

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO**

In re:	)	
	)	
IBEX, LLC,	)	Case No. 17-16031 EEB
	)	Chapter 11
Debtor.	)	

**IBEX, LLC’S FIRST AMENDED PLAN OF REORGANIZATION (REVISED)**

IBEX, LLC, debtor-in-possession, by and through its undersigned counsel, proposes the following Plan of Reorganization (the “Plan”) pursuant to Section 1121(a) of the Bankruptcy Code.

**ARTICLE I  
DEFINITIONS**

Unless otherwise provided in this Plan, all terms used herein that are defined or used in the Bankruptcy Code are intended to be used in this Plan as defined or used in the Bankruptcy Code. The following capitalized terms shall have the respective meanings set forth below, and such meanings shall be equally applicable to the singular and plural forms of the terms.

“Administrative Claim” shall mean (i) a Claim for a cost or expense of administration of the Chapter 11 Case as contemplated in Section 503(b) of the Bankruptcy Code and entitled to priority pursuant to Section 507(a)(2) of the Bankruptcy Code; and (ii) all fees due under 28 U.S.C. § 1930.

“Allowed” when used with respect to a Claim other than an Administrative Claim, shall mean a Claim (i) to the extent it is not a Contested Claim; or (ii) a Contested Claim, proof of which was filed with the Bankruptcy Court on or before any applicable Bar Date, and (x) as to which no objection has been filed by the Objection Date, unless such Claim is to be determined in a forum other than the Bankruptcy Court, in which case such Claim shall not become Allowed until determined by Final Order of such other forum and allowed by Final Order of the Bankruptcy Court; or (y) as to which an objection was filed by the Objection Date, to the extent allowed by a Final Order. “Allowed” when used with respect to a Claim that is an Administrative Claim, shall mean an Administrative Claim that has been allowed pursuant to Article V of the Plan.

“Bankruptcy Code” shall mean Title 11 of the United States Code.

“Bankruptcy Court” shall mean the Bankruptcy Court unit of the United States District Court for the District of Colorado.

“Bar Date” shall mean September 13, 2017, the last date set by the Bankruptcy Court for filing Claims that are not Administrative Claims.

“Chapter 11 Case” shall mean the case commenced under Chapter 11 of the Bankruptcy Code for the Debtor.

“Claim” shall mean a claim, as defined in Section 101(5) of the Bankruptcy Code, against the Debtor.

“Client Bar Date” shall mean January 12, 2018, the last date set by the Bankruptcy Court for clients of the Debtor to file Claims. No Claims were received from Clients before or after the Client Bar Date.

“Confirmation” shall mean the entry by the Bankruptcy Court of an order confirming the Plan in accordance with Chapter 11 of the Bankruptcy Code; “Confirmation Order” shall mean such order; and “Confirmation Date” shall mean the date on which such order is entered.

“Contested” when used with respect to a Claim as to which a proof of claim has been timely filed with the Bankruptcy Court, shall mean a Claim that has not been Allowed: (i) that is listed in any of Debtor’s schedules of liabilities as disputed, unliquidated, or contingent; (ii) to the extent the proof of claim exceeds the scheduled amount; (iii) that is not listed in any such schedules; or, (iv) as to which an objection has been filed and as to which no Final Order allowing such Claim has been entered.

“Debtor” shall mean Ibex, LLC.

“Disclosure Statement” shall mean the disclosure document describing the Plan as required to be filed by the Debtor, approved by the Court, and distributed to the various classes of Claims under the Plan as provided in Section 1125 of the Bankruptcy Code.

“Distribution Date” when used with respect to an Allowed Administrative or Priority Claim, shall mean as soon as practicable after the later of (i) the Effective Date, or (ii) if the Administrative or Priority Claim is Allowed after the Effective Date, the fifteenth day of the next calendar month after the date upon which such Claim is Allowed.

“Effective Date” shall mean the first business day after the passage of thirty (30) days from the date the Confirmation Order becomes a Final Order.

“Equity Interest” shall mean the respective membership interests, if any, in the Debtor.

“Fee Claim” shall mean a Claim under Section 330 or 503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in the Chapter 11 Case.

“Final Order” shall mean an order or judgment of the Bankruptcy Court or other court of competent jurisdiction which has not been reversed, stayed, modified, or amended and as to which (i) the time to appeal or seek review, rehearing, or certiorari has expired (without regard to whether the time to seek relief of a judgment under Rule 60(b) of the Federal Rules of Civil Procedure has expired); and (ii) no appeal or petition for review, rehearing, or certiorari is pending, or if pending as to which no bond or other stay has been issued, or as to which any right to appeal or seek review, rehearing, or certiorari has been waived.

“Impaired” A class of claims or interests is “impaired” in accordance with 11 U.S.C. § 1124 if the Plan alters the legal, equitable and/or contractual rights of the holders of such claims or interests.

“Insider” shall mean any Person defined in Section 101(31)(B) of the Bankruptcy Code.

“Late Filed Claims” shall mean any claim filed in the Chapter 11 Case after the Bar Date.

“Litigation” shall mean any civil action or arbitration pending on the Confirmation Date or commenced thereafter by the Reorganized Debtor, including the pending state court litigation against Mark Terry, Total Healthcare Staffing, Inc., and Right Investments, LLC (among others), the arbitration proceeding pending against Right at Home, LLC, Brian Petranick, Margaret Haynes, and Susie Dunn, any preference or avoidance actions under the Bankruptcy Code, any state and federal court proceedings, and any matters submitted to binding arbitration.

“Litigation Proceeds” shall mean any recovery of money by the Debtor or Reorganized Debtor in connection with any Litigation after subtraction of any reasonable costs, expenses, taxes provided for, or reimbursements paid, due and owing, or to be paid by the Debtor or its members in connection with any Litigation or the resolution thereof. Thus, Litigation Proceeds will not include any specially awarded attorney fees or costs and are the “net” proceeds recovered by the Debtor after provisions for tax implications to the Debtor’s members specifically related to the Litigation.

“Net Profits” shall mean the Reorganized Debtor’s accounts receivable collected less all cash payments and expenses, including those due under the Plan. The Litigation Proceeds will not be included in the calculation of Net Profits.

“Net Profits Fund” shall mean the fund established by the Debtor including 25% percent of its Net Profits, calculated annually for the prior 12 months (or any portion thereof), for each year of the Plan.

“Objection Date” shall mean, with respect to a Claim other than a Claim that is an Administrative Claim, the first business day following the passage of sixty (60) days from the Effective Date.

“Person” shall mean an individual, corporation, partnership, joint venture, trust, estate, unincorporated association, unincorporated organization, cooperative, limited liability company, governmental entity or political subdivision thereof, or any other legally recognized entity.

“Plan” shall mean this Plan of Reorganization for the Debtor, as amended from time to time.

“Plan Proponent” shall mean the Debtor.

“Post-petition” shall mean anytime on or subsequent to June 29, 2017 and prior to the Confirmation Date.

“Pre-petition” shall mean any time prior to June 29, 2017.

“Priority Claim” shall mean a Claim entitled to priority in payment pursuant to Section 507(a)(4) or 507(a)(5) of the Bankruptcy Code.

“Pro Rata” shall mean with respect to any Person entitled to distribution, the percentage which such Person’s Allowed Claim bears to the sum of all Allowed Claims in the same class.

“Reorganized Debtor” shall mean the reorganized Debtor under the confirmed Plan.

“Secured Claim” shall mean any Claim secured by a valid and enforceable lien against the property of the Debtor, but only to the extent of the value of the collateral securing such Claim.

“Tax Claim” shall mean any Claim of a governmental unit for taxes entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

“Unsecured Claim” shall mean a Claim that is not secured by a valid and enforceable lien against the property of the Debtor, other than Administrative Claims, Priority Claims, and Equity Interests.

“Unimpaired” A class of claims or interests is “unimpaired” in accordance with 11 U.S.C. § 1124 if the legal, equitable and/or contractual rights of the holders of such claims or interests are not altered under the Plan.

## **ARTICLE II CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

The following is a designation of all classes of Claims and Equity Interests other than those Claims of a kind specified in Sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code.

<u>Class 1</u>	Allowed Impaired Secured Claim of First National Bank of Pennsylvania
<u>Class 2</u>	Contested Unsecured Claims of Total Healthcare Staffing, Inc.
<u>Class 3</u>	Executory Contracts and Unexpired Leases
<u>Class 4</u>	General Unsecured Claims
<u>Class 5</u>	Equity Interests
<u>Class 6</u>	Late Filed Claims

## **ARTICLE III TREATMENT OF UNCLASSIFIED PRIORITY CLAIMS**

As provided in Section 1123(a)(1) of the Bankruptcy Code, the Claims against the Debtor covered in this Article III are not classified. The holders of such Claims are not entitled to vote on the Plan.

3.1 *Allowed Administrative Claims.*

The holders of Allowed Administrative Claims of the type specified in Section 507(a)(2) of the Bankruptcy Code shall receive cash equal to the allowed amount of such Claim or a lesser amount or different treatment as may be acceptable and agreed to by particular holders of such Claims. Such Claims shall be paid in full on the Effective Date or treated as otherwise agreed to by the particular holders of such Claims. Such Claims include a debtor-in-possession loan from Peter Vanderbrouk to the Debtor. The payment of professionals is subject to Court approval. The payment of bankruptcy counsel and litigation counsel are subject to a Litigation Agreement and Bankruptcy Court order approving the same.

### 3.2 *Allowed Unsecured Tax Claims.*

The Debtor does not believe that any Claims under Section 507(a)(8) exist. To the extent any do exist, such claimants shall receive 100% of their priority claim through a monthly installment payment of a value, as of the Effective Date, equal to the allowed amount of such claim, over a period of five years from the Petition Date. Claims for penalties not related to actual pecuniary loss shall be treated under Class 3.

### 3.3 *Fees Due Under 28 U.S.C. § 1930(a)(6).*

The Reorganized Debtor shall make all payments required to be made to the U.S. Trustee program pursuant to 28 U.S.C. § 1930(a)(6) until the Chapter 11 Case is closed, converted, or dismissed. All payments due to the U.S. Trustee program pursuant to 28 U.S.C. § 1930(a)(6) shall be paid on the Effective Date, and the U.S. Trustee shall thereafter be paid fees due on a quarterly basis until the Chapter 11 Case is closed, converted, or dismissed. The Debtor will also timely file all required post-confirmation reports.

## **ARTICLE IV IDENTIFICATION OF UNIMPAIRED AND IMPAIRED CLASSES**

All Classes are impaired under the Plan.

## **ARTICLE V TREATMENT OF CLAIMS AND EQUITY INTERESTS**

Class 1. (*Allowed Impaired Secured Claim of First National Bank of Pennsylvania*). First National Bank of Pennsylvania (“First National Bank”) holds a first-priority Allowed Impaired Secured Claim of \$2,357,569.38 against all the Debtor’s tangible and intangible personal property. Whether the Class 1 Claim of First National Bank is fully secured depends on the outcome of pending Litigation. Due to the Debtor’s belief that it will prevail in Litigation and that its damages are substantial, the Debtor estimates that First National bank is fully secured.

The Debtor and First National Bank are parties to several stipulated orders authorizing Debtor’s continue use of cash collateral. Since the Petition Date and through July 7, 2018, the Debtor made interest only payments to First National Bank. The most recent stipulated cash collateral order requires the Debtor to make the following monthly payments: \$16,000.00 on August 7, 2018; \$16,500.00 on September 7, 2018; \$15,500.00 on October 7, 2018; \$16,000.00 on November 7, 2018; \$16,000.00 on December 7, 2018; and \$16,000.00 on January 7, 2019.

The Class 1 Claim shall be amortized over 15 years at a fixed annual interest rate of 7.00% with a balloon payment due on the last day of the 63rd month following the Effective Date with monthly payments of principle and interest in the amount of \$21,114.57 to be paid by the 7<sup>th</sup> of each month following the Effective Date. After a Final Order or settlement in any Litigation, the Debtor will promptly pay any Litigation Proceeds to First National Bank. Any extra payments—including payment of any Litigation Proceeds—will be applied to principal and the remaining term will remain the same. Thus, such extra payments will reduce the principal balance owed and amount of the remaining monthly payments due hereunder.

Class 2. (*Contested Impaired Unsecured Claim of Total Healthcare Staffing, Inc.*). Total Healthcare Staffing asserts Unsecured Claims of \$283,476.86 and \$700,000.00 under separate promissory notes. The Class 2 Claims of Total Healthcare Staffing, Inc. (“THS”) are listed as contingent, disputed, and subject to setoff in the Debtor’s bankruptcy schedules. The Debtor and THS are engaged in Litigation in the state courts of Colorado. The Debtor also intends to object to the Claim of THS. The Contested Impaired Unsecured Claim of Total Healthcare Staffing, Inc. will be treated as a Contested Claim under this Plan and in accordance with the outcome of the Litigation and/or the Bankruptcy Court’s ruling on a claim objection. Should THS or any other defendant prevail in the Litigation, any amount found to be due and owing by the Reorganized Debtor to the same will be treated as a general Unsecured Claim under Class 4.

Class 3. (Executory Contracts and Unexpired Leases). The Debtor’s Finance Lease with GreatAmerica Financial Services Corporation (Proof of Claim 4-1) has been terminated and the equipment has been returned to the lessor.

Any unexpired leases or executory contracts not otherwise specifically assumed or dealt with in the Plan shall be deemed rejected. Under the terms of any lease agreements, in the event that a lease is rejected, the equipment or property will be returned to the lessor, unless Debtor and the lessor otherwise agree.

Any Class 3 claimant asserting a claim for damages arising from rejection of a lease shall file a proof of claim with the Bankruptcy Court by the later of the Effective Date or thirty days after entry of the Order granting the motion to reject or the claim shall be forever barred. The claims held by holders of rejected leases or executory contracts shall be treated as a Class 4 unsecured claims subject to the limitations of Section 502 of the Bankruptcy Code.

Right Investments, LLC filed Proof of Claim 8-1 on September 13, 2017 for amounts it alleges are due and owing under a commercial real property lease that the Debtor rejected under 11 U.S.C. § 365(4)(A)(i). The Debtor asserts that Proof of Claim 8-1 is insufficient, incorrect, and unenforceable. Proof of Claim 8-1 will be treated as a Contested Claim and under this Plan and in accordance with the outcome of the Litigation and/or any determination of the Bankruptcy Court in connection with a claim objection. Should the Debtor prevail in the Litigation (meaning that the Debtor is not found liable to Right Investments, LLC, the lease is rescinded, or Right Investments, LLC is found liable to the Debtor), Right Investments, LLC will receive no distributions under the Plan. If Right Investments, LLC prevails in Litigation and its alleged Unsecured Claims are Allowed by the Bankruptcy Court, any amount found to be due and owing by the Reorganized Debtor in connection with termination of the lease will be treated as general Unsecured Claim under Class 4.



The Debtor is a party to a franchise agreement (the “Franchise Agreement”) with Right at Home, LLC (“RAH”). The Franchise Agreement is the subject of ongoing Litigation. The Debtor asserts that the Franchise Agreement was not validly created under applicable law and was not enforceable as of the Petition Date. Nevertheless, the Debtor has made all required payments to RAH under the applicable agreements and will continue to do so until the Franchise Agreement is rejected, a settlement is approved, or in compliance with a Final Order made by the arbitrator in the Litigation. The Debtor has or will soon file a motion to reject the Franchise Agreement prior to Confirmation. If the motion to reject is granted, the Debtor will de-identify and continue operations as an independent (non-franchised) business as of Confirmation. Any dispute regarding the Debtor’s ability to reject the Franchise Agreement and continue operating will be determined by the Bankruptcy Court as a contested matter pursuant to Fed. R. Bankr. P. 9014. Should the Bankruptcy Court rule that a non-compete provision in favor of RAH contained in the Franchise Agreement cannot be rejected, the Debtor will cure any alleged non-monetary defaults under the Franchise Agreement, assume the Franchise Agreement prior to Confirmation, and continue to operate its business as a RAH franchisee. In the event the Franchise Agreement is rejected, any claim for damages by RAH will be treated as a Class 4 Unsecured Claim.

Should the Debtor then prevail in Arbitration (meaning that the contracts between the Debtor and RAH are rescinded, the Debtor is not found liable to RAH, or RAH is found liable to the Debtor), the parties’ obligations under the Franchise Agreement and the Claim of RAH will be treated in accordance with such Final Order. Should the arbitrator fail to rule that the Franchise Agreement is rescinded or should RAH prevail at Arbitration (meaning that the Franchise Agreement is not rescinded and the Debtor is found liable to RAH), the parties’ obligation under the Franchise Agreement and the Claim of RAH will be treated as set forth in the previous paragraph of this Plan. In the event RAH disputes the treatment of its alleged Claim as set forth herein prior to the hearing on Confirmation, the matter will be submitted to the Bankruptcy Court for a determination as a contested matter pursuant to Fed. R. Bankr. P. 9014.

Class 4. (Unsecured Claims). Class 4 is comprised of creditors holding Allowed Unsecured Claims against the Debtor, including any allowed penalty Claims held by any taxing authority which are not related to actual pecuniary loss. Allowed Class 4 Claims shall receive their pro rata share of the Net Profits Fund. Distributions from the Net Profits Fund shall continue for 5 years following the Effective Date. Distributions to Class 4 claimants shall not exceed the amount of the Allowed Unsecured Claims plus interest calculated at two and a half percent (2.5%) per annum. Distributions to the Allowed Class 4 claimants shall be made annually on each anniversary of the Effective Date. In the alternative, at any time during the term of the Plan and at its sole discretion, the Debtor may distribute \$400,000.00 less any payments already made under the Plan, as a lump-sum payment to the allowed Class 4 claimants on a pro-rata basis, in full, final, and complete satisfaction of their unsecured claims.

Class 5. (Equity Interests). On the Effective Date, the members of the Debtor shall retain their Equity Interests.

Class 6. (Late Filed Claims). Class 6 is comprised of all Late Filed Claims against Debtor. The Class 6 claims shall be disallowed and shall receive no distribution under the Plan.

## ARTICLE VI

## **DEFAULT AND PLAN MODIFICATION**

### *6.1 Default and Right to Cure.*

In the event of any default by the Reorganized Debtor of any payment to any class of claimants arising under the terms of the Plan, the Reorganized Debtor shall have thirty (30) days within which to cure any default in payments due under this Plan after the date of issuance of written notice from any claim holder. Written notice shall be provided to the Reorganized Debtor and to Debtor's counsel as provided in paragraph 12.7 herein, unless written notice of substitution of legal counsel is served upon the claim holder at least fifteen (15) days prior to the date notice is sent.

### *6.2 Failure to Cure Default.*

In the event that the Reorganized Debtor fails to cure any default in the requirements to make payment under the Plan, within thirty (30) days from the date that written notice is sent in compliance with paragraph 6.1, the Reorganized Debtor shall be in default under the terms of the Plan. If the Reorganized Debtor defaults on its obligations under this Plan, creditors would be able to pursue the Reorganized Debtor for the restructured debt under the Plan. A post-petition default under the terms of the confirmed Plan enables all creditors whose claims are treated under the Plan to enforce those terms in any court of competent jurisdiction.

### *6.3 Plan Modification.*

At any time after Confirmation of the Plan but before the completion of payments under the Plan, the Plan may be modified upon the request of the Reorganized Debtor, after notice and a hearing, only to the extent allowed by 11 U.S.C. § 1127.

## **ARTICLE VII MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN**

### *7.1 Asset Transfer to Reorganized Debtor.*

On or about the Effective Date, all assets of the Debtor shall be transferred to the Reorganized Debtor free and clear of all liens, claims, and interests of creditors, equity holders, and other parties in interest, except as otherwise provided herein. Specifically, the assets shall be transferred subject to the liens held by secured creditors as discussed in the treatment of their claims. The Reorganized Debtor shall not, except as otherwise provided in this Plan, be liable to repay any debts which accrued prior to the Confirmation Date. Except as provided in this Plan, on the Confirmation Date, the Debtor shall be granted a discharge under 11 U.S.C. § 1141.

### *7.2 Means for Implementation.*

The Debtor shall fund its Plan obligations with cash from operations and a debtor in possession loan. Such funds shall be sufficient to pay in full all amounts due on the Effective Date, and, as applicable, priority claimants treated under Article III herein.



7.3 *Execution of Plan.*

After the Effective Date, the Reorganized Debtor shall implement its Plan of Reorganization pursuant to the terms for each class of claimants set forth above. Payments under the Plan shall come from the cash flow of the Reorganized Debtor generated by the Reorganized Debtor's business and Litigation. On the due date for payments as set forth in Article V above, the Reorganized Debtor shall immediately distribute the required pro rata amount to each claimant holding an Allowed Secured or Unsecured Claim and escrow the same pro rata amount to creditors holding Contested Claims as provided in Article X herein.

In the alternative, at any time during the term of the Plan and at its sole discretion, the Debtor may distribute \$400,000.00 to the allowed Class 4 Claims on a pro-rata basis in full, final, and complete satisfaction of their unsecured claims.

7.4 *Net Profits Fund.*

7.4.1 On the first anniversary of the Effective Date, and each year thereafter for 5 years, the Reorganized Debtor shall calculate its Net Profits for the prior 12-month period and deposit 25% percent of the Net Profits into the Net Profits Fund and distribute the same to the Class 4 Claimants on a pro rata basis.

7.4.2 Upon request by an Allowed Class 4 claimant, the Reorganized Debtor shall provide its calculation of Net Profits for the period requested.

7.5 *Financial Records.*

The Reorganized Debtor's financial records shall be available for review by creditors upon reasonable notice during normal business hours subject to execution of an appropriate confidentiality agreement.

7.6 *Avoidance and Recovery Actions.*

The Reorganized Debtor may pursue any claims or recovery actions held by the Debtor, including but not limited to recovery under 11 U.S.C. §§ 544, 547, 548 and 549. The Reorganized Debtor may abandon any claim it has against any third party if it determines that the claim is burdensome or of inconsequential value and benefit. The Reorganized Debtor is authorized to employ counsel to represent it in litigation or any cause of action or claims held by the Debtor.

7.7 *Deposit Accounts.*

All funds held by the Reorganized Debtor for distribution under the Plan shall be held in accounts which meet the insurance and guaranty requirements 11 U.S.C. § 345(b).

7.8 *Claims Objections.*

Following the Effective Date, the Reorganized Debtor may compromise objections to Claims or causes of action referred to in this Plan without notice and hearing for claims or causes of action asserted in the original amount of \$50,000.00 or less. Settlements or compromises of

any claims or causes of action asserted in the amount of \$50,000.00 or more shall be subject to notice and an opportunity for hearing under the provisions after notice in compliance with the Local Rules of Bankruptcy Procedure.

*7.9 Continued Operations.*

After the Effective Date, the Reorganized Debtor exercising its business judgment may sell, operate or abandon any of its assets.

*7.10 Discharge and Injunctive Relief.*

The Reorganized Debtor shall receive a discharge to the extent permitted by 11 U.S.C. § 1141 and the Reorganized Debtor shall be entitled to seek injunctive relief from the Court, if necessary, to enforce any and all provisions of the Plan.

**ARTICLE VIII  
EFFECT OF CONFIRMATION**

Upon Confirmation, the provisions of this Plan shall bind the Debtor and any creditor or equity security holder of the Debtor, whether or not the Claim or Equity Interest of such Person is impaired under this Plan and whether or not such Person has accepted this Plan. Upon Confirmation, all of the property of the Debtor's estates shall be vested in the Reorganized Debtor as provided in this Plan, free and clear of all Claims and Equity Interests, except as specifically provided in this Plan. Upon Confirmation, all creditors and equity security holders of the Debtor are permanently enjoined from commencing or pursuing any action against the Reorganized Debtor, other than an action to enforce the provisions of this Plan. The previous sentences shall in no way alter or impair the rights of the State of Colorado available under applicable state law.

**ARTICLE IX  
PROVISION FOR ASSUMPTION OR  
REJECTION OF EXECUTORY CONTRACTS**

All unexpired leases and executory contracts between the Debtor and any other Person (if any) which have not prior to the Effective Date of the Plan been affirmatively assumed by the Debtor, are hereby rejected.

**ARTICLE X  
PROVISION AS TO DISPUTED CLAIMS**

*10.1 Objections.*

The Reorganized Debtor may, at any time within sixty (60) days after the Effective Date, file an objection to any claim which in its opinion should be objected to as improper, in whole or in part. The Reorganized Debtor may further designate claims held by creditors against whom the Reorganized Debtor believes actions may be brought under Sections 544, 547, 548 or 549 of the Bankruptcy Code as Contested Claims by sending notice in writing to the Claimant within sixty (60) days after the Effective Date.

Upon the filing of such objection or service of said written notice, such claim shall be considered a Contested Claim, and any cash or other instruments or property otherwise distributable to such creditor under this Plan shall be held by the Reorganized Debtor in escrow until final disposition of the objection to the claim either by settlement or entry of a Final Order. If the claim is only contested in part, payment shall be made to the claimant on the uncontested portion under the provisions of Article V and the balance shall be treated as a Contested Claim under the provisions of Article X. If the objection is overruled or denied, in whole or in part, or the claim is allowed by stipulation of the Reorganized Debtor and the claimant, such claimant shall receive the amount of cash provided in this Plan to the extent of the amount of the claim finally allowed, including back installments.

#### 10.2 *Contested Claims Escrow.*

From and after the Effective Date, the Reorganized Debtor shall reserve and hold for the benefit of each holder of a Contested Claim cash in an amount equal to the pro rata payments which would have been made to the holder of such contested claim if it were an Allowed Claim in an amount equal to the lesser of: (i) the amount of the Contested Claim or (ii) the amount in which the Contested Claim shall be estimated by the Bankruptcy Court pursuant to § 502 of the Bankruptcy Code for purposes of allowance, which amount shall constitute and represent the maximum amount in which such claim may ultimately become an Allowed Claim. No payments or distributions shall be made with respect to all or any portion of any Contested Claim pending the entire resolution thereof by Final Order.

### **ARTICLE XI AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS OF DEBTOR**

As may be required, the Articles and Bylaws of the Debtor shall be amended on or before the Effective Date to the extent necessary to effectuate the provisions of the Plan.

### **ARTICLE XII MISCELLANEOUS PROVISIONS**

#### 12.1 *Retention of Jurisdiction.*

The Reorganized Debtor reserves the right to reopen the Chapter 11 Case after Confirmation and dismissal for the purposes set forth in this paragraph. The Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case for the following purposes:

- (a) To hear and determine any and all objections to the allowance of Claims or Interests.
- (b) To determine any and all applications for allowances of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan, to the extent such claim was incurred prior to the Effective Date.
- (c) To hear and determine any and all pending applications for the rejection or assumption, or for the assumption and assignment, as the case may be, of executory

contracts or unexpired leases to which the Debtor is a party, and to hear and determine any and all Claims arising therefrom.

- (d) To hear and determine any and all applications, adversary proceedings, and contested or litigated matters that may be pending on the Effective Date or instituted by the Reorganized Debtor thereafter.
- (e) To consider any modifications of the Plan, to remedy any defect or omission, or reconcile any inconsistency in the Plan or in any order of the Bankruptcy Court, including the Confirmation Order.
- (f) To hear and determine any application to sell the Debtor's property free and clear of liens.
- (g) To hear and determine all controversies, suits, and disputes that may arise in connection with the interpretation, enforcement, or consummation of the Plan.
- (h) To consider and act on the compromise and settlement of any claim or cause of action by or against the Debtor where the original claim or cause of action is in excess of \$50,000.00.
- (i) To issue orders in aid of execution of the Plan as contemplated by Section 1142 of the Bankruptcy Code.
- (j) To determine such other matters as may be set forth in the Confirmation Order or which may arise in connection with the Plan or the Confirmation Order.

#### 12.2 *Vesting of Property.*

The Reorganized Debtor shall be vested with ownership to all property of the estate upon the Effective Date.

#### 12.3 *Satisfaction of Claims.*

The payment of Allowed Claims, Allowed Administrative Claims and Allowed Secured Claims shall be in exchange for all claims against the Debtor and shall constitute full settlement, release, discharge, and satisfaction of all such claims against the Debtor. Confirmation of the Plan shall constitute a modification of any note or obligation for which specification and treatment is provided under the Plan as set forth in the Plan. Any obligation or note, previously in default, so modified, shall be cured as modified as of the Confirmation Date. This provision shall be operable regardless of whether the Plan provides for any obligation to be evidenced by a rewritten loan or security document following confirmation of the Plan.

#### 12.4 *Pre-Existing Causes of Action.*

Nothing herein contained shall prevent the Reorganized Debtor from taking any action as may be necessary to the enforcement of any cause of action which may exist on behalf of the

Reorganized Debtor and which may not have been enforced or prosecuted by the Debtor prior to the Effective Date.

12.5 *Reservation of Rights.*

The Reorganized Debtor reserves the right to modify the Plan prior to the Confirmation, and thereafter to modify the Plan in accordance with 11 U.S.C. § 1127(b) and paragraph 6.3 herein.

12.6 *Headings.*

The headings used in the Plan are for convenience of reference only and shall not limit or in any manner affect the meaning or interpretation of the Plan.

12.7 *Notices.*

All notices, request, demands, or other communications required or permitted in this Plan must be given in writing to the party(ies) to be notified. All communications will be deemed delivered when received at the following addresses:

(a) To Debtor:

Ibex, LLC  
5446 N. Academy Blvd., Ste. 203  
Colorado Springs, CO 80918

With a copy to:

David J. Warner  
5280 W. Main St., Ste. 200  
Littleton, CO 80120

- (b) To an allowed claimant, at the addresses set forth in the allowed Proof of Claim, if filed, or, if no Proof of Claim is filed, at the address set forth for the claimant in the Debtor's Schedules filed with the Bankruptcy Court.

12.8 *Successors and Assigns.*

The Plan will be binding upon the Reorganized Debtor, any creditor affected by the Plan and their heirs, successors, assigns and legal representatives.

12.9 *Unclaimed Payments.*

If a Person entitled to receive a payment or distribution pursuant to this Plan fails to negotiate a check, accept a distribution, or provide a forwarding address in the event notice cannot be provided as set forth in paragraph 11.7, within one (1) year of the Effective Date, the person or entity is deemed to have released and abandoned any right to payment or distribution under the Plan.

DATED October 25, 2018.

IBEX, LLC  
  
By: Peter Vanderbrouk  
Its: Managing Member



WADSWORTH WARNER CONRARDY P.C.

*/s/ David J. Warner*

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