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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re

1701 COMMERCE, LLC,

Debtor in Possession.

CHAPTER 11

CASE NO. 12-41748-DML-11

DEBTOR'S [FIRST AMENDED](#) PLAN OF REORGANIZATION

1701 Commerce, LLC, the above-captioned debtor and debtor in possession (the “Debtor”), hereby respectfully proposes the following ~~plan of reorganization~~First Amended Plan of Reorganization (the “Plan”) under Chapter 11 of the Bankruptcy Code.

ARTICLE I.

RULES OF INTERPRETATION, COMPUTATION OF TIME AND DEFINED TERMS

Rules of Interpretation. For purposes of interpreting the Plan: (i) any reference herein to an existing document or exhibit filed, or to be filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented from time to time; (ii) unless otherwise specified, all references herein to Articles are references to Articles of this Plan; (iii) the words “herein,” “hereof,” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (iv) 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 hereof; (v) the rules of construction set forth in Section 102 of the Bankruptcy Code shall apply; (vi) all Schedules to this Plan, if any, are incorporated into this Plan, and shall be deemed to be included in this Plan, regardless of when filed with the Bankruptcy Court; and (vii) whenever a distribution of property is required to be made on a particular date, the distribution shall be made on such date, or as soon as practicable thereafter.

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

Defined Terms. For purposes of this Plan, unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them below. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the

Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or Bankruptcy Rules, as applicable.

- a. “Administrative Expense Claim” means any right to payment constituting a cost or expense of administration of the Chapter 11 Case under Sections 503(b) and 507(a)(2) of the Bankruptcy Code including, without limitation, any actual and necessary costs and expenses of preserving the Estate, all compensation and reimbursement of expenses to the extent Allowed by the Bankruptcy Court under Section 330 or 503 of the Bankruptcy Code and any fees or charges assessed against the Estate under Section 1930 of chapter 123 of Title 28 of the United States Code.
- b. “Administrative Expense Bar Date” means November 29, 2013, the date fixed by the Bankruptcy Court by which all applications or requests for treatment of an Administrative Expense Claim as an Allowed Administrative Expense Claim, other than (i) all Fee Applications of Professionals, (ii) all fees payable and unpaid pursuant to 28 U.S.C. § 1930, (iii) a liability incurred and payable in the ordinary course of business by the Debtor (and not past due); and (iv) any Administrative Expense Claims that have already been paid by the Debtor, must be filed with the Bankruptcy Court.
- c. “Allowed” means, with reference to any Claim or Equity Interest, proof of which was timely and properly filed or, if no proof of a Claim or Equity Interest was filed, which has been or hereafter is listed by the 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 Equity Interest has been allowed, in whole or in part, by a Final Order; provided, however, that (i) 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 Claims” hereunder, and (ii) no Claims shall be considered to be “Allowed Claims” before the Bar Date. Unless otherwise specified herein or by Order of the Bankruptcy Court, “Allowed Administrative Expense Claim,” or “Allowed Claim,” shall not, for purposes of computation of distributions under this Plan, include interest on such Administrative Expense Claim or Claim from and after the Petition Date.
- d. “Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as applicable to the Chapter 11 Case.
- e. “Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas, having jurisdiction over the Chapter 11 Case, or, if such court ceases to exercise jurisdiction over the Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Case in lieu of the United States Bankruptcy Court for the Northern District of Texas.
- f. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of Title 28 of the United States Code, and any Local Rules of the Bankruptcy Court, as amended from time to time, and as applicable to the Chapter 11 Case.

- g. “Business Day” means any day other than a Saturday, Sunday or any other day on which commercial banks in Texas are required or authorized to close by law or executive order.
- h. “Cash” means legal tender of the United States of America or the equivalent thereof, including bank deposits, checks and wire transfers.
- i. “Causes of Action” means any and all claims, actions, proceedings, causes of action, suits, accounts, controversies, agreements, promises, rights of actions, rights to legal remedies, rights to equitable remedies, rights to payment and Claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or asserted directly or derivatively, in law, equity or otherwise, that the Debtor, Post-Confirmation Debtor and/or the Estate may hold against any Person, but excluding those released, exculpated or waived pursuant to the Plan and the Confirmation Order.
- j. “Chapter 11 Case” means the Chapter 11 case pending for the Debtor under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.
- k. “Claim” means any claim against the Debtor as defined in Section 101(5) of the Bankruptcy Code.
- l. “Class” means any group of substantially similar Claims or Equity Interests classified by this Plan pursuant to Section 1123(a)(1) of the Bankruptcy Code.
- m. “Confirmation Date” means the date upon which the Bankruptcy Court enters the Confirmation Order on its docket.
- n. “Confirmation Order” means the Order of the Bankruptcy Court confirming the Plan pursuant to Section 1129 of the Bankruptcy Code.
- o. “Creditor” means any Person that is the Holder of a Claim against the Debtor.
- p. “Disclosure Statement” means the Disclosure Statement for the Debtor’s Plan of Reorganization, including, without limitation, all schedules thereto whenever filed, either in their present form or as the same may be altered, amended or modified from time to time whenever filed.
- q. “Disputed” means, (i) any Claim or Equity Interest, proof of which was timely and properly filed and that has been or hereafter is listed on the Schedules as unliquidated, disputed or contingent and (ii) any Claim or Equity Interest which is disputed under this Plan or as to which the Debtor or, if not prohibited by this Plan, any other party in interest has interposed a timely objection and/or request for estimation in accordance with Section 502(c) of the Bankruptcy Code, which objection and/or request for estimation has not been withdrawn or determined by a Final Order, and any Claim or Equity Interest, proof of which was required to be filed by Order of the Bankruptcy Court, but as to which a proof of claim or interest was not timely or properly filed.
- r. “Disputed Claim” means that portion (including, when appropriate, the whole) of a Claim to which an objection has been filed by the applicable deadline for bringing such objection and which objection has not been resolved in accordance with the procedures set forth in this Plan.

- s. “Distribution” means any distribution to the holders of Allowed Claims as of the Petition Date.
- t. “Distribution Date” means the date the Debtor, as Disbursing Agent, issues a payment on an Allowed Claim.
- u. “Effective Date” means the date (i) which is at least one (1) day after the Confirmation Order becomes a Final Order, and (ii) upon which conditions to the Effective Date as set forth in Article X of this Plan have been satisfied or, if waivable, waived.
- v. “Entity” means an entity as defined in Section 101(15) of the Bankruptcy Code.
- w. “Estate” means the estate created for the Debtor in the Chapter 11 Case pursuant to Section 541 of the Bankruptcy Code.
- x. “Estate Cash” means all of the cash and cash equivalents held by the Debtor as of the Effective Date.
- y. “Equity Interests” or “Interests” means all equity interests in the Debtor including, but not limited to, all issued, unissued, authorized or outstanding membership interests together with any warrants, options or contract rights to purchase or acquire such interests at any time.
- z. “Executory Contract” means any executory contract or unexpired lease as of the Petition Date, subject to Section 365 of the Bankruptcy Code, between the Debtor and any other Person or Persons.
- aa. “Fee Application” means an application by a Professional for compensation or reimbursement of costs and expenses relating to services rendered from the Petition Date through and including the Effective Date.
- bb. “Final Order” means an Order of the Bankruptcy Court or a court of competent jurisdiction to hear appeals from the Bankruptcy Court, that has not been reversed, stayed, modified or amended and as to which the time to appeal, to petition for certiorari, or to move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or, if pending, as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing, provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rules under the Bankruptcy Rules or applicable state court rules of civil procedure, may be filed with respect to such Order shall not cause such Order to not be a Final Order.
- cc. “General Unsecured Claim” means any Claim against the Debtor that arose or is deemed by the Bankruptcy Code or Bankruptcy Court, as the case may be, to have arisen before the Petition Date that is neither a Secured Claim nor entitled to priority under the Bankruptcy Code or any order of the Bankruptcy Court.
- dd. “Holder” means the beneficial Holder of any Claim or Equity Interest.

ee. “Federal Interest Rate” means the Interest to be paid on Allowed Claims from the Petition Date through the Distribution Date. The Federal Interest Rate is calculated at the Federal Post-Judgment Rate posted on the United States District Court for the Northern District of Texas' website, at <http://www.txnd.uscourts.gov/publications/pjrate.html>. The interest rate adjusts every 7 days.

ff. “Order” means an order or judgment of the Bankruptcy Court as entered on the Bankruptcy Court’s docket.

gg. “Post-Confirmation Debtor” means the Debtor, on and after the Effective Date.

hh. “Priority Non-Tax Claim” means a Claim that is entitled to priority under Section 507(a) of the Bankruptcy Code, other than an Administrative Expense Claim and a Priority Tax Claim.

ii. “Professional” means a Person or Entity employed pursuant to a Final Order in accordance with Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Confirmation Date, pursuant to Sections 327, 328, 329, 330 and/or 331 of the Bankruptcy Code, or for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

jj. “Proof of Claim” means any proof of claim filed with the Bankruptcy Court in connection with the Chapter 11 Case pursuant to Section 501 of the Bankruptcy Code.

kk. “Schedules” means the schedules of assets and liabilities, the list of Holders of Equity Interests and the statements of financial affairs filed by the Debtor 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.

ll. “Secured Claim” means either a Claim that is secured by a lien on property in which the Debtor has an interest, which lien is valid, perfected and enforceable under applicable law or pursuant to a Final Order.

mm. “Unimpaired” means, with reference to a Claim or Equity Interest, a Claim or Equity Interest that is not impaired within the meaning of Section 1124 of the Bankruptcy Code.

nn. “Vestin” means, collectively, Vestin Realty Mortgage I, Inc., Vestin Realty Mortgage II, Inc., Vestin Originations, Inc., and Vestin Fund III, LLC.

ARTICLE II.

ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY CLAIMS

Certain types of Claims are not placed into voting classes; instead, they are unclassified. Such Claims are not considered Impaired, and Holders of such Claims do not vote on the Plan because their Claims are automatically entitled to specific treatment provided under the

Bankruptcy Code. These Claims are either Priority Claims or Administrative Expense Claims. The treatment of these Claims is provided below.

A. Administrative Expense Claims

1. General Administrative Expense Claims

Except to the extent that any entity entitled to payment of an Allowed Administrative Expense Claim agrees, or has agreed, to a different treatment, each Holder of an Allowed Administrative Expense Claim shall receive Cash in an amount equal to such Allowed Administrative Expense Claim on the Effective Date, or as soon thereafter as practicable, or seven (7) Business Days after the entry of a Final Order Allowing such Administrative Expense Claim, or as soon thereafter as is practicable. With respect to the Allowed Administrative Claim of Vestin, in the amount of \$610,000, such Allowed Administrative Claim will be paid in full, after either the payment in full, in accordance with the Plan of all Allowed Administrative Expense Claims, Allowed Priority Claims, Allowed Class 1 Claims, and Allowed Class 2 Claims, or after the establishment, by the Post-Confirmation Debtor, of a reserve of Estate Funds sufficient to pay the foregoing.

2. Professional Administrative Expense Claims

Any Professional seeking payment of an Administrative Expense Claim shall be required to file a Fee Application pursuant to Section 330 of the Bankruptcy Code for all fees and reimbursement of expenses incurred through and including the Effective Date, within 60 days of the Effective Date.

3. Priority Claims

All fees payable to the United States Trustee pursuant to Section 1930 of Title 28 of the United States Code (“**Statutory Fees**”), to the extent unpaid through the Confirmation Date, shall be paid in Cash ~~within seven (7) Business Days after~~ on or before the Effective Date.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Summary

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including confirmation of the Plan and distributions pursuant to the Plan. The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class, and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class.

B. Classified Claims and Equity Interests.

1. Class 1: Secured Claim of CapSource

- a. Classification Claim: Class 1 consists of the Secured Claim of CapSource, Inc. (“**CapSource**”).
- b. Treatment of the Claim: CapSource shall, in full, final and complete satisfaction of its Class 1 Claim, be paid, on the Effective Date, or as soon thereafter as is practicable, in Cash equal to one hundred (100%) percent of its Allowed Secured Claim, including interest accrued from and after the Petition Date through the Distribution Date at the Federal Interest Rate.
- c. Impairment & Voting: Class 1 is Unimpaired under the Plan. Therefore, CapSource is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan.

2. Class 2: General Unsecured Claims

- a. Classification of Claims: Class 2 consists of all Allowed General Unsecured Claims against the Debtor.
- b. Treatment of the Claims: Holders of Allowed Class 2 Claims shall, in full, final and complete satisfaction of their Class 2 Claims, be paid in Cash equal to one hundred (100%) percent of their Allowed Class 2 Claims, including interest accrued from and after the Petition Date through the Distribution Date, at the Federal Interest Rate. Distributions to Holders of Allowed Class 2 Claims will be made: (a) for any Class 2 Claims that are

not Disputed, on the Effective Date, or as soon thereafter as is practicable; and (b) for any Class 2 Claims that are Disputed, seven (7) Business Days after the entry of a Final Order Allowing such Class 2 Claim, or as soon thereafter as is practicable.

Vestin holds various Class 2 Claims against the Estate, and has agreed to subordinate payment of those Claims to the payment in full of all other Allowed Class 2 General Unsecured Claims in accordance with the Plan, or the establishment, by the Post-Confirmation Debtor, of a reserve of Estate Funds sufficient to pay the foregoing.

If any portion of a Class 2 Claim is Disputed, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim.

- c. Impairment & Voting: Holders of Class 2 Claims are Unimpaired, and thus not entitled to vote on the Plan.

3. Class 3: Equity Interests in the Debtor

- a. Classification of Claim: Class 3 consists of the Equity Interests in the Debtor.
- b. Treatment of the Claim: Holders of the Class 3 Equity Interests shall retain their Equity Interests in the Debtor.
- c. Impairment & Voting: Class 3 is Unimpaired under the Plan. Therefore, Holders of the Class 3 Equity Interests are conclusively presumed to have accepted the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

In addition to the provisions set forth elsewhere in the Plan, the following shall constitute the means for implementation of the Plan:

A. Corporate Action; Effectuating Documents and Further Transactions

On the Effective Date, all matters and actions provided for under the Plan that would otherwise require approval of the members or managers of the Debtor or the Post-Confirmation Debtor including, without limitation, the issuance of any documents necessary to implement the Plan, shall be deemed to have been authorized and effective in all respects as provided herein

and shall be taken without any requirement for further action by the members and managers of the Debtor and the Post-Confirmation Debtor. The Debtor and Post-Confirmation Debtor are authorized to execute, deliver, file or record such contracts, instruments, releases, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

B. Approval of Agreements

Entry of the Confirmation Order shall constitute approval of the Plan and all transactions contemplated thereby.

C. Vesting of Property of the Estate

On or after the Effective Date, all property of the Estate and all Causes of Action shall vest in the Post-Confirmation Debtor on the Effective Date free and clear of all liens, claims, interests, charges and other encumbrances, except as provided in the Plan or the Confirmation Order. From and after the Effective Date, the Post-Confirmation Debtor, [which shall continue to do business as a real estate investment company](#), may use, acquire and dispose of property without supervision or approval by the Bankruptcy Court and free of any restrictions imposed by the Bankruptcy Code and Bankruptcy Rules, but subject to the continuing jurisdiction of the Bankruptcy Court as set forth in Article VIII of the Plan.

D. Preservation of Causes of Action

Except as otherwise provided in the Plan, the Confirmation Order or in any document, instrument, release or other agreement entered into in connection with the Plan, in accordance with Section 1123(b) of the Bankruptcy Code, the Post-Confirmation Debtor will retain all of the Causes of Action, and may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any and all of such Causes of Action. The failure of the Debtor to specifically list any claim, right of action, suit, proceeding or other Cause of Action in the Plan or Disclosure

Statement does not, and will not be deemed to, constitute a waiver or release by the Debtor or the Post-Confirmation Debtor of such claim, right of action, suit, proceeding or other Cause of Action, and the Post-Confirmation Debtor will retain the right to pursue such claims, rights of actions, suits, proceedings or other Causes of Action in its sole discretion and, therefore, no preclusion doctrine, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches will apply to such claim, right of action, suit, proceeding or other Cause of Action upon or after the Confirmation or consummation of the Plan.

E. The Reorganized Debtor's Operational Structure

The Debtor's three (3) members holding the following interests, to wit: Vestin Fund III, LLC (1.70%), Vestin Realty Mortgage I, Inc. (7.93%), and Vestin Realty Mortgage II, Inc. (90.37%), shall retain such interests pursuant to the treatment of Class 3. The Reorganized Debtors shall continue to be managed by Vestin Mortgage, LLC, which is managed by Michael Shustek. After the Effective Date, the Reorganized Debtor shall continue to exist in accordance with the applicable law in Nevada and pursuant to its organizational documents in effect prior to the Effective Date.

ARTICLE V.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Sources of Cash for Plan Distributions

The Debtor will use the Estate Cash to satisfy all Allowed Priority Claims, Allowed Administrative Expense Claims, Allowed Secured Claims, and Allowed General Unsecured Claims, pursuant to the Plan. Any Cash remaining after the payment of all such Claims shall be property of the Post-Confirmation Debtor, free and clear of all liens, claims, interests, and encumbrances.

B. Application of Distribution Record Date

As of 5:00 pm Central Time on the 3rd Business Day after the date the Bankruptcy Court enters its Order confirming the Plan (the “**Distribution Record Date**”), the claims register for all Claims shall be deemed closed, and there shall be no further changes in the record holders of such Claims. Neither the Debtor nor the Post-Confirmation Debtor shall have any obligation to recognize any transfer of Claims occurring on or after the Distribution Record Date. The Debtor and the Post-Confirmation Debtor shall be entitled to recognize and deal for all purposes under the Plan only with those record holders stated on the claims registers as of the close of business on the Distribution Record Date, to the extent applicable.

C. Compliance with Tax Requirements

In connection with the Plan and all Distributions thereunder, the Post-Confirmation Debtor shall comply with all tax withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of Allowed Claims with any excess allocated, if applicable, to unpaid interest that accrued, on such Claims.

D. Means of Cash Payment

Cash payments under the Plan will be in U.S. funds by checks drawn on a bank selected by the Post-Confirmation Debtor, or by wire transfer from a bank, at the option of the Post-Confirmation Debtor.

E. Delivery And Distributions And Undeliverable Or Unclaimed Distributions.

1. Delivery of Distributions in General.

Distributions to Holders of Allowed Claims shall be made at the [last-known](#) address of the Holder of such Claim as indicated on the records of the Debtor, or a filed Proof of Claim, as applicable.

2. Undeliverable Distributions and Uncashed Checks.

- a. Holding of Undeliverable Distributions and Uncashed Distribution Checks. If any Allowed Claim Holder's distribution is returned as undeliverable, ~~no further attempt to make such Distribution shall be made to such Holder unless and until the Debtor or~~ or the check mailed to such Allowed Claim Holder for such distribution (a "Distribution Check") is not cashed within 30 days after mailing, the Post-Confirmation Debtor ~~is notified in writing of such Holder's then current address, subject to the provisions of subparagraph b. below~~ shall attempt to locate and contact such Allowed Claim Holder by conducting a search over the Internet for a period of no longer than 30 days following the date of such mailing. Undeliverable distributions shall remain in the possession of the Post-Confirmation Debtor until such time as a distribution becomes deliverable. Undeliverable Cash shall not be entitled to any interest, dividends or other accruals of any kind.
- b. Failure to Claim Undeliverable Distributions and Cash Distribution Checks. In an effort to ensure that all Holders of valid Claims receive their allocated distributions, the Post-Confirmation Debtor will file with the Bankruptcy Court a listing of ~~unclaimed distribution Holders~~ Allowed Claim Holders who have not claimed their distributions or cashed their Distribution Checks, 60 calendar days after the Distribution Date. Any Holder of an Allowed Claim that does not assert a Claim pursuant to the Plan for an undeliverable distribution, or has not cashed a Distribution Check that was delivered to it, within 90 calendar days after the attempted delivery or actual delivery (as applicable), shall have its Claim for such undeliverable distribution discharged and shall be forever barred from asserting any such Claim against the Debtor, the Post-Confirmation Debtor, or their respective property. In such cases, the Post-Confirmation Debtor shall stop payment on any uncashed Distribution Checks, and any Cash held for distribution on account of such Claims shall be ~~property of the Post Confirmation Debtor~~ paid to the Clerk of the Bankruptcy Court, along with a transmittal letter indicating the last-known address of each Allowed Claim Holder that has not received an undeliverable distribution or has not cashed its Distribution Check. Such Cash paid to the Clerk of the Bankruptcy Court (the "Unclaimed Cash") shall remain there for a period of 180 days after deposit, after which the Debtor may withdraw the Unclaimed Cash and, to the extent Vestin has not been paid in full on account of its Allowed Administrative Claim and Allowed Class 2 Claim, pay such Claims in full and retain the balance of the Unclaimed Cash, if any, free of any restrictions thereon, and shall revert to the account from which such payment was originally issued to be distributed pursuant to the Plan. Nothing contained in the Plan shall require the Post Confirmation Debtor to attempt to locate any Holder of an Allowed Claim.

F. Setoffs and Recoupments.

The Debtor and the Post-Confirmation Debtor, as applicable, may, pursuant to Section 553 of the Bankruptcy Code or applicable non-bankruptcy law, exercise its right of setoff or recoupment against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim (before distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the Holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or Post-Confirmation Debtor of any such claims, rights and causes of action that the Debtor or Post-Confirmation Debtor may possess against such Holder.

ARTICLE VI.

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

A. Prosecution of Objections to Claims

Except as set forth in the Plan or any applicable Order of the Bankruptcy Court with respect to Administrative Expense Claims, all objections to Claims must be filed and served on the Holders of such Claims by the 30th day after the Effective Date, which deadline may be extended by the Bankruptcy Court. After the Effective Date, only the Post-Confirmation Debtor shall have the authority to file objections to Claims and to settle, compromise, withdraw, or litigate to judgment objections to Claims regardless of whether the Claims were filed before or after the Effective Date, including Administrative Expense Claims. From and after the Effective Date, the Post-Confirmation Debtor may settle or compromise any Disputed Claim without approval of the Bankruptcy Court, regardless of whether the objection to such Disputed Claim was filed before or after the Effective Date. To the extent a Disputed Claim subject to a filed

objection is settled by the Post-Confirmation Debtor, the Post-Confirmation Debtor shall file with the Bankruptcy Court a Notice of Settlement and Withdrawal of Objection to Claim, which shall conclusively be deemed allowance, if any, of the objected to Claim, without further Order of the Bankruptcy Court, and the Debtor may make a Distribution, if any, thereon.

Except as otherwise provided in the Plan, nothing shall affect the Debtor's rights and defenses, both legal and equitable, with respect to any Claim, Administrative Claim or Priority Claim (including Claims that are Allowed pursuant to the Plan), including, without limitation, all rights with respect to legal and equitable defenses to setoffs or recoupments against any Claims, Administrative Claim, or Priority Claim and the Debtor's failure to object to such Claims, Administrative Claim or Priority Claim in the Chapter 11 Case shall be without prejudice to the Post-Confirmation Debtor's right to contest or defend against such Claims, Administrative Claim, or Priority Claim in (i) any appropriate non-bankruptcy forum as if such Chapter 11 Case had not been commenced or (ii) the Bankruptcy Court (such forum to be selected at the Debtor's or the Post-Confirmation Debtor's option).

B. Allowance Of Claims; No Distribution Pending Allowance

Except as expressly provided herein or in any Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed, unless and until such Claim is deemed Allowed under the Bankruptcy Code or the Bankruptcy Court enters a Final Order in the Chapter 11 Case allowing such Claim. Except as expressly provided in the Plan or in any Order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Post-Confirmation Debtor on and after the Effective Date will have and retain any and all rights and defenses the Debtor had with respect thereto as of the Petition Date.

C. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, a distribution, if any, will be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the Order or judgment of the Bankruptcy Court or other applicable court of competent jurisdiction allowing any Disputed Claim becomes a Final Order, or the date upon which other final resolution has been reached to Allow such Claim, the Post-Confirmation Debtor shall provide to the holder of such Claim the distribution to which such holder is entitled under the Plan.

D. Reserve for Disputed Claims, Administrative Expense Claims, and Priority Claims.

To the extent the Post-Confirmation Debtor deems it appropriate, in its sole and exclusive discretion, which may be determined without Bankruptcy Court approval, provided, however should Bankruptcy Court approval be sought by the Post-Confirmation Debtor, the Bankruptcy Court shall have jurisdiction for such purpose, the Post-Confirmation Debtor may establish a reserve bank account, funded with Estate Funds, in an amount reasonably believed to be sufficient to pay all Priority Claims, Administrative Claims, Class 1 Claims and Class 2 Claims, including Disputed Claims. In establishing the amount for the reserve bank account, the Post-Confirmation Debtor shall reasonably estimate the date any Disputed Claim, could become an Allowed Claim, and the payment, as applicable of such Allowed Claim, in full, in accordance with the Plan. Upon establishment of the reserve bank account the Post-Confirmation Debtor may use the balance of Estate Funds to pay the Vestin Allowed Administrative Claims and the Vestin Allowed Class 2 Claims, in accordance with the Plan.

ARTICLE VII.

TREATMENT OF EXECUTORY CONTRACTS

A. Rejection of Executory Contracts.

On the Effective Date, all Executory Contracts, to the extent not previously rejected pursuant to the Bankruptcy Code and/or by Final Order of the Bankruptcy Court, will be deemed rejected. The Confirmation Order shall constitute an Order approving such rejection as of the Effective Date.

B. Deadline for Filing Proofs of Claim Relating to Executory Contracts Rejected Pursuant to the Plan.

The Debtor does not believe that any Executory Contracts, or claims resulting from the rejection of such contracts, exist as of the date of this Plan. Nevertheless, if the rejection by the Debtor, pursuant to the Plan or otherwise, of an Executory Contract gives rise to a Claim, a Proof of Claim must be filed with the Bankruptcy Court and served upon the Debtor's counsel by no later than thirty (30) days after the later of (i) notice of entry of the Confirmation Order and (ii) other notice that the Executory Contract has been rejected. Any Proofs of Claim not filed and served within such time periods will be forever barred from assertion against the Debtor, the Post-Confirmation Debtor, the Estate and their property. Unless otherwise Ordered by the Bankruptcy Court, all Claims arising from the rejection of Executory Contracts shall be treated as Class 2 General Unsecured Claims under the Plan.

ARTICLE VIII.

RETENTION OF JURISDICTION

The Bankruptcy Court shall have exclusive jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code, and for, among other things, the following purposes:

- a. To hear and determine all matters with respect to any Executory Contract to which the Debtor is a party or with respect to which the Debtor may be liable;

- b. To hear and determine any and all adversary proceedings, applications, motion and contested or litigated matters arising out of, under or relate to, the Chapter 11 Case;
- c. To hear and determine any objections to Claims and to address any issues relating to Disputed Claims;
- d. To enter and implement such Orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- e. To issue such Orders in aid of execution and consummation of the Plan, to the extent authorized by Section 1142 of the Bankruptcy Code;
- f. To consider any amendments to or modifications of the Plan, to cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- g. To hear and determine all Administrative Expense Claims and Fee Applications;
- h. To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan;
- i. To recover all assets of the Debtor and property of the Debtor's Estate, wherever located;
- j. To hear and determine matters concerning state, local and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code;
- k. To hear any other matter not inconsistent with the Bankruptcy Code;
- l. To enter a final decree closing the Chapter 11 Case;
- m. To ensure that Distributions to Holders of Allowed Claims and Allowed Equity Interests are accomplished pursuant to the provisions of the Plan;
- n. To decide or resolve any motions, adversary proceedings, contested or litigated matters pending in the Bankruptcy Court and any other matters pending in the Bankruptcy Court, and to grant or deny any applications involving the Debtor that may be pending in the Bankruptcy Court on the Effective Date;
- o. To issue injunctions, enter and implement other Orders or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the occurrence of the Effective Date or enforcement of the Plan, except as otherwise provided herein;
- p. To determine any other matters that may arise in connection with or relate to the Plan and the Confirmation Order;
- q. To enforce, interpret, and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Case (whether or not the Chapter 11 Case has been closed);

- r. To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof; and
- s. To resolve any disputes concerning whether a Person or Entity had sufficient notice of the Chapter 11 Case, the Bar Date, the Administrative Expense Bar Date, and the hearing on the confirmation of the Plan, for the purpose of determining whether a Claim or Equity Interest is discharged hereunder or for any other purpose.

ARTICLE IX.

RELEASES AND RELATED PROVISIONS

A. Releases by the Debtor

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, the Post-Confirmation Debtor and any Entity seeking to exercise the rights of the Debtor's estate, shall be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action (including claims or causes of action arising under Chapter 5 of the Bankruptcy Code), and liabilities whatsoever in connection with or related to the Debtor, the conduct of the Debtor's business, the Chapter 11 Case or the Disclosure Statement and Plan (other than the rights of the Debtor and the Post-Confirmation Debtor to enforce the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the conduct of the Debtor's business, the Post-Confirmation Debtor, the Chapter 11 Case, or the Plan, and limited to those that may be asserted by or on behalf of the Debtor, the Estate, or the Post-Confirmation Debtor against solely ~~(H)~~(i) the Debtor's Affiliates, ~~(H)~~(ii) the Debtor's members, and ~~(H)~~(iii) any Professionals of the Debtor, with the exception of any such claims, obligations, suits, judgments,

damages, demands, debts, rights, causes of action, and liabilities that are based on acts of fraud, gross negligence, or willful misconduct.

B. Releases by Holders of Claims and Equity Interests

As of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, each Holder of a Claim and/or Equity Interest that receives a Distribution or retains an interest pursuant to the Plan shall be deemed to forever release, waive, and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever against the present or former shareholders, directors, officers, Professionals, employees or advisors of the Debtor, in connection with or related to the Debtor, the Chapter 11 Case, or the Plan (other than the rights under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereunder arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, or the Plan, with the exception of any such claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities that are based on acts of fraud, gross negligence, or willful misconduct.

C. Injunctions or Stays

All injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code and in the Plan, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Except as otherwise expressly provided in the Plan or to the extent necessary to enforce the terms and conditions of the Plan, the Confirmation Order or a separate Order of the Bankruptcy Court, all entities, creditors and equity and/or interest holders who have held, hold, or may hold Claims against or Equity

Interests in the Debtor, are permanently enjoined, on and after the Confirmation Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim or Equity Interest, (ii) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or Order against the on account of any such Claim or Equity Interest, (iii) creating, perfecting or enforcing any encumbrance of any kind against the Debtor or against the property or interests in property of the Debtor on account of any such Claim or Equity Interest, and (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtor, or against the property or interests in property of the Debtor on account of any such Claim or Equity Interest. Such injunction shall extend to the Post-Confirmation Debtor.

D. Temporary Injunction.

On and after the Confirmation Date, all entities, creditors and equity and/or interest holders who have held, hold or may hold Claims against the Debtor, shall be temporarily enjoined, pursuant to Section 105 of the Bankruptcy Code, from proceeding against any manager, member, or other responsible party of the Debtor, individually, for the collection of all or any portion of their Allowed Claim or Allowed Equity Interest. Notwithstanding the foregoing, nothing in this Plan shall be construed to effect a third party discharge in accordance with 11 U.S.C. § 524(e).

Notwithstanding anything contained herein to the contrary, the exclusive remedy for payment of any claim or debt so long as the Plan is not in default, shall be the Plan.

E. Exculpation.

The Debtor and the Post-Confirmation Debtor and their respective members, managers and agents (including any attorneys, financial advisors, investment bankers and other professionals retained by such Persons) shall have no liability to any Holder of any Claim or

Equity Interest, or any other party-in-interest, or any of their respective agents, employees, representatives, advisors, attorneys, or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Case, the formulation, negotiating, or implementation of the Plan, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omission that are the result of fraud, gross negligence or willful misconduct and, in all respects, shall be entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Plan.

F. Discharge of Claims and Termination of Equity Interests.

Except as otherwise provided herein or in the Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests (other than those Equity Interests that are ~~Reinstated~~retained under the Plan) of any nature whatsoever against the Debtor or any of its assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Equity Interests. Upon the Effective Date, the Debtor and the Post-Confirmation Debtor shall be deemed discharged and released under Section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims and Equity Interests (other than those Equity Interests that are ~~Reinstated~~retained under the Plan), including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

G. Waiver of Enforcement of Subordination

All subordination rights that a holder of a Claim or Equity Interest may have with respect to any distribution to be made pursuant to the Plan will be discharged and terminated, and all

actions related to the enforcement of such subordination rights hereby are permanently enjoined. Accordingly, distributions (if any) pursuant to the Plan to holders of Allowed Claims and/or Equity Interests will not be subject to payment to a beneficiary of such terminated subordination rights, or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights.

ARTICLE X.

CONDITIONS TO CONFIRMATION AND EFFECTIVE DATE

A. Conditions to Confirmation.

An Order shall have been entered as a condition precedent to the occurrence of the Confirmation Date, which Order shall find that:

~~i.~~ the Disclosure Statement contains adequate information pursuant to Section 1125 of the Bankruptcy Code; and

~~ii.~~ the Debtor and its respective principals, officers, directors, attorneys, accountants, financial advisors, advisory affiliates, employees, and agents solicited acceptance or rejection of the Plan in good faith pursuant to 11 U.S.C. § 1125(e); and

~~iii.~~ the proposed Confirmation Order shall be in form and substance reasonably satisfactory to the Debtor and shall have been signed by the Bankruptcy Court and entered on the docket of this Chapter 11 Case.

B. Conditions Precedent to the Effective Date

The following are conditions precedent to occurrence of the Effective Date:

~~i.~~ The Confirmation Order shall have been entered and shall authorize and direct that the Debtor take all actions necessary or appropriate to enter into, implement and consummate the Plan, including the transactions contemplated thereby; and

~~ii.~~ The Confirmation Order shall have become a Final Order; and

~~iii.~~ The Statutory Fees owing to the United States Trustee shall have been paid in full.

C. Effect of Failure of Conditions

If each condition to the Effective Date has not been satisfied or duly waived within ninety (90) days after the Confirmation Date, then upon motion by any party in interest, made before

the time that each of the conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order will be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived by the Debtor, before the Bankruptcy Court enters a Final Order granting such motion. If the Confirmation Order is vacated pursuant to this Article, the Plan shall be deemed null and void in all respects including, without limitation, the discharge of Claims pursuant to Section 1141 of the Bankruptcy Code and the assumptions or rejections of Executory Contracts and unexpired leases provided for herein, and nothing contained herein shall constitute a waiver or release of any Claims by or against the Debtor or prejudice in any manner the rights of the Debtor.

D. Waiver of Conditions to Confirmation and Effective Date.

Each of the conditions to Confirmation and the Effective Date may be waived in writing, in whole or in part, by the Debtor at any time, without notice or an Order of the Bankruptcy Court. The failure of the Debtor to exercise any of the foregoing rights will not be deemed a waiver of any other rights, and each such right will be deemed an ongoing right that may be asserted at any time.

ARTICLE XI.

MISCELLANEOUS PROVISIONS

A. Amendment or Modification of the Plan.

The Debtor may alter, amend or modify the Plan or any schedules hereto under Section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of the Plan, as defined in Section 1101(2) of the Bankruptcy Code, the Debtor may, under Section 1127(b) of the Bankruptcy

Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, or the Confirmation Order, and to accomplish such matters as may be necessary to carry out the purposes and effects of the Plan, so long as such proceedings do not adversely affect the treatment of holders of Claims under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or Order of the Bankruptcy Court.

B. Post-Effective Date Fees and Expenses.

From and after the Effective Date, the Post-Confirmation Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of Professionals thereafter incurred by the Debtor and the Reorganized Debtor, as the case may be, including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of the Plan.

C. Payment of Statutory Fees.

The Post-Confirmation Debtor shall timely pay post-confirmation quarterly fees assessed ~~pursuant to~~under 28 U.S.C. § 1930(a)(6) and file quarterly operating reports until such time as the Chapter 11 Case is dismissed, converted, or the Bankruptcy Court enters a final decree closing the Chapter 11 Case.

D. Severability of Plan Provisions.

If, prior to the Confirmation Date, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or

interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

E. Revocation or Withdrawal of the Plan.

The Debtor reserves the right to revoke or withdraw the Plan before the Confirmation Date. If the Debtor revokes or withdraws the Plan before the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor, or any Causes of Action or other claims by or against the Debtor, or any person or entity or to prejudice in any manner the rights of the Debtor or any Person in any further proceedings involving the Debtor.

F. Successors and Assigns and Binding Effect.

The rights, benefits, and obligations of any person or entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, personal representative, successor, or assign of such person or entity, including, but not limited to, the Post-Confirmation Debtor and all other parties-in-interest in the Chapter 11 Case.

G. Notices.

All notices, requests and demands to or upon the Debtor, to be effective, shall be in writing and, unless otherwise expressly provided in the Plan, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

If to the Debtor:	1701 Commerce, LLC
	8880 W. Sunset Rd., Suite 210
	Las Vegas, Nevada 89148
	Attn: Mr. Craig Burr

Document comparison by Workshare Professional on Monday, November 25, 2013
3:35:58 PM

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Moved to	
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Format change	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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