

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

CARGO TRANSPORTATION  
SERVICES, INC.

Case No. 8:11-bk-00432-MGW  
Chapter 11

Debtor.

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**ORDER CONFIRMING SECOND AMENDED  
CHAPTER 11 PLAN OF REORGANIZATION OF  
CARGO TRANSPORTATION SERVICES, INC.**

**THIS CASE** came before the Court for hearing on September 14, 2011, at 1:30 p.m., and on September 15, 2011, at 1:30 p.m. (the “**Confirmation Hearing**”), to consider (a) final approval of the *Amended Disclosure Statement in Connection with Plan of Reorganization of Cargo Transportation Services, Inc.* (Doc. No. 663) (the “**Disclosure Statement**”), (b) confirmation of the *Amended Plan of Reorganization of Cargo Transportation Services, Inc.* (Doc. No. 662) (the “**Amended Plan**”) filed by Debtor, Cargo Transportation Services, Inc. (“**Debtor**” or “**CTS**”) and (c) the objections to confirmation filed by (i) Comerica Bank (“**Comerica**”) (Doc. No. 770), (ii) certain secured creditors classified as subclasses of Class 3 (the “**Class 3 Creditors**”) under the Plan (as defined herein) (collectively, the “**Class 3 Objections**”) (Doc. Nos. 751 and 752), (iii) the Official Committee for Unsecured Creditors (the “**Committee**”) (Doc. No. 707), and (iv) Ryder Truck Rental, Inc. (“**Ryder**”) (Doc. No. 764) (the foregoing objections to confirmation of the Amended Plan shall be collectively referred to as the “**Confirmation Objections**”). Appearances made are reflected in the record.

At the Confirmation Hearing, Debtor's counsel and counsel for Comerica announced in open court certain proposed modifications to the Amended Plan that, if made and incorporated in the Plan (as defined below) would result in Comerica's acceptance of the Plan on account of Comerica's Secured Claim and on account of an allowed Class 7 Unsecured Claim asserted by Comerica (the "**Comerica Modifications**"). The Comerica Modifications were incorporated into a draft proposed second amended plan that was presented to the Court and the parties present at the Confirmation Hearing for review. The Comerica Modifications were subsequently incorporated in a *Second Amended Plan of Reorganization of Cargo Transportation Services, Inc.* filed with the Court (Doc. No. 806) (the "**Plan**").<sup>1</sup>

At the Confirmation Hearing, additional modifications were announced on the record with respect to the treatment of certain secured claims that were classified in the various subclasses of Class 3, as more specifically set forth below (the "**Class 3 Modifications**") to address the Class 3 Objections and obtain the affirmative vote to accept the Plan as amended by impaired Class 3 Creditors who had previously rejected or had not voted with respect to the Plan. Based on the Class 3 Modifications, the Class 3 Objections were withdrawn in open court or denied as moot, and the Court was advised that, as a result, each subclass included in Class 3 had either accepted the Plan or was unimpaired under the Plan.

At the Confirmation Hearing, additional modifications (the "**Additional Modifications**") were announced on the record as to the treatment and payment of

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

certain administrative expense claims, including those administrative expense claims defined in the Plan as “Professional Fee Claims,” including the Professional Fee Claims of CRG Partners Group LLC, Englander & Fischer LLP, Hill, Ward, and Henderson, P.A., Hunton & Williams, LLP, Jennis & Bowen, P.L., Ruden McClosky P.A., and Stichter, Riedel, Blain & Prosser, P.A. (collectively, the “**Professional Fee Claimants**”). The Court was further advised that the consensual agreement among the Professional Fee Claimants regarding the Professional Fee claims would resolve the objections filed by the United States Trustee and other parties in interest. The compromises and agreements by the Professional Fee Claimants as announced on the record in open court have been incorporated and set forth in this Court’s *Order Approving Applications for Compensation* filed with the Court and are specifically incorporated into this Order by reference.

The Court was further advised that based on (i) the Comerica Modifications and Comerica’s vote to accept the Plan, on account of its Class 2 Secured Claim and Class 7 Unsecured Claim, (ii) the Class 3 Modifications and the resulting acceptance of the Plan by all impaired sub-classes of secured claims in Class 3, and (iii) the ballot tabulation which was presented to the Court at the Confirmation Hearing and the additional accepting votes in favor of the Plan as modified announced on the record, that the Debtor had obtained the acceptance of each impaired class of claims under the Plan, satisfying the requirements of Section 1129(a)(8) of the Bankruptcy Code. However, at the Confirmation Hearing, counsel for the Committee and Ryder asserted that the inclusion of an allowed unsecured claim on behalf of Comerica in connection with voting (the

“**Comerica Vote**”) and distribution to Comerica on account of a Class 7 Unsecured Claim would be a material modification to the Amended Plan.

For the reasons stated orally and recorded in open court that shall constitute the decision of the Court, the Court finds that the objections raised by the Committee and Ryder that the inclusion of Comerica as a Class 7 Unsecured Claim was a material modification that negates the acceptances of the Amended Plan obtained by the Debtor from other Holders of Allowed Class 7 Claims and concludes that the Debtor did not obtain the acceptance of Class 7, which is an impaired class of claims under the Plan. However, for the reasons stated orally and recorded in open court that shall constitute the decision of the Court, the Court finds and concludes that the Plan should be confirmed notwithstanding the failure of the Debtor to satisfy the requirements of Section 1129(a)(8) of the Bankruptcy Code because the Plan is fair and equitable and satisfies the requirements for confirmation notwithstanding the acceptance of impaired classes of unsecured claims pursuant to Section 1129(b)(2)(B)(ii) in that no class of claims or interest that is junior to the non-accepting impaired class will receive or retain any money or property on account of any such junior claim or interest.

Subject to and conditioned upon the modifications set forth in paragraph 1 below, after considering (i) the declarations of David Bell and Eric A.W. Danner in support of confirmation (Doc. Nos. 779 and 780) (the “**Confirmation Declarations**”), (ii) the ballot tabulation provided to the Court at the Confirmation Hearing and the additional acceptances of the Plan as announced on the record in open court, (iii) the various objections to confirmation, (iv) the Comerica Modifications, the Class 3 Modifications,

and the Additional Modifications, (v) the arguments and proffers of counsel made at the Confirmation Hearing, and (vi) the entire record in this chapter 11 case, and for the reasons stated orally and recorded in open court that shall constitute the rulings, findings of fact, and conclusions of law as if specifically incorporated of the Court, the Court finds and concludes that (a) the Plan has been proposed in good faith and meets all of the requirements of Sections 1126 and 1129 of the Bankruptcy Code other than 1129(a)(8), (b) the Plan is fair and equitable and does not discriminate unfairly with respect to each class of claims or interests that is impaired under and has not accepted the Plan, and (c) the Disclosure Statement contains adequate information as contemplated under Section 1125 of the Bankruptcy Code and should be finally approved, and (d) the Plan should be confirmed. Accordingly, the Court

**FINDS, CONCLUDES, ORDERS, AND DECREES AS FOLLOWS:<sup>2</sup>**

1. **Confirmation of Plan.** The Plan is hereby confirmed pursuant to Section 1129 of the Bankruptcy Code, with the following Class 3 Modifications and Additional Modifications, which shall become part of the Plan and this Confirmation Order:

- (a) Section 4.3.1 as it relates to Class 3(F) is deleted in its entirety and is replaced and superseded with the following: Mercedes will have an Allowed Secured Claim in the amount of \$70,000.00 which shall be secured by a lien in two (2) 2007 CL 120 Freightliners, with VINs ending in 8309 and 0806, respectively; an Allowed Secured Claim in the amount of \$70,000.00, which shall be secured by a lien in two (2) 2007 CL 120 Freightliners, with VINs ending in 0805 and 8308, respectively; and an Allowed Secured Claim in the amount of \$39,470.11, which shall be secured by a lien in one (1) 2008 CL 120 Freightliner, with a VIN ending in 4642. Mercedes shall have a total Allowed Secured Claim in the amount of \$179,470.11, which shall accrue interest at the rate of five and one-quarter percent (5.25%) commencing on the Effective

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<sup>2</sup> Pursuant to Fed.R.Bankr.P. 7052, findings of fact shall be construed as conclusions of law and conclusions of law construed as findings of fact when appropriate.

Date of the Plan. The claim shall be paid in forty-eight equal monthly installments with the first payment to commence thirty (30) days after the Effective Date.

- (b) Section 4.3.1 as it relates to Class 3(G) is deleted in its entirety and is replaced and superseded with the following: US Bancorp Equipment Finance shall have an Allowed Secured Claim in the amount of \$10,601.42, less any payments received but not included in US Bancorp's calculation of the amount owed as reflected in its proof of claim. The balance shall be paid in monthly installments of \$232.50 per month until the Allowed Secured Claim is satisfied.
- (c) Section 4.3.1 as it relates to Class 3(I) is deleted in its entirety and is replaced and superseded with the following: Wells Fargo Financial Leasing shall have an Allowed Secured Claim in the amount of \$14,000.00, which shall accrue interest at the rate of 5.25% commencing on the Effective Date of the Plan, and shall be paid in thirty-six (36) equal monthly installments to commence thirty (30) days after the Effective Date. The Allowed Secured Claim shall be secured by a lien in two Komatsu forklifts. Any deficiency resulting from the Toyota forklift, which has been surrendered, or the two Komatsu forklifts shall be treated as a Class 7 Unsecured Claim.
- (d) Section 4.3.1 as it relates to Class 3(L) is deleted in its entirety and is replaced and superseded with the following: Coactiv Capital Partners, Inc. ("Coactiv") will have a total Allowed Secured Claim in the amount of \$27,000, which shall be paid in one payment by the Exit Funder upon any order confirming the Plan becoming final and non-appealable. Coactiv shall abate any action against the guarantors of the obligation, so long as the payment is made. The guarantors shall not be pursued for any residual deficiency upon completion of the payment as reflected herein.
- (e) Toyota Motor Credit's claim is unimpaired as the Debtor has surrendered the Toyota forklifts securing any lien Toyota may have had in full satisfaction of Toyota's claim, and Toyota has not filed any proof of claim for any unsecured deficiency.
- (f) Section 4.3.1 as it related to Class 3(M) is deleted in its entirety and is replaced and superseded by the terms of the *Amended Agreed Order on Contested Matters Between the Debtor and Transport International Pool, Inc.* (Doc. No. 808).

2. All terms of the Plan and all exhibits thereto, and all relevant and necessary documents, shall be effective and binding upon the entry of the Confirmation Order and the Effective Date. The failure to reference or discuss any particular provision of the Plan in this Confirmation Order shall have no effect on this Court's approval and authorization of, or the validity, binding effect and enforceability of such provision and each provision is authorized and approved and shall have the same validity, binding effect, and enforceability as every other provision of the Plan, whether or not mentioned in this Confirmation Order.

3. Based on the Comerica Modifications and the Class 3 Modifications, the following objections were either withdrawn on the record in open court or are **OVERRULED** as moot: (a) *Objection of Comerica Bank to Confirmation of Debtor's Plan of Reorganization* (Doc. No. 770); and (b) the Class 3 Objections.

4. Additionally, the following objections are hereby **OVERRULED**: (a) *Objection to Disclosure Statement and to Confirmation of Amended Plan of Reorganization (Creditors Committee)* (Doc. No. 707); and (b) *Ryder Truck Rental, Inc.'s Objection to Amended Disclosure Statement and Plan and Joinder in Committee's Objection* (Doc. No. 764).

5. **Final Approval of Disclosure Statement.** On August 12, 2011, this Court entered an order (Doc. No. 666) (the "**Disclosure Statement Order**"), that, among other things: (i) conditionally approved the *Debtor's Amended Disclosure Statement* (Docket No. 663) (the "**Disclosure Statement**") as containing adequate information within the meaning of Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017;

(ii) set September 6, 2011, as the deadline for submission of Ballots to accept or reject the Plan (the “**Voting Deadline**”); (iii) set September 9, 2011, as the deadline for submitting objections to confirmation of the Plan (the “**Objection Deadline**”). For the reasons stated orally and recorded in open court that shall constitute the Court’s decision, any Objections to the adequacy of the Disclosure Statements are **OVERRULED**. The Disclosure Statement is finally approved as containing adequate information within the meaning of Section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017.

6. **Transmittal of Solicitation Packages.** The Disclosure Statement, the Amended Plan, and a Ballot were transmitted to creditors in all of the Classes identified in the Amended Plan. The transmittal of the foregoing materials was conducted in accordance with Bankruptcy Rule 3017(d) and the Disclosure Statement Order.

7. **Ballot Report.** The Debtor presented a Ballot Tabulation to the Court, which reflects the acceptances and rejections of each Class that voted to accept or reject the Plan as of the commencement of the Confirmation Hearing.

8. **Jurisdiction and Venue.** The Court has jurisdiction over this Chapter 11 Case under 28 U.S.C. § 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

9. **Judicial Notice.** In connection with the Confirmation Hearing, the Court takes judicial notice of the record of this Chapter 11 Case, including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at, the hearings held before the Court during the pendency of this Chapter 11 Case.



10. **Oral Findings of Fact Incorporated.** All oral findings of fact and conclusions of law entered by the Court at the Confirmation Hearing are incorporated herein by this reference and are made a part hereof, in accordance with Bankruptcy Rule 7052(a).

11. **Transmittal and Mailing of Materials; Notice.** In accordance with Bankruptcy Rule 2002, the Court finds and concludes that adequate and sufficient notice of the time for filing objections to the Amended Plan was provided to the holders of claims and interests in accordance with the procedures set forth in the Confirmation Hearing Notice. The Disclosure Statement, Amended Plan, Ballots, and Disclosure Statement Order were transmitted and served in substantial compliance with the Disclosure Statement Order and the Bankruptcy Rules and such transmittal and service were adequate and sufficient. Adequate and sufficient notice of the Confirmation Hearing and other deadlines, was given in compliance with the Disclosure Statement Order and the Bankruptcy Rules.

12. **Solicitation.** In accordance with Section 1126(b) of the Bankruptcy Code, the Court finds and concludes that: (a) the solicitation of votes to accept or reject the Amended Plan complied with all applicable non-bankruptcy law, rules and regulations governing the adequacy of disclosure in connection with the solicitation; and (b) the solicitation was conducted after disclosure of adequate information, as defined in Section 1125(a) of the Bankruptcy Code.

13. **Impaired Classes under the Plan.** Classes 2, 3(C), 3(E), 3(F) (as to the tractors only), 3(G), 3(I), 3(J), 3(L), 3(M), 4, 5, 6, and 7 (collectively, the “**Impaired**

Classes”) are impaired under the Plan as that term is defined in Section 1124 of the Bankruptcy Code. Accordingly, the Impaired Classes are entitled to submit votes to accept or reject the Plan.

14. **Unimpaired Classes under the Plan.** Classes 1, 3(A), 3(B), 3(D), 3(H), and 3(K) (collectively, the “**Unimpaired Classes**”) are unimpaired under the Plan as that term is defined in Section 1124 of the Bankruptcy Code. Accordingly, the Unimpaired Classes are deemed to accept the Plan and are not entitled to vote on the Plan.

15. **Impaired Classes That Have Voted to Accept the Plan.** All of the Impaired Classes, with the exception of Class 7, have voted to accept the Plan. As a result, at least one Impaired Class has voted to accept the Plan, which was determined without including any acceptance of the Plan by any insider, satisfying the requirement of Section 1129(a)(10) of the Bankruptcy Code.

16. **Burden of Proof.** The Debtor has met its burden of proving all of the elements of Section 1129(a) and (b) of the Bankruptcy Code.

17. **The Plan Complies with the Bankruptcy Code (11 U.S.C. §1129(a)(1)).** The Plan complies with all applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(1) of the Bankruptcy Code.

18. **Debtor’s Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1) and (2)).** The Plan and the Debtor have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(1) and (2) of the Bankruptcy Code. Specifically, the Debtor is a proper debtor under Section 1109 of the Bankruptcy Code and is a proper proponent of the Plan under Section 1121(a) of the Bankruptcy Code.

The Debtor has complied with the applicable provisions of the Bankruptcy Code, including as provided or permitted by orders of the Court. The Debtor has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order in transmitting the Plan, the Disclosure Statement, the Ballots, and related documents and notices, and in soliciting and tabulating votes on the Plan.

19. **Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)).** The Debtor has proposed the Plan in good faith and is not by any means forbidden by law, thereby satisfying Section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Case and the formulation of the Plan. The Chapter 11 Case was filed, and the Plan was proposed, with the legitimate and honest purpose of maximizing the value of the Debtor's assets and the recovery to creditors under the circumstances of this Chapter 11 Case.

20. **Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).** Any payment made or to be made by the Debtor or the Reorganized Debtor for services or for costs and expenses in connection with the Chapter 11 Case, including all administrative expense claims under Section 503 of the Bankruptcy Code, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, the Court as reasonable, thereby satisfying Section 1129(a)(4) of the Bankruptcy Code.

21. **Directors and Officers (11 U.S.C. § 1129(a)(5))**. The Debtor has complied with Section 1129(a)(5) of the Bankruptcy Code by disclosing in the Disclosure Statement the identity of all individuals proposed to serve, after confirmation of the Plan, as directors and officers of the Reorganized Debtor or as Disbursing Agent.

22. **No Government Regulation of Rates (11 U.S.C. § 1129(a)(6))**. Section 1129(a)(6) of the Bankruptcy Code is satisfied because the business of the Debtor is not subject to governmental regulation of rates.

23. **Best Interests Test (11 U.S.C. § 1129(a)(7))**. The Plan satisfies Section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis attached as **Exhibit “E”** to the Disclosure Statement, the Confirmation Declarations, and evidence proffered at the Confirmation Hearing: (a) are persuasive, credible and accurate as of the dates such evidence was prepared, presented, or proffered; (b) either has not been controverted by other persuasive evidence or have not been challenged; (c) are based upon reasonable and sound assumptions; (d) provide a reasonable estimate of the liquidation values of the Debtor upon a hypothetical conversion to a case under Chapter 7 of the Bankruptcy Code; and (e) establish that each holder of a Claim in an Impaired Class that has not accepted the Plan will receive or retain under the Plan, on account of such Claim, property of a value, as of the effective date of the Plan (the “**Effective Date**”), that is not less than the amount that it would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

24. **Treatment of Administrative and Priority Tax Claims and Other Priority Claims (11 U.S.C. § 1129(a)(9))**. The treatment of Administrative Claims and

other Priority Claims under the Plan satisfies the requirements of Sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Priority Tax Claims under the Plan satisfies Section 1129(a)(9)(C) of the Bankruptcy Code.

25. **Feasibility (11 U.S.C. § 1129(a)(11))**. The Plan satisfies Section 1129(a)(11) of the Bankruptcy Code. The Confirmation Declarations and other evidence proffered at the Confirmation Hearing: (a) are persuasive, credible and accurate as of the dates such evidence was prepared, presented, or proffered; (b) either have not been controverted by other persuasive evidence or have not been challenged; (c) are based upon reasonable and sound assumptions; and (d) except as such liquidation is proposed by the Plan, establish that the Plan is feasible and that confirmation of the Plan is not likely to be followed by the liquidation or further financial reorganization of the Debtor.

26. **Payment of Fees (11 U.S.C. § 1129(a)(12))**. To the extent that all fees payable to the United States Trustee under 28 U.S.C. §1930(a)(6) have not been paid, the Plan provides for the payment of all such fees on the Effective Date of the Plan and as they come due after the Effective Date. After the Effective Date, the Plan Trust shall be responsible for paying all quarterly fees under 28 U.S.C. § 1930(a)(6). After the Effective Date, the Reorganized Debtor and the Plan Trustee will provide quarterly reports in compliance with applicable law to the United States Trustee's office reflecting all disbursements, both by the Reorganized Debtor in the ongoing operation of the business and by the Plan Trust in the administration of the Plan Trust. Quarterly fees shall be calculated based upon the sum of the total disbursements from the reports provided by the Reorganized Debtor and the Plan Trust but exclusive of disbursements

made by the Reorganized Debtor to the Plan Trust for subsequent distribution by the Plan Trust. Accordingly, the Plan satisfies Section 1129(a)(12) of the Bankruptcy Code.

27. **Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13))**. No retiree benefits, as that term is defined in Section 1114 of the Bankruptcy Code, exist in the Chapter 11 Case, making Section 1129(a)(13) of the Bankruptcy Code inapplicable. The Plan thus satisfies Section 1129(a)(13) of the Bankruptcy Code.

28. **Principal Purpose of Plan (11 U.S.C. § 1129(d))**. The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933, and there has been no objection filed by any governmental unit asserting such avoidance. Accordingly, the Plan complies with Section 1129(d) of the Bankruptcy Code.

29. **Modifications to the Plan**. The Comerica Modifications, Class 3 Modifications, and the Additional Modifications to the Plan described and set forth in this Confirmation Order constitute technical changes and/or changes with respect to particular Claims by agreement with or that improve the treatment of the Holders of such Claims, and do not affect a material adverse change in the treatment of any Claims or Interests. Accordingly, pursuant to Bankruptcy Rule 3019, such Modifications and Additional Modifications do not require additional disclosure under Section 1125 of the Bankruptcy Code, nor re-solicitation of votes under Section 1126 of the Bankruptcy Code, nor do they require that holders of Claims be afforded an opportunity to change previously cast Ballots with respect to the Plan.

30. **Good Faith Solicitation (11 U.S.C. §1125(e))**. The Debtor and its respective attorneys, and advisers have solicited votes to accept or reject the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order, and are, therefore, entitled to the protections afforded by Section 1125(e) of the Bankruptcy Code and the release provisions contained in Article 11 of the Plan.

31. **Executory Contracts**. The Debtor has exercised reasonable business judgment in determining to assume or reject its executory contracts and unexpired non-residential real property leases as set forth in Article 7.1 of the Plan (collectively, the “**Assumed Contracts**”). The Assumed Contracts shall be deemed assumed by the Debtor as of immediately prior to the Effective Date and the entry of the Confirmation Order shall constitute approval of any such assumptions pursuant to Section 365(a) and 1123 of the Bankruptcy Code. The Court finds that the Debtor has provided adequate assurance of future performance with respect to all Assumed Contracts. Any objections to cure amounts related to the assumption of any Assumed Contracts not otherwise resolved are hereby **OVERRULED**. Pursuant to Section 365(b)(1) of the Bankruptcy Code, any monetary amount by which any such Assumed Contract is in default shall be satisfied, at the election of the Debtor or Reorganized Debtor, as provided in Article 7.2 of the Plan. The entry of this Confirmation Order constitutes approval of all such assumptions of all Assumed Contracts pursuant to Sections 365(a) and 1123 of the Bankruptcy Code. Confirmation and consummation of the Plan (including, without limitation, the issuance of New Stock) shall not constitute a “change of control” under

any Assumed Contract. As of the Effective Date, all Assumed Contracts shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Reorganized Debtor, notwithstanding any provision in any such Assumed Contract (including those described in Sections 365(b)(2) and 365(f) of the Bankruptcy Code) that prohibits such assignment or transfer or that enables or requires termination of such Assumed Contract. The Reorganized Debtor's remaining obligations arising from each such Assumed Contract shall therefore be limited solely to, from the Effective Date and thereafter, any future performance thereunder and obligations arising therefrom.

32. **Conditions to Confirmation.** Any conditions to confirmation set forth in Article 9.1 of the Plan have been satisfied, waived, or will be satisfied by entry of the Confirmation Order, provided, however, that the occurrence of the Effective Date is subject to satisfaction or waiver, as applicable, of the conditions to the Effective Date set forth in Article 9.2 of the Plan.

33. **Retention of Jurisdiction.** The Court's retention of jurisdiction as set forth in Article 11 of the Plan comports with the parameters contained in 28 U.S.C. § 157 and is to be interpreted as broadly as possible. Without limiting the provisions of Article 11, the Court's retention of jurisdiction include jurisdiction over all matters and parties in connection with objections to claims and the pursuit, litigation, and recovery of avoidance actions, surcharge claims, fraudulent transfers, and all other claims or causes of action available to the Debtor or its estate. Except with respect to the releases of Comerica contained in Section 6.2 and 6.4 of the Plan, the Release of Performing CV/IC Claims as provided in Section 4.5.3 of the Plan, any release of claims or Avoidance



Actions pursuant to any CV/IC Settlement Order or other order of the Court, confirmation of the Plan and entry of this Confirmation Order shall not be *res judicata*, collateral estoppel, or otherwise preclude the pursuit, litigation, prosecution, or settlement of any claim, defense, objection, or cause of action available to the Debtor or the Reorganized Debtor.

34. **Preservation of Causes of Action.** Except to the extent provided under Sections 4.5.3, 5.9.2, 5.13.2, 6.2, 6.4 of the Plan, all causes of action and objections to claims of the Debtor or the estate not specifically resolved or released through separate Order of this Court (the “**Retained Claims**”) are to be retained and preserved to the full extent provided under Section 6.8 of the Plan and shall be the property of the Reorganized Debtor and available to the Reorganized Debtor to the fullest extent allowable under applicable law. Confirmation of the Plan and entry of this Confirmation Order shall not (i) constitute an adjudication of any Retained Claim the Debtor or Reorganized Debtor may have against any parties, whether known or unknown, asserted or unasserted, contingent or unliquidated, and (ii) act as *res judicata*, collateral estoppel, or otherwise preclude the pursuit, litigation, prosecution, or settlement of any claim, defense, or objection of cause of action or Retained Claims available to the Debtor, its estate, or the Reorganized Debtor. Notwithstanding Section 5.9 of the Plan, the Plan Trustee may only take action with respect to those Retained Claims that have been transferred to the Plan Trust pursuant to Section 5.13.2 of the Plan.

35. **Objections to Confirmation.** The Objections were resolved through agreement of the parties and by the Modifications and/or the Additional Modifications,

and/or were withdrawn at the Confirmation Hearing. Based upon the resolutions of the Objections, the Modifications and Additional Modifications, any Objections not specifically withdrawn at or prior to the Confirmation Hearing are **OVERRULED**.

36. **Exemption From Certain Transfer Taxes 11 U.S.C. §1146.** Pursuant to Section 1146(a) of the Bankruptcy Code, any transfers from the Debtor, the Reorganized Debtor, and/or the Exit Funder (Smith Transportation Services, Inc.) to any person or entity pursuant to this Plan, or in connection with any sale of assets or property done in contemplation of the Plan, whether prior to or subsequent to the Effective Date, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment.

37. **Post Confirmation Employment of Professionals.** The Reorganized Debtor may employ, retain, and compensate professional persons in connection with the implementation and consummation of the Plan, the claims reconciliation and objection process, the prosecution of avoidance actions and other causes of action, and for such other matters as to which professionals are ordinarily engaged under Section 327 of the Bankruptcy Code without the necessity of further retention or fee applications. As provided in Section 5.3.13 of the Plan, the Plan Trustee may also retain professionals for the purposes described in the Plan and may compensate such professionals from the Plan Trust Assets and in the manner described in Section 5.13.3 of the Plan and any Plan Trust Agreement.

38. **Discharge and Injunction.** Except as otherwise explicitly provided in the Plan or the agreement filed in accordance with Section 4.2.5 of the Plan, to the fullest extent allowable under Section 1141(d) of the Bankruptcy Code, confirmation of the Plan shall discharge the Debtor, the Reorganized Debtor, and the Exit Funder, and any successors and assigns, from (1) all Claims against the Debtor or its Property (including, but not limited to, Claims based upon any act or omission, transaction, or other activity or security instrument or other agreement of any kind or nature occurring, arising, or existing prior to entry of the Confirmation Order or arising from any pre-Confirmation conduct, act, or omission of the Debtor) against, (2) liabilities of the Debtor or its Property (including, but not limited to, any liability of a kind specified in Section 502(g), 502(h), or 502(i) of the Bankruptcy Code), (3) all Liens on any Property of the Debtor, (4) obligations of the Debtor or its Property, and Equity Interests in the Debtor or the Property of the Debtor, whether known to, unknown, or knowable by the Holder thereof, either directly or derivatively through the Debtor, against successors and assigns of the Debtor, based on the same subject matter as any Claim or Equity Interest, in each case regardless of whether or not a Proof of Claim or Proof of Equity Interest was filed, whether or not Allowed and whether or not the Holder of the Claim or Equity Interest voted on or accepted the Plan. Except for the obligations expressly imposed by the Plan, the Distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge, extinguishment, and termination of all such Claims against, liabilities of, Liens on, obligations of, and Equity Interests in the Debtor and/or Property of the Debtor. In addition, this Order shall operate as a general adjudication and resolution with prejudice,

as of the Effective Date, of all pending legal proceedings against the Debtor and its Property, as well as any proceedings not yet instituted against the Debtor or the Reorganized Debtor or its Property, except as otherwise provided in the Plan. As provided in Section 524 of the Bankruptcy Code, the discharge provided herein operates as an injunction against, among other things, the assertion of any Claim, Lien, or Equity Interest or the commencement of legal action or process against the Debtor, the Reorganized Debtor, the Exit Funder, any successors, and assigns or against the property of the Debtor, the Reorganized Debtor, or the Exit Funder (except for obligations expressly imposed by the Plan).

39. **Debtor's Release of Comerica.** Under Section 6.2 of the Plan, the Debtor has agreed to release Comerica and the respective current and former officers, directors, employees, agents, stockholders, managers, members, affiliates, partners, advisors, and professionals of Comerica and their respective predecessors, successors, and assigns (the "**Comerica Release**"). For the specific reasons, findings, and conclusions stated on the record at the Confirmation Hearing as if specifically incorporated in this Order, the Comerica Release provided in the Plan is appropriate because it satisfies the factors to be considered by courts in approving such third party releases and such settlement agreements, as set forth by the Eleventh Circuit in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544,1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990) and the United States Bankruptcy Court for the Middle District of Florida in *In re Transit Group, Inc.*, 286 B.R. 811 (Bankr. M.D. Fla. 2002,) and because of the unusual circumstances of this case.

40. **Third Party Release of Comerica.** The Plan also provides for a “third party release” and exculpation of Comerica and the respective current and former officers, directors, employees, agents, stockholders, managers, members, affiliates, partners, advisors, and professionals of Comerica and their respective predecessors, successors, and assigns in Section 6.4 of the Plan (the “Third Party Release”) with respect to any claims or causes of action that could be brought by third parties against Comerica in any way relating to any acts or conduct relating to the Debtor, the Reorganized Debtor, the Reorganization Case, or the Plan. For the specific reasons, findings, and conclusions stated on the record at the Confirmation Hearing as if specifically incorporated in this Order, the Third Party Release provided in the Plan satisfies the factors set forth in *In re Transit Group, Inc.*, 286 B.R. 811, 817 (Bankr. M.D. Fla. 2002), and is appropriate because of the unusual circumstances of this case, and is fair and necessary because of the following reasons, among others:

- a) Comerica has agreed to the Carve-Outs provided under the Plan and has provided its support of the Plan;
- b) Comerica would not agree to the Carve-Outs or support the Plan without the Comerica Release and corresponding exposure to third party claims or claims derivative of the Debtor’s, so the entry of the contemplated injunction is essential to reorganization;
- c) The impacted class, or classes, has voted to accept the Plan; and
- d) The Plan provides a mechanism to pay the class or classes affected by injunction, and those impacted classes have accepted the Plan.

41. **CV/IC Injunction.** Section 6.3 of the Plan provides for an injunction against CV/IC Creditors or their agents, employees, and/or assignees, that has or may have claims, or may claim or assert any applicable rights or ability to pursue or collect

from the Debtor's customers directly or indirectly on account of any claims, liabilities, or obligations relating to the Debtor (the "CV/IC Injunction"). For the specific reasons, findings, and conclusions stated on the record at the Confirmation Hearing as if specifically incorporated in this Order, the injunctive relief set forth in Section 6.3 of the Plan and the CV/IC Injunction provided in the Plan is fair, appropriate, and necessary because of the unusual circumstances of this case, and because of the following reasons, among others:

- a) Throughout the Bankruptcy Case, the need for injunctive relief against the CV/IC Creditors has been clearly demonstrated and such injunction is essential to the reorganization, as the Debtor was forced to file the *Debtor's Motion for Order to Show Cause Why The Mason-Dixon Lines, Inc., Universal Am-Can, Ltd., and Universal Truckload Services, Inc. Should Not Be Held in Contempt of Subject to Sanctions for Violation of the Supplemental OTSC Order* (Doc. No. 564) (the "Contempt Motion") and initiate Adversary Proceeding No: 8:11-ap-00804-MGW (the "Adversary Proceeding") through the *Verified Complaint for Declaratory Judgment that the Automatic Stay Applies or Alternatively, for Injunctive Relief* (Adv. Doc. No. 1) (the "Complaint") in response to the CV/IC Creditors' actions.
- b) The Debtor would likely prevail in any proceeding to determine whether the CV/IC Creditor had rights against the Debtor's customers.
- c) The Reorganized Debtor will suffer irreparable harm because the Reorganized Debtor's customer base will be eviscerated as a result of the CV/IC Creditors' actions. The Debtor has already been paid by the Customers, and if the Customers are subject to double liability, they will not continue to do business with the Debtor and will assert claims against the Debtor in all likelihood. Without the Customers, the Debtor has no ability to generate income.
- d) The CV/IC Creditors would be minimally harmed by the injunction, as they may not have a sustainable cause of action against the customers based on applicable federal law, and to the extent that the CV/IC Creditors are able to assert claims based on

applicable federal law, the CV/IC Creditors may seek relief from the CV/IC Injunction through a Determination Proceeding, which will be concluded long before the CV/IC Creditors' eighteen (18) month statute of limitations runs.

- e) Plan Article 4.6.2 contemplates a "Determination Motion" whereby the a CV/IC Creditor can request relief from the proposed CV/IC Injunction by proving actual entitlement to pursue independent claims against the Debtor's customers that is not a disguised claim against the Debtor.
- f) There is a substantial identity of interest between the Debtor's customers and the Debtor. Any suit against the customers would give rise to setoff and other claims that will deplete assets available to creditors or the Reorganized Debtor.

In so finding and concluding, the Court has utilized the factors listed in *In re Transit Group, Inc.*, 286 B.R. 811, 817 (Bankr. M.D. Fla. 2002), as applicable, and stated on the record at the Confirmation Hearing and set forth in the declaration of David Bell (Doc. No. 780). Accordingly, pursuant to Section 6.3 of the Plan, Section 105 of the Bankruptcy Code, and this Order:

ANY CV/IC CREDITOR OR THEIR AGENTS, EMPLOYEES, AND/OR ASSIGNEES, THAT HAS, MAY HAVE, CLAIMS, ASSERTS, OR MAY CLAIM OR ASSERT ANY APPLICABLE RIGHTS OR ABILITY TO PURSUE OR COLLECT FROM THE DEBTOR'S CUSTOMERS DIRECTLY OR INDIRECTLY ON ACCOUNT OF ANY CLAIMS, LIABILITIES, OR OBLIGATIONS, OR OTHER AMOUNTS CLAIMED TO BE OWED ARISING OUT OF OR IN CONNECTION WITH ANY BUSINESS OR FREIGHT TRANSACTIONS BETWEEN, BROKERED BY, INVOICED, OR BILLED TO OR FROM SUCH CV/IC CREDITOR AND THE DEBTOR, SHALL BE ENJOINED AND PROHIBITED FROM CONTACTING, MAKING ANY DEMAND UPON, PURSUING, OR OTHERWISE TAKING ANY ACTION TO COLLECT OR FOR THE PURPOSE OF COLLECTING SUCH CLAIMS FROM ANY OF THE DEBTOR'S CUSTOMERS. ANY OTSC INJUNCTION ENTERED DURING THE REORGANIZATION CASE SHALL REMAIN IN FULL FORCE AND EFFECT FOLLOWING THE EFFECTIVE DATE.

42. **CV/IC Performing Creditors.** The terms of this Confirmation Order and the Plan do not modify the rights of any CV/IC Performing Creditor under a CV/IC Settlement Order.

43. **Estes CV/IC Agreement.** Notwithstanding anything to the contrary herein, in accordance with and subject to the Bankruptcy Court's *Order Granting the Debtor's Motion to Approve Critical Vendor Agreement with Estes Express* dated June 14, 2011 (Doc. No. 450) ("**Estes Settlement Order**"), nothing in this Order shall preclude Estes Express Lines ("**Estes**") from (i) pursuing any available remedy for collection of any amounts that may be due to Estes that are not part of the "Pre-Petition Claim" as defined and described in that certain agreement between Estes and the Debtor dated as of May 4, 2011 (the "**Estes Settlement Agreement**"), as approved and modified by the Estes Settlement Order, and/or (ii) contacting customers of Estes that are or were also customers of the Debtor on matters unrelated to the Prepetition Claim as defined in the Estes Settlement Agreement, provided, however, nothing in this paragraph modifies or impairs the releases of the Releasees under Section 6.4 of the confirmed Plan. Notwithstanding anything to the contrary herein, nothing in this Order, including the CV/IC Injunction, will restrict Estes from exercising any and all appropriate remedies available to it under the Estes Settlement Agreement or under applicable law for any post-confirmation issues with the Reorganized Debtor including but not limited to, any breach of contract.

44. **Exculpation.** To the fullest extent provided under Section 1125(e) of the Bankruptcy Code, the Debtor, the Reorganized Debtor, the Exit Funder, and Comerica



and their respective successors, predecessors, control persons, members, agents, and present and former (to the extent each such Person provided services during post-petition period) officers, directors, and employees (and their respective attorneys, financial advisors, investment bankers, accountants, and other professionals retained by such Persons) shall neither have nor incur any liability to any Person or Entity (including any Holder of a Claim or Equity Interest) for any pre- or post-petition act taken or omitted to be taken in connection with or related to the formulation, negotiation, preparation, dissemination, implementation, administration, confirmation, or occurrence of the Effective Date of the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan or any other pre-petition or post-petition act taken or omitted to be taken in connection with, or in contemplation of, restructuring of Debtor.

45. **Final Fee Applications.** Any professional seeking an award of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date shall file their respective applications for allowance of compensation for services rendered and reimbursement of expenses incurred (the “**Final Fee Applications**”) by the date that is twenty (20) days from the date of the entry of this Order.

46. **Equity Interests.** As of and on the Effective Date, all existing Equity Interests held in the Debtor shall be cancelled and terminated. On or immediately after the Effective Date, in accordance with the Plan, the Reorganized Debtors shall issue, deliver or execute, as the case may be, the New Stock (and any and all other documents

necessary to issue, or related to the issuance, of the New Stock) to Smith Transportation Services, Inc.

47. **Continued Corporate Existence.** On or after the Effective Date, the Reorganized Debtor shall continue to exist for at least 120 days after the Effective Date as a corporate entity with all of the powers of a corporation under applicable law in the jurisdiction in which the Debtor was organized or otherwise formed and pursuant to its articles of incorporation and bylaws or other organizational documents in effect before the Effective Date, as such documents may be amended by or pursuant to the Plan or amended after the Effective Date by the Reorganized Debtor.

48. **Vesting.** On the Effective Date, the Reorganized Debtor shall be vested with all of the Assets and Property of the Debtor, free and clear of all Claims, Liens, encumbrances, charges, and/or other interests of Holders of Claims or Equity Interests, except as provided in the Plan. The Reorganized Debtor shall operate its business free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court provided, however, at the election of the Exit Funder, the (i) Debtor's transferable Cash equivalent assets in the form of any bond collateral, tenant security deposits, utility deposits and prepaid expenses as of the Effective Date and/or (ii) the Debtor's computer equipment, office equipment, furniture, and other tangible assets not subject to Liens in favor of any Class 3 Secured Creditor, shall vest in the Exit Funder.

49. **Retention/Release of Lien by Comerica.** Comerica shall retain all liens on the Effective Date Receivables, the Effective Date Cash, and the assets set forth in Section 4.2.1(vi) of the Plan. Upon the payment to Comerica of the amounts required in

Plan Sections 4.2.1(ii), 4.2.1(iii), 4.2.1(iv), and 4.2.1 (v) by the Reorganized Debtor or Exit Funder (as the case may be), Comerica will, and shall be deemed to immediately, release in full satisfaction its liens on and in (i) the Debtor's transferable Cash equivalent assets in the form of any bond collateral, tenant security deposits, utility deposits, and prepaid expenses as of the Effective Date (the Effective Date Deposits and Pre-Paid Expenses), (ii) the Debtor's computer equipment, office equipment, furniture, and other tangible assets not subject to liens in favor of any Class 3 Secured Creditor (the Effective Date Tangible Personal Property), (iii) that promissory note dated March 5, 2009, in the principal amount of \$955,988, payable to the Debtor by Stacy Bell and pledged to Comerica and any underlying indebtedness evidenced by such note (the Shareholder Note), and (iv) the accounts receivable of All Points, ANAM Inc., and John J. Transportation. The Lien of Comerica does not extend or attach to the after-acquired property of the Reorganized Debtor.

50. **Effectuating Documents.** Each of the Debtor or the Reorganized Debtor, as appropriate, is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and the New Stock issued pursuant to the Plan.

51. **Exit Funding.** The Exit Funding (as defined in the Plan) is hereby authorized and approved. In particular, the Exit Funder shall provide and use \$2,000,000 (i) to acquire the New Stock of the Reorganized Debtor, (ii) to make the Cash payments to Comerica under Sections 4.2.1(ii), 4.2.1(iii), 4.2.1(iv), and 4.2.1(v) of this Plan, (iii) to

provide such working capital to the Reorganized Debtor that may be required or necessary to continue business operations of the Reorganized Debtor after the Effective Date, and (iv) for the benefit of the Reorganized Debtor, allocated among items (i) - (iv) as may be determined by the Exit Funder.

52. **Dissolution of Creditors' Committee.** As provided in Section 6.9 of the Plan, on the Effective Date, the Committee shall be dissolved and its members shall be released and discharged of and from all further authority, duty, responsibility, and obligations related to and arising from and in connection with the Debtor's chapter 11 case.

53. **Status Conference.** The Court will conduct a Status Conference in this Chapter 11 case on **November 9, 2011, at 10:00 a.m.**

54. **Notice of Entry of Confirmation Order and Further Notices.** Counsel for the Debtor shall serve a copy of this Confirmation Order pursuant to Bankruptcy Rules 2002(f)(7), 2002(k), and 3020(c) on all creditors and parties in interest within five (5) business days of the entry of this Confirmation Order, and shall promptly file proof of service. All further notices to be served on creditors and parties in interest may be served only on the L.B.R. 1007-2 list, unless more limited notice is ordered or permitted by separate Order of the Court.

55. **Waiver of Rule 3020(e).** For the reasons stated on the record at the Confirmation Hearing, good cause exists for waiving and eliminating the stay of this

Order set forth in Bankruptcy Rule 3020(e) and this Order is effective upon entry. The stay of this Order set forth in Rule 3020(e) is hereby waived.

**DONE** and **ORDERED** in Chambers at Tampa, Florida, on October 19, 2011.



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Michael G. Williamson  
United States Bankruptcy Judge

Copies furnished to:

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**Local Rule 1007-2 Parties in Interest List**