

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GMG CAPITAL PARTNERS III, L.P.,¹

Debtors.

Chapter 11

Case No. 13-12937 (SMB)
Jointly Administered

**JOINT CHAPTER 11 PLAN OF REORGANIZATION PROPOSED BY
GMG CAPITAL PARTNERS III, L.P. AND GMG CAPITAL PARTNERS III
COMPANION FUND, L.P.**

OLSHAN FROME WOLOSKY LLP

Park Avenue Tower
65 East 55th Street
New York, New York 10022
Michael S. Fox, Esq.
Jonathan T. Koevary, Esq.
212.451.2300

*Counsel to the Debtors and Debtors in
Possession*

Dated: October 3, 2014

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: (i) GMG Capital Partners III, L.P. (9146); (ii) GMG Capital Partners III Companion Fund, L.P. (0603); GMG Capital Investments, LLC (9144); and (iv) GMS Capital Partners II, L.P. (8938).

The Debtors hereby propose this Joint Chapter 11 Plan of Reorganization.

ARTICLE I
CERTAIN DEFINITIONS

Unless otherwise provided in the Plan, all capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Bankruptcy Code. For the purposes of the Plan, the following terms (which are capitalized in the Plan) shall have the meanings set forth below.

“Administrative Expense Claim” means a Claim for costs and expenses of administration of the Chapter 11 cases allowed under §§ 503(b), 507(b) or, if applicable, 1114(e)(2) of the Bankruptcy Code, including: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Debtors’ Estates and operating the businesses of the Debtors (such as wages, salaries, commissions for services and payments for inventories, leased equipment and premises) and Claims of governmental units for taxes (including Claims related to taxes which accrued after the Petition Date, but excluding Claims related to taxes which accrued on or before the Petition Date); (b) compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses allowed by the Bankruptcy Court under §§ 330, 331 or 503(b) of the Bankruptcy Code to the extent incurred prior to the Effective Date; and (c) all fees and charges assessed against the Debtors’ Estates under § 1930, chapter 123 of title 287 of the United States Code.

“Allowed Claim” means a Claim (a) as to which no objection or request for estimation has been filed on or before the Claims Objection Deadline or the expiration of such other applicable period fixed by the Bankruptcy Court; or (b) as to which any objection has been settled, waived, withdrawn or denied by a Final Order; or (c) that is Allowed (i) by a Final Order; (ii) by an agreement between the Holder of such Claim and the Debtor; or (iii) pursuant to the terms of the Plan. For purposes of computing distributions under the Plan, the term “Allowed Claim” shall not include interest on such Claim from and after the Petition Date, except as provided in Bankruptcy Code § 506(b) or as otherwise expressly set forth in the Plan.

“Assets” means collectively, the GMG III Assets and the GMG Companion Assets.

“Asset Purchase Agreement” means the agreement that is a Plan Supplement, that provides for the sale of certain of the Debtors’ interest in Lancope to the Plan Supporter, free and clear of all liens, claims interests and encumbrances.

“Athenian” means, collectively, Athenian Venture Partners I, L.P and Athenian Venture Partners II., L.P.

“Athenian Accrued Amount” means amounts arising under the Athenian Judgment which shall be due and payable under the terms of the Athenian Judgment as of the date the Athenian Claims become Allowed Claims.

“Athenian Claims” means the unsecured Claims of Athenian arising from the Athenian Judgment, which are each identical claims against each of the Debtors on a joint and several liability basis.

“Athenian Judgment” means the judgment dated on or about June 21, 2013 by the Superior Court of Delaware in the case captioned *Athenian Venture Partners I, L.P. v. GMG Capital Investments, LLC*, C.A. No. 08C-04-084 DCS in favor of Athenian against each of the Debtors on a joint and several basis, which provides for payment of (a) the Athenian Accrued Amount and (b) the Athenian Payment Stream.

“Athenian Payment Stream” means amounts arising under the Athenian Judgment which will not by their terms under the Athenian Judgment be due and payable as of the date such Athenian Claims become Allowed Claims. For the avoidance of doubt, this amount consists of each \$15,000 “Mandatory Monthly Payment” due under the Athenian Judgment that becomes due subsequent to the date after which the Athenian Claims become Allowed Claims.

“Avoidance Actions” mean any cause of action assertable under Sections 510, 542, 543, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code or state law if made applicable under such Bankruptcy Code sections.

“Bankruptcy Code” or the “Code” means title 11 of the United States Code, 11 U.S.C. §§101 et seq., as now in effect or hereafter amended.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York or any court having competent jurisdiction to enter the Confirmation Order.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms, the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and the Local Rules of the Bankruptcy Court, as applicable to the Cases or proceedings therein, as the case may be.

“Bankruptcy Schedules” means the schedules of assets and liabilities, lists of executory contracts and unexpired leases, statements of financial affairs, and related information filed by the applicable Debtor pursuant to Bankruptcy Rule 1007, as same may be amended or supplemented from time to time.

“Business Day” means any day, excluding Saturdays, Sundays or “legal holidays” (as referenced in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in New York, New York.

“Cases” means the Chapter 11 cases of the Debtors, jointly administered under Case No. 13-12937 (SMB) in the Bankruptcy Court.

“Cash” means legal tender of the United States of America and equivalents thereof.

“**Causes of Action**” means any claim or cause of action belonging to the Debtor, including but not limited to Avoidance Actions.

“**Claim**” means a claim against the Debtor as defined in Bankruptcy Code § 101(5).

“**Claims Objection Deadline**” shall mean that date which is 120 days after the Effective Date or as otherwise extended by the Bankruptcy Court in accordance with Section 7.04 hereto.

“**Class**” means all of the Holders of Claims or Interests having characteristics substantially similar to the other Claims or Interests and which have been designated as a class in the Plan.

“**Confirmation**” means the entry of the Confirmation Order on the Bankruptcy Court’s docket.

“**Confirmation Date**” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

“**Confirmation Hearing**” means the hearing or hearings before the Bankruptcy Court at which the Bankruptcy Court will consider the Confirmation of the Plan pursuant to Bankruptcy Code § 1128.

“**Confirmation Order**” means the order of the Bankruptcy Court, in form and substance satisfactory to the Debtors, confirming the Plan pursuant to Bankruptcy Code § 1129.

“**Creditor**” means a Holder of a Claim.

“**Debtors**” mean, together, GMG III and GMG Companion.

“**Disclosure Statement**” means the Disclosure Statement for the Plan of Reorganization proposed by the Debtors dated October [], 2014, as amended from time to time, together with any supplements, amendments, or modifications thereto.

“**Disputed Claim**” means any Claim as to which a party specified in Section 7.4 hereto has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, or any Claim otherwise disputed by the Debtors or any party specified in Section 7.4 hereto in accordance with such Section and applicable law, which objection has not been withdrawn or determined by a Final Order.

“**Distribution**” means the distribution of cash to the Holders of Allowed Claims pursuant to the Plan.

“**Distribution Date**” means the date on which a Distribution is made under the Plan.

“**Effective Date**” means the first Business Day on which all conditions precedent to the effectiveness of the Plan have been satisfied or waived as provided in Article V of the Plan.

“**Estates**” means the Debtors’ estates created by Bankruptcy Code § 541 upon the commencement of the Cases.

“**Existing Equity Interests**” mean, together, the Existing GMG III Interests and the Existing GMG Companion Interests.

“**Existing GMG III Interests**” mean partnership interests of GMG III issued as of the Petition Date.

“**Existing GMG Companion Interests**” mean partnership interests of GMG Companion issued as of the Petition Date.

“**Filed**” means filed with the Bankruptcy Court in the Debtors’ Cases.

“**Final Order**” means an order entered by the Bankruptcy Court or other court of competent jurisdiction on its docket as to which (a) the time to appeal, petition for certiorari, or 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 (b) in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, however, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or a similar rule under the Federal Rules of Bankruptcy Procedure may be filed with respect to such order.

“**General Unsecured Claim**” shall mean any unsecured Claim which is not an Administrative Claim, Priority Claim, Athenian Claim, Intercompany Claim or Management Company Claim that arose prior to the filing of the Debtors’ Chapter 11 Cases and includes, without limitation, Claims based upon pre-petition trade accounts payable and the rejection of an executory contract during pendency of the Chapter 11 Cases.

“**General Unsecured Claims Distribution**” means as set forth in Article 2 hereto.

“**GMG III**” means GMG Capital Partners III, L.P.

“**GMG IIIA**” means GMG Capital Partners IIIA, L.P.

“**GMG III Assets**” means all assets of GMG III constituting property of the estate pursuant to Bankruptcy Code Section 541.

“**GMG IIIB**” means GMG Capital Partners IIIB, L.P.

“**GMG Companion**” means GMG Capital Partners III Companion Fund, L.P.

“GMG Companion Assets” means all assets of GMG Companion constituting property of the estate pursuant to Bankruptcy Code Section 541.

“Holder” means any Person holding a Claim or Interest against the Debtors’ Estates.

“Impaired” means any Claim or Interest that is “impaired” within the meaning of section 1124 of the Bankruptcy Code.

“Interest” means the legal, equitable, contractual and other rights of the Holders of any equity interest in the Debtors, including the rights of any Person to purchase or demand the issuance of any Interest, including (a) conversion, exchange, voting, participation and dividend rights; (b) liquidations preferences; (c) stock options, warrants and put rights; and (d) share-appreciation rights; or (e) any other stock right pertaining or in any way relating to the Debtors.

“Intercompany Claims” means any Claim, arising on or prior to the Petition Date of any affiliate of a Debtor, that has chapter 11 case pending before the Court as of the date the Confirmation Order is entered.

“Lancope” means Lancope, Inc., a Delaware corporation.

“Lien” means any charge against, or interest in, property to secure payment of a debt or performance of a Claim.

“Management Company” means JDJ Management, LLC.

“Management Company Claim” means claims of the Management Company against any Debtor existing as of the Petition Date.

“Management Company Consent” means the written consent of the Management Company, which shall be filed as a Plan Supplement, to have, under this Plan, the Management Company Claims treated at a priority level junior to General Unsecured Claims.

“Person” means any person or entity of any nature whatsoever, specifically including, but not limited to, an individual, firm, company, corporation, partnership, trust, governmental unit, joint venture, association, joint stock company, limited liability company, estate, unincorporated organization or other entity.

“Petition Date” means September 10, 2013.

“Plan” means this Plan of Reorganization, as it may be amended, modified, or supplemented from time to time as permitted herein.

“Plan Documents” means all documents, forms, lists, and agreements contemplated under the Plan to effectuate the terms and conditions hereof.

“Plan Proponent” means the Debtors.

“**Plan Supplement**” means the compilation of Plan Documents and other documents, forms, lists, and schedules as specified in the Plan and Disclosure Statement which will be filed with the Bankruptcy Court not later than five (5) days prior to the Voting Deadline, as such documents may be altered, restated, modified, or supplemented from time to time.

“**Plan Supporter**” means Second Alpha Partners, LLC, a Delaware limited liability company.

“**Post-Confirmation Assets**” means all of the assets of the Debtor, on the Effective Date.

“**Priority Claim**” means all Claims that are entitled to priority pursuant to Bankruptcy Code § 507(a) and that are not Administrative Expense Claims or Priority Tax Claims.

“**Priority Tax Claim**” means a Claim of a governmental unit of the kind specified in Bankruptcy Code §§ 502(i) and 507(a)(8).

“**Proof of Claim**” means a written statement setting forth a Creditor’s Claim and conforming substantially to the appropriate official form.

“**Pro Rata**” means the proportion that the amount of an Allowed Claim bears, respectively, to the aggregate amount of all Claims in its Class, including Disputed Claims but excluding Disallowed Claims. For purposes of this calculation, the amount of a Disputed Claim will equal the lesser of (a) its Face Amount, and (b) the amount estimated as allowable by the Bankruptcy Court.

“**Reorganized Debtors**” means the Debtors as of the Effective Date.

“**Scheduled**” means included in or listed in the Debtors’ Bankruptcy Schedules, as initially filed or as amended.

“**Securities Act**” means the Securities Act of 1933, 15 U.S.C. § 77c-77aa, in effect from time to time.

“**U.S. Trustee Fees**” means fees payable pursuant to 28 U.S.C. § 1930.

“**Voting Deadline**” means “the deadline fixed by the Bankruptcy Court for Holders of Claims entitled to vote to submit their votes on the Plan.

ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS

- 2.1. **Class 1A** consists of Priority Non-Tax Claims against GMG III. (**Unimpaired**).
- 2.2. **Class 1B** consists of the Athenian Claim against GMG III (**Unimpaired**).
- 2.3. **Class 1C** consists of the General Unsecured Claims against GMG III (**Impaired**).
- 2.4. **Class 1D** consists of the Management Company Claims against GMG III (**Impaired**).

- 2.5. **Class 1E** consists of any Intercompany Claim against GMG III (**Impaired**).
- 2.6. **Class 1F** consists of the Holders of Interests in GMG III (**Unimpaired**).
- 2.7. **Class 2A** consists of Priority Non-Tax Claims against GMG Companion. (**Unimpaired**).
- 2.8. **Class 2B** consists of the Athenian Claim against GMG Companion (**Unimpaired**).
- 2.9. **Class 2C** consists of the General Unsecured Claims against GMG Companion (**Impaired**).
- 2.10. **Class 2D** consists of the Management Company Claims against GMG Companion (**Impaired**).
- 2.11. **Class 2E** consists of any Intercompany Claim against GMG Companion (**Impaired**).
- 2.12. **Class 2F** consists of the Holders of Interests in GMG Companion (**Unimpaired**).

ARTICLE III
TREATMENT OF UNCLASSIFIED CLAIMS

- 3.1. **Administrative Expense Claims.** All Allowed Administrative Expense Claims shall be paid the Allowed amount of such claim as follows: either (i) in Cash on the later of (x) the Effective Date, or as soon thereafter as is reasonably practicable, and (y) the date such claim becomes Allowed, or due and payable in the ordinary course of business; or (ii) on such other terms and conditions as may be mutually agreed upon between such holder and the applicable Reorganized Debtor.
- 3.2. **Bar Dates for Non-Professional Administrative Expense Claims.** The Bar Date for Holders of Administrative Expense Claims other than those of professionals retained by the Debtor shall be thirty (30) days after the Confirmation Order becomes a Final Order.
- 3.3. **Professional Fees.** All applications for professional fees for services rendered and reimbursement of expenses in connection with the Case prior to the Effective Date are Administrative Expense Claims and shall be filed with the Bankruptcy Court within sixty (60) days after the Effective Date. Any such application not filed within sixty (60) days after the Effective Date shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof. All retained professionals shall be paid the full amounts awarded by the Court, subject to any caps agreed to in the retention. All such awarded fees shall be paid upon Court award by the Debtors or the Reorganized Debtors from the Assets.
- 3.4. **U.S. Trustee Fees.** All unpaid U.S. Trustee Fees incurred before the Effective Date shall be timely paid by the Debtor in the ordinary course as such U.S. Trustee Fees become due and payable. All unpaid U.S. Trustee Fees incurred after the Effective Date shall be timely paid from Post-Confirmation Assets by the Debtors or

Reorganized Debtors in the ordinary course as such U.S. Trustee Fees become due and payable.

- 3.5. **Priority Tax Claims.** As soon as practicable after the Effective Date, the Reorganized Debtors, on an entity by entity basis without any substantive consolidation, shall pay to each Holder of an Allowed Priority Tax Claim from the Post-Confirmation Assets the full amount of such Claims, if any, (i) in Cash on the later of (x) the Effective Date, or as soon thereafter as is reasonably practicable, and (y) the date such claim becomes Allowed, or due and payable in the ordinary course of business; (ii) over a period ending not later than five (5) years after the Petition Date in accordance with section 1129 of the Bankruptcy Code; or (iii) on such other terms and conditions as may be mutually agreed upon between such holder and the applicable Reorganized Debtor.

ARTICLE IV
TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

4.1. **Class 1A (Priority Non Tax Claims Against GMG III).**

- (i) Classification: Class 1A Priority Non Tax Claims consists of claims against GMG III entitled to priority under Section 507(a) of the Bankruptcy Code.
- (ii) Treatment. On the Effective Date, all Allowed Class 1A Claims shall be paid in full in Cash.
- (iii) Voting. Class 1A is an Unimpaired Class. Therefore, Class 1A claimholders are not entitled to vote to accept or reject the Plan.

4.2. **Class 1B (Athenian Claim Against GMG III).**

- (i) Classification: The Class 1B Athenian Claim consists of the Athenian Claim against GMG III.
- (ii) Treatment. On the later of (i) the Effective Date or (ii) the date the Class 1B Athenian Claim becomes an Allowed Claim, in full and final satisfaction of its Class 1B Athenian GMG III Claim, the Athenian Judgment shall be reinstated in accordance with Bankruptcy Code section 1124, such that the Athenian Accrued Amount will be paid in full on the date such Claim becomes Allowed and the Athenian Payment Stream will be paid in accordance with the terms of the Athenian Judgment.

No Double Recovery: For the avoidance of doubt, as the Class 1B Athenian Claim arises as a joint and several claim under the Athenian Judgment for the same amounts with the Class 2B Claims, the Holders of each of these claims shall not be entitled to a recovery in excess of amounts owing under the reinstated Athenian Judgment.

- (iii) Voting. Class 1B is an Unimpaired Class. Therefore, the Holders of the Class 1B Claims are not entitled to vote to accept or reject the Plan.

4.3. Class 1C (General Unsecured Claims Against GMG III)

- (i) Classification: Class 1C consists of all General Unsecured Claims against GMG III.
- (ii) Treatment: Upon 30 days following the later of: (i) the Effective Date and (ii) the date such Class 1C Claim becomes an Allowed Claim, in full and final satisfaction of their Class 2C General Unsecured Claims, Holders of Allowed Class 1C Claims will, receive (i) cash equal to as much as forty (40) percent of such Allowed General Unsecured Claim and (ii) *pro rata*, the proceeds of any liquidation of GMG Companion's Assets until such time as such claim is paid in full inclusive of interest at the federal judgment rate at a priority level senior to Class 1D and 1E Claims and to Class 1F Interests.
- (iii) Voting: Class 1C is an Impaired Class. Therefore, the Holders of General Unsecured Claims in Class 1C are entitled to vote to accept or reject the Plan.

4.4. Class 1D (Management Company Claims Against GMG III)

- (i) Classification: The Class 1D Management Company Claims consists of the Management Company Claims against GMG III.
- (ii) Treatment. In full and final satisfaction of its Class 1D Management Company Claims, after payment in full of Allowed Class 1A and 1C Claims and in accordance with the Management Consent Agreement, Holders of the Allowed Class 1D Management Company Claims will receive *pro rata* the proceeds of any liquidation of GMG III's Assets until such time as such claim is paid in full inclusive of postpetition interest at the federal judgment rate.
- (iii) Voting. Class 1D is an Impaired Class. Therefore, the Holders of Management Company Claims in Class 1D are entitled to vote to accept or reject the Plan.

4.5. Class 1E (Intercompany Claims Against GMG III)

- (i) Classification: The Class 1E Intercompany Claims consists of any Intercompany Claims against GMG III.
- (ii) Treatment. In full and final satisfaction of its Class 1E Intercompany Claims, after payment in full of Allowed Class 1A, 1C and 1D Claims holders of Intercompany Claims will receive *pro rata* the proceeds of any liquidation of GMG III's Assets until such time as such claim is paid in full inclusive of postpetition interest at the federal judgment rate.
- (iii) Voting. Class 1E is an Impaired Class. However, the Holders of Intercompany Claims in Class 1E will not be entitled to vote to accept or reject the Plan.

4.6. Class 1F (Interests in GMG III).

- (i) Classification: Class 1F consists of Holders of Existing GMG III Interests.
- (ii) Treatment: On the Effective Date, the Holders of Class 1F Interests will retain their interest in GMG III. Consistent with the foregoing, to the extent a Holder of a Class 1F Interest owes management fees, legal fees, reimbursements or any other amounts in connection with its Class 1F Interest, any distribution to such Holder of a Class 1F Interest shall be offset by any and all such amounts then due and owing from such Holder, plus postpetition interest at the federal judgment rate, which offset amount shall remain with the Debtors' estates for distribution to Holders of Claims.
- (iii) Voting: Class 1F is an Unimpaired Class. Therefore, the Holders of Interests in Class 1F are not entitled to vote to accept or reject the Plan.

4.7. Class 2A (Priority Non Tax Claims Against GMG Companion).

- (i) Classification: Class 2A Priority Non Tax Claims consists of claims against GMG Companion entitled to priority under Section 507(a) of the Bankruptcy Code.
- (ii) Treatment. On the Effective Date, all Allowed Class 2A Claims shall be paid in full in Cash.
- (iii) Voting. Class 2A is an Unimpaired Class. Therefore, Class 2A claimholders are not entitled to vote to accept or reject the Plan

4.8. Class 2B (Athenian Claim Against GMG Companion).

- (i) Classification: The Class 2B Athenian Claim consists of the Athenian Claim against GMG Companion.
- (ii) Treatment. On the later of (i) the Effective Date or (ii) the date the Class 2B Athenian Claim becomes an Allowed Claim, in full and final satisfaction of its Class 2B Athenian GMG Companion Claim, the Athenian Judgment shall be reinstated in accordance with Bankruptcy Code section 1124, such that the Athenian Accrued Amount will be paid in full on the date such Claim becomes Allowed and the Athenian Payment Stream will be paid in accordance with the terms of the Athenian Judgment.

No Double Recovery: For the avoidance of doubt, as the Class 1B Athenian Claim arises as a joint and several claim under the Athenian Judgment for the same amounts with the Class 1B Claims, the Holders of each of these claims shall not be entitled to a recovery in excess of amounts owing under the reinstated Athenian Judgment.

- (iii) Voting. Class 2B is an Unimpaired Class. Therefore, the Holders of the Class 2B Claims are not entitled to vote to accept or reject the Plan.

4.9. Class 2C (General Unsecured Claims Against GMG Companion)

- (i) Classification: Class 1C consists of all General Unsecured Claims against GMG Companion.
- (ii) Treatment: Upon 30 days following the later of: (i) the Effective Date and (ii) the date such Class 2C Claim becomes an Allowed Claim, in full and final satisfaction of their Class 2C General Unsecured Claims, Holders of Allowed Class 2C Claims will, receive (i) cash equal to as much as forty (40) percent of such Allowed General Unsecured Claim and (ii) *pro rata*, the proceeds of any liquidation of GMG Companion's Assets until such time as such claim is paid in full inclusive of interest at the federal judgment rate at a priority level senior to Class 2D and 2E Claims and to Class 2F Interests.
- (iii) Voting: Class 2C is an Impaired Class. Therefore, the Holders of General Unsecured Claims in Class 2C are entitled to vote to accept or reject the Plan.
- (iv) Voting. Class 2B is an Unimpaired Class. Therefore, the Holders of the Class 2B Claims are not entitled to vote to accept or reject the Plan.

4.10. Class 2D (Management Company Claims Against GMG Companion)

- (i) Classification: The Class 2D Management Company Claims consists of the Management Company Claims against GMG Companion.
- (ii) Treatment. In full and final satisfaction of its Class 2D Management Company Claims, after payment in full of Allowed Class 2A and 2C Claims and in accordance with the Management Consent Agreement, Holders of the Allowed Class 2D Management Company Claims will receive *pro rata* the proceeds of any liquidation of GMG Companion's Assets until such time as such claim is paid in full inclusive of postpetition interest at the federal judgment rate.
- (iii) Voting. Class 2D is an Impaired Class. Therefore, the Holders of Management Company Claims in Class 2D are entitled to vote to accept or reject the Plan.

4.11. Class 2E (Intercompany Claims Against GMG Companion)

- (i) Classification: The Class 2E Intercompany Claims consists of any Intercompany Claims against GMG Companion.
- (ii) Treatment. In full and final satisfaction of its Class 2E Intercompany Claims, after payment in full of Allowed Class 2A, 2C and 2D Claims holders of Intercompany Claims will receive *pro rata* the proceeds of any liquidation of GMG Companion's Assets until such time as such claim is paid in full inclusive of postpetition interest at the federal judgment rate.
- (iii) Voting. Class 2E is an Impaired Class. However, the Holders of Intercompany Claims in Class 2E will not be entitled to vote to accept or reject the Plan.

4.12. Class 2F (Interests in GMG Companion).

- (i) Classification: Class 2F consists of Holders of Existing GMG Companion Interests.
- (ii) Treatment: On the Effective Date, the Holders of Class 2F Interests will retain their interest in GMG Companion. Consistent with the foregoing, to the extent a Holder of a Class 2F Interest owes management fees, legal fees, reimbursements or any other amounts in connection with its Class 2F Interest, any distribution to such Holder of a Class 2F Interest shall be offset by any and all such amounts then due and owing from such Holder, plus postpetition interest at the federal judgment rate, which offset amount shall remain with the Debtors' estates for distribution to Holders of Claims.
- (iii) Voting: Class 2F is an Unimpaired Class. Therefore, the Holders of Interests in Class 2F are not entitled to vote to accept or reject the Plan.

4.13. Reservation of Rights. Except as otherwise provided in the Plan or the Confirmation Order, the Debtors' or Reorganized Debtors' rights and defenses, both legal and equitable, with respect to any Claims, Interests or Administrative Expense Claims, including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments, shall be unaffected and unaltered. From and after the Effective Date, the Reorganized Debtors shall be deemed to be the successor in interest to the Debtors with respect to all such rights and defenses.

ARTICLE V
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

5.1. Conditions Precedent.

Each of the following events shall occur on or before the Effective Date:

- (i) The order confirming the Plan shall have been entered, in a form and substance reasonably acceptable to each of the Debtors, and such order shall be a Final Order and the Plan satisfied the applicable provisions of the Bankruptcy Code as set forth in Bankruptcy Code § 1125(e).
- (ii) The Bankruptcy Court shall have determined that the Reorganized Debtors is duly authorized to take the actions contemplated in the Plan which approval and authorization may be set forth in the Confirmation Order.
- (iii) All documents, instruments, and agreements provided under, or necessary to implement the Plan shall have been executed and delivered by the applicable parties.

5.2. Waiver of Conditions Precedent to the Effective Date. The Debtors may waive in writing any or all of the conditions precedent to the Effective Date set forth above, whereupon the Effective Date shall occur without further action by any Person.

ARTICLE VI
IMPLEMENTATION OF THE PLAN

- 6.1. **Introduction.** The Plan will be implemented through the Debtors' sale of certain of its equity interests in Lancopé pursuant to the Asset Purchase Agreement. Proceeds of such sale will be used to pay distributions set forth in the Plan.
- 6.2. **Vesting of Assets, including Sale Proceeds, in Reorganized Debtors for Distribution.** On the Effective Date, certain of the Debtors' interests in Lancopé will be sold to the Plan Supporter, free and clear of any lien, claim interest or encumbrance as set forth in the Asset Purchase Agreement, which any such lien, claim, interest or encumbrance to attach to the proceeds of the sale. Subject to any such lien, claim, interest or encumbrance, the proceeds of such sale and the remainder of the Debtors' Assets shall be vested in the Reorganized Debtors for Distribution in accordance with the terms of the Plan. Non-Debtor affiliate GMG IIIA may also contribute to such Distribution with the proceeds of the sale of certain of its beneficial interests in Lancopé to the Plan Supporter.
- 6.3. **No Cancellation of Interests; Operation and Pro Rata Payment of Costs.** Upon the Effective Date, the Debtors' organizational documents shall not be canceled and neither will the Existing Equity Interests. Consistent with the Debtors' organizational documents, books and records and courses of dealing, non-Debtors GMG IIIA and GMG IIIB will each share *pro rata* with the Debtors (who will share among each other *pro rata*) in all costs of administration of the Debtors' estates and satisfaction of Claims, with such necessary amounts to be offset for the benefit of the Debtors' estates prior to any distribution on account of such non-Debtor's limited partner's holdings.
- 6.4. **Creation of Reserve for Expenses and Professional Fees.** To the extent necessary to pay the anticipated awards of fees and expenses of the professionals retained by the Debtors in its Cases and to pay the post-Effective Date expenses of the Debtors and the Reorganized Debtors before making the Distributions, the Reorganized Debtors shall create a reserve sufficient to fund all such payments and such reserve shall have a designated line item for the estimated fees and expenses of the professionals retained by the Debtors in the Cases.
- 6.5. **Creation of Reserve for Athenian Payment Stream.** On the Effective Date, the Reorganized Debtors shall create a reserve containing [\$] which shall be set aside for the purpose of paying the Athenian Claims, including the Athenian Payment Stream. Such reserve will be lowered on a dollar for dollar basis to the extent (i) of payment to Athenian on account of the Athenian Claims or (ii) the Athenian Claims become Allowed Claims in an amount less than what is contained in such reserve.
- 6.6. **No Substantive Consolidation.** Holders of Claims and Interests will solely be entitled to Distributions on account of Assets and proceeds of such Assets for the corresponding Debtor against which such Debtor has a Claim or Interest.

- 6.7. **Settlement of Disputed Claims Prior to the Effective Date.** At any time prior to the Effective Date, notwithstanding anything in the Plan to the contrary, the Debtors may settle some or all Disputed Claims subject to obtaining any necessary Bankruptcy Court approval.
- 6.8. **Operating Reports.** Prior to the Effective Date, the Debtors shall timely file all reports, including without limitation, monthly operating reports, required by the Bankruptcy Court, Bankruptcy Code, Bankruptcy Rules or Office of the United States Trustee. After the Effective Date, the Reorganized Debtors shall timely file all reports, including without limitation, quarterly operating reports, as required by the Bankruptcy Court, Bankruptcy Code, Bankruptcy Rules or Office of the United States Trustee until the Cases are closed.

ARTICLE VII
BAR DATES, CLAIMS OBJECTIONS AND DISTRIBUTIONS

- 7.1. **Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided in the Plan, or as ordered by the Bankruptcy Court, Distributions to Creditors shall be made within 30 days of such Claim becoming an Allowed Claim, or, as applicable, to the extent such Distribution is dependent upon the occurrence of a liquidation event of the Debtors' assets, as soon as practicable after such event, subject to the priority scheme set forth in this Plan or as may be subordinated in accordance with Article 7.4 hereto.
- 7.2. **Means of Cash Payment.** Cash payments made pursuant to the Plan shall be in U.S. funds, by the means, including by check or wire transfer.
- 7.3. **Delivery of Distribution.** Distributions to holders of Allowed Claims shall be made (a) at the addresses set forth on the Proofs of Claim Filed by such holders (or at the last known addresses of such holders if no Proof of Claim is Filed or if the Debtor has been notified of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Reorganized Debtors; or (c) if no Proof of Claim has been Filed and the Reorganized Debtors have not received a written notice of a change of address, at the addresses reflected in the Bankruptcy Schedules, if any.
- 7.4. **Objection Deadline; Prosecution of Objections; Late Filed Claims Expunged; Subordination of Claim under Section 510 of the Bankruptcy Code.**
- (i) On or prior to the Claims Objection Deadline, the Reorganized Debtors shall file objections to Claims and serve such objections upon the holders of each of the Claims to which objections are made. All late filed Claims (those filed after the Bar Date) are deemed expunged absent further order of this Court allowing same. The Reorganized Debtors shall be authorized to resolve all Disputed Claims by withdrawing or settling such objections thereto, or by litigating to judgment in the Bankruptcy Court or such other court having competent jurisdiction the validity, nature, and/or amount thereof. If the Reorganized Debtors and the holder of a Disputed Claim agree to compromise, settle, and/or resolve a Disputed Claim by

granting such holder an Allowed Claim in the amount of \$10,000 or less, then the Reorganized Debtors may compromise, settle, and/or resolve such Disputed Claim without further Bankruptcy Court approval. Otherwise, the Reorganized Debtors may only compromise, settle, and/or resolve such Disputed Claim with Bankruptcy Court approval. Any objections to Claims shall be filed, in each instance, by the Claims Objection Deadline. The filing of a motion to extend the Claims Objection Deadline shall automatically extend such deadline until a Final Order is entered on such motion. In the event that such a motion to extend the Claims Objection Deadline is denied by the Bankruptcy Court, or approved by the Bankruptcy Court and reversed on appeal, such Claims Objection Deadline shall be the later of the current deadline (as previously extended, as applicable) or 30 days after entry of a Final Order denying the motion to extend the objection deadline.

- (ii) Subject to the time limitations set forth in Section 7.4(i) and the obligations set forth in Section 7.4(iv), and without limitation to the Reorganized Debtors' rights set forth in Section 7.4(i), Holders of Class 1F and 2F Interests shall have standing to object to Claims against the specific Debtor entity in which such Holder has an interest. Such Holders may only compromise, settle, and/or resolve such Disputed Claim with Bankruptcy Court approval, regardless of any dollar amount. Holders of such Class 1F and 2F interests may not object to any Claims in which objections made by the Reorganized Debtors are pending, but at all times have standing to be heard on such objections.
 - (iii) Notwithstanding anything to the contrary in the Plan, within 30 days after any Claim becomes an Allowed Claim, the Reorganized Debtors shall have authority to file an adversary proceeding to subordinate any such Claim pursuant to section 510 of the Bankruptcy Code. The filing of such adversary proceeding shall toll the timing of the distribution on account of such Claim until the adversary proceeding is resolved by Final Order. Subject to notice and a hearing, the Reorganized Debtors shall have the right, but not the obligation, to assign to any party in interest a right to bring an adversary proceeding to subordinate any Claim under this subsection.
 - (iv) To the extent any party, other than the Debtors or the Reorganized Debtors, either: (i) objects to any Athenian Claim or (ii) seeks to subordinate any Athenian Claim, (each an "Athenian Action") such party shall (a) bear its own costs in connection with such Athenian Action; and (b) reimburse the Estates for any and all costs such Athenian Action may have on increasing the dollar amount necessary for the Estates to reinstate the Athenian Claims.
- 7.5. No Distributions Pending Allowance.** Notwithstanding any other provision of the Plan, no payments or Distribution by the Reorganized Debtors shall be made with respect to all or any portion of a Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

- 7.6. **Withholding and Reporting Requirements.** In connection with the Plan and all Distributions hereunder, the Reorganized Debtors shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtor shall be authorized to take any and all actions that may be reasonably necessary or appropriate to comply with such withholding and reporting requirements.
- 7.7. **Setoffs.** The Reorganized Debtors may, but shall not be required to, setoff against any Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, claims of any nature whatsoever that the Debtors or the Reorganized Debtors, respectively, may have against the holder of such Claim; provided, however, neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtors of any such Claim that the Reorganized Debtors may have against such holder, unless otherwise agreed to in writing by such holder and the Reorganized Debtors, as applicable.

ARTICLE VIII

EXECUTORY CONTRACTS AND UNEXPIRED LEASES DEEMED REJECTED

- 8.1. All of the Debtors' executory contracts and unexpired leases shall be deemed rejected on the Effective Date except to the extent (a) the Debtors previously has assumed or rejected an executory contract or unexpired lease, or (b) prior to the Effective Date, the Debtors have Filed or do File a motion to assume an executory contract or unexpired lease on which the Bankruptcy Court has not ruled. Counterparties to any executor contracts and unexpired leases shall have until thirty (30) days following the Effective Date to file proofs of claim for rejection damages or be forever barred from seeking such damages from the Debtors, their estates or the Reorganized Debtors.

ARTICLE IX

EFFECTS OF CONFIRMATION

The Plan provides that Confirmation shall have the following effects:

- 9.1. **Discharge.** Except as otherwise set forth in the Plan or the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims including any interest accrued on any Claims from the Petition Date, and the termination of all Interests. Confirmation shall discharge the Debtors and the from all Claims or other debts that arose before the Confirmation Date, and all debts of a kind specified in Bankruptcy Code §§ 502(g), (h), or (i), whether or not (i) a Proof of Claim based on such debt is Filed or deemed Filed under Bankruptcy Code § 501; (ii) a Claim based on such debt is Allowed; or (iii) the holder of a Claim based on such debt has accepted the Plan. The Debtors' discharge shall be governed by Section 1141 of the Bankruptcy Code.

- 9.2. **Injunction.** Except as otherwise expressly provided herein or in the Confirmation Order, all Persons or entities who have held, hold or may hold Claims against or Interests in the Debtors, and all other parties in interest, along with their respective present and former employees, agents, officers, directors, principals and affiliates, are permanently enjoined, from and after the Effective Date, from (a) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Interest against the Debtors, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or other against the Debtors, (c) creating, perfecting or enforcing any encumbrance of any kind against the Debtors, or against the property or interests in property of the Debtors, (d) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due to the Debtors or against the property or interests in property of the Debtors with respect to such Claim or Interest or (e) pursuing any claim released pursuant to this Article IX of the Plan. Such injunction shall extend to any successors of the Debtors and their respective properties and interests in properties.
- 9.3. **Exculpation and Limitation of Liability.** Pursuant to and to the extent permitted by section 1125(e) of the Code, and notwithstanding any other provision of the Plan, no holder of a Claim Interest or Lien shall have any right of action against the Debtors, the Debtors' Assets, or any of their respective managers, officers, directors, agents, attorneys, investment bankers, financial advisors, other professionals, or any of their respective property and assets for any act or omission in connection with, relating to or arising out of the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for acts or omissions which constitute willful misconduct or gross negligence.
- 9.4. **Releases.**

(A) EACH (I) CREDITOR WHO IS PAID IN FULL, ACCEPTS A DIFFERENT TREATMENT OR WHO VOTES TO ACCEPT THE PLAN AND DID NOT MARK THEIR BALLOT TO INDICATE THEIR REFUSAL TO GRANT THE RELEASE PROVIDED FOR IN THIS PARAGRAPH AND (II) HOLDER OF AN EXISTING EQUITY INTEREST, FOR ITSELF AND EACH OF ITS RESPECTIVE TRUSTEES, AFFILIATES, PREDECESSORS, SUCCESSORS, ASSIGNS, EMPLOYEES, AGENTS, ATTORNEYS, LEGAL REPRESENTATIVES, PROFESSIONALS, PARENTS, SUBSIDIARIES, EQUITY HOLDERS, MEMBERS, OFFICERS, DIRECTORS, MANAGERS AND ANY OTHER PERSON ACTING FOR OR ON BEHALF OF IT (COLLECTIVELY, THE "RELEASING PARTIES"), RELEASES, ACQUITS AND FOREVER DISCHARGES EACH OF THE DEBTORS AND EACH OF THEIR RESPECTIVE TRUSTEES, AFFILIATES, PREDECESSORS, SUCCESSORS, ASSIGNS, EMPLOYEES, AGENTS, ATTORNEYS, LEGAL REPRESENTATIVES, PROFESSIONALS, PARENTS, SUBSIDIARIES, EQUITY HOLDERS, MEMBERS, OFFICERS, DIRECTORS, MANAGERS AND ANY OTHER PERSON ACTING FOR OR ON BEHALF OF THEM (COLLECTIVELY, THE "RELEASED PARTIES") OF AND FROM ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, DAMAGES, ACTIONS, CAUSES OF ACTION, RIGHTS, COSTS, LOSSES, EXPENSES, ADVERSE CONSEQUENCES, DEBTS, DEFICIENCIES, DIMINUTION IN VALUE, LIENS, AMOUNTS PAID IN SETTLEMENT, DISBURSEMENTS, COMPENSATION AND SUITS

AT LAW OR IN EQUITY, OF WHATSOEVER KIND OR NATURE, IN EACH CASE, THAT ANY OF THE RELEASING PARTIES EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE BECAUSE OF ANYTHING HERETOFORE DONE, OMITTED, SUFFERED, OR ALLOWED TO BE DONE BY ANY OF THE RELEASED PARTIES, WHETHER FORESEEN OR UNFORESEEN, FIXED OR CONTINGENT, DIRECT, INDIRECT OR DERIVATIVE, ASSERTED OR UNASSERTED, MATURED OR UNMATURED, LIQUIDATED OR UNLIQUIDATED, SUSPECTED OR UNSUSPECTED, OR WHETHER KNOWN OR UNKNOWN, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS FOR BREACH OF CONTRACT OR ANY INTERFERENCE WITH CONTRACT, AND ANY DAMAGES AND THE CONSEQUENCES THEREOF RESULTING FOR ANY REASON WHATSOEVER, IN EACH CASE TO THE EXTENT ARISING PRIOR TO THE EFFECTIVE DATE IN CONNECTION WITH THE PLAN, OR THE CHAPTER 11 CASES (ALL OF THE FOREGOING, COLLECTIVELY, THE "RELEASED MATTERS").

(B) THE RELEASED PARTIES RELEASES, ACQUITS AND FOREVER DISCHARGES EACH OF THE RELEASED PARTIES OF AND FROM ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, DAMAGES, ACTIONS, CAUSES OF ACTION, RIGHTS, COSTS, LOSSES, EXPENSES, ADVERSE CONSEQUENCES, DEBTS, DEFICIENCIES, DIMINUTION IN VALUE, LIENS, AMOUNTS PAID IN SETTLEMENT, DISBURSEMENTS, COMPENSATION AND SUITS AT LAW OR IN EQUITY, OF WHATSOEVER KIND OR NATURE, IN EACH CASE, THAT ANY OF THE RELEASED PARTIES EVER HAD, NOW HAS OR HEREAFTER CAN, SHALL OR MAY HAVE BECAUSE OF ANYTHING HERETOFORE DONE, OMITTED, SUFFERED, OR ALLOWED TO BE DONE BY ANY OF THE COMPANY RELEASED PARTIES, WHETHER FORESEEN OR UNFORESEEN, FIXED OR CONTINGENT, DIRECT, INDIRECT OR DERIVATIVE, ASSERTED OR UNASSERTED, MATURED OR UNMATURED, LIQUIDATED OR UNLIQUIDATED, SUSPECTED OR UNSUSPECTED, OR WHETHER KNOWN OR UNKNOWN, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS FOR BREACH OF CONTRACT OR ANY INTERFERENCE WITH CONTRACT, AND ANY DAMAGES AND THE CONSEQUENCES THEREOF RESULTING FOR ANY REASON WHATSOEVER, IN EACH CASE TO THE EXTENT ARISING PRIOR TO THE EFFECTIVE DATE IN CONNECTION WITH THE OPERATIONS AND MANAGEMENT OF THE DEBTORS.

- 9.5. **Legal Binding Effect.** The provisions of the Plan shall bind all holders of Claims and Interests and their respective successors and assigns, whether or not they accept the Plan.
- 9.6. **Insurance.** Confirmation and consummation of the Plan shall have no effect on insurance policies of the Debtor in which the Debtor is or was an insured party. Each insurance company is prohibited from, and the Confirmation Order shall include an injunction against, denying, refusing, altering or delaying coverage on any basis regarding or related to the Case, the Plan or any provision within the Plan, including any treatment or means of liquidation set out within the Plan for insured Claims.

ARTICLE X

CAUSES OF ACTION

- 10.1. As of and subject to the occurrence of the Effective Date, the Reorganized Debtors, for and on its behalf and on behalf of the Debtors and their estates, will have the discretion to prosecute Causes of Action. Any proceeds from recovery of Causes of Action, after the payment of all reasonable attorneys' fees and costs incurred in connection with such recovery(s), shall be vested in the Reorganized Debtors.
- 10.2. Any professional fees and expenses in connection with the prosecution of any of the Avoidance Actions shall be paid solely from the proceeds of such recoveries, and the Reorganized Debtors and the Debtors' estates shall not be responsible for any such fees and expenses.

ARTICLE XI

RETENTION OF JURISDICTION

- 11.1. Pursuant to Bankruptcy Code §§ 105(a) and 1142, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Cases and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:
- (i) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any application or request for payment of any Administrative Claim, and the resolution of any objections to the allowance or priority of Claims;
 - (ii) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all causes of action, and consider and act upon the compromise and settlement of any Claim, or cause of action;
 - (iii) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection therewith;
 - (iv) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan;
 - (v) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

- (vi) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;
- (vii) hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, and the Confirmation Order;
- (viii) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Case;
- (ix) hear and determine matters concerning state, local, and federal taxes in accordance with Bankruptcy Code §§ 346, 505 and 1146;
- (x) hear and determine all matters related to the Post-Confirmation Assets, the Debtors, and the Reorganized Debtors from and after the Effective Date, including but not limited to all matters concerning the exemptions granted in accordance with Bankruptcy Code § 1145;
- (xi) hear and determine such other matters as may be provided in the Confirmation Order and as may be authorized under the provisions of the Bankruptcy Code; and
- (xii) enter a final decree closing the Cases.

ARTICLE XII
MISCELLANEOUS PROVISIONS.

- 13.1 **Non-Consummation.** If Confirmation or Effective Date does not occur, then (a) the Plan shall be null and void in all respects, (b) settlements or compromises embodied in the Plan, assumptions or rejections of executory contracts or unexpired leases affected by the Plan, and any documents or agreements executed pursuant to the Plan, shall be deemed null and void, and (c) nothing contained in the Plan or the Disclosure Statement shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (ii) prejudice in any manner the rights of the Debtor or any other Person, or (iii) constitute an admission of any sort by the Debtor or any other Person.
- 13.2 **Severability of Plan Provisions.** 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, at the request of the Debtors shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial

determination and shall provide that each term and provision of the Plan, as it may be altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

- 13.3 **Exemption from Transfer Taxes.** In accordance with Bankruptcy Code § 1146(a), the Bankruptcy Court will be requested to make findings, in the Confirmation Order, that neither (i) the issuance, transfer or exchange of security under the Plan or the making or delivery of an instrument of transfer nor (ii) the transfers of the Debtors' Assets under the Asset Purchase Agreement or otherwise shall be taxed under any law imposing stamp or similar tax. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any stamp or similar tax.
- 13.5 **Allocation of Plan Distributions between Principal and Interest.** To the extent that any Allowed Claim entitled to a distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first, and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.
- 13.6 **Rules of Interpretation; Computation of Time.** For purposes of the Plan, (a) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document as being in a particular form or containing particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented, (c) unless otherwise specified, all references in the Plan to Sections, Articles, and Exhibits, if any, are references to Sections, Articles, and Exhibits of or to the Plan, (d) the words "herein" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan, (e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (f) the rules of construction set forth in Bankruptcy Code § 102 and in the Bankruptcy Rules shall apply. In computing any period of time prescribed or allowed by the Plan, unless otherwise specifically designated herein, the provisions of Bankruptcy Rule 9006(a) shall apply.
- 13.7 **Successors and Assigns.** The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.
- 13.8 **Governing Law.** Unless a rule of law or procedure is supplied by federal law, including the Bankruptcy Code and Bankruptcy Rules, the construction and implementation of the Plan and any agreements, documents, and instruments executed

in connection with the Plan shall be governed by the State of New York, without giving effect to the principles of conflicts of law thereof.

- 13.9 **Entire Agreement.** The Plan sets forth the entire agreement and understanding among the parties in interest relating to the subject matter hereof and supersedes all prior discussions and documents.
- 13.10 **Modification of the Plan.** The Debtors may alter, amend, or modify the Plan, any Plan Documents under Bankruptcy Code § 1127(a) at any time prior to the Confirmation Date. After the Confirmation Date and prior to Effective Date of the Plan, the Plan Proponent may, under Bankruptcy Code § 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan so long as such proceedings do not materially or adversely affect the treatment of holders of Claims or Interests under the Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or Order of the Bankruptcy Court.

Dated: October 3, 2014

GMG Capital Partners III, L.P.

By: s/ Joachim Gfoeller, Jr.
Name: Joachim Gfoeller, Jr.
Title: Manager, GMG Capital Investments,
LLC, its General Partner

**GMG Capital Partners III Companion
Fund, L.P.**

By: s/ Joachim Gfoeller, Jr.
Name: Joachim Gfoeller, Jr.
Title: Manager, GMG Capital Investments,
LLC, its General Partner

Debtors and Debtors-in-Possession