

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Charlotte Division**

In re:	Chapter 11
PORTRAIT INNOVATIONS, INC., et al. <sup>1</sup>	Case No. 17-31455 (JCW)
Debtors.	Jointly Administered

**DEBTORS' JOINT CHAPTER 11 PLAN OF REORGANIZATION**

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Dated: September 8, 2017

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<sup>1</sup> The Debtors in these jointly administered cases are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Portrait Innovations, Inc. (9394) and Portrait Innovations Holding Company (5553). The Debtors address is 2016 Ayrley Town Center Boulevard, Suite 200, Charlotte, North Carolina 28273.

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## **INTRODUCTION**

Portrait Innovations, Inc. and Portrait Innovations Holdings Company, the Debtors and Debtors in possession in the above-captioned chapter 11 cases, propose this joint plan of reorganization (the “*Plan*”). The Plan provides for the reorganization and sale of the Debtors’ assets pursuant to Bidding Procedures under which an Auction will be held for the Reorganized Company’s equity. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code in its respective chapter 11 case. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters. There are other agreements, documents, and exhibits which will be filed with the Bankruptcy Court in the form of a Plan Supplement and which are referenced in the Plan or the Disclosure Statement. All such agreements, documents, exhibits are incorporated into and are a part of this Plan as if fully set forth herein.

## **ARTICLE I**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **1.1 Defined Terms**

Unless the context requires otherwise, the following terms shall have the following meanings when used in capitalized form herein:

1. “*Administrative Claim*” means any claim against the Debtor or its bankruptcy estate for costs and expenses of administration pursuant to section 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate, and all fees and charges assessed against the Estate pursuant to section 1930 of title 28 of the United States Code. For the avoidance of doubt the Transaction Expenses are an Administrative Claim.

2. “*Administrative Claims Reserve*” means the reserve of cash funded on the Effective Date into an account maintained by the Disbursing Agent for the benefit of holders of Allowed Administrative Claims (exclusive of holders of Professional Fee Claims, the reserve for which holders shall be the Professional Fee Reserve), Allowed Other Priority Claims, Allowed Priority Tax Claims, and Allowed Other Secured Claims, in an amount equal to the Administrative and Priority Claims Estimate.

3. “*Administrative and Priority Claims Estimate*” means the Debtors’ best estimate, as of the Effective Date, exclusive of Professional Fee Claims, of all unpaid claims that will be Allowed Administrative Claims, Allowed Other Secured Claims (if applicable), Allowed Priority Tax Claims, and Allowed Other Priority Claims, or such other amount agreed to by the Debtors, the Noteholder Agent, and the Winning Bidder.

4. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code.

5. “*Allowed*” means, as to a Claim, proof of which was timely and properly filed or, if no proof of a Claim was filed, which has been or hereafter is listed by the applicable Debtor in its Schedules, as liquidated in amount and not disputed or contingent and, in each case, as to which: (i) no objection to allowance has been interposed within the applicable period fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or (ii) an objection has been interposed and such Claim or Interest has been allowed, in whole or in part, by a Final Order and/or by the agreement of the holder of such Claim or Interest and the Debtors, the Reorganized Company, or the Disbursing Agent, as applicable; provided, however, that any Claims allowed solely for the purpose of voting to accept or reject this Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed” hereunder. Unless otherwise specified herein or by order of the Bankruptcy Court, “Allowed” shall not, for purposes of computation of distributions under this Plan, include interest on any Allowed Claim.

6. “*Assets*” means substantially all of the Debtors’ assets.

7. “*Assumption Notice*” means the *Notice of Possible Assumption of the Debtors’ Executory Contracts and Unexpired Leases and Proposed Cure Amounts* approved by the Bidding Procedures Order, together with any amended notices, which (i) lists Executory Contracts and Unexpired Leases to be assumed as of the Effective Date under section 365 of the Bankruptcy Code, (ii) sets forth the amounts necessary to cure any default on such Executory Contracts and unexpired Leases, and (iii) shall be filed with the Bankruptcy Court and served on the non-Debtor counterparties to all Executory Contracts and Unexpired Leases. The Assumption Notice shall be in a form and substance acceptable to the Noteholder Agent.

8. “*Auction*” means the auction to be conducted by the Debtors and their advisors pursuant to the Bidding Procedures.

9. “*Avoidance Actions*” means any and all Causes of Action that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under sections 502, 510, 542, 544, 545, and 547 through and including 553 of the Bankruptcy Code or similar avoidance or fraudulent transfer actions under applicable non-bankruptcy law.

10. “*Ballot*” means each of the ballots distributed to each holder of an Impaired Claim that is entitled to vote to accept or reject the Plan and on which such holder is to indicate, among other things, acceptance or rejection of the Plan.

11. “*Bankruptcy Administrator*” means the Bankruptcy Administrator for the Western District of North Carolina.

12. “*Bankruptcy Code*” means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto that are subsequently made applicable to the Chapter 11 Cases.

13. “*Bankruptcy Court*” means the United States Bankruptcy Court for the Western District of North Carolina or such other court having jurisdiction over the Chapter 11 Cases.

14. “*Bankruptcy Rules*” means: (i) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of

the United States Code; (ii) the applicable Local Rules of Bankruptcy Practice and Procedure for the Bankruptcy Court; and (iii) any general or chamber rules, or standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, and each of the foregoing together with all amendments and modifications thereto that are subsequently made and as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

15. “*Bidding Procedures*” means the bidding procedures approved by the Bidding Procedures Order.

16. “*Bidding Procedures Motion*” means the motion (together with all exhibits thereto), filed by the Debtors with the Bankruptcy Court on the Petition Date [Docket No. 20], seeking entry of an order: (i) approving the Bidding Procedures in connection with the Auction; and (ii) authorizing and scheduling a date and time for an Auction pursuant to such procedures.

17. “*Bidding Procedures Order*” means the order of the Bankruptcy Court approving the Bidding Procedures Motion.

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

19. “*Cash*” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

20. “*Causes of Action*” means any and all claims, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims of any of the Debtors and/or the Estates, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, that are or may be pending on the Effective Date or commenced by the Reorganized Company after the Effective Date against any Entity, based in law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted as of the date of entry of the Confirmation Order.

21. “*Certificate*” means any instrument evidencing a Claim or an Interest.

22. “*Chapter 11 Cases*” means the administratively consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

23. “*Claim*” has the meaning set forth in section 101(5) of the Bankruptcy Code.

24. “*Claims and Solicitation Agent*” means Rust Consulting/Omni Bankruptcy, or such other the claims and solicitation agent the Debtors may retain in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court.

25. “*Claims Register*” means the official register of Claims against or Interests in the Debtors maintained by the Claims and Solicitation Agent.

26. “*Class*” means a category of holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

27. “*Committee*” means any official committee of unsecured creditors appointed in these Chapter 11 Cases.

28. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

29. “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

30. “*Confirmation Hearing*” means the hearing(s) before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors seek entry of the Confirmation Order.

31. “*Confirmation Order*” means the order of the Bankruptcy Court approving the Plan and the transactions set forth therein including, without limitation, on a final basis and confirming the Plan pursuant to section 1129 of Bankruptcy Code, which order (and any exhibits, appendices and related documents) shall be in form and substance acceptable to the Debtors, the Noteholder Agent, and the Winning Bidder.

32. “*Consummation*” means the occurrence of the Effective Date.

33. “*Creditor*” has the meaning set forth in section 101(10) of the Bankruptcy Code.

34. “*Cure Amounts*” shall mean all pre- and postpetition amounts payable pursuant to section 365(b)(1)(A) or (B) of the Bankruptcy Code as determined by an order of the Bankruptcy Court or agreed to between the applicable parties in order to effectuate the assumption of Executory Contracts and Unexpired Leases pursuant to the Confirmation Order.

35. “*Debtors*” means, collectively, each of the following: Portrait Innovations, Inc. and Portrait Innovations Holdings Company.

36. “*DIP Agent*” means CapitalSouth Partners SBIC Fund III, L.P.

37. “*DIP Budget*” means the budget, in form and substance satisfactory to the DIP Agent approved by the Interim DIP Order or the Final DIP Order, as the case may be.

38. “*DIP Term Sheet*” means the *General Term Sheet for Post Petition Debtor-in-Possession Financing* relating to the DIP Facility, attached to the Interim DIP Order.

39. “*DIP Facility*” means that superpriority secured post-petition credit facility as described in the DIP Term Sheet and approved by the Interim DIP Order and Final DIP Order, respectively.



40. “*DIP Facility Claims*” means any and all of the Claims, held by the DIP Agent and the DIP Lenders, against the Debtors arising under or in connection with the DIP Facility.

41. “*DIP Lenders*” means CapitalSouth Partners Fund II Limited Partnership, a North Carolina limited partnership, CapitalSouth Partners SBIC Fund III, L.P., a Delaware limited partnership, and CapitalSouth Partners Florida Sidecar Fund II, L.P., a Delaware limited partnership, each in their capacities as such.

42. “*Disbursing Agent*” means The Finley Group or such other party selected by the Debtors and the Noteholder Agent and set forth in the Plan Supplement.

43. “*Disclosure Statement*” means the disclosure statement for the Plan, as may be amended, supplemented or modified from time to time with the consent of the Noteholder Agent and Winning Bidder, including all exhibits and schedules thereto as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

44. “*Disclosure Statement Order*” means the order of the Bankruptcy Court approving the Disclosure Statement and the Solicitation in form and substance acceptable to the Noteholder Agent and Winning Bidder.

45. “*Disputed*” means as to a Claim or Interest, a Claim or Interest, or any portion thereof, that (a) is not Allowed; (b) is not yet allowed or disallowed under the Plan, the Bankruptcy Code, or a Final Order; (c) is the subject of an objection or request for estimation filed in the Bankruptcy Court and which objection or request for estimation has not been withdrawn or overruled by a Final Order of the Bankruptcy Court; or (d) is otherwise disputed by the Debtors (with the consent of the Noteholder Agent and Winning Bidder), or the Disbursing Agent after the Effective Date, in accordance with applicable law, including by the listing of such Claim or Interest on the Schedules as unliquidated, disputed, or contingent, which dispute has not been withdrawn, resolved or overruled by Final Order.

46. “*Distribution*” means the distributions made in accordance with this Plan.

47. “*Effective Date*” means the date that is one (1) Business Day after which all conditions precedent to the occurrence of the Effective Date set forth in Section 10.2 herein have been satisfied or waived in accordance with Section 10.3 herein.

48. “*Entity*” means a natural person, corporation, limited liability company, association, partnership (whether general or limited), joint venture, proprietorship, estate, trust, Governmental Authority or any other individual or entity, whether acting in an individual, fiduciary, representative or other capacity, including the Bankruptcy Administrator, within the meaning of section 101(15) of the Bankruptcy Code.

49. “*Equity Security*” has the meaning set forth in section 101(16) of the Bankruptcy Code.

50. “*Estate*” means the bankruptcy estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

51. “*Exculpated Claim*” means a Claim arising out of or related to any act or omission in connection with or relating to (a) the in-court or out-of-court efforts to implement the Restructuring Transaction or the Support Agreement; (b) the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement or Plan or any contract, instrument, release, or other agreement or document created or entered into in connection therewith including, but not limited to, the Support Agreement, the Disclosure Statement, or the Plan; (c) the filing and prosecution of the Chapter 11 Cases; (d) the pursuit of Confirmation; (e) the pursuit of Consummation; (f) the administration and implementation of the Plan; and/or (g) the distribution of property under the Plan.

52. “*Exculpated Party*” means, collectively: (a) the Debtors; (b) the Noteholder Agent; (c) the Noteholders; (d) the DIP Agent; (e) the DIP Lenders; (f) the Disbursing Agent; (g) the Committee; (h) the Winning Bidder, and (i) each of their respective affiliates, subsidiaries and shareholders, and each of their respective current and former members, managers, professionals, attorneys and financial advisors, agents, directors and officers, and other persons and entities.

53. “*Executory Contract*” means a contract to which one or more of the Debtors are party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

54. “*Existing Governance Documents*” means the corporate governance documents related to each of the Debtors, including, but not limited to, charters, bylaws, operating agreements, or other organizational documents.

55. “*Exit Financing*” means financing, to be provided by the Winning Bidder, in an aggregate principal amount of \$5,000,000, the proceeds of which shall be used to (1) repay all amounts outstanding under the DIP Facility, (2) fund the Administrative Claims Reserve and the Professional Fee Reserve; (3) fund the GUC Fund; and (4) fund working capital needs for the Reorganized Debtor.

56. “*Final Decree*” means the decree issued pursuant to Bankruptcy Rule 3022, closing the Chapter 11 Cases.

57. “*Final DIP Order*” means the order of the Bankruptcy Court approving the DIP Facility on a final basis.

58. “*Final Order*” means an order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the Clerk of the Bankruptcy Court (or such other court) on the docket in the Chapter 11 Cases (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed and as to which: (a) the time to appeal, petition for *certiorari*, or move for a new trial, stay, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari*, or motion for new trial, stay, reargument, or rehearing shall then be pending; or (b) if an appeal, writ of *certiorari*, new trial, stay, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, stay, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to

take any further appeal, petition for *certiorari*, or move for a new trial, stay, reargument, or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order.

59. “*General Unsecured Claim*” means a Claim that (i) is neither Secured nor entitled to priority under the Bankruptcy Code or a Final Order and (ii) is not a DIP Facility Claim, an Administrative Claim, a Priority Tax Claim, an Other Secured Claim, an Other Priority Claim, or a Noteholder Claim.

60. “*GUC Fund*” means that certain fund, in an amount up to \$250,000 in Cash, to be used for payment of General Unsecured Claims.

61. “*Governmental Bar Date*” means the date established pursuant to Bankruptcy Rule 3002(c)(1).

62. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

63. “*Holdings Interests*” means an Interest in Portrait Innovations Holding Company in existence prior to the Effective Date. For purposes of clarity, the term Holdings Interests does not include New Common Stock.

64. “*Impaired*” means, with respect to any Class of Claims or Interests, a Claim or an Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

65. “*Insider*” has the meaning set forth in section 101(31) of the Bankruptcy Code.

66. “*Intercompany Claim*” means a Claim by a Debtor against another Debtor that is reflected in the Debtors’ books and records.

67. “*Intercompany Interest*” means an Interest held by a Debtor.

68. “*Interest*” means any Equity Security in a Debtor, including all issued, unissued, authorized, or outstanding shares of stock and other ownership interests in any Debtor, together with any warrants, options, or contract rights to purchase or acquire such Equity Securities, and all rights arising with respect thereto.

69. “*Interim DIP Order*” means the order of the Bankruptcy Court approving the DIP Facility on an interim basis.

70. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

71. “*New Governance Documents*” means the corporate governance documents related to the Reorganized Company, including, but not limited to, charters, bylaws, operating agreements, or other organizational documents, which shall be included with the Plan

Supplement and shall be in form and substance acceptable to the Noteholder Agent and Winning Bidder.

72. “*New Notes*” means secured promissory notes to be issued by the Reorganized Company in the original principal amount of \$12,000,000 and containing the following terms (i) a five-year term and (ii) monthly cash interest payable at a per annum rate of twelve percent (12%). Forms of and documentation for the New Notes shall be included in the Plan Supplement and shall be in form and substance acceptable to the Noteholder Agent and Winning Bidder.

73. “*New Shares*” means the Equity Securities in the Reorganized Company, which shall consist of (a) preferred equity interests in the Reorganized Company with a notional amount of \$2,750,000 and an annual cash dividend of six percent (6%) and (b) 100% of the common equity interests of the Reorganized Company. Forms of and the documentation for the New Shares shall be included in the Plan Supplement and shall be in form and substance acceptable to the Noteholder Agent and Winning Bidder.

74. “*Notes*” means those certain Secured Subordinated Promissory Notes issued by the Debtors in an aggregate principal amount of \$15,000,000, pursuant the Note Purchase Agreement.

75. “*Note Purchase Agreement*” means the certain Note Purchase Agreement by and among the Debtors and the Noteholders, dated as of February 26, 2015, as amended, modified, or otherwise supplemental from time to time.

76. “*Noteholder Agent*” means CapitalSouth Partners SBIC Fund III, L.P.

77. “*Noteholder Claims*” means all claims for unpaid principal, interest, fees, costs and any other amounts arising under or in connections with the Note Purchase Agreement.

78. “*Noteholders*” means CapitalSouth Partners Fund II Limited Partnership, a North Carolina limited partnership, CapitalSouth Partners SBIC Fund III, L.P., a Delaware limited partnership, and CapitalSouth Partners Florida Sidecar Fund II, L.P., a Delaware limited partnership.

79. “*Other Priority Claim*” means a Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

80. “*Other Secured Claim*” means a Secured Claim other than the DIP Facility Claims or Noteholder Claims.

81. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code.

82. “*Petition Date*” means September 1, 2017.

83. “*Plan*” means this plan of reorganization together with the Plan Supplement, (as the same may be altered, amended, modified or supplemented from time to time with the consent of the Noteholder Agent and Winning Bidder), which Plan may be modified to reflect the terms

and conditions of the Winning Bid, and which shall be satisfactory to the Debtors, the Noteholder Agent, and the Winning Bidder.

84. “*Plan Supplement*” means that compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan to be filed no later than seven (7) calendar days prior to the deadline for submitting Ballots accepting or rejecting the Plan.

85. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

86. “*Priority Tax Claim Estimate*” means the Debtors’ best estimate, as of the Effective Date, of all unpaid claims that will be Allowed Priority Tax Claims.

87. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of all Allowed Claims in that Class.

88. “*Professional*” means a Person or Entity employed by the Debtors or the Committee in the Chapter 11 Cases pursuant to sections 327, 328, 363, or 1103 of the Bankruptcy Code and whose compensation for services rendered before or on the Effective Date shall be determined pursuant to sections 327, 328, 330, 331, or 503(b) of the Bankruptcy Code.

89. “*Professional Fee Claim*” means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation and reimbursement of expenses incurred through and including the Effective Date under sections 327, 328, 330, 331, or 503(b) of the Bankruptcy Code.

90. “*Professional Fee Estimate*” means the estimated aggregate amount of all reasonable fees and expenses due to Professional Fee Claims through the Effective Date, which have not been paid or otherwise funded (including with funds deposited in escrow for payment of Professional Fee Claims).

91. “*Professional Fee Reserve*” means the reserve of cash funded on the Effective Date (as agreed to by the Noteholder Agent and Winning Bidder) to an account maintained by the Disbursing Agent in an amount sufficient to fund all Professional Fee Claims of Professionals, including but not limited to an amount sufficient to pay (i) all unpaid holdback amounts and other expenses billed by Professionals prior to the Effective Date; and (ii) all outstanding fee applications of Professionals not ruled upon by the Bankruptcy Court as of the Effective Date.

92. “*Proof of Claim*” means a written proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

93. “*Released Parties*” means, collectively, each of the following in its/their capacity as such: (a) each of the Debtors’ current and former officers and directors; (b) the DIP Agent; (c) the DIP Lenders; (d) the Noteholders; (e) the Noteholder Agent; (f) the Winning Bidder; and (g) the Committee; and in each case, the term “Released Parties” shall include the respective Related Persons of each of the foregoing Entities and the Debtors.

94. “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of the respective current and former officers, directors, principals, employees, shareholders, members, managers, management companies, advisory board members, partners, limited partners, general partners, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and any Person claiming by or through any of them, including heirs, executors, estates, servants, and nominees.

95. “*Reorganized Company*” means the newly-formed Entity which shall directly or indirectly own the Assets on the Effective Date, as determined by the Debtors and the Winning Bidder.

96. “*Restructuring Term Sheet*” means that certain Restructuring Term Sheet attached as Exhibit A to the Support Agreement, as may be amended, supplemented or modified from time to time in accordance with the terms thereof.

97. “*Restructuring Transaction*” shall have the meaning set forth in the recitals to the Support Agreement.

98. “*Schedules*” means the schedules of assets and liabilities, the list of holders of Interests and the statements of financial affairs and such other documents filed by each of the Debtors under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments pursuant to Bankruptcy Rule 1009 and modifications thereto through the Confirmation Date.

99. “*Section 510(b) Claim*” means a Claim against the Debtors arising from rescission of a purchase or sale of a security of the Debtors, for damages arising from the purchase or sale of such security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim.

100. “*Secured*” means a Claim (a) secured by a Lien on property in which an Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Final Order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’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; or (b) Allowed as such pursuant to the Plan.

101. “*Securities Act*” means, as may be amended from time to time, the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, and any similar federal, state, or local law. References herein to specific provisions of the Securities Act include any similar provisions of federal, state, or local law.

102. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

103. “*Solicitation*” means the solicitation of votes in connection with the Plan pursuant to sections 1125 and 1126 of the Bankruptcy Code.

104. “*Support Agreement*” means that certain Restructuring Support Agreement, dated as of September 1, 2017 by and among the Debtors and the Noteholders, as may be amended, supplemented or modified from time to time in accordance with the terms thereof.

105. “*Transaction Expenses*” shall have the meaning set forth in the Support Agreement.

106. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim to a holder that has not: (a) accepted a particular Distribution or, in the case of Distributions made by check, negotiated such check; (b) given notice to the Disbursing Agent of an intent to accept a particular Distribution; (c) responded to the Disbursing Agent’s requests for information necessary to facilitate a particular Distribution; or (d) taken any other action necessary to facilitate such Distribution.

107. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

108. “*Unimpaired*” means a Class of Claims or Interests that is not impaired within the meaning of section 1124 of the Bankruptcy Code.

109. “*Voting Creditors*” shall have the meaning provided in Section 4.5 herein.

110. “*Winning Bid*” shall have the meaning provided in the Bidding Procedures.

111. “*Winning Bidder*” shall have the meaning provided in the Bidding Procedures or, if no Auction is held pursuant to the Bidding Procedures, the Winning Bidder shall refer to the Noteholder Agent.

For purposes of the Plan, the following rules of interpretation apply: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (e) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1.2 **Computation of Time**

Bankruptcy Rule 9006(a) applies in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to this Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

1.3 **Governing Law**

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of North Carolina, without giving effect to conflict-of-laws principles.

1.4 **Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

1.5 **Reference to the Debtors or Reorganized Company**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Company mean the Debtors and the Reorganized Company, as applicable, to the extent the context requires.

**ARTICLE II**

**DIP FACILITY, ADMINISTRATIVE EXPENSE, AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, DIP Facility Claims, Administrative Claims, Professional Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III.

2.1 **DIP Facility Claims**

On the Effective Date, each holder of an allowed claim arising under the DIP Facility shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for such claim, payment in cash in full from proceeds from the Exit Financing.

2.2 **Administrative Claims**

Each holder of an Allowed Administrative Claim, including, without limitation, a claim of the type described in section 503(b)(9) of the Bankruptcy Code, to the extent such claim has not already been paid during the Chapter 11 Case, shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Administrative Claim, payment in full in cash of the due and unpaid portion of its Allowed Administrative Claim on the later of (x) the Effective Date (or as soon thereafter as reasonably practicable) or (y) the date (i) such



claim becomes Allowed, or (ii) the amount of the Claim is otherwise agreed to by the Debtors (with the consent of the Noteholder Agent and Winning Bidder) or the Disbursing Agent in accordance with the terms of the Plan, as applicable, and the holder of such Allowed Administrative Claim. Payments made by the Disbursing Agent on account of an Allowed Administrative Claim shall be paid solely from the Administrative Claims Reserve.

Any request for allowance and payment of Administrative Claims (other than Professional Claims and Claims for fees and expenses pursuant to 28 U.S.C. § 1930) arising, accruing, or otherwise becoming due and payable from September 1, 2017 through the Effective Date must be filed pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order (as applicable) no later than (30) days after the Effective Date or otherwise be forever barred, estopped, and enjoined from asserting such Administrative Claim against the Debtors and Reorganized Company and their respective Estates and property, the Winning Bidder, the Disbursing Agent, or otherwise, and such Administrative Expense Claim shall be deemed discharged as of the Effective Date.

### 2.3 **Professional Claims**

To the extent not previously paid during the Chapter 11 Cases, all requests for payment of Professional Fee Claims must be filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Fee Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, or order of the Bankruptcy Court. The Disbursing Agent shall pay Professional Fee Claims in Cash in the amount allowed by the Court within three (3) days of allowance. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Company, Debtors, and the Disbursing Agent may employ and pay any Professional in the ordinary course of business without any further notice to, or action, order, or approval of, the Bankruptcy Court. Any Professional Fee Claim shall be paid from the Professional Fee Reserve.

### 2.4 **Priority Tax Claims**

Each holder of an Allowed Priority Tax Claim, to the extent such claim has not already been paid during the Chapter 11 Cases, shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim payment in full in cash of the due and unpaid portion of its Allowed Priority Tax Claim on the later of (x) the Effective Date (or as soon thereafter as reasonably practicable) or (y) the date such claim becomes Allowed or agreed to by the Debtors or the Disbursing Agent in accordance with the terms of the Plan (in either case, with the consent of the Noteholder Agent and Winning Bidder), as applicable, and the holder of such Allowed Priority Tax Claim. Any payments made by the Disbursing Agent on account of an Allowed Priority Tax Claim shall be paid solely from the Administrative Claims Reserve.

**ARTICLE III**

**CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS**

**3.1 Classification of Claims and Interests**

The Plan constitutes a separate Plan with respect to each Debtor. Except for the Claims addressed in Article II, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Below is a chart assigning each Class a number for purposes of identifying each separate Class:

<b>Class</b>	<b>Claim or Interest</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Secured Claims	Unimpaired	Presumed to Accept
2	Other Priority Claims	Unimpaired	Presumed to Accept
3	Noteholder Claims	Impaired	Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Intercompany Claims	Impaired	Presumed to Reject
6	Equity Interests	Impaired	Presumed to Reject
7	Section 510(b) Claims	Impaired	Presumed to Reject

Except to the extent that a holder of an Allowed Claim or Interest, as applicable, agrees to a less favorable treatment, such holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release and discharge of and in exchange for such holder's Allowed Claim against or Interest in each Debtor, as applicable. Unless otherwise indicated, the holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date, or as soon as practicable thereafter.

**(a) Class 1-Other Secured Claims**

- (1) *Classification:* Class 1 consists of any Other Secured Claims against any Debtor.
- (2) *Treatment:* Each holder of an Allowed Other Secured Claim, to the extent such claim has not already been paid during the Chapter 11 Cases, shall receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Other Secured Claim (i) payment in full in

cash of the due and unpaid portion of its Allowed Other Secured Claim on the later of (x) the Effective Date (or as soon thereafter as reasonably practicable) or (y) the date such claim becomes Allowed or agreed to by the Debtors or the Disbursing Agent in accordance with the terms of the Plan (with the consent of the Noteholder Agent and Winning Bidder, as applicable, and the holder of such Allowed Other Secured Claim, (ii) a return of the holder's collateral securing the Allowed Other Secured Claim, (iii) such treatment required under section 1124(2) of the Bankruptcy Code for such Allowed Other Secured Claim to be rendered unimpaired or (iv) such other treatment as agreed to by the Debtors or the Disbursing Agent in accordance with the terms of the Plan (with the consent of the Noteholder Agent and Winning Bidder), as applicable, and the holder of such Allowed Other Secured Claim. Any payments made by the Disbursing Agent on account of an Allowed Other Secured Claim shall be paid solely from the Administrative Claims Reserve.

- (3) *Voting:* Class 1 is Unimpaired. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan.

**(b) Class 2-Other Priority Claims**

- (1) *Classification:* Class 2 consists of any Other Priority Claims against any Debtor.
- (2) *Treatment:* Each holder of an Allowed Other Priority Claim, to the extent such claim has not already been paid during the Chapter 11 Cases, shall receive, as agreed to by the Debtors or the Disbursing Agent in accordance with the terms of the Plan (with the consent of the Noteholder Agent and Winning Bidder), as applicable, in full satisfaction, settlement, discharge and release of, and in exchange for, such claim, payment in full in cash of the due and unpaid portion of its Allowed Other Priority Claim on the later of (x) the Effective Date (or as soon thereafter as reasonably practicable) or (y) the date such claim becomes Allowed or agreed to by the Debtors or the Disbursing Agent in accordance with the terms of the Plan (with the consent of the Noteholder Agent and Winning Bidder), as applicable, and the holder of such Allowed Other Priority Claim. Any payments made by the Disbursing Agent on account of Allowed Other Priority Claims shall be paid solely from the Administrative Claims Reserve.
- (3) *Voting:* Class 2 is Unimpaired. Holders of Allowed Other Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

**(c) Class 3-Noteholder Claims**

- (1) *Classification:* Class 3 consists of any Noteholder Claims.
- (2) *Allowance:* On the Effective Date, Noteholder Claims shall be deemed Allowed Claims in the aggregate amount of \$15,000,000.00 plus all accrued but unpaid interest, fees, costs, charges, or other amounts arising under the Notes, including post-petition interest, fees, costs, and charges, amounts to the extent allowable under section 506 of the Bankruptcy Code.
- (3) *Treatment:* With respect to such holder's Allowed Noteholder Claim, each holder of an Allowed Noteholder Claim shall receive, on the Effective Date, in full and final satisfaction of such Claim, (A) if the Noteholders are the Winning Bidder, its pro rata share of the New Notes and New Shares, or (B) if the Noteholders are not the Winning Bidder, payment in cash in full of such holders' Allowed Noteholders Claim.
- (4) *Voting:* Class 3 is Impaired. Holders of Allowed Noteholder Claims are entitled to vote to accept or reject the Plan.

**(d) Class 4-General Unsecured Claims**

- (1) *Classification:* Class 4 consists of any General Unsecured Claims against any Debtor.
- (2) *Treatment:* Each holder of Allowed General Unsecured Claim shall receive, on the Effective Date (or as soon thereafter as reasonably practicable), in full satisfaction, settlement, discharge and release of, and in exchange for such Claim: the lesser of (i) five per cent (5%) of the total amount of such Allowed General Unsecured Claim; and (ii) such holder's *pro rata* share of the GUC Fund.
- (3) *Voting:* Class 4 is Impaired. Holders of Allowed General Unsecured Claims are entitled to vote to accept or reject the Plan.

**(e) Class 5- Intercompany Claims**

- (1) *Classification:* Class 5 consists of any Intercompany Claims.
- (2) *Treatment:* Holders of Intercompany Claims shall not receive a Distribution on account of such Claim, and such Claims shall be extinguished on the Effective Date.
- (3) *Voting:* Class 5 is Impaired. Holders of Intercompany Claims are conclusively presumed to have rejected the Plan. Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

**(f) Class 6-Equity Interests**

- (1) *Classification:* Class 6 consists of any Equity Interests.
- (2) *Treatment:* Holders of Equity Interests shall not receive a Distribution on account of such Interest, and such Interests shall be extinguished on the Effective Date.
- (3) *Voting:* Class 6 is Impaired. Holders of Equity Interests are conclusively presumed to have rejected the Plan. Holders of Equity Interests are not entitled to vote to accept or reject the Plan.

**(g) Class 7-Section 510(b) Claims**

- (1) *Classification:* Class 7 consists of any Section 510(b) Claims.
- (2) *Treatment:* Holders of Section 510(b) Claims shall not receive a Distribution on account of such Claims, and such Claims shall be extinguished on the Effective Date.
- (3) *Voting:* Class 7 is Impaired. Holders of Section 510(b) Claims are conclusively presumed to have rejected the Plan. Holders of Section 510(b) Claims are not entitled to vote to accept or reject the Plan.

**3.2 Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Company's rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**ARTICLE IV**

**ACCEPTANCE OR REJECTION OF PLAN**

**4.1 Impaired Classes of Claims and Interests Entitled to Vote**

Subject to Section 4.3 and 4.4 of the Plan, Claim and Interest holders in each Impaired Class of Claims or Interests are entitled to vote as a class to accept or reject the Plan.

**4.2 Acceptance by an Impaired Class**

In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject the Plan.

4.3 **Presumed Acceptances by Unimpaired Classes**

Classes 1 and 2 are Unimpaired by the Plan. Under section 1126(f) of the Bankruptcy Code, such Claim holders are conclusively presumed to accept the Plan, and the votes of such Claim holders will not be solicited.

4.4 **Classes Presumed to Reject Plan**

Holders of Claims and Interests in Classes 5, 6 and 7 are not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, Classes 5, 6 and 7 are presumed to reject the Plan, and Classes 5, 6 and 7 will not be solicited.

4.5 **Summary of Classes Voting on the Plan**

As a result of the provisions of Sections 4.3 and 4.4 of this Plan, the votes of holders of Claims in Classes 3 and 4 are entitled to vote on the Plan (collectively the “*Voting Creditors*”) and will be solicited with respect to this Plan.

4.6 **Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code**

To the extent that any Impaired Class rejects the Plan or is presumed to have rejected the Plan, the Debtors will request confirmation of the Plan under section 1129(b) of the Bankruptcy Code.

**ARTICLE V**

**PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

5.1 **Consummation of Transactions**

On or prior to the Effective Date, the Debtors or the Reorganized Company, as the case may be, the Noteholder Agent, the Winning Bidder, and any other party to the Restructuring Transaction shall take all actions that are necessary or appropriate to effectuate the Restructuring Transaction, including, but not limited to:

- (a) the Debtors shall transfer the Assets to the Reorganized Company;
- (b) the Reorganized Company shall issue the New Shares to the Winning Bidder;
- (c) all New Governance Documents shall be executed;
- (d) the Reorganized Company shall issue the New Notes to the Winning Bidder and all documentation in connection with the New Notes shall be executed and delivered;
- (e) the Reorganized Company shall execute all necessary documentation in connection with the Exit Financing;
- (f) Allowed DIP Facility Claims shall be paid in full in cash on the Effective Date;

(g) If the Winning Bidder is not the Noteholder Agent, Allowed Noteholder Claims shall be paid in full in cash on the Effective Date; and

(h) If the Winning Bidder is not the Noteholder Agent, the Winning Bidder shall have paid or otherwise provided for sufficient funding to implement the Plan, including sufficient funds to fund the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund, pay the DIP Facility Claims in full, and pay the Allowed Noteholder Claims in full.

## 5.2 **Offering and Issuance of Securities Pursuant to Section 1145**

The offering, issuance, distribution, and exercise (as applicable) of the New Notes, pursuant to the Plan, shall be exempt from the registration requirements of section 5 of the Securities Act pursuant to section 1145 of the Bankruptcy Code. In addition, under section 1145 of the Bankruptcy Code, the New Notes will be freely transferable under the Securities Act by the recipients thereof, subject to: (1) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with any applicable state or foreign securities laws, if any, and the rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of New Notes; (2) the restrictions, if any, on the transferability of New Notes; and (3) any other applicable regulatory approval. All New Notes issued and distributed pursuant to the Plan shall be duly authorized, validly issued, fully paid and non-assessable.

On and after the Effective Date, subject to the terms of the New Governance Documents, the Reorganized Company will be a “private” company that is not required to register any Securities pursuant to the Securities Exchange Act of 1934.

## 5.3 **Subordination**

The allowance, classification, and treatment of all Claims and Interests under the Plan shall conform to and with the respective contractual, legal, and equitable subordination rights of such Claims and Interests, and the Plan shall recognize and implement any such rights. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors reserve the right, after notice and a hearing, to re-classify any Allowed Claim or Interest (other than an Allowed Noteholder Claim, which shall not be subject to re-classification in any event) in accordance with any contractual, legal or equitable subordination relating thereto.

## 5.4 **Vesting of Assets in the Reorganized Company**

Except as otherwise provided herein or in any agreement, instrument or other document incorporated in the Plan, on the Effective Date, all property and assets (excluding the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund) of each Estate, including all Causes of Action, and any other assets or property acquired by any of the Debtors during the Chapter 11 Cases or under or in connection with the Plan shall vest in the Reorganized Company, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Company may operate its business and use, acquire, or dispose of property, and compromise or settle any

Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

#### 5.5 **Disbursing Agent; Responsibilities; Compensation**

On the Effective Date, the Winning Bidder shall transfer to the Disbursing Agent cash sufficient to fund the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund. The Disbursing Agent shall be responsible for (i) receiving the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund; (ii) establishing separate bank accounts for the maintenance of the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund; (iii) reviewing, resolving, compromising, and objecting to Claims to the extent necessary; (iv) calculating and effectuating all distributions to be made under this Plan from the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund; (v) paying any fees pursuant to 28 U.S.C. § 1930 incurred after the Effective Date until the closing of the Chapter 11 Cases; (vi) completing and filing any post-confirmation reports; and (vii) such other responsibilities as may be vested in the Disbursing Agent under this Plan, the Confirmation Order, other Final Orders, or as otherwise may be necessary and proper to carry out the provisions of this Plan.

The Disbursing Agent shall be entitled to retain professional advisors to assist the Disbursing Agent in performing its obligations under the Plan. Any costs and expenses incurred by the Disbursing Agent or its professionals shall be paid as follows: (i) to the extent such costs and expenses arise in connection with administering Administrative Claims, Professional Fee Claims, Other Secured Claims, Priority Tax Claims, and Other Priority Claims, from the Administrative Claim Reserve; (ii) to the extent such costs and expenses arise in connection with administering General Unsecured Claims, from the GUC Fund; and (iii) to the extent such costs and expenses arise in connection with any other responsibilities under the Plan, *pro rata* from the Administrative Claim Reserve, and the GUC Fund.

#### 5.6 **Cancellation of Notes, Instruments, Certificates, and Other Documents**

On the Effective Date, except to the extent otherwise provided herein (including as otherwise provided with respect to any contracts evidencing the Restructuring Transaction, including the transactions described in Section 5.1 herein), all notes, instruments, Certificates and other documents evidencing Claims or Interests shall be cancelled and the obligations of the Debtors or Reorganized Company thereunder or in any way related thereto shall be discharged regardless of whether the holder surrenders such note, instrument, Certificates or other document; provided, however, that notwithstanding Confirmation or the occurrence of the Effective Date, any agreement that governs the rights of the holder of a Claim or Interest shall continue in effect solely for purposes of (a) allowing holders of Claims or Interests to receive Distributions under the Plan and (b) allowing and preserving the rights of the Disbursing Agent to make Distributions on account of Claims and Interests.

#### 5.7 **Corporate Action; New Governance Documents; New Board**

Each of the matters provided for by the Plan involving the consummation of the Restructuring Transaction, and establishment of the capital and corporate structure, amending or modifying the Existing Governance Documents of any of the Debtors, or other corporate or



related actions to be taken by or required of the Debtors or the Reorganized Company, whether taken prior to or as of the Effective Date, shall be authorized without the need for any further corporate action or without any further action by or approval of any shareholders, directors or managers of the Debtors.

The New Governance Documents shall be consistent with the provisions of the Plan and the Bankruptcy Code, shall include, among other things (and only to the extent required by section 1123(a)(6) of the Bankruptcy Code), provisions prohibiting the issuance of non-voting Equity Securities. After the Effective Date, each Reorganized Company may amend and restate its certificate of incorporation and other constituent documents as permitted by the laws of its respective jurisdiction of formation and its respective charter and bylaws. The Plan Supplement will disclose the Reorganized Company's new board of directors, as selected by the Winning Bidder.

On and after the Effective Date, the Reorganized Company and the officers and members of the board of directors thereof are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

#### 5.8 **Section 1146(a) Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property under the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment. Upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax, fee, or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

#### 5.9 **[Reserved]**

#### 5.10 **Preservation of Rights of Action**

Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Company shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Company's rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Company will not pursue any and all available Causes of Action against them. The Debtors and

the Reorganized Company expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided in the Plan. Unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Company expressly reserves all Causes of Action for later adjudication and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Company reserves and shall retain Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with sections 1123(b)(3) and 1141(b) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Company. The Reorganized Company shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to, or action, order or approval of, the Bankruptcy Court.

#### 5.11 **Dissolution of Committees**

Upon the Effective Date, any official committees appointed under section 1102 of the Bankruptcy Code shall be dissolved; provided, however, that the Committee shall be deemed to continue in existence subsequent to the Effective Date solely for the limited purpose of undertaking all actions it deems reasonably necessary in connection with the prosecution of the final fee applications of Professionals retained by the Committee.

### ARTICLE VI

#### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

##### 6.1 **Assumption of Executory Contracts and Unexpired Leases**

The Debtors shall file and serve the Assumption Notice on the non-Debtor counterparties to the Executory Contracts and Unexpired Leases. The Confirmation Order will constitute an order of the Bankruptcy Court approving the following as of the Effective Date pursuant to sections 365(a) and 1123 of the Bankruptcy Code: (i) the assumption and assignment to the Reorganized Company of the Executory Contracts and Unexpired Leases set forth in the Assumption Notice; and (ii) the rejection of any other Executory Contracts or Unexpired Leases that are not addressed in (i).

Except as otherwise provided herein or agreed to by the Debtors with the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated hereunder.

Modifications, amendments, supplements and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

## 6.2 **Cure of Defaults and Objections to Assumption**

Any objection to the assumption of an Executory Contract or Unexpired Lease pursuant to the Plan, including any objection to the proposed Cure Amount set forth on the Assumption Notice, must be filed with the Bankruptcy Court by October 26, 2017, or such other date as may be established by the Bankruptcy Court and noticed to counterparties. Any such objection, if not resolved, will be heard by the Bankruptcy Court at the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption and to the Cure Amount set forth on the Assumption Notice. The Debtors, with the consent of the Noteholder Agent and Winning Bidder, and the Reorganized Company, as applicable, may settle any such objections without any further notice to, or action, order or approval of, the Bankruptcy Court.

Payment of the Cure Amounts shall be made by the Disbursing Agent from the Administrative Claims Reserve. If there is an objection to a Cure Amount, then payment of the Cure Amount shall occur as soon as practicable after entry of a Final Order resolving such dispute or as may be agreed upon by the Debtors (with the consent of the Noteholder Agent and Winning Bidder) or the Reorganized Company, as applicable, and the counterparty to the Executory Contract or Unexpired Lease. To the extent that any objection to a Cure Amount is not resolved to the satisfaction of the Winning Bidder, the Winning Bidder shall have the right to direct the rejection of such Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full and final release and satisfaction of any Cure Amounts, Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the Effective Date. Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the Effective Date without the need for any objection thereto or any further notice to, or action, order or approval of, the Bankruptcy Court.

## 6.3 **Pre-existing Payment and Other Obligations**

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors or the Reorganized Company, as applicable, under such contract or lease. In particular, to the extent permissible under applicable nonbankruptcy law, the Reorganized Company expressly reserves and does not waive any right to receive, or any continuing obligation of a counterparty to provide (a) payment to the contracting Debtors or Reorganized Company, as applicable, of outstanding and future amounts owing thereto under or in connection with rejected Executory Contracts or

Unexpired Leases or (b) maintenance of, or to repair or replace, goods previously purchased by the contracting Debtors or the Reorganized Company, as applicable.

#### 6.4 **Rejection Damages Claims and Objections to Rejection**

Pursuant to section 502(g) of the Bankruptcy Code, counterparties to Executory Contracts or Unexpired Leases that are rejected, if any, shall have the right to assert Claims, if any, on account of the rejection of such contracts and leases. Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of Executory Contracts and Unexpired Leases pursuant to the Plan must be filed with the Claims and Solicitation Agent no later than thirty (30) days after the Effective Date. Any rejection damages Claim represented by an untimely Proof of Claim shall: (i) be disallowed without the need for any further notice to, or action, order, or approval of, the Bankruptcy Court; (ii) be forever barred, estopped, and enjoined from assertion; (iii) not be enforceable against the Debtors, the Reorganized Company or the Disbursing Agent; and (iv) be deemed fully satisfied, released, and discharged notwithstanding anything in a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of Executory Contracts and Unexpired Leases shall be classified as Class 4 - General Unsecured Claims against the applicable Debtor counterparty thereto.

#### 6.5 **Contracts and Leases Entered Into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the Reorganized Company in the ordinary course of business.

#### 6.6 **Reservation of Rights**

Neither the exclusion nor inclusion of any contract or lease in the Assumption Notice, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that the Reorganized Company has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Company, as applicable, (with the consent of the Noteholder Agent and Winning Bidder) shall have ninety (90) days following the Effective Date to alter their treatment of such contract or lease, or to request appropriate relief from the Bankruptcy Court.

## ARTICLE VII

### PROVISIONS GOVERNING DISTRIBUTIONS

#### 7.1 Claims Reserves

The Disbursing Agent shall establish and maintain the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund. After all Professional Fee Claims, Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Other Priority Claims are paid (or, in the case of Allowed Other Secured Claims, satisfied) by the Disbursing Agent, any remaining cash in the Professional Fee Reserve, or the Administrative Claims Reserve, as the case may be, shall, be added to the GUC Fund.

#### 7.2 Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the relevant parties, (a) no partial payments and no partial Distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order, and (b) any Entity that holds both an Allowed Claim and a Disputed Claim shall not receive any Distribution on the Allowed Claim unless and until all objections to the Disputed Claim have been resolved by settlement or Final Order or the Claims have been Allowed or expunged. Any dividends or other distributions arising from property distributed to holders of Allowed Claims, as applicable, in a Class and paid to such holders under the Plan shall be paid also, in the applicable amounts, to any holder of a Disputed Claim, as applicable, in such Class that becomes an Allowed Claim after the date or dates that such dividends or other distributions were earlier paid to holders of Allowed Claims in such Class.

#### 7.3 Delivery of Distributions

##### (a) **Accrual of Dividends and Other Rights**

For purposes of determining the accrual of dividends or other rights after the Effective Date, the New Notes and New Shares issued under the Plan shall be deemed distributed as of the Effective Date regardless of the date on which they are actually issued, dated, authenticated or distributed.

##### (b) **Compliance Matters**

Any federal, state or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All entities holding Claims shall be required to provide any information necessary to effect the withholding of such taxes. In addition, all Distributions under the Plan shall be net of the actual and reasonable costs of making such Distributions.

##### (c) **[Reserved]**

**(d) Fractional, De Minimis, Undeliverable, and Unclaimed Distributions**

- (1) *No Fractional or De Minimis Distribution.* Notwithstanding anything contained herein to the contrary, payments of fractional dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made will reflect a rounding down of such fractions. The Disbursing Agent shall not be required to make any payment of less than \$20.00 on any Distribution.
- (2) *Undeliverable Distributions.* If any Distribution to a holder of an Allowed Claim is returned to a Disbursing Agent as undeliverable, no further Distributions shall be made to such holder unless and until such Disbursing Agent is notified in writing of such holder's then-current address or other necessary information for delivery, at which time all currently due missed Distributions shall be made to such holder as soon as practicable. Undeliverable Distributions shall remain in the possession of the Disbursing Agent until such time as a Distribution becomes deliverable and shall not be supplemented with any interest, dividends or other accruals of any kind.
- (3) *Tax Compliance.* The Disbursing Agent 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 Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, including, without limitation, requiring that the holder of an Allowed Claim complete the appropriate IRS Form W-8 or IRS Form W-9, as applicable to each holder or establishing any other mechanisms that the Disbursing Agent believes to be appropriate. The Disbursing Agent shall not be required to make distributions on any Allowed Claim if the holder thereof has not provided all documentation necessary to determine all tax withholding and reporting requirements for such Allowed Claim.
- (4) *Expungement of Claims and Reversion.* To the extent that (i) any Distribution under the Plan that is an Unclaimed Distribution for a period of six months after Distribution or (ii) the holder of an Allowed Claim fails to provide documentation necessary to determine all tax withholding and reporting requirements for such Allowed Claim within thirty (30) days of a written request for such documentation, the Distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code, the related Claim shall be expunged, and such Unclaimed Distribution and any future distribution on account of such Claim shall vest in the GUC Fund.

**(e) Surrender of Cancelled Instruments or Securities**

On the Effective Date or as soon as practicable thereafter, each holder of a Certificate shall surrender such Certificate to the Disbursing Agent. Such Certificate shall be cancelled solely with respect to the Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties *vis-a-vis* one another with respect to such Certificate. No Distribution of property pursuant to the Plan shall be made to or on behalf of any such holder unless and until such Certificate is received by the Disbursing Agent or the unavailability of such Certificate is reasonably established to the satisfaction of the Disbursing Agent pursuant to the provisions of Section 7.3(f) hereof. Any holder who fails to surrender or cause to be surrendered such Certificate or fails to execute and deliver an affidavit of loss and indemnity acceptable to the Disbursing Agent prior to the first anniversary of the Effective Date shall have its Claim or Interest discharged with no further action, be forever barred from asserting any such Claim or Interest against the Debtors or Reorganized Company or its property, be deemed to have forfeited all rights, and Claims and Interests with respect to such Certificate, and not participate in any Distribution under the Plan; furthermore, all property with respect to such forfeited Distributions, including any dividends or interest attributable thereto, shall revert to the Reorganized Company notwithstanding any federal or state escheat, abandoned or unclaimed property law to the contrary.

Notwithstanding the foregoing, the obligations of the Noteholders under this Section 7.3(e) shall be deemed satisfied by the execution of a statement by the Noteholder Agent regarding the cancellation of the Notes pursuant to the Plan.

**(f) Lost, Stolen, Mutilated, or Destroyed Securities**

Any holder of Allowed Claims or Interests evidenced by a Certificate that has been lost, stolen, mutilated or destroyed shall, in lieu of surrendering such Certificate, deliver to the Disbursing Agent an affidavit of loss acceptable to the Disbursing Agent setting forth the unavailability of the Certificate and such additional indemnity as may be required reasonably by the Disbursing Agent to hold the Disbursing Agent harmless from any damages, liabilities or costs incurred in treating such holder as a holder of an Allowed Claim or Interest. Upon compliance with this procedure by a holder of an Allowed Claim or Interest evidenced by such a lost, stolen, mutilated or destroyed Certificate, such holder shall, for all purposes pursuant to the Plan, be deemed to have surrendered such Certificate.

**7.4 Claims Paid or Payable by Third Parties**

A Claim shall be reduced in full and such Claim shall be disallowed without a Claims objection having to be filed and without any further notice to, or action, order or approval of, the Bankruptcy Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or the Reorganized Company. To the extent a holder of a Claim receives a Distribution on account of such Claim and receives payment from a party that is not a Debtor or the Reorganized Company on account of such Claim, such holder shall repay, return or deliver any Distribution held by or transferred to the holder to the Reorganized Company to the extent the holder's total recovery on account of such

Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such Distribution under the Plan.

## ARTICLE VIII

### PROCEDURES FOR RESOLVING DISPUTED CLAIMS

#### 8.1 Disputed Claims Process

Except as otherwise provided herein, if a party files a Proof of Claim and the Disbursing Agent has not determined in its sole discretion, and without the need for notice to, or action, order or approval of, the Bankruptcy Court, that the Claim subject to such Proof of Claim is Allowed, such Claim shall be deemed Disputed unless and until Allowed, resolved by agreement of the parties, or disallowed by a Final Order.

Except as otherwise provided herein, all Proofs of Claim filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against the Debtors, the Reorganized Company or the Disbursing Agent, without the need for any objection by the Debtors, Reorganized Company or Disbursing Agent or any further notice to, or action, order or approval of, the Bankruptcy Court. For the avoidance of doubt, on and after the Effective Date, the Disbursing Agent may negotiate and settle any Claims, including Claims for which a Proof of Claim has been filed, without further notice to or approval of the Bankruptcy Court or any other party.

#### 8.2 Prosecution of Objections to Claims

Any objections to Claims shall be served and filed on or before the 120th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. Notwithstanding anything to the contrary herein, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, except insofar as a Claim is Allowed under the Plan on and after the Effective Date, the Disbursing Agent shall have the authority to: (1) file, withdraw or litigate to judgment objections to and requests for estimation of Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. The Disbursing Agent shall succeed to any pending objections to Claims filed by the Debtors prior to the Effective Date, and shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim, including the Causes of Action retained under the Plan. The Reorganized Company shall provide commercially reasonable assistance and cooperation to the Disbursing Agent in connection with the Disbursing Agent's prosecution of objections to Claims, including, without limitation, access to the Debtors' or the Reorganized Company's (as the case may be) books and records and other information reasonably requested by the Disbursing Agent to enable the Disbursing Agent to perform its obligations under the Plan.



### 8.3 **No Interest**

Except as provided in Section 3.1(c) or as otherwise specifically provided for in the Plan or by order of the Bankruptcy Court, post-petition interest shall not accrue or be paid on Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim or right.

## ARTICLE IX

### EFFECT OF CONFIRMATION OF THE PLAN

#### 9.1 **Discharge of Claims**

Except as otherwise provided for herein and effective as of the Effective Date: (a) the rights afforded in the Plan and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, including any interest accrued on such Claims from and after the Petition Date, against the Debtors or any of their assets, property or Estates; (b) the Plan shall bind all holders of Claims and Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Interests shall be satisfied, discharged, and released in full, and the Debtors' liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (d) all Entities shall be precluded from asserting against the Debtors, the Debtors' Estates, the Reorganized Company, their successors and assigns and their assets and properties any other Claims or Interests based upon any documents, instruments, or any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

#### 9.2 **[Reserved]**

#### 9.3 **Consensual Third-Party Releases**

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, all Voting Creditors who vote to accept the Plan shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Released Parties from any and all Claims, Interests, obligations, rights, liabilities, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement claims, indemnity claims, counterclaims, and crossclaims (including all claims and actions against any Entities under the Bankruptcy Code) whatsoever, whether for tort, contract, violations of federal or state securities laws, Avoidance Actions, including (solely to the extent permissible under applicable law) any derivative Claims asserted or that could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors, the Restructuring

Transaction, or the Support Agreement; the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement or Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Support Agreement, the Disclosure Statement, or the Plan; the filing and prosecution of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Company, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, prepetition contracts and agreements with one or more Debtors, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date; provided, that to the extent that a Claim or Cause of Action is determined by a Final Order to have constituted actual fraud, gross negligence, or willful misconduct, such Claim or Cause of Action shall not be so released. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth in this Section 9.3, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims released by this Section 9.3; (c) in the best interests of the Debtors and all holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any Entity granting a release under this Section 9.3 from asserting any Claim or Cause of Action released by this Section 9.3.

Notwithstanding the foregoing, nothing in this Section 9.3 shall operate to release the rights of the Noteholders and the DIP Lenders under the Support Agreement, DIP Documents, or the Plan.

#### 9.4 **Exculpation**

Effective as of the Effective Date, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim, except for actual fraud, willful misconduct, or gross negligence, and in all respects, the Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of acceptances and rejections of the Plan and the making of Distributions pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violation of any applicable, law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such Distributions made pursuant to the Plan.

## 9.5 **Injunction**

Except as otherwise provided herein or in the Confirmation Order, from and after the Effective Date, all Entities are, to the fullest extent provided under section 524 and other applicable provisions of the Bankruptcy Code, permanently enjoined from taking any of the following actions against, as applicable, the Debtors, the Reorganized Company, the Released Parties, or the Exculpated Parties (collectively, the “*Section 9.5 Parties*”): (a) 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 Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against the Section 9.5 Parties or their respective property and assets on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against the Section 9.5 Parties or their respective property and assets on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from the Section 9.5 Parties or their respective property and assets on account of or in connection with or with respect to any such Claims or Interests unless such holder has filed a motion requesting the right to perform such setoff on or before the Confirmation Date; and (e) 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, exculpated or settled pursuant to the Plan.

## 9.6 **Release of Liens**

Except as otherwise provided herein or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Reorganized Company or the Disbursing Agent, as applicable.

# ARTICLE X

## CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

### 10.1 **Conditions Precedent to Confirmation**

It shall be a condition to Confirmation that the Confirmation Order shall have been entered by the Bankruptcy Court in form and substance acceptable to the Debtors and the Noteholder Agent and Winning Bidder unless waived pursuant to Section 10.3 hereof:

### 10.2 **Conditions Precedent to the Effective Date**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Section 10.3 hereof:

(a) the Plan, the Plan Supplement, and all other documents related to the Restructuring Transaction shall each be in form and substance consistent with the Restructuring

Term Sheet and otherwise acceptable in all respects to the Debtors, the Noteholder Agent and Winning Bidder, and shall be in full force and effect;

(b) the Confirmation Order shall have been entered and such order shall be in form and substance consistent with the Restructuring Term Sheet and otherwise acceptable in all respects to the Debtors, the Noteholder Agent and Winning Bidder;

(c) the Confirmation Order shall have become a Final Order;

(d) the Support Agreement (unless terminated in accordance with the bidding procedures) shall be in full force and effect and shall not have been terminated, and all conditions precedent therein shall have been satisfied or waived in accordance with their respective terms;

(e) any unpaid Transaction Expenses shall have been paid in full in cash;

(f) all governmental approvals and consents that are legally required for the consummation of the Plan, as applicable, shall have been obtained, not subject to unfulfilled conditions, and be in full force and effect;

(g) the Assets shall have been transferred to and vested in the Reorganized Company free and clear of all claims and liens, except as specifically provided in the Plan;

(h) the Professional Fee Reserve, the Administrative Claims Reserve, and the GUC Fund shall have been funded in cash in full;

(i) [Reserved];

(j) if the Noteholder Agent is the Winning Bidder, the New Notes (including all documentation related thereto) shall be in form and substance satisfactory to the Noteholders and shall be executed and delivered to the Noteholders;

(k) the Noteholder Claims shall have been allowed in an amount not less than \$15,000,000 plus all accrued pre or post-petition interest, fees or charges that may be allowable under section 506 of the Bankruptcy Code;

(l) the New Shares shall have been issued to the Winning Bidder;

(m) the Reorganized Company shall have entered into written employment agreements with certain of the Debtors' "key employees" identified by the Winning Bidder, including without limitation John Grosso, Johnny Grosso, and John Davis, upon terms and conditions acceptable to the Winning Bidder;

(n) the Administrative Claims Estimate shall not exceed \$1,500,000;

(o) the Priority Tax Claims Estimate shall not exceed \$50,000;

(p) the Professional Fee Claims Estimate shall not exceed \$350,000;

(q) if the Winning Bidder is not the Noteholder Agent, Allowed Noteholder Claims shall be paid in full in cash on the Effective Date; and

(r) all amounts outstanding under the DIP Facility shall have been indefeasibly paid in full in cash;

### 10.3 **Waiver of Conditions Precedent**

The Debtors may, with the written consent of the Noteholder Agent and Winning Bidder, waive any of the conditions set forth in Sections 10.1 and 10.2 herein without any notice to any other parties in interest and without any further notice to, or action, order or approval of, the Bankruptcy Court, and without any formal action other than proceeding to confirm or consummate the Plan.

### 10.4 **Effect of Non-Occurrence of Conditions to Consummation**

If prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan or Disclosure Statement shall: (a) constitute a waiver or release of any Claims, Interests or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Entity; or (c) constitute an admission, acknowledgment, offer or undertaking of any sort by any Debtor or any other Entity.

## ARTICLE XI

### MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

#### 11.1 **Modification of Plan**

Effective as of the date hereof, (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order, subject to the limitations set forth herein and in the Support Agreement; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Company, as applicable, may amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan, this clause (b) being subject in all cases to the limitations set forth herein and in the Support Agreement.

#### 11.2 **Revocation or Withdrawal of Plan**

Except with the prior written consent of the Noteholder Agent (subject to and for so long as the Support Agreement is in effect), the Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in all respects; and (c) nothing contained in the Plan shall (1) constitute a waiver or release of any Claims, Interests

or Causes of Action, (2) prejudice in any manner the rights of any Debtor or any other Entity, or (3) constitute an admission, acknowledgement, offer or undertaking of any sort by any Debtor or any other Entity.

### 11.3 **Confirmation of the Plan**

The Debtors request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code. Subject to the terms of the Support Agreement, the Debtors reserve the right to amend the Plan to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

## **ARTICLE XII**

### **RETENTION OF JURISDICTION**

Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain jurisdiction over all matters arising under the Bankruptcy Code or arising in, or related to, the Chapter 11 Cases, to the fullest extent permitted by law, including, among other things, exclusive jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of any Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine and, if necessary, liquidate, any Cure Amount or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Company's amendment, modification, or supplement, after the Effective Date, pursuant to ARTICLE VI, of the list of Executory Contracts and Unexpired Leases to be rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. ensure Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to Distributions under the Plan;

5. adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. enter and implement such orders as may be necessary or appropriate to execute, implement, enforce or consummate the terms, provisions and/or conditions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan or the Confirmation Order, including contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan;

7. resolve any disputes as to the administration of the Administrative Claims Reserve, the Professional Fee Reserve, and the GUC Fund;

8. enforce any order for the sale of property pursuant to sections 363, 1123 or 1146(a) of the Bankruptcy Code;

9. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

11. hear, determine, and resolve any cases, matters, controversies, suits, disputes or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the holder of a Claim for amounts not timely repaid pursuant to Section 7.4 hereof; (b) with respect to the releases, injunctions, and other provisions contained in ARTICLE IX, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan or the Confirmation Order, or any Entity's obligations incurred in connection with the Plan or the Confirmation Order, including those arising under agreements, documents, or instruments executed in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

12. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

15. enter an order or Final Decree concluding or closing the Chapter 11 Cases;

16. enforce all orders previously entered by the Bankruptcy Court; and

17. hear any other matter not inconsistent with the Bankruptcy Code.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### 13.1 **General Settlement of Claims**

Unless otherwise set forth in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan constitute a good-faith compromise and settlement of all Claims and Interests.

#### 13.2 **Additional Documents**

On or before the Effective Date, subject to the terms of the Support Agreement, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Company, as applicable, and all holders of Claims and Interests receiving Distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### 13.3 **Payment of Statutory Fees**

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid by the Disbursing Agent from the Administrative Claims Reserve for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or a Final Decree is issued, whichever occurs first.

#### 13.4 **Substantial Consummation**

“Substantial Consummation” of the Plan, as defined in section 1101(2) of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

#### 13.5 **Reservation of Rights**

The Plan shall have no force or effect unless the Bankruptcy Court enters the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

#### 13.6 **Elimination of Vacant Classes**

Any Class of Claims that does not have a holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.





13.12 **Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (c) nonseverable and mutually dependent.

Dated: September 8, 2017

**AS DEBTORS AND DEBTORS IN POSSESSION:**

**PORTRAIT INNOVATIONS, INC.**

**PORTRAIT INNOVATIONS HOLDING COMPANY**

By: /s/John Grosso  
John Grosso, President and Chief Executive Officer