

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
In re : Chapter 11  
CRABTREE & EVELYN, LTD., :  
Debtor. : Case No. 09-14267 (BRL)  
----- X

FIRST AMENDED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Dated: ~~October 23,~~ November 17, 2009  
New York, New York

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## INTRODUCTION

Crabtree & Evelyn, Ltd. (the “Debtor”) proposes the following Plan for the resolution of the outstanding Claims against and Interests in the Debtor. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The Plan provides for the reorganization of the Debtor and satisfaction of all outstanding Claims through the Distributions described herein and treatment of Interests in the Debtor. Other agreements and documents that supplement the Plan have been (or will be) filed with the Bankruptcy Court. These supplemental agreements and documents will be available for review.

Reference is made to the Disclosure Statement accompanying the Plan, including the exhibits thereto, for a discussion of the Debtor’s history, business, properties, results of operations, and projections for future operations and risk factors, together with a summary and analysis of the Plan. All Claim holders entitled to vote on the Plan are encouraged to consult the Disclosure Statement and to read the Plan carefully before voting to accept or reject the Plan.

The Plan [has the support of the Creditors’ Committee](#). [The Plan also](#) has the support of the Debtor’s ultimate parent company, ultimate sole equity holder and largest unsecured creditor, KLK.

NO SOLICITATION MATERIALS, OTHER THAN THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED THEREWITH AND APPROVED BY THE BANKRUPTCY COURT, HAVE BEEN AUTHORIZED BY THE [BANKRUPTCY](#) COURT FOR USE IN SOLICITING ACCEPTANCES OR REJECTIONS OF THE PLAN.

## ARTICLE I

### DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

**1.1. Defined Terms.** As used in the Plan, capitalized terms have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

**1.1.1. “\$13 Million Obligation”** means the amount of \$13,731,528 owed by the Debtor to KLKOI.

**1.1.2. “\$18 Million Obligation”** means the amount of approximately \$18 million assumed by KLK under that certain Revolving Demand Note (Grid) dated July 3, 2008 in consideration of payment by KLK to HSBC Bank USA, National Association.

**1.1.3. “503(b)(9) Claim”** means a Claim asserted against the Debtor pursuant to section 503(b)(9) of the Bankruptcy Code.

**1.1.4. “Administrative Claim”** means a Claim for costs and expenses of administration allowed under sections 503(b) or 507(a)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtor (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises); (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses awarded or allowed under sections 330(a), 331 or 503 of the Bankruptcy Code, including a Professional Fee Claim and any Claim based upon a substantial contribution in the Debtor’s Chapter 11 Case; (c) a Cure Amount Claim; and (d) a 503(b)(9) Claim.

**1.1.5. “Allowed” or “Allowed Claim”** means or refers to, as dictated by the context in which the definition is used, a Claim (or a portion thereof) to the extent:

(a) such Claim is listed by the Debtor on its Schedules in a liquidated amount and not listed as contingent, unliquidated, zero, undetermined or disputed that:

(i) is not subject to an objection or to an amendment to the Schedules prior to the Claims Objection Deadline,

(ii) has been allowed in a Stipulation of Amount and Nature of Claim executed by the Debtor or Reorganized Debtor and the holder of the Claim, or

(iii) has otherwise been allowed by a Final Order or the terms of the Plan; or

(b) such Claim is a Timely Claim that:

(i) is not subject to an objection prior to the Claims Objection Deadline, in the Debtor’s or Reorganized Debtor’s sole discretion,

(ii) has been allowed in a Stipulation of Amount and Nature of Claim executed by the Debtor or Reorganized Debtor and the holder of the Claim, or

(iii) has otherwise been allowed by a Final Order or the terms of the Plan.

An Allowed Claim includes a previously Disputed Claim, or a portion thereof, to the extent such Disputed Claim becomes Allowed and shall be net of any valid setoff amount based on a valid offset right. Unless otherwise expressly provided herein, in the Confirmation Order or in another Final Order of the Bankruptcy Court, the term “Allowed or Allowed Claim” shall not, for the purposes of computation of Distributions under the Plan, include: (a) interest on any Claim, (b) any non-compensatory penalties, fines, punitive damages, exemplary damages, multiple damages, treble damages or any other claims or obligations that do not compensate for actual losses incurred, (c) any damages or amounts that arose or resulted from the Claim holder’s failure to mitigate as required or obligated under applicable law or (d) any other amounts not allowable under the Bankruptcy Code or applicable law, including, without limitation, any Claim subject to disallowance, in whole or part, in accordance with Section 502(d) of the Code.

**1.1.6. “Allowed . . . Claim”** means an Allowed Claim in the particular Class or category specified.

**1.1.7. “Ballot”** means the form distributed to each holder of an impaired Claim that is entitled to vote to accept or reject the Plan on which is to be indicated, among other things, acceptance or rejection of the Plan.

**1.1.8. “Bankruptcy Code”** means title 11 of the United States Code, as in effect on the Petition Date or thereafter amended with retroactive applicability to the Chapter 11 Case.

**1.1.9. “Bankruptcy Court”** means the United States Bankruptcy Court for the Southern District of New York having jurisdiction over the Chapter 11 Case.

**1.1.10. “Bankruptcy Rules”** means, collectively, the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended with retroactive applicability to the Chapter 11 Case.

**1.1.11. “Bar Date”** means the applicable bar date by which a proof of Claim or a request for payment of Administrative Claim must be or must have been filed, in accordance with the procedures established by an order of the Bankruptcy Court, including the Bar Date Order and the Confirmation Order.

**1.1.12. “Bar Date Order”** means the order of the Bankruptcy Court entered on August 20, 2009, establishing certain Bar Dates for filing proofs of Claim in the Chapter 11 Case, as the same may be amended, modified or supplemented.

**1.1.13. “Business Day”** means any day, other than a Saturday, Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

**1.1.14. “By-Laws”** means the by-laws of the Debtor or Reorganized Debtor as amended and restated, if necessary.

**1.1.15. “Cash”** means the legal tender of the United States of America or the equivalent thereof, including without limitation, bank deposits and checks.

**1.1.16. “Certificate of Incorporation”** means the incorporation or formation documents of the Debtor or Reorganized Debtor as amended and restated, if necessary.

**1.1.17. “Chapter 11 Case”** means the chapter 11 case pending for the Debtor in the Bankruptcy Court, administered under Case No. 09-14267 (BRL).

**1.1.18. “Claim”** means a “claim,” as that term is defined in section 101(5) of the Bankruptcy Code, against the Debtor.

**1.1.19. “Claims Agent”** means Epiq Bankruptcy Solutions, LLC, the Debtor’s claims and noticing agent appointed by the Bankruptcy Court by Final Order dated July 2, 2009.



**1.1.20. “Claims Objection Deadline”** means, for all Claims and Interests, the later of (a) ~~one hundred and eighty (180)~~ninety (90) days after the Effective Date, (b) such other period as set forth in a Final Order by the Bankruptcy Court for objecting to such Claim or Interest, (c) sixty (60) days after a proof of Claim or request for payment of a Claim is filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules, or (d) such other later date the Bankruptcy Court may establish upon a motion ~~by~~of the Reorganized Debtor; ~~which motion may be approved without a hearing and without notice to any party upon a showing of cause.~~

**1.1.21. “Class”** means a class of Claims or Interests.

**1.1.22. “Class Action Settlement Amount”** means two hundred and seventy thousand dollars (\$270,000.00).

**1.1.23. “Class Action Settlement Claims”** means the Claims covered by proof of claim number 370 filed on behalf of a purported class of current and former employees of the Debtor.

**1.1.24. “Confirmation Date”** means the first date as of which the Confirmation Order is signed by the Bankruptcy Court and entered on its docket.

**1.1.25. “Confirmation Hearing”** means, collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Plan, as such hearing or hearings may be continued from time to time.

**1.1.26. “Confirmation Order”** means the order of the Bankruptcy Court that confirms the Plan pursuant to section 1129 of the Bankruptcy Code.

**1.1.27. “Creditors’ Committee”** means the Official Committee of Unsecured Creditors of the Debtor appointed by the U.S. Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code and any duly appointed successors, as the same may be amended or reconstituted from time to time.

**1.1.28. “Cure Amount Claim”** means a Claim based upon the Debtor’s defaults pursuant to an Executory Contract or Unexpired Lease at the time such Executory Contract or Unexpired Lease is assumed, or assumed and assigned, by the Debtor under section 365 of the Bankruptcy Code, provided however, that the Cure Amount Claim shall not include claims that accrued prior to the Effective Date of the Plan but which shall not become due and payable until after the Effective Date of the Plan. For the avoidance of doubt, the Cure Amount Claim set forth in a previous Final Order of the Bankruptcy Court for any Executory Contract or Unexpired Lease that was assumed, or assumed and assigned is and shall be the sole and single satisfaction for any and all Claims arising under such Executory Contract or Unexpired Lease through the date that the Executory Contract or Unexpired Lease was assumed.

**1.1.29. “Debtor”** has the meaning ascribed to it on the first page of the Plan.

**1.1.30. “Deficiency Claim”** means a General Unsecured Claim for the difference between (a) the aggregate amount of an Allowed Claim and (b) the value received on account of the portion of such Allowed Claim that is a Secured Claim.

**1.1.31. “DIP Agreement”** means that certain Amended DIP Grid Note dated as of June 30, 2009, in the amount of \$26,300,000, made by KLK in favor of the Debtor.

**1.1.32. “DIP Claim”** means the Claim of the DIP Lender arising under the DIP Agreement.

**1.1.33. “DIP Lender”** means KLK, in its capacity as lender under the DIP Agreement.

**1.1.34. “Disallowed”** or **“Disallowed Claim”** means or refers to, as dictated by the context in which the definition is used, a Claim or any portion thereof that (a) has been disallowed, expunged, barred, estopped or otherwise determined not to be a liability of the Debtor by any order of the Bankruptcy Court, including, for the avoidance of doubt, that portion of a Disputed Claim that was not determined to be an Allowed Claim in any such order; (b) is listed by a Debtor in its Schedules at zero or as contingent, unliquidated, undetermined or disputed and as to which no Timely Claim has been filed; or (c) is not listed by a Debtor in the Schedules and as to which no Timely Claim has been filed.

**1.1.35. “Disclosure Statement”** means that certain first amended disclosure statement dated as of ~~October 23,~~November 17, 2009, relating to the Plan, including, without limitation, all exhibits and schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

**1.1.36. “Disputed”** or **“Disputed Claim”** means or refers to, as dictated by the context in which the definition is used, a Claim that is neither an Allowed Claim, as set forth in Section 1.1.6, nor a Disallowed Claim, as set forth in Section 1.1.34.

**1.1.37. “Distribution”** means the payment or distribution under the Plan of Cash, interests or other property, as applicable, to the holders of Allowed Claims.

**1.1.38. “Distribution Percentage”** means, with respect to any Allowed Claim in Class 3, at any time, a total of forty-five percent (45%) of each Allowed General Unsecured Claim, subject to pro rata reduction based upon allowance of any Class 4 Claims in accordance with Section 3.4.2.

**1.1.39. “Distribution Record Date”** means the Confirmation Date.

**1.1.40. “Effective Date”** means a day, as determined by the Debtor, that is a Business Day on which all conditions to the Effective Date in Section 8.1 have been met or waived pursuant to Section 8.2, which date shall be no later than thirty (30) days after the Confirmation Order becomes a Final Order.

**1.1.41. “Encumbrance”** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, assignment or encumbrance of any kind or nature with respect to such asset (including any conditional sale or other title retention agreement, any security agreement, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction).

**1.1.42. “Entity”** means an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization or government or any political subdivision thereof, or other Person or entity.

**1.1.43. “Estate”** means the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

**1.1.44. “Executory Contract”** means a contract to which the Debtor is a party that is or was subject to assumption or rejection under section 365 of the Bankruptcy Code during the Chapter 11 Case.

**1.1.45. “Exhibit”** means an exhibit to the Plan.

**1.1.46. “Exit Facility”** means the exit loan facility, on substantially the terms set forth on Exhibit E.

**1.1.47. “Exit Financing”** means the Exit Facility sufficient to fund, among other things, the transactions contemplated by the Plan and the working capital requirements of the Reorganized Debtor subsequent to the Effective Date.

**1.1.48. “Fee Order”** means the Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code and Bankruptcy Rule 2016(a) Establishing Procedures for Interim Monthly Compensation and Reimbursement of Expenses of Professionals entered by the Bankruptcy Court on July 29, 2009.

**1.1.49. “Final Fee Application”** means an application for final allowance of the Professional’s aggregate Professional Fee Claim as described in Section 2.2.2(a).

**1.1.50. “Final Order”** means: (a) an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, the docket of an adversary proceeding related to the Chapter 11 Case or the docket of any other court of competent jurisdiction, (b) that has not been reversed, stayed, modified or amended, (c) as to which the time to appeal or seek certiorari or move for a new trial, reargument or rehearing has expired, and (d) for which no appeal or petition for certiorari or other proceedings for a new trial, reargument or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been timely filed has been withdrawn with prejudice or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument or rehearing shall have been denied or resulted in no modification of such order.

**1.1.51. “General Unsecured Claim”** means a Claim, including any Deficiency Claim, Insured Claim, Reclamation Claim or Rejection Claim, that is not entitled to priority or

administrative status under the Bankruptcy Code and is not a Secured Claim. For the avoidance of doubt, any Administrative Claim, Cure Amount Claim, Priority Tax Claim, Priority Non-Tax Claim or Secured Claim is not a General Unsecured Claim.

1.1.52. “General Unsecured Claims Reserve” means the reserve of Cash established and maintained by the Debtor or the Reorganized Debtor to pay Allowed General Unsecured Claims, which reserve shall be funded in an amount not less than an amount required to fund the Distribution Percentage for Allowed General Unsecured Claims totaling \$8.5 million.

1.1.53. ~~1.1.52.~~ “Initial Distribution Date” means no later than ninety (90) days after Effective Date.

1.1.54. ~~1.1.53.~~ “Insured Claim” means any Claim (other than a Workers’ Compensation Claim) arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtor or its business that is subject to the provisions of Section 4.12.1.

1.1.55. ~~1.1.54.~~ “Interest” means an equity security, within the meaning of section 101(16) of the Bankruptcy Code, in the Debtor, including, but not limited to, the shares of stock of the Debtor.

1.1.56. ~~1.1.55.~~ “Interim Distribution Date” means one or more dates designated by the Reorganized Debtor in its sole and reasonable discretion.

1.1.57. ~~1.1.56.~~ “Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

1.1.58. ~~1.1.57.~~ “IRS” means the Internal Revenue Service of the United States of America.

1.1.59. ~~1.1.58.~~ “KLK” means Kuala Lumpur Kepong Berhad.

1.1.60. ~~1.1.59.~~ “KLKOP” means KLK Overseas Investments Ltd.

1.1.61. ~~1.1.60.~~ “Liability” or “Liabilities” means any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place on or prior to the Effective Date.

1.1.62. ~~1.1.61.~~ “Ordinary Course Professionals Order” means the Order Pursuant to Sections 105(a), 327, 328, and 330 of the Bankruptcy Code Authorizing the Debtor to Employ Professionals Utilized in the Ordinary Course of Business entered by the Bankruptcy Court on July 29, 2009.

1.1.63. ~~1.1.62.~~ “Parent Debt” means (i) the \$13 Million Obligation, and (ii) the \$18 Million Obligation.

1.1.64. ~~1.1.63.~~ **“Person”** means a “person” within the meaning of Bankruptcy Code section 101(41), as well as any governmental or political entity, subdivision or agency.

1.1.65. ~~1.1.64.~~ **“Petition Date”** means July 1, 2009.

1.1.66. ~~1.1.65.~~ **“Plan”** means this plan of reorganization for the Debtor, and all Exhibits attached hereto or referenced herein, as the same may be amended, modified or supplemented.

1.1.67. ~~1.1.66.~~ **“Plan Supplement”** means the supplement to the Plan containing the Exhibits, which supplement will be filed with the Bankruptcy Court on the Plan Supplement Date. Notwithstanding anything herein to the contrary, the Debtor reserves the right to amend the documents contained in the Plan Supplement at any time prior to the Confirmation Hearing, except that the Debtor shall not be entitled to amend Exhibit D to the Plan to add any Executory Contracts or Unexpired Leases after the Plan Supplement Date, absent the consent of the counterparty to any such Executory Contract or Unexpired Lease.

1.1.68. ~~1.1.67.~~ **“Plan Supplement Date”** means ~~a date that is at least ten (10) days prior to the Confirmation Hearing~~ on or before December 21, 2009 or such later date as may be established by order of the Bankruptcy Court.

1.1.69. ~~1.1.68.~~ **“Potential Class Action Settlement Approval Order”** means an order of the Bankruptcy Court granting a motion of the Debtor to take all actions necessary or appropriate to implement the settlement agreement attached as exhibit A to the Motion of the Debtor Pursuant to Sections 105(a), 362, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004 for an Order (I) Granting Assumption of Settlement Agreement, or, Alternatively, Granting Approval to Enter Into Settlement Agreement, (II) Modifying the Automatic Stay for the Limited Purpose of Permitting Actions Contemplated by Settlement Agreement to Proceed, and (III) Upon State Court Approval of Settlement Agreement, Allowing Claim of Potential Class and Permitting Payment Thereof (Docket No. 70).

1.1.70. ~~1.1.69.~~ **“Prepetition Note”** means that certain Grid Note dated April 6, 2009, in favor of KKKOI and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto.

1.1.71. ~~1.1.70.~~ **“Priority Non-Tax Claim”** means a Claim that is entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

1.1.72. ~~1.1.71.~~ **“Priority Tax Claim”** means a Claim for Taxes that is entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

1.1.73. ~~1.1.72.~~ **“Professional”** means any professional employed in the Chapter 11 Case pursuant to sections 327, 328, or 363 of the Bankruptcy Code or any professional or other Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

~~1.1.74. 1.1.73.~~ **“Professional Fee Claim”** means an Administrative Claim under sections 330(a), 331, or 503 of the Bankruptcy Code for compensation of a Professional or other Entity for services rendered or expenses incurred in the Chapter 11 Case.

~~1.1.75. 1.1.74.~~ **“Reclamation Claim”** means a Claim for reclamation in accordance with section 546(c) of the Bankruptcy Code and/or section 2-702 of the Uniform Commercial Code or other applicable state law. Reclamation Claims shall be treated under the Plan as General Unsecured Claims.

~~1.1.76. 1.1.75.~~ **“Recovery Actions”** means, collectively and individually, any and all actions, proceedings, accounts, controversies, agreements, promises, claims, and rights of the Debtor and its Estate to avoid or recover a transfer of property of any of the Estate or an interest of any of the Debtor in property, including, without limitation, actions arising under sections 506, 510, 541, 542, 544, 545, ~~547,~~ 548, 549, 550 and 553 of the Bankruptcy Code and any other applicable federal or common law, including fraudulent transfers, whether or not litigation has been commenced with respect to such Recovery Action as of the Effective Date.

~~1.1.77. 1.1.76.~~ **“Reinstated”** or **“Reinstatement”** means rendering an Allowed Claim or Interest unimpaired within the meaning of section 1124 of the Bankruptcy Code. Unless the Plan specifies a particular method of Reinstatement, when the Plan provides that an Allowed Claim or Interest will be Reinstated, such Allowed Claim or Interest will be Reinstated, at the Reorganized Debtor’s sole discretion, in accordance with one of the following:

(a) The legal, equitable and contractual rights to which such Allowed Claim or Interest entitles the holder will be unaltered; or

(b) Notwithstanding any contractual provision or applicable law that entitles the holder of such Allowed Claim or Interest to demand or receive accelerated payment of such Allowed Claim or Interest after the occurrence of a default:

(i) any such default that occurred before or after the commencement of the Chapter 11 Case, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code, will be cured;

(ii) the maturity of such Allowed Claim or Interest as such maturity existed before such default will be reinstated;

(iii) the holder of such Allowed Claim or Interest will be compensated for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

(iv) the legal, equitable or contractual rights to which such Allowed Claim or Interest entitles the holder of such Allowed Claim or Interest will not otherwise be altered.

~~1.1.78. 1.1.77.~~ **“Rejection Claim”** means a Claim arising from the rejection of an Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code. All



such Claims shall be subject to the limitations set forth in sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code and state law mitigation requirements, if any.

1.1.79. ~~1.1.78.~~ **“Released Parties”** has the meaning assigned to such term in Section 9.3 of the Plan.

1.1.80. ~~1.1.79.~~ **“Reorganized Debtor”** means the Debtor on and after the Effective Date.

1.1.81. ~~1.1.80.~~ **“Restructuring Transactions”** means, collectively, those mergers, consolidations, restructurings, dispositions, liquidations or dissolutions that the Debtor or Reorganized Debtor determines to be necessary or appropriate to effect a corporate restructuring of its business or otherwise to simplify the overall corporate structure of the Reorganized Debtor as contemplated by and consistent with the Plan.

1.1.82. ~~1.1.81.~~ **“Schedules”** means the schedules of assets and liabilities and the statements of financial affairs filed by the Debtor on or about August 14, 2009 with the Bankruptcy Court, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, restated, modified or supplemented.

1.1.83. ~~1.1.82.~~ **“Secured Claim”** means a Claim, other than a DIP Claim, that is secured by a lien on property in which the Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

1.1.84. ~~1.1.83.~~ **“Stipulation of Amount and Nature of Claim”** means a stipulation or other agreement between the Debtor or Reorganized Debtor and a holder of a Claim or Interest establishing the Allowed amount or nature of such Claim or Interest that is (a) entered into in accordance with any Claim settlement procedures established in this Chapter 11 Case, (b) permitted or contemplated by the Plan, or (c) approved by order of the Bankruptcy Court.

1.1.85. ~~1.1.84.~~ **“Tax”** means (a) any net income, alternative or add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, property, environmental or other tax, assessment or charge of any kind whatsoever (together in each instance with any interest, penalty, addition to tax or additional amount) imposed by any federal, state, local or foreign taxing authority; or (b) any liability for payment of any amounts of the foregoing types as a result of being a member of an affiliated, consolidated, combined or unitary group, or being a party to any agreement or arrangement whereby liability for payment of any such amounts is determined by reference to the liability of any other Entity.

1.1.86. ~~1.1.85.~~ **“Timely Claim”** means a Claim for which a proof of Claim or request for payment of Administrative Claim was filed by the applicable Bar Date or is otherwise determined to be timely filed by a Final Order of the Bankruptcy Court.

**1.1.87. ~~1.1.86.~~ “Unexpired Lease”** means a lease to which the Debtor is a party that is or was subject to assumption or rejection under section 365 of the Bankruptcy Code during the Chapter 11 Case.

**1.1.88. ~~1.1.87.~~ “U.S. Trustee”** means the United States Trustee for the Southern District of New York.

**1.1.89. ~~1.1.88.~~ “Workers’ Compensation Claim”** means a Claim held by a current or former employee of the Debtor for workers’ compensation insurance coverage under the workers’ compensation laws applicable in the particular state in which the employee is or was employed by the Debtor.

## **1.2. Rules of Interpretation and Computation of Time**

**1.2.1. Rules of Interpretation.** For purposes of the Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) unless otherwise provided in the Plan, 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 will be substantially in such form or substantially on such terms and conditions; (c) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified or supplemented pursuant to the Plan or Confirmation Order; (d) any reference to an Entity as a holder of a Claim or Interest includes that Entity’s predecessors, successors, assigns and affiliates; (e) all references in the Plan to Sections, Articles and Exhibits are references to Sections, Articles and Exhibits of or to the Plan; (f) the words “herein,” “hereunder” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (g) the words “includes” or “including” are not limiting; (h) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (i) subject to the provisions of any contract, incorporation documents, operating agreements, by-laws, similar constituent documents, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the rights and obligations arising under the Plan will be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code and the Bankruptcy Rules; (j) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (k) to the extent not inconsistent with the Plan, terms used in the Plan that are not otherwise defined herein shall be interpreted as such terms are interpreted under the Bankruptcy Code and the Bankruptcy Rules.

**1.2.2. Computation of Time.** In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

## **ARTICLE II**

### **PROVISIONS FOR TREATMENT OF ADMINISTRATIVE CLAIMS**

#### **2.1. Payment of Administrative Claims.**



**2.1.1. Administrative Claims in General.** Except as specified in Sections 2.1.2 through ~~2.1.4~~2.1.3 of the Plan and subject to the bar date provisions contained in Section 2.2, unless otherwise agreed to by the holder of an Administrative Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Administrative Claim shall receive Cash in an amount equal to the Allowed Administrative Claim, in full satisfaction of its Allowed Administrative Claim, on account of such Allowed Claim from the Reorganized Debtor either (i) if the Administrative Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (ii) if the Administrative Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Administrative Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Administrative Claim.

~~**2.1.2. Statutory Fees.** On or before the Effective Date, Allowed Administrative Claims for fees payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717, as determined at the Confirmation Hearing by the Bankruptcy Court, shall be paid in Cash equal to the amount of such Allowed Administrative Claims by the Debtor or Reorganized Debtor. All fees arising after the Effective Date and payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717 shall be paid by the Reorganized Debtor in accordance therewith until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.~~

~~**2.1.2.**~~ ~~**2.1.3.**~~ **Ordinary Course Liabilities.** Allowed Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its business shall be satisfied by the Reorganized Debtor pursuant to the terms and conditions of the particular transaction giving rise to such Administrative Claims, without any further action by the holders of such Administrative Claims or further approval of the Bankruptcy Court.

~~**2.1.3.**~~ ~~**2.1.4.**~~ **DIP Claims.** On the Effective Date, any Allowed Administrative Claim that is a DIP Claim shall receive Cash in an amount equal to the Allowed DIP Claim in full satisfaction of its Allowed Claim.

## **2.2. Bar Dates for Administrative Claims**

**2.2.1. General Bar Date Provisions.** Except as otherwise provided in Section 2.2.2, unless previously filed, requests for payment of Administrative Claims (except for Professional Fee Claims) for the period of **July 1, 2009 through the Effective Date**, must be filed and served on the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order, no later than thirty (30) days after the Effective Date. Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims and that do not file and serve such a request by the applicable Bar Date shall be forever barred from asserting such Administrative Claims against the Debtor, the Reorganized Debtor or their respective property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be filed and served on the requesting party, the Reorganized Debtor and, prior to the Effective Date, the Creditors' Committee, by the Claims Objection Deadline.

## 2.2.2. Bar Dates for Certain Administrative Claims.

(a) **Professional Compensation.** Professionals or other Entities asserting a Professional Fee Claim for services rendered from the Petition Date to the Effective Date must file with the Bankruptcy Court and serve on the Reorganized Debtor and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Fee Order or other order of the Bankruptcy Court a Final Fee Application no later than forty-five (45) days after the Effective Date; provided, however, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered from the Petition Date to the Effective Date, without further Bankruptcy Court review or approval, pursuant to the Ordinary Course Professionals Order. A Professional may include any outstanding, non-filed monthly or interim request for payment of a Professional Fee Claim pursuant to the Fee Order in its Final Fee Application. Objections to any Final Fee Application must be filed with the Bankruptcy Court and served on the requesting party, the Reorganized Debtor, counsel for the Reorganized Debtor, and, prior to the Effective Date, the Creditors' Committee within thirty (30) days after the filing of the applicable Final Fee Application. To the extent necessary, the Confirmation Order or any other order with respect to a Final Fee Application shall amend and supersede any previously entered order of the Bankruptcy Court, including the Fee Order, regarding the payment of Professional Fee Claims. Any pending, filed interim requests for a Professional Fee Claim pursuant to the Fee Order shall be resolved in the ordinary course in accordance with the Fee Order or, if sooner, in connection with the particular Professional's Final Fee Application.

(b) **Ordinary Course Liabilities.** Holders of Administrative Claims based on liabilities incurred by the Debtor in the ordinary course of its business shall not be required to file or serve any request for payment of such Administrative Claims. Such Administrative Claims shall be satisfied pursuant to Section ~~2.1.3~~2.1.2.

(c) **DIP Claims.** Holders of Administrative Claims that are DIP Claims shall not be required to file or serve any request for payment of such Claims. Such Administrative Claims shall be satisfied pursuant to Section ~~2.1.4~~2.1.3.

## 2.3. Payment of Priority Tax Claims

**2.3.1. Priority Tax Claims.** Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the Debtor or Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall receive (i) Cash in an amount equal to the Allowed Priority Tax Claim, in full satisfaction of its Allowed Priority Tax Claim either (A) if the Priority Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (B) if the Priority Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Priority Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Tax Claim; or (ii) if agreed by the Debtor or Reorganized Debtor and the holder of the Priority Tax Claim, payment over a period ending not later than five (5) years after the Petition Date with a total Cash value equal to the Allowed amount of the Priority Tax Claim.

**2.3.2. Other Provisions Concerning Priority Tax Claims.** Notwithstanding the provisions of Section 2.3.1, any Claim on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim that does not compensate the holder for actual pecuniary loss shall be treated as a General Unsecured Claim, and the holder (other than as the holder of a General Unsecured Claim) may not assess or attempt to collect such penalty from the Reorganized Debtor or its property.

### ARTICLE III

#### CLASSIFICATION OF CLAIMS AND INTERESTS, IMPAIRMENT AND VOTING

The following table designates the classes of Claims against and Interests in the Debtor and specifies which of those classes are impaired or unimpaired by the Plan and entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code or deemed to reject the Plan.

Class	Designation	Impairment	Entitled to Vote
Class 1	Secured Claims	Unimpaired	No (deemed to accept)
Class 2	Priority Non-Tax Claims	Unimpaired	No (deemed to accept)
Class 3	General Unsecured Claims	Impaired	Yes
Class 4	Class Action Settlement Claims	Impaired	Yes
Class 5	Interests	Unimpaired	No (deemed to accept)

#### 3.1. Class 1 Claims (Secured Claims).

**3.1.1. Impairment and Voting.** Class 1 is unimpaired by the Plan. Each holder of a Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**3.1.2. Distributions.** Each holder of an Allowed Secured Claim in Class 1 shall receive (i) Cash in an amount equal to the Allowed Secured Claim, or (ii) the return of the holder's collateral securing the Allowed Secured Claim, in full satisfaction of its Allowed

Secured Claim, unless the holder of such Claim agrees to less favorable treatment, either (a) if the Secured Claim is Allowed as of the Effective Date, on the Initial Distribution Date, (b) if the Secured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Secured Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Secured Claim, unless otherwise agreed by the holder of a Secured Claim and the Debtor or Reorganized Debtor. Any Allowed Deficiency Claim of a holder of an Allowed Secured Claim shall be entitled to treatment as an Allowed General Unsecured Claim. Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order ~~to the contrary~~, Claims in Class 1 shall not include the \$13 Million Obligation, which shall remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and shall become debt of the Reorganized Debtor.

### **3.2. Class 2 Claims (Priority Non-Tax Claims).**

**3.2.1. Impairment and Voting.** Class 2 is unimpaired by the Plan. Each holder of a Priority Non-Tax Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**3.2.2. Distributions.** Each holder of an Allowed Priority Non-Tax Claim in Class 2 shall receive Cash in an amount equal to the Allowed Priority Non-Tax Claim, in full satisfaction of its Allowed Priority Non-Tax Claim, unless the holder of such Claim agrees to less favorable treatment either (a) if the Priority Non-Tax Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the Priority Non-Tax Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2 and 7.3 after an order allowing such Priority Non-Tax Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Priority Non-Tax Claim, unless otherwise agreed by the holder of a Priority Non-Tax Claim and the Debtor or Reorganized Debtor.

### **3.3. Class 3 Claims (General Unsecured Claims).**

**3.3.1. Impairment and Voting.** Class 3 is impaired by the Plan. Each holder of a General Unsecured Claim is entitled to vote to accept or reject the Plan.

**3.3.2. Distributions.** Each holder of an Allowed General Unsecured Claim shall receive payments in Cash that would, together with any payments previously received by such holder after the Petition Date on account of its Allowed General Unsecured Claim, provide such holder with its Distribution Percentage, in full satisfaction of its Allowed General Unsecured Claim, unless the holder of such Claim agrees to less favorable treatment either (a) if the General Unsecured Claim is Allowed as of the Effective Date, on the Initial Distribution Date or (b) if the General Unsecured Claim is not Allowed as of the Effective Date, on the next Interim Distribution Date as set forth in Sections 6.8.2, 7.1.2 and 7.3. The Reorganized Debtor shall make an initial distribution to holders of Allowed General Unsecured Claims on the Initial Distribution Date. As Disputed General Unsecured Claims are resolved, the Reorganized Debtor shall make one or more additional distributions, as necessary. Notwithstanding anything to the

contrary in the Plan, the Disclosure Statement or the Confirmation Order ~~to the contrary~~, Claims in Class 3 shall not include the \$18 Million Obligation, which shall remain in full force and effect, on the same terms and conditions as existed prior to the Petition Date, on the Effective Date and thereafter, and shall become debt of the Reorganized Debtor.

### **3.4. Class 4 Claims (Class Action Settlement Claims).**

**3.4.1. Impairment and Voting.** Class 4 is impaired by the Plan. ~~Each~~The holder of ~~a~~the Class Action Settlement Claim is entitled to vote to accept or reject the Plan.

**3.4.2. Distributions.** ~~Claims~~The Class Action Settlement Claim in Class 4 shall be treated as follows: either (a) if the Potential Class Action Settlement Approval Order is entered by the Bankruptcy Court and such order becomes a Final Order, the Class Action Settlement Claim shall be treated as an Administrative Claim in the reduced Class Action Settlement Amount and shall be paid in accordance with the Potential Class Action Settlement Approval Order, or (b) if the Potential Class Action Settlement Approval Order is not entered by the Bankruptcy Court, ~~each holder of an Allowed~~the Class Action Settlement Claim ~~shall receive the same Distribution Percentage as each holder of a Class 3 Claim in an aggregate Claim amount to be determined by entry of a judgment or otherwise agreed by the parties, if allowed, shall share pro rata with Allowed Class 3 Claims the amounts that otherwise would have been paid to satisfy all Allowed Class 3 and Allowed Class 4 Claims if the Potential Class Action Settlement Approval Order was entered.~~ The allowance of such ~~Claim~~Class Action Settlement Claim pursuant to this Section 3.4.2(b) and the pro rata sharing described herein will result in a reduction of the Distribution Percentage by between approximately 1.9% and 2.2% for every \$500,000 of the Allowed Class Action Settlement Claim.

### **3.5. Class 5 Interests (Interests).**

**3.5.1. Impairment and Voting.** Class 5 is unimpaired by the Plan. Each holder of an Interest is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

**3.5.2. Distributions.** Interests in the Debtor shall be Reinstated and shall remain in full force and effect on the Effective Date and thereafter.

## **ARTICLE IV**

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

**4.1. Corporate Existence and Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided herein (and subject to the Restructuring Transaction provisions of Section 4.2), the Debtor will, as a Reorganized Debtor, continue to exist after the Effective Date, with all the powers of a corporation or company under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable state law. Except as otherwise provided herein, as of the Effective Date, all property of the Estate of the Debtor, and any property acquired by the Debtor or Reorganized Debtor under the Plan, will vest in the Reorganized Debtor, free and clear of all Claims, Encumbrances and Interests. On and after the Effective Date, the Reorganized Debtor may operate its businesses

and may use, acquire and dispose of property and compromise or settle any Claims without supervision of or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including fees relating to the preparation of Final Fee Applications) without application to the Bankruptcy Court.

## **4.2. Restructuring Transactions**

**4.2.1. Restructuring Transactions Generally.** On or after the Confirmation Date, the Debtor or Reorganized Debtor may enter into Restructuring Transactions and may take such actions as the Debtor or Reorganized Debtor may determine to be necessary or appropriate to effect a corporate restructuring of their respective businesses or simplify the overall corporate structure of the Reorganized Debtor, to the extent not inconsistent with any other terms of the Plan. Such Restructuring Transactions may include one or more mergers, consolidations, restructurings, dispositions, liquidations or dissolutions, as may be determined by the Debtor or the Reorganized Debtor to be necessary or appropriate without further order of the Bankruptcy Court. The actions to effect these transactions may include, but shall not be limited to: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, disposition, liquidation or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable Entities may agree; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, duty or obligation on terms consistent with the terms of the Plan and having such other terms to which the applicable Entities may agree; (c) the filing of appropriate certificates or articles of merger, consolidation, dissolution or change in corporate form pursuant to applicable state law; and (d) the taking of all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with such transactions.

**4.2.2. Obligations of Any Successor Corporation in a Restructuring or Other Transaction.** In no case shall a Restructuring Transaction or any other restructuring or sale relieve the Reorganized Debtor or any successor to the Reorganized Debtor from performing the obligations of the Debtor or the Reorganized Debtor pursuant to the Plan including, without limitation, to pay or otherwise satisfy the Allowed Claims against the Reorganized Debtor.

**4.3. Certificate of Incorporation and By-Laws of the Reorganized Debtor.** As of the Effective Date, the Certificate of Incorporation and the By-Laws of the Reorganized Debtor will be adopted substantially in the forms of Exhibit A and Exhibit B, respectively, with such changes as may be necessary to conform to the applicable law of the state of incorporation. The initial Certificate of Incorporation and By-Laws of the Reorganized Debtor will, among other things, prohibit the issuance of nonvoting equity securities to the extent required by section 1123(a) of the Bankruptcy Code. After the Effective Date or the effective time of any applicable Restructuring Transaction, the Reorganized Debtor may amend and restate its Certificate of Incorporation or By-Laws as permitted by applicable state law, subject to the terms and conditions of such constituent documents. If the Reorganized Debtor is not a new corporate



entity, then the Certificate of Incorporation and By-Laws of the Debtor may become the Certificate of Incorporation and By-Laws of the Reorganized Debtor. Notwithstanding anything herein to the contrary, nothing herein shall require the Debtor to form a new corporate entity.

**4.4. Directors and Officers of the Reorganized Debtor.** Subject to any requirement of Bankruptcy Court approval pursuant to section 1129(a)(5) of the Bankruptcy Code, the initial members of the board of directors of the Reorganized Debtor shall be set forth on Exhibit C. The initial officers of the Reorganized Debtor will consist of the officers of the Debtor immediately prior to the Effective Date.

Each such director and officer will serve from and after the Effective Date until his or her successor is duly elected or appointed and qualified or until the earlier of his or her death, resignation or removal in accordance with the terms of the Certificate of Incorporation and By-Laws of the Reorganized Debtor and state law.

**4.5. New Employment, Retirement, Indemnification and Other Related Agreements and Incentive Compensation Programs.** As of the Effective Date, the Reorganized Debtor shall have authority, as determined by the Reorganized Debtor's board of directors, to: (a) maintain, amend or revise existing employment, retirement, welfare, incentive, severance, indemnification and other agreements with its active and retired directors, officers and employees, subject to the terms and conditions of any such agreement; and (b) enter into new employment, retirement, welfare, incentive, severance, indemnification and other agreements for active and retired employees.

**4.6. Corporate Action.** Pursuant to section 1142 of the Bankruptcy Code and applicable state law, the following actions (which will occur and be deemed effective as of the date specified in the documents effectuating the same or, if no date is so specified, the Effective Date) shall be authorized and approved in all respects and for all purposes without any requirement of further action by stockholders or directors of the Debtor or the Reorganized Debtor or any other Person or entity: (a) the Restructuring Transactions; (b) the adoption of a new or amended and restated Certificate of Incorporation and By-Laws for the Reorganized Debtor; (c) the initial selection of directors and officers for the Reorganized Debtor; (d) the Distribution of Cash pursuant to the Plan; (e) the filing of any necessary registration statements; (f) the adoption, execution, delivery and implementation of all contracts, leases, instruments, releases and other agreements or documents related to any of the foregoing; (g) the adoption, execution and implementation of employment, retirement and indemnification agreements, incentive compensation programs, retirement income plans, welfare benefit plans and other employee plans and related agreements; and (h) and other matters involving the corporate structure of the Debtor or Reorganized Debtor or corporate action to be taken by or required of the Debtor or Reorganized Debtor.

**4.7. Obtaining Cash for Plan Distributions.** The Debtor or Reorganized Debtor, as applicable, is authorized to execute and deliver any documents necessary or appropriate to obtain Cash for funding the Plan. All Cash necessary for the Reorganized Debtor to make Distributions and other payments pursuant to the Plan will be obtained through a combination of one or more of the following: (1) the Reorganized Debtor's Cash balances and Cash from operations; (2) the proceeds of the Exit Financing; and (3) any other means of financing or funding that the Debtor

or the Reorganized Debtor determines is necessary or appropriate. Cash payments to be made pursuant to the Plan will be made by the Reorganized Debtor.

**4.8. Authority of the Reorganized Debtor.** On and after the Confirmation Date, the Reorganized Debtor shall be empowered and authorized to take or cause to be taken, all actions necessary or appropriate to enable it to effectively implement the provisions of the Plan.

**4.9. Preservation of Rights of Action by the Debtor and the Reorganized Debtor.** Except as provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code and to the fullest extent possible under applicable law, the Reorganized Debtor shall retain and may enforce, and shall have the sole right to enforce, any claims, demands, rights and causes of action that the Debtor or its Estate holds or may hold against any Entity, including any Recovery Actions and any currently pending actions. The Reorganized Debtor or its successors may pursue such retained claims, demands, rights or causes of action, as appropriate, in accordance with the best interests of the Reorganized Debtor or its successors holding such claims, demands, rights or causes of action. Further, the Reorganized Debtor retains its right to file and pursue, and shall have the sole right to file and pursue, any adversary proceedings against any trade creditor or vendor related to debit balances or deposits owed to any Debtor. Notwithstanding the foregoing, on the Effective Date, the Reorganized Debtor shall be deemed to waive and release any actions arising under section 547 of the Bankruptcy Code relating to any preference actions held by any Debtor or its Estate or any Reorganized Debtor against any Entity; ~~provided, however, that notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, the Debtor shall be permitted to use any available defenses under section 502(d) of the Bankruptcy Code, including the assertion of an action under section 547 of the Bankruptcy Code, to setoff against or otherwise reduce all or part of any General Unsecured Claim asserted against the Debtor's Estate.~~

**4.10. Comprehensive Settlement of Claims and Controversies.** Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided under the Plan, the provisions of the Plan, including the releases set forth in Section 9.3, shall constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Interest may have with respect to any Claim, Interest, or any Distribution to be made pursuant to the Plan on account of any Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or controversies and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, the Reorganized Debtor, and their respective property and Claim and Interest holders, and is fair, equitable and reasonable.

**4.11. Releases and Satisfaction of Subordination Rights.** All Claims ~~against the Debtor and all~~ and rights ~~and claims~~ between ~~or~~ and among ~~the Debtor and~~ the holders of Claims relating in any manner whatsoever to any claimed subordination rights shall be deemed satisfied by the Distributions under, described in, contemplated by, and/or implemented in Articles II and III of the Plan. Distributions under, described in, contemplated by, and/or implemented by the Plan to the various Classes of Claims and Interests hereunder shall not be subject to levy, garnishment, attachment, or like legal process by any holder of a Claim or Interest by reason of



any claimed subordination rights or otherwise, so that each holder of a Claim or Interest shall have and receive the benefit of the Distributions in the manner set forth in the Plan.

#### **4.12. Special Provisions Regarding Insured Claims and Insurance Policies**

**4.12.1. Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims.** Distributions under the Plan to each holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section 4.12.1 shall constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities that any Entity may hold against any other Entity, including the Debtor's insurance carriers.

**4.12.2. Reinstatement and Continuation of Insurance Policies.** From and after the Effective Date, the Debtor's insurance policies in existence as of the Effective Date shall be Reinstated and continued in accordance with their terms and, to the extent applicable, shall be deemed assumed by the Reorganized Debtor pursuant to section 365 of the Bankruptcy Code and Section 5.1.

#### **4.12.3. Insurance Neutrality.**

(a) - Notwithstanding anything to the contrary in the Plan, the Disclosure Statement or the Confirmation Order, nothing in the Plan, the Disclosure Statement or the Confirmation Order (including any other provision that purports to be preemptory or supervening), shall in any way operate to, or have the effect of, impairing the insurers' legal, equitable or contractual rights, if any, with respect to any claims. The rights of insurers shall be determined under the relevant insurance policies or insurance settlements, as applicable, and under applicable law.

(b) Nothing in the Plan, including the injunction, exculpation and release provisions contained in Sections 9.2, 9.3, 9.4 and 9.5, the Disclosure Statement or Confirmation Order shall preclude any Entity from asserting in any proceeding any and all claims, defenses, rights or causes of action that it has or may have under or in connection with any insurance policy or any insurance settlement agreement. Nothing in the Plan, the Disclosure Statement or the Confirmation Order shall be deemed to waive any claims, defenses, rights or causes of action that any Entity has or may have under the provisions, terms, conditions, defenses or exclusions contained in such insurance policy or insurance settlement agreements, nor shall such documents be construed as, or be a, determination as to coverage with respect to any Insured Claim under any applicable insurance policy.

(c) The Plan, Disclosure Statement or Confirmation Order shall not (i) modify the coverage provided under the Debtor's insurance policies, (ii) alter in any way the obligations of the Debtor's insurers under the insurance policies, or (iii) in any way permit any holder of a Workers' Compensation Claim or Insured Claim to any duplicate recovery from the insurers and any other party including, but not limited to, the Debtor or the Reorganized Debtor.

**4.13. Cancellation and Surrender of Instruments, Securities and Other Documentation.** Except as otherwise provided in the Plan or in any contract, instrument or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Articles II and III, agreements, contracts, instruments and other documents evidencing Secured Claims shall be canceled and of no further force and effect, without any further action on the part of the Debtor or Reorganized Debtor, and the obligations of the Debtor under such agreements, contracts, instruments and other documents shall be discharged. The holders of or parties to such canceled instruments, securities and other documentation shall have no rights arising from or relating to such instruments, securities and other documentation or the cancellation thereof, except the rights provided pursuant to the Plan.

**4.14. Release of Liens and Escrows.** Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Articles II and III, all mortgages, deeds of trust, liens or other security interests against the property of the Estate shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, liens or other security interests, including any rights to any collateral thereunder, shall revert to the Reorganized Debtor and its successors and assigns. In addition, all reserves, escrows and other deposits, held by the Debtor or by another party, for adequate assurance of performance or any similar reason shall be released and transferred to the Reorganized Debtor as soon as reasonably practicable after the Effective Date. To the extent that any escrow or deposit held by a third party is not turned over to the Reorganized Debtor within ten (10) days of the Effective Date, and such failure to do so is in contravention of applicable law, the Reorganized Debtor shall not make any Distribution on any Claim or Interest held by such third party.

**4.15. Effectuating Documents; Exemption from Certain Transfer Taxes.** The officers and directors of the Debtor or Reorganized Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan. The Secretary or any Assistant Secretary of the Debtor or Reorganized Debtor shall be authorized to certify or attest to any of the foregoing actions. Pursuant to section 1146(a) of the Bankruptcy Code, the following shall not be subject to any stamp tax or similar tax: (1) the creation of any mortgage, deed of trust, lien or other security interest; (2) the making or assignment of any lease or sublease; (3) any Restructuring Transaction; or (4) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including any merger agreements, agreements of consolidation, restructuring, disposition, liquidation or dissolution, deeds, bills of sale or assignments executed in connection with any Restructuring Transaction pursuant to the Plan.

## ARTICLE V

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### 5.1. Executory Contracts and Unexpired Leases to Be Assumed or Rejected

**5.1.1. Assumption or Rejection of Executory Contracts and Unexpired Leases.** All Executory Contracts and Unexpired Leases that exist between the Debtor and any Person shall be deemed rejected by the Debtor, as of the Effective Date, except for any Executory Contract or Unexpired Lease (i) that has been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion or notice for approval of the assumption, assumption and assignment, or rejection of such Executory Contract or Unexpired Lease has been filed and served prior to the Effective Confirmation Date, or (iii) that is specifically designated as a contract or lease to be assumed on Exhibit D to the Plan, provided, however, that the Debtor reserves the right, on or prior to the Effective Confirmation Date, to amend Exhibit D to the Plan to delete any Executory Contract or Unexpired Lease therefrom ~~or add any Executory Contract or Unexpired Lease thereto~~, in which event such Executory Contract(s) or Unexpired Lease(s) shall will be deemed to be, ~~respectively, assumed or~~ rejected (unless otherwise agreed between the Debtor and the non-Debtor counterparty). The Debtor shall will provide notice of any amendment to Exhibit D to the Plan to the parties to the Executory Contracts and Unexpired Leases affected thereby. In the event Exhibit D to the Plan has been amended as provided for in ~~this~~ Section ~~5.1.1, 5.1.1~~ of the Plan, the Debtor shall will file an amended version of Exhibit D to the Plan. The listing of a document on Exhibit D ~~shall~~ to the Plan will not constitute an admission by the Debtor that such document is an Executory Contract or an Unexpired Lease or that the Debtor has any liability thereunder.

Notwithstanding anything to the contrary in any contract, agreement or lease to which the Debtor or Reorganized Debtor is a party, (i) the transactions contemplated by the Plan and (ii) the consequences of the Plan's implementation shall not trigger any change in control or similar provisions and shall not be voided by any restraints against assignment in any contract, agreement or lease governed by the Plan.

**5.1.2. Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases.** Entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (i) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the assumption or assumption and assignment of the Executory Contracts and Unexpired Leases assumed or assumed and assigned pursuant to Section 5.1.1 of the Plan, and (ii) the approval, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, of the rejection of the Executory Contracts and Unexpired Leases rejected pursuant to Section 5.1.1 of the Plan.

**5.1.3. Inclusiveness.** Unless otherwise specified on Exhibit D, each Executory Contract and Unexpired Lease listed or to be listed on Exhibit D shall include modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such Executory Contract or Unexpired Lease, without regard to whether such agreement, instrument or other document is listed on Exhibit D.

**5.1.4. Bar Date for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Plan.** Notwithstanding anything in the Bar Date Order to the contrary, if the rejection of an Executory Contract or Unexpired Lease gives rise to a Rejection Claim by the non-Debtor counterparty or counterparties to such contract or

lease, such Rejection Claim shall be forever barred and shall not be enforceable against the Debtor, the Reorganized Debtor, their respective successors or their respective properties unless a proof of Claim is filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of the entry of the Confirmation Order or another order of the Bankruptcy Court, no later than thirty (30) days after the later of (i) notice of entry of an order approving the rejection of such executory contract or unexpired lease, (ii) entry of the Confirmation Order, and (iii) notice of an amendment to Exhibit D.

**5.1.5. Assumption Procedures.** The appropriate procedures for assumption of an Executory Contract or Unexpired Lease are as follows:

(a) Any entity wishing to object to (i) the proposed assumption of an Executory Contract or Unexpired Lease under the Plan or (ii) the proposed amount of the related Cure Amount Claim must file with the Bankruptcy Court and serve on counsel to the Debtor ~~or Reorganized Debtor and, prior to the Effective Date, and~~ the Creditors' Committee, a written objection setting forth the basis for the objection ~~three (3) business days after the filing of the Plan Supplement, but~~ no later than January ~~7, 5,~~ 2010 at 4:00 p.m. (prevailing Eastern time).

(b) If no objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease: (i) the proposed assumption of the Executory Contract or Unexpired Lease ~~shall~~will be approved in accordance with the Plan and the Confirmation Order, effective as of the earlier of (x) January 27, 2010 or (y) Effective Date, without further action of the Bankruptcy Court; and (ii) the Cure Amount Claim identified by the Debtor or Reorganized Debtor in Exhibit D to the Plan or any notice filed with the Bankruptcy Court and served on the non-Debtor counterparty to the Executory Contract or Unexpired Lease ~~shall~~will be fixed and ~~shall~~will be paid in accordance with the Plan on or after the Effective Date, without further action of the Bankruptcy Court, to the appropriate contract or lease party identified on the notice.

(c) If an objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtor or Reorganized Debtor, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

(d) If an objection to the proposed assumption or Cure Amount Claim is timely and properly filed with the Bankruptcy Court and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection: (i) the Debtor or Reorganized Debtor may file with the Bankruptcy Court a reply to such objection no later than thirty (30) days after the filing and service of such objection and ask the Bankruptcy Court to schedule a hearing on the particular objection and the related reply at an appropriate time; or (ii) the Debtor or Reorganized Debtor, as applicable, may designate the Executory Contract or Unexpired Lease underlying such objection for rejection pursuant to Section 5.1.1 and amend Exhibit D accordingly.

**5.2. Payments Related to the Assumption of Executory Contracts and Unexpired Leases.** To the extent that such Claims constitute monetary defaults, any Cure Amount Claims associated with each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, at the option of the Debtor or Reorganized Debtor or the assignee of the Debtor or Reorganized Debtor: (1) by payment of the Cure Amount Claim in Cash on the Initial Distribution Date or (2) on such other terms as are agreed to by the Debtor or Reorganized Debtor and the counterparty to such Executory Contract or Unexpired Lease. Pursuant to section 365(b)(2)(D) of the Bankruptcy Code, no Cure Amount Claim shall be allowed for a penalty rate or other form of default rate of interest. If there is a dispute regarding: (1) the amount of any Cure Amount Claim; (2) the ability of the Reorganized Debtor or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (3) any other matter pertaining to assumption of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption and in accordance with this Plan.

**5.3. Rejection Procedures.** The appropriate procedures for rejection of an Executory Contract or Unexpired Lease are as follows:

(a) Any entity wishing to object to the proposed rejection of an Executory Contract or Unexpired Lease under the Plan must file with the Bankruptcy Court and serve on counsel to the Debtor ~~or Reorganized Debtor and, prior to the Effective Date, and~~ the Creditors’ Committee, a written objection setting forth the basis for the objection ~~three (3) business days after the filing of the Plan Supplement, but~~ by no later than January ~~7, 5,~~ 2010 at 4:00 p.m. (prevailing Eastern time); provided, however, that any Executory Contract or Unexpired Lease listed on Exhibit D that is subsequently removed from Exhibit D prior to the Confirmation Date shall have five business days after receipt of notice of such amendment to Exhibit D to file an objection to the proposed rejection of such Executory Contract or Unexpired Lease.

(b) If no objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the proposed rejection of the applicable Executory Contract or Unexpired Lease ~~shall~~will be approved in accordance with the Plan and the Confirmation Order, effective as of the earlier of (x) January 27, 2010, (y) the Effective Date or (z) if applicable, the date identified on Exhibit D to the Plan, without further action of the Bankruptcy Court.

(c) If an objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease, the Debtor or Reorganized Debtor, as applicable, and the objecting party may resolve such objection by stipulation, without further action of the Bankruptcy Court.

(d) If an objection to the proposed rejection is timely and properly filed and served prior to the objection deadline with respect to an Executory Contract or Unexpired Lease and the parties are unable to resolve such objection, the Debtor or Reorganized Debtor, as applicable, may file a reply to such objection with the Bankruptcy Court no later than thirty (30)



days after the filing and service of such objection and ask the Court to schedule a hearing on the particular objection and the related reply at an appropriate time.

#### **5.4. Limited Extension of Time to Assume or Reject**

**5.4.1.** In the event of a dispute as to whether a contract or lease is executory or unexpired, the right of the Debtor or the Reorganized Debtor to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after entry of a Final Order by the Bankruptcy Court.

**5.4.2.** In the event the Debtor or the Reorganized Debtor become aware after the Confirmation Date of the existence of an Executory Contract or Unexpired Lease that was not included on Exhibit D, the right of the Reorganized Debtor to move to assume such contract or lease shall be extended until the date that is thirty (30) days after the date on which the Debtor or the Reorganized Debtor become aware of the existence of such contract or lease.

**5.5. Postpetition Contracts and Leases.** The Debtor shall not be required to assume or reject any contract or lease entered into by the Debtor after the Petition Date. Any such contract or lease shall continue in effect in accordance with its terms after the Effective Date, unless the Debtor has obtained a Final Order of the Bankruptcy Court approving rejection or other termination of such contract or lease.

**5.6. Assumption of Utility Service Agreements.** In the event that there is in effect between the Debtor and any utility immediately prior to the Effective Date, with respect to any operating facility of the Debtor, any utility service agreement or related agreement providing a reduced rate to the Debtor, which agreement has not been previously assumed, rejected or terminated, but is considered to be an executory contract, such agreement shall be deemed to be assumed pursuant to section 365 of the Bankruptcy Code and Section 5.1.1; provided, however, that no Cure Amount Claim shall be owed with respect to any such agreement, and in the event that a utility asserts any Cure Amount Claim, at the election of the Debtor, such utility's agreement shall not be deemed assumed and shall instead be deemed rejected pursuant to section 365 of the Bankruptcy Code under the Plan.

#### **5.7. Treatment of Compensation and Benefit Programs**

**5.7.1. Employee Compensation and Benefit Programs.** Except to the extent (i) otherwise provided for in the Plan, (ii) previously assumed or rejected by an order of the Bankruptcy Court entered on or before the Confirmation Date, (iii) the subject of a pending motion to reject filed by the Debtor on or before the Confirmation Date, or (iv) previously terminated, all employee compensation and benefit programs of the Debtor in effect during the pendency of the Chapter 11 Case, including all health and welfare plans, 401(k) plans, pension plans within the meaning of Title IV of the Employee Retirement Income Security Act of 1974, as amended, and all benefits subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Petition Date and in effect during the pendency of the Chapter 11 Case, shall be deemed to be, and shall be treated as though they are, Executory Contracts that are assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 5.1.1. Nothing contained herein shall be deemed to modify the existing terms of such employee

compensation and benefit programs, including, without limitation, the Debtor's and the Reorganized Debtor's rights of termination and amendment thereunder.

**5.7.2. Vacation Policies.** The Debtor's existing vacation policies will be Reinstated on the Effective Date for any employees of the Debtor employed on the Effective Date that have not received a notice of termination prior to or on the Effective Date. Accordingly, those employees will be entitled to a Cash payment of earned but unused vacation time in the event of a subsequent termination of employment after the Effective Date, if such payment is in accordance with the vacation policies.

**5.8. Obligations to Indemnify or Provide Advancement to Directors, Officers and Employees.** The obligations of the Debtor or Reorganized Debtor to indemnify or provide advancement to any Person serving as one of its directors, officers or employees prior to or following the Petition Date by reason of such Person's prior or future service in such capacity to the extent provided in the Certificate of Incorporation, By-Laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of or with the Debtor, shall be deemed to be, and shall be treated as though they are, Executory Contracts that are assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 5.1.1. Accordingly, such indemnification and advancement obligations shall survive and be unaffected by entry of the Confirmation Order, irrespective of whether such indemnification or advancement is owed for an act or event occurring before or after the Petition Date.

**5.9. Contracts and Leases Entered Into After the Petition Date.** Notwithstanding any other provisions of the Plan, contracts and leases entered into after the Petition Date by the Debtor, including any Executory Contracts and Unexpired Leases assumed by the Debtor, shall be performed by the Debtor or Reorganized Debtor in accordance with the terms and conditions of such contracts and leases in the ordinary course of its business; provided, however, that nothing in this paragraph shall affect the limitations on a Rejection Claim for a previously assumed nonresidential real property lease under section 503(b)(7) of the Bankruptcy Code. Accordingly, such contracts and leases and other obligations (including any assumed Executory Contracts and Unexpired Leases) shall survive and remain unaffected by entry of the Confirmation Order.

## ARTICLE VI

### PROVISIONS GOVERNING DISTRIBUTIONS

**6.1. Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided in the Plan, Distributions to be made on the Effective Date to holders of Claims that are Allowed Claims as of such date shall be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (1) the time set forth in Section 6.8.1 or (2) such later date when the applicable conditions of Section 5.2 (regarding Cure Amount Claims for Executory Contracts and Unexpired Leases being assumed), Section 6.3.2 (regarding undeliverable Distributions), or Section 6.8.3 (regarding compliance with Tax requirements) are satisfied. Distributions on account of Allowed Claims shall be made pursuant to Section 6.8.2. Any Claim that is Disallowed by order of the Bankruptcy Court or for which the underlying liability is found not to be a liability of the Debtor by any other court prior

to the Effective Date shall be deemed Disallowed (to the extent not already Disallowed) as of the Effective Date without the necessity for further Bankruptcy Court approval and the holder of any such Claim shall not be entitled to any Distributions under the Plan.

**6.2. Method of Distributions to Holders of Claims.** The Reorganized Debtor shall make all Distributions of Cash and other instruments or documents required under the Plan.

**6.3. Delivery of Distributions and Undeliverable or Unclaimed Distributions.**

**6.3.1. Delivery of Distributions.** Distributions to holders of Allowed Claims shall be made by the Reorganized Debtor (a) to the addresses set forth on the respective proofs of Claim filed by holders of such Claims; (b) to the addresses set forth in any written certification of address change delivered to the Reorganized Debtor (including pursuant to a letter of transmittal delivered to the Reorganized Debtor) after the date of filing of any related proof of Claim; or (c) to the addresses reflected in the Debtor's Schedules if no proof of Claim has been filed and the Reorganized Debtor has not received a written notice of a change of address. The Reorganized Debtor shall make reasonable efforts to determine the correct addresses for the Distributions to holders of Allowed Claims.

**6.3.2. Undeliverable Distributions Held by the Reorganized Debtor**

(a) **Holding and Investment of Undeliverable Distributions.** If any Distribution to a holder of an Allowed Claim is returned to the Reorganized Debtor as undeliverable, no further Distributions shall be made to such holder unless and until the Reorganized Debtor is notified in writing of such holder's then-current address. Undeliverable Distributions shall remain in the possession of the Reorganized Debtor pursuant to this Section 6.3.2(a) until such time as a Distribution becomes deliverable, subject to Section 6.3.2(b). Undeliverable Cash Distributions shall be held in a segregated bank account in the name of the Reorganized Debtor for the benefit of the potential claimants of such funds. The Reorganized Debtor shall invest such Cash in a manner consistent with the Reorganized Debtor's investment and deposit guidelines.

(b) **After Distributions Become Deliverable.** On each Interim Distribution Date, the Reorganized Debtor shall make all Distributions that become deliverable to holders of Allowed Claims during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the discretion of the Reorganized Debtor.

(c) **Failure to Claim Undeliverable Distributions.** Any holder of an Allowed Claim that does not assert a claim pursuant to the Plan for an undeliverable Distribution to be made by the Reorganized Debtor within six (6) months after the later of (i) the Effective Date or (ii) the last date on which a Distribution was attempted to be made to such holder shall have its claim for such undeliverable Distribution discharged and shall be forever barred from asserting any such claim against the Debtor, the Reorganized Debtor or their respective property. Unclaimed Distributions shall become property of the Reorganized Debtor, free of any restrictions thereon. Subject to Section 6.3.1, nothing contained in the Plan shall require the Debtor or Reorganized Debtor to attempt to locate any holder of an Allowed Claim.



#### **6.4. Distribution Record Date.**

(a) The Reorganized Debtor shall have no obligation to recognize the transfer of, or the sale of any participation in, any Claim that occurs after the close of business on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make Distributions only to those holders of Allowed Claims that are holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date.

(b) As of the close of business on the Distribution Record Date, the respective transfer or Claims registers as maintained by the Debtor or the Claims Agent, as applicable, shall be closed and any transfer of any Claim or Interest therein shall be prohibited. The Reorganized Debtor shall have no obligation to recognize the transfer or sale of any Claim or Interest that occurs after the close of business on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make Distributions only to those holders of Claims or Interests who are holders of such Claims or Interests as of the close of business on the Distribution Record Date.

(c) Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date shall be treated as the holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date. The Debtor and Reorganized Debtor shall not have any liability arising from or related to a dispute between the transferee and transferor of a claim transferred pursuant to Bankruptcy Rule 3001.

**6.5. Means of Cash Payments.** Except as otherwise specified herein, Cash payments made pursuant to the Plan to holders of Claims shall be in U.S. currency by checks drawn on a domestic bank selected by the Reorganized Debtor or, at the option of the Reorganized Debtor, by wire transfer from a domestic bank; provided, however, that Cash payments to foreign holders of Allowed Claims may be made, at the option of the Reorganized Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

**6.6. De Minimis Distributions.** Notwithstanding anything to the contrary contained in the Plan, the Disclosure Statement or the Confirmation Order, the Reorganized Debtor shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than fifty dollars (\$50.00). Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$50.00 shall have such Claim discharged and shall be forever barred from asserting such Claim against the Debtor, the Reorganized Debtor or their respective property. Any Cash or other property not distributed pursuant to this provision shall be the property of the Reorganized Debtor, free of any restrictions thereon.

**6.7. Withholding, Payment and Reporting Requirements.** In connection with the Plan and all Distributions under the Plan, the Reorganized Debtor shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be

subject to any such withholding, payment, and reporting requirements. The Reorganized Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. For example, with respect to any employee-related withholding, if the Debtor is obligated by law to withhold amounts from Distributions to a present or former employee to satisfy such present or former employee's tax and other payroll obligations, the Reorganized Debtor may withhold a portion of the Distributions allocated to the holder of an Allowed Claim that is a present or former employee, whether such Distributions are in the form of Cash, in such amount as is determined necessary to satisfy such holder's tax and other payroll obligations with respect to the Distributions. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution, and including, in the case of any holder of a Disputed General Unsecured Claim that has become an Allowed General Unsecured Claim, any tax obligation that would be imposed upon the Debtor or the Reorganized Debtor in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtor for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Debtor or the Reorganized Debtor in connection with such Distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Section 6.3.2.

## **6.8. Timing and Calculation of Amounts to Be Distributed**

**6.8.1. Timing of Distributions Under the Plan.** Any Distribution to be made by the Debtor or Reorganized Debtor pursuant to the Plan shall be deemed to have been timely made if made within thirty (30) days after the time specified therefor in the Plan. No interest shall accrue or be paid with respect to any Distribution as a consequence of such Distribution not having been made on the Effective Date.

**6.8.2. Allowed Claims.** On the Initial Distribution Date, each holder of an Allowed Claim shall receive the full amount of the Distributions that the Plan provides for Allowed Claims in the applicable Class. On each Interim Distribution Date, Distributions also shall be made pursuant to Section 7.3 to holders of Disputed Claims in any such Class that were Allowed during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the sole discretion of the Reorganized Debtor. Such Distributions also shall be in the full amount that the Plan provides for Allowed Claims in the applicable Class.

**6.8.3. Compliance with Tax Requirements.** In connection with the Plan, to the extent applicable, the Reorganized Debtor shall comply with all Tax withholding and reporting requirements imposed on it by any governmental unit, and all Distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. The Reorganized Debtor shall be authorized to take any actions that may be necessary or appropriate to comply with such withholding and reporting requirements.

Without limiting the generality of the foregoing, in accordance with the Internal Revenue Code's backup withholding rules, a holder of a Claim may be subject to backup withholding with respect to Distributions made pursuant to the Plan, unless the holder (i) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates this fact or (ii) provides at the Reorganized Debtor's request a completed IRS Form W-9 (or substitute therefor) on which the holder includes a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Non-U.S. holders may be required by the Reorganized Debtor to provide a completed IRS Form W-8 to establish an exemption from withholding or a treaty-reduced rate of withholding on interest distributed pursuant to the Plan. The Reorganized Debtor shall provide or make available the necessary forms to comply with this Section sufficiently in advance of the Effective Date.

Notwithstanding any other provision of the Plan, each Entity receiving a Distribution of Cash pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any Tax obligations imposed on it by any governmental unit on account of such Distribution, including income, withholding and other Tax obligations.

**6.9. Setoffs.** Except with respect to claims of the Debtor or Reorganized Debtor released pursuant to the Plan or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, set off against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Claim (before any Distribution is made on account of such Claim) the claims, rights and causes of action of any nature that the Debtor or Reorganized Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Reorganized Debtor of any claims, rights and causes of action that the Debtor or Reorganized Debtor may possess against the holder of such a claim.

**6.10. No Distribution in Excess of Allowed Amounts.** Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim (excluding payments on account of interest due and payable from and after the Effective Date pursuant to the Plan, if any).

**6.11. Allocation of Payments.** Amounts paid to holders of Claims in satisfaction thereof shall be allocated first to the principal amounts of such Claims, with any excess being allocated to interest that has accrued on such Claims but remains unpaid.

**6.12. No Distributions Pending Allowance.** Notwithstanding any other provision of the Plan, if any Claim or portion thereof is Disputed, no Distribution provided hereunder shall be made on account of such Claim unless and until such Claim shall have become an Allowed Claim through settlement and/or a Final Order of the Bankruptcy Court. The Reorganized Debtor shall only make Distributions on account of Claims that have become fully Allowed.

## ARTICLE VII

### PROCEDURES FOR RESOLVING DISPUTED CLAIMS

#### 7.1. Prosecution of Objections to Claims

**7.1.1. Objections to Claims.** Objections to Claims must be filed and served on the holders of such Claims by the Claims Objection Deadline, and, if filed prior to the Effective Date, such objections shall be served on the parties on the then-applicable service list in the Chapter 11 Case. If an objection has not been filed with the Bankruptcy Court to a proof of Claim or an amendment has not been made to the Schedules with respect to a scheduled Claim by the Claims Objection Deadline, the Claim to which the proof of Claim or Schedules relates shall be treated as an Allowed Claim if such Claim has not been allowed earlier.

**7.1.2. Authority to Prosecute Objections.** Prior to and after the Effective Date, the Debtor or Reorganized Debtor, as applicable, shall have the authority to file (if applicable), settle, compromise, withdraw or litigate to judgment objections to all Claims, including pursuant to any alternative dispute resolution, in accordance with the Bankruptcy Code, Bankruptcy Rules or any order approved by the Bankruptcy Court as follows: (i) with respect to a Claim greater than twenty-five thousand dollars (\$25,000), after an order allowing such Claim becomes a Final Order or a Stipulation of Amount and Nature of Claim is executed by the Reorganized Debtor and the holder of the Claim and approved by the Bankruptcy Court, or (ii) with respect to a Claim less than or equal to twenty-five thousand dollars (\$25,000), without further order of the Bankruptcy Court.

**7.1.3. Authority to Amend Schedules.** The Debtor or the Reorganized Debtor shall have the authority to amend the Schedules with respect to any Claim and to make Distributions based on such amended Schedules without approval of the Bankruptcy Court through the Claims Objection Deadline. The Debtor or the Reorganized Debtor may amend the Schedules after the Claims Objection Deadline only upon order of the Bankruptcy Court. If any such amendment to the Schedules reduces the amount of a Claim or changes the nature or priority of a Claim, the Debtor or Reorganized Debtor shall provide the holder of such Claim with notice of such amendment and such holder shall have thirty (30) days to file a proof of Claim with the Claims Agent, with a copy to the Debtor or Reorganized Debtor. If no such proof of Claim is filed, the Debtor or Reorganized Debtor may proceed with Distributions based on such amended Schedules without approval of the Bankruptcy Court.

**7.2. Enforcement of Bar Date Order.** In accordance with the Bar Date Order and section 502(b)(9) of the Bankruptcy Code, except as otherwise provided herein, any Entity that failed to file a proof of Claim by the applicable Bar Date or was not otherwise permitted to file a proof of Claim after the applicable Bar Date by a Final Order of the Bankruptcy Court is and shall be barred, estopped and enjoined from asserting any Claim against the Debtor (1) in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such Entity as undisputed, noncontingent and liquidated; or (2) of a different nature or a different classification than any Claim identified in the Schedules on behalf of such Entity.

All Claims filed after the applicable Bar Date and for which no Final Order has been entered by the Bankruptcy Court determining that such Claims were timely filed shall be Disallowed and expunged without any further action required by the Debtor, the Reorganized Debtor or the Bankruptcy Court. Any Distribution on account of such Claims shall be limited to the amount, if any, listed in the applicable Schedules as undisputed, noncontingent and liquidated. **The Debtor or Reorganized Debtor have no obligation to review and/or respond to any Claim that is not a Timely Claim unless: (i) the filer has obtained a Final Order from the Bankruptcy Court authorizing it to file such Claim after the Bar Date; or (ii) the Reorganized Debtor has consented to the filing of such Claim in writing.**

Nothing in this Section 7.2 shall be construed as preventing the Debtor or the Reorganized Debtor from objecting to any Claim on any grounds permitted by applicable bankruptcy or non-bankruptcy law.

**7.3. Distributions on Account of Disputed Claims Once Allowed.** On each Interim Distribution Date, the Reorganized Debtor shall make all Distributions on account of any Disputed Claim that has become an Allowed Claim during the preceding period since the Initial Distribution Date or the last Interim Distribution Date, as applicable, to the extent not distributed earlier at the sole discretion of the Reorganized Debtor. Such Distributions shall be made pursuant to the provisions of the Plan governing the applicable Class.

**7.4. Reserves.** The Debtor or the Reorganized Debtor shall, subject to and in accordance with the provisions of the Plan (a) establish one or more general accounts into which shall be deposited all funds not required to be deposited into any other account, reserve or escrow, (b) create, fund and withdraw funds from, as appropriate, the General Unsecured Claims Reserve and (c) if practicable, invest any Cash that is withheld in the applicable claims reserve in an appropriate manner to ensure the safety of the investment. However, nothing in the Plan or Disclosure Statement shall be deemed to entitle the holder of a Claim to postpetition interest on such Claim.

**7.4.1. General Unsecured Claims Reserve.** On the Effective Date, the Debtor or Reorganized Debtor shall create and fund the General Unsecured Claims Reserve with Cash to be used by the Reorganized Debtor sufficient to pay the Distribution Percentage on account of Allowed General Unsecured Claims as set forth in the Plan, which reserve shall be funded in an amount not less than an amount required to fund the Distribution Percentage for Allowed General Unsecured Claims totaling \$8.5 million. In the event that any Cash remains in the General Unsecured Claims Reserve after payment of all Allowed Claims to be paid thereunder, such Cash shall be distributed to the Reorganized Debtor.

**7.5. ~~7.4.~~ Estimation.** The Debtor or Reorganized Debtor may at any time, request that the Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor or the Reorganized Debtor previously objected to such Claim. The Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during proceedings concerning any objection to such Claim. In the event that the Bankruptcy Court estimates any Disputed Claim, such estimated amount may constitute either (i) the Allowed amount of such Claim, or (ii) a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the

Debtor or the Reorganized Debtor, as the case may be, may elect to object to ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another.

## ARTICLE VIII

### CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN

**8.1. Conditions to the Effective Date.** The Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions have been satisfied or duly waived pursuant to Section 8.2:

(a) The Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) approving and authorizing the Debtor and the Reorganized Debtor to take all actions necessary or appropriate to implement the Plan, including completion of the Restructuring Transactions and other transactions contemplated by the Plan and the implementation and consummation of contracts, instruments, releases and other agreements or documents created in connection with the Plan.

(b) The Confirmation Order has been entered by the Bankruptcy Court and shall have become a Final Order.

(c) The Confirmation Order shall be in full force and effect.

(d) Each of the Exhibits and any other necessary documents shall be fully executed and delivered to the Debtor and shall be fully enforceable in accordance with their terms.

(e) All necessary agreements to provide the Exit Financing have been executed and approved by Final Order of the Bankruptcy Court, if necessary, on terms and conditions satisfactory to the Debtor and Reorganized Debtor.

(f) The Debtor shall have filed a notice of the occurrence of the Effective Date.

**8.2. Waiver of Conditions to Confirmation or the Effective Date.** The conditions to the Effective Date set forth in Section 8.1 may be waived in whole or part in writing by the Debtor at any time without an order of the Bankruptcy Court.

**8.3. Effect of Nonoccurrence of Conditions to the Effective Date.** If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 8.1 or 8.2, then upon motion by the Debtor made before the time that each of such conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order shall be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated



pursuant to this Section 8.3, (1) the Plan shall be null and void in all respects, including with respect to the discharge of Claims; and (2) nothing contained in the Plan shall (a) constitute a waiver or release of any claims by or against, or any Interest in, the Debtor or (b) prejudice in any manner the rights of the Debtor or any other party in interest.

## ARTICLE IX

### DISCHARGE, INJUNCTION, RELEASE, AND EXCULPATION

**9.1. Discharge of the Debtor.** The rights afforded herein and the treatment of all Claims and Interests herein shall be in exchange for and in complete satisfaction, discharge, and release of all Claims of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtor, the Reorganized Debtor or any of their respective assets or properties, arising prior to the Effective Date. Pursuant to section 1141(d) of the Bankruptcy Code and except as otherwise expressly specified in the Plan, upon the Effective Date the Confirmation Order shall act as a discharge of all debts of, Claims against, and liens on the Debtor, their respective assets and properties, arising at any time before the Effective Date, regardless of whether a proof of Claim with respect thereto was filed, whether the Claim is Allowed, or whether the holder thereof votes to accept the Plan or is entitled to receive a distribution hereunder. Except as otherwise expressly specified in the Plan, after the Effective Date, any holder of such discharged Claim shall be precluded from asserting against the Debtor, the Reorganized Debtor, or any of their respective assets or properties, any other or further Claim based on any document, instrument, act, omission, transaction, or other activity of any kind or nature that occurred before the entry of the Confirmation Order. Notwithstanding anything in the Plan, Disclosure Statement or Confirmation Order to the contrary, neither the Parent Debt nor Interests shall be discharged pursuant to the Plan, Disclosure Statement or the Confirmation Order.

**9.2. Injunction.** Except as otherwise expressly provided in the Plan, the Confirmation Order, or a separate order of the Court, all Persons or Entities who have held, hold, or may hold a Claim or Claims against the Debtor that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against or affecting the Debtor, its Estate or its assets, with respect to any such Claim, (ii) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtor or the Reorganized Debtor on account of any such Claim, (iii) creating, perfecting, or enforcing any Encumbrance of any kind against the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim, (iv) asserting any right of setoff, or subrogation of any kind against any obligation due from the Debtor or the Reorganized Debtor or against the property or interests in property of the Debtor on account of any such Claim; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan. Such injunction shall extend to successors of the Debtor (including, without limitation, the Reorganized Debtor) and their respective properties and interests in property. Such injunction shall not apply in respect of Administrative Claims incurred in the ordinary course of the Debtor's business.

### 9.3. Releases.

(a) Releases by the Debtor. ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, THE DEBTOR AND THE REORGANIZED DEBTOR, ON BEHALF OF THEMSELVES AND THE ESTATE, SHALL BE DEEMED TO RELEASE UNCONDITIONALLY (I) ALL OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS, (II) KLK, AS DIP LENDER, ULTIMATE SOLE INTEREST HOLDER AND ULTIMATE PARENT OF THE DEBTOR AND REORGANIZED DEBTOR, (III) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLK, (IV) KLKOI, AS PREPETITION LENDER, (V) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF KLKOI, (VI) THE MEMBERS OF THE CREDITORS' COMMITTEE, (VII) THE OFFICERS, DIRECTORS, PRINCIPALS, MEMBERS, EMPLOYEES, PARTNERS, SUBSIDIARIES, AFFILIATES, ADVISORS, ATTORNEYS, FINANCIAL ADVISORS, ACCOUNTANTS, AND OTHER PROFESSIONALS OF THE CREDITORS' COMMITTEE, (COLLECTIVELY THE "RELEASED PARTIES," AND EACH A "RELEASED PARTY") FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ACTIONS TAKEN SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE OR ANY OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR, THE CHAPTER 11 CASE, THE PLAN, OR THE DISCLOSURE STATEMENT; PROVIDED, HOWEVER, THAT (A) NO PERSON OR ENTITY SHALL BE RELEASED FROM ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (B) THE REORGANIZED DEBTOR SHALL NOT RELINQUISH OR WAIVE THE RIGHT TO ASSERT ANY OF THE FOREGOING AS A LEGAL OR EQUITABLE DEFENSE OR RIGHT OF SET-OFF OR RECOUPMENT AGAINST ANY CLAIMS OF ANY SUCH PERSONS ASSERTED AGAINST THE DEBTOR, (C) THE FOREGOING RELEASE SHALL NOT APPLY TO ANY OBLIGATIONS THAT REMAIN OUTSTANDING IN RESPECT OF ANY OBLIGATIONS UNDER THE EXIT FACILITY OUTSTANDING AS OF THE EFFECTIVE DATE, AND (D) THE FOREGOING RELEASE APPLIES TO THE RELEASED PARTIES SOLELY IN THEIR RESPECTIVE CAPACITIES DESCRIBED ABOVE.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ON THE EFFECTIVE DATE, THE REORGANIZED DEBTOR SHALL BE DEEMED TO WAIVE AND RELEASE ANY ACTIONS ARISING UNDER SECTION 547 OF THE BANKRUPTCY CODE RELATING TO ANY PREFERENCE ACTIONS HELD BY ANY



~~DEBTOR OR ITS ESTATE OR ANY REORGANIZED DEBTOR AGAINST ANY ENTITY; **PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING IN THE PLAN, DISCLOSURE STATEMENT OR CONFIRMATION ORDER TO THE CONTRARY, THE DEBTOR SHALL BE PERMITTED TO USE ANY AVAILABLE DEFENSES UNDER SECTION 502(d) OF THE BANKRUPTCY CODE, INCLUDING THE ASSERTION OF AN ACTION UNDER SECTION 547 OF THE BANKRUPTCY CODE, TO SETOFF AGAINST OR OTHERWISE REDUCE ALL OR PART OF ANY GENERAL UNSECURED CLAIM ASSERTED AGAINST THE DEBTOR'S ESTATE.**~~

(b) Releases by Holders of Claims and Interests. ON THE EFFECTIVE DATE, AND NOTWITHSTANDING ANY OTHER PROVISIONS OF THE PLAN, (I) PERSONS WHO DIRECTLY OR INDIRECTLY, HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS WHO VOTED TO ACCEPT THE PLAN, AND (II) TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, AS SUCH LAW MAY BE EXTENDED OR INTERPRETED SUBSEQUENT TO THE EFFECTIVE DATE, ALL PERSONS WHO DIRECTLY OR INDIRECTLY, HAVE HELD, HOLD, OR MAY HOLD CLAIMS OR INTERESTS, WILL BE DEEMED, BY VIRTUE OF THEIR RECEIPT OF DISTRIBUTIONS AND/OR OTHER TREATMENT CONTEMPLATED UNDER THE PLAN, TO HAVE FOREVER RELEASED AND COVENANTED WITH THE REORGANIZED DEBTOR AND THE RELEASED PARTIES NOT TO (Y) SUE OR OTHERWISE SEEK RECOVERY FROM ANY OF THE REORGANIZED DEBTOR OR ANY RELEASED PARTY ON ACCOUNT OF ANY CLAIM, INCLUDING BUT NOT LIMITED TO ANY CLAIM BASED UPON TORT, BREACH OF CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS OR OTHERWISE, BASED UPON ANY ACT, OCCURRENCE, OR FAILURE TO ACT FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATED TO THE DEBTOR OR ITS BUSINESS AND AFFAIRS OR (Z) ASSERT AGAINST ANY OF THE REORGANIZED DEBTOR OR ANY RELEASED PARTY ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY THAT ANY HOLDER OF A CLAIM OR INTEREST MAY BE ENTITLED TO ASSERT, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION, OR OCCURRENCE FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTOR, THE CHAPTER 11 CASE, OR THE PLAN; **PROVIDED, HOWEVER, (I) THE FOREGOING RELEASE WILL NOT APPLY TO OBLIGATIONS ARISING UNDER THE PLAN, (II) THE FOREGOING RELEASE WILL NOT APPLY TO ANY ACT OR OMISSION THAT CONSTITUTES WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER, (III) THE FOREGOING RELEASE WILL NOT** BE CONSTRUED TO PROHIBIT A PARTY IN INTEREST FROM SEEKING TO ENFORCE THE TERMS OF THE PLAN, AND **(HIV)** NOTHING IN THE CONFIRMATION ORDER OR THE PLAN SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST THE RELEASED PARTIES, NOR SHALL ANYTHING IN

**THE CONFIRMATION ORDER OR THE PLAN ENJOIN THE UNITED STATES OR ANY STATE OR LOCAL AUTHORITY FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS AGAINST THE RELEASED PARTIES FOR ANY LIABILITY SO ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE OR LOCAL AUTHORITY, NOR SHALL ANYTHING IN THE CONFIRMATION ORDER OR THE PLAN EXCULPATE ANY PARTY FROM ANY LIABILITY TO THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY ARISING UNDER THE INTERNAL REVENUE CODE, FEDERAL SECURITIES LAWS, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST THE RELEASED PARTIES (PROVIDED THAT THE FOREGOING SHALL IN NO WAY AFFECT OR LIMIT THE DISCHARGE OR INJUNCTION GRANTED TO THE DEBTOR UNDER SECTIONS 524 AND 1141 OF THE BANKRUPTCY CODE). NOTWITHSTANDING ANYTHING IN THE PLAN, DISCLOSURE STATEMENT OR CONFIRMATION ORDER TO THE CONTRARY, HOLDERS OF THE PARENT DEBT OR INTERESTS SHALL NOT RELEASE ANY CLAIMS ON ACCOUNT OF THE PARENT DEBT OR INTERESTS IN THE DEBTOR, RESPECTIVELY.**

**9.4. Exculpation. THE DEBTOR, THE REORGANIZED DEBTOR, AND THE RELEASED PARTIES (I) SHALL HAVE NO LIABILITY WHATSOEVER TO ANY HOLDER OR PURPORTED HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION IN CONNECTION WITH, OR ARISING OUT OF, THE PLAN, THE DISCLOSURE STATEMENT, THE NEGOTIATION OF THE PLAN, THE NEGOTIATION OF THE DOCUMENTS INCLUDED IN THE PLAN SUPPLEMENT, THE RESTRUCTURING TRANSACTIONS, THE PURSUIT OF APPROVAL OF THE DISCLOSURE STATEMENT OR THE SOLICITATION OF VOTES FOR CONFIRMATION OF THE PLAN, THE CHAPTER 11 CASE, THE CONSUMMATION OF THE PLAN, THE ADMINISTRATION OF THE PLAN OR THE PROPERTY TO BE DISTRIBUTED UNDER THE PLAN, OR ANY TRANSACTION CONTEMPLATED BY THE PLAN OR DISCLOSURE STATEMENT OR IN FURTHERANCE THEREOF EXCEPT FOR ANY ACT OR OMISSION THAT CONSTITUTES WILLFUL MISCONDUCT OR GROSS NEGLIGENCE AS DETERMINED BY A FINAL ORDER, AND (II) IN ALL RESPECTS, SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. THIS EXCULPATION SHALL BE IN ADDITION TO, AND NOT IN LIMITATION OF, ALL OTHER RELEASES, INDEMNITIES, EXCULPATIONS AND ANY OTHER APPLICABLE LAW OR RULES PROTECTING THE RELEASED PARTIES FROM LIABILITY.**

**9.5. Injunction With Respect to Released Parties.** Pursuant to section 105 of the Bankruptcy Code, no holder or purported holder of a Claim or Interest shall be permitted to commence or continue any action, employment of process, or any act to collect, offset, or recover any Claim against a Released Party that accrued on or prior to the Effective Date and that has been released or waived pursuant to the Plan.

## ARTICLE X

### RETENTION OF JURISDICTION

#### **10.1. Retention of Exclusive Jurisdiction by the Bankruptcy Court.**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain such exclusive jurisdiction over the Chapter 11 Case and any matter related to the Chapter 11 Case after the Effective Date as is legally permissible, including exclusive jurisdiction to:

(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 or the resolution of any objections to the allowance, priority or classification of Claims or Interests;

(b) Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan for periods ending on or before the Effective Date;

(c) Resolve any matters, related to the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor or Reorganized Debtor may be liable and to hear, determine and, if necessary, liquidate any Claims arising therefrom, including any Cure Amount Claims;

(d) Ensure that Distributions to holders of Allowed Claims and Interests are accomplished pursuant to the provisions of the Plan;

(e) Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters and grant or deny any applications involving the Debtor that may be pending on the Effective Date or brought thereafter;

(f) Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(g) Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan or any Entity's rights arising from or obligations incurred in connection with the Plan or such documents;

(h) Modify the Plan before or after the Effective Date pursuant to section 1127 of the Bankruptcy Code; modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order; or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the

Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into, delivered or created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan and give effect to the Restructuring Transactions and other transactions contemplated by the Plan;

(i) Issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order, 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 Plan or the Confirmation Order;

(j) Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason or in any respect modified, stayed, reversed, revoked or vacated or Distributions pursuant to the Plan are enjoined or stayed;

(k) Determine such other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, the Disclosure Statement, the Confirmation Order, the Restructuring Transactions or any other transactions contemplated by the Plan;

(l) Determine matters related to requests by counsel for the Creditors' Committee for payment of post-Effective Date reasonable fees and expenses;

(m) Determine matters concerning state, local and federal Taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code, including any Disputed Claims for Taxes; and

(n) Enter a final decree closing the Chapter 11 Case.

To the extent that it is not legally permissible for the Bankruptcy Court to have exclusive jurisdiction over any of the foregoing matters, the Bankruptcy Court shall have nonexclusive jurisdiction over such matters to the extent legally permissible.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**11.1. Dissolution of the Creditors' Committee.** On the Effective Date, the Creditors' Committee shall be dissolved and its members shall be deemed released of any continuing duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention and employment of the Creditors' Committee's attorneys, accountants and other agents shall terminate, except with respect to: (i) any matters concerning the Distributions to be made under the Plan through the date upon which the first Distributions are made after the Effective Date; (ii) all Professional Fee Claims through a final hearing on Professional Fee Claims for Professionals; or (iii) any appeals of the Confirmation Order through the date such appeals are finally decided, settled, withdrawn or otherwise resolved. Counsel to the Creditors' Committee shall be entitled to reasonable compensation and reimbursement of

actual, necessary expenses for post-Effective Date activities authorized hereunder upon the submission of invoices to be paid by the Reorganized Debtor. Copies of such invoices shall be sent to the Reorganized Debtor. The Reorganized Debtor is authorized to pay such invoices without further order of the Bankruptcy Court. If the Reorganized Debtor disputes the amount of any such invoice, it may bring the matter before the Bankruptcy Court.

**11.2.** ~~Statutory Fees.~~ On or before the Effective Date, fees payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717, as determined at the Confirmation Hearing by the Bankruptcy Court, shall be paid in Cash in full by the Debtor or Reorganized Debtor. All fees arising after the Effective Date and payable pursuant to 28 U.S.C. § 1930 plus accrued interest under 31 U.S.C. § 3717 shall be paid by the Reorganized Debtor in accordance therewith until the closing of the Chapter 11 Case pursuant to section 350(a) of the Bankruptcy Code.

**11.3.** ~~11.2-Modification of the Plan and Exhibits.~~ Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code, the Debtor or the Reorganized Debtor, as applicable, reserves the right to alter, amend or modify the Plan and the Exhibits to the Plan at any time before its substantial consummation; provided, however, that after entry of the Confirmation Order, (i) the Plan as modified shall meet the requirements of sections 1122 and 1123 of the Bankruptcy Code, (ii) shall comply with section 1125 of the Bankruptcy Code, (iii) that circumstances warrant such modifications and (iv) the Bankruptcy Court enters an order confirming the Plan as modified.

**11.4.** ~~11.3-Revocation of the Plan.~~ The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if confirmation of the Plan does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (1) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor; or (2) prejudice in any manner the rights of the Debtor or any other party.

**11.5.** ~~11.4-Term of Bankruptcy Injunction or Stays.~~ All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**11.6.** ~~11.5-Headings.~~ The headings used in the Plan are inserted for convenience only and neither constitute a portion of the Plan nor affect, in any manner, the construction of the provisions of the Plan.

**11.7.** ~~11.6-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.

**11.8.** ~~11.7-Governing Law.~~ Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of (a) the State of Connecticut shall govern the construction and implementation of the Plan and (except as may be provided otherwise in any such agreements, documents, or instruments) any agreements,

documents, and instruments executed in connection with the Plan, and (b) the laws of the state of incorporation of the Debtor shall govern corporate governance matters with respect to the Debtor; in each case without giving effect to the principles of conflicts of law thereof. None of the foregoing shall be deemed to preclude the application of the tax laws of states in which the Debtor and Reorganized Debtor does business, to the extent federal law is not controlling.

**11.9. ~~11.8.~~ Plan Supplement and Exhibits.** The Plan Supplement shall be filed with the Clerk of the Bankruptcy Court on the Plan Supplement Date. Upon such filing, all documents included in the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal business hours. Holders of Claims or Interests may obtain a copy of any document included in the Plan Supplement upon written request to the Debtor in accordance with Section ~~11.10~~11.11 of the Plan or by downloading any such document from the Bankruptcy Court's website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) or the Claims Agent's website at <http://chapter11.epiqsystems.com/Crabtree>. To the extent any Exhibit is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-Exhibit portion of the Plan shall control. The Debtor reserves the right to modify, amend, supplement, restate or withdraw any of the Exhibits after they are filed, except that the Debtor shall not be entitled to amend Exhibit D to the Plan to add any Executory Contracts or Unexpired Leases after the Plan Supplement Date, absent the consent of the counterparty to any such Executory Contract of Unexpired Lease. The Debtor shall file and shall make available on the aforementioned websites all modified, amended, supplemented or restated Exhibits as promptly as possible.

**11.10. ~~11.9.~~ Waiver of Federal Rule of Civil Procedure 62(a).** The Debtor may request that the Confirmation Order include (a) a finding that Federal Rule of Civil Procedure 62(a) shall not apply to the Confirmation Order, and (b) authorization for the Debtor to consummate the Plan immediately after entry of the Confirmation Order.

**11.11. ~~11.10.~~ Service of Documents.** Any notice, request, or demand required or permitted to be made or provided under the Plan shall be (a) in writing, (b) served by (i) certified mail, return receipt requested, (ii) hand delivery, (iii) overnight delivery service, (iv) first class mail, or (v) facsimile transmission, and (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed by the recipient, addressed as follows:

The Debtor and the Reorganized Debtor:

CRABTREE & EVELYN, LTD.  
102 Peake Brook Road  
Woodstock, Connecticut 06281-0167  
Telephone: (860) 928-2761  
Facsimile: (860) 928-5685  
Attn.: Colleen Cording, Esq.

-and-

COOLEY GODWARD KRONISH LLP  
1114 Avenue of the Americas



New York, New York 10036  
Telephone: (212) 479-6000  
Facsimile: (212) 479-6275  
Attn.: Lawrence C. Gottlieb, Esq.  
Jeffrey L. Cohen, Esq.  
Richelle Kalnit, Esq.

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Attn.: Serene Nakano, Esq.

Dated: ~~October 23,~~November 17, 2009  
New York, New York

Respectfully submitted,

**CRABTREE & EVELYN, LTD.**

By: /s/ Stephen W. Bestwick  
Name: Stephen W. Bestwick  
Title: Acting President

COUNSEL:

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Attorneys for Debtor and  
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**EXHIBIT A TO THE PLAN OF REORGANIZATION**

**Certificate of Incorporation of the Reorganized Debtor**

(To Be Filed With the Plan Supplement to the  
Debtor's [First Amended](#) Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

## **EXHIBIT B TO THE PLAN OF REORGANIZATION**

### **By-Laws of the Reorganized Debtor**

(To Be Filed With the Plan Supplement to the  
Debtor's [First Amended](#) Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

## EXHIBIT C TO THE PLAN OF REORGANIZATION

### Directors of the Reorganized Debtor

(To Be Filed With the Plan Supplement to the Debtor's [First Amended](#) Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

## EXHIBIT D TO THE PLAN OF REORGANIZATION

### Executory Contracts and Unexpired Leases to Be Assumed and Proposed Cure Amounts

(To Be Filed With the Plan Supplement to the  
Debtor's [First Amended](#) Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)

## **EXHIBIT E TO THE PLAN OF REORGANIZATION**

### **Exit Facility**

(To Be Filed With the Plan Supplement to the  
Debtor's [First Amended](#) Plan of Reorganization Under Chapter 11 of the Bankruptcy Code)



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