

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

AEROGROUP INTERNATIONAL,
INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 17-11962 (KJC)

(Jointly Administered)

DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION

Nothing contained in the Debtors' First Amended Joint Plan of Reorganization is an offer, acceptance, or a legally binding obligation of the Debtors or any other party in interest. This Plan is subject to the Bankruptcy Court's approval and certain other conditions. This Plan is not an offer with respect or a solicitation with respect to any securities of the Debtors or a solicitation of acceptances of this Plan within the meaning of section 1125 of the Bankruptcy Code. Acceptances or rejections with respect to this Plan may not be solicited until the Bankruptcy Court has approved an accompanying disclosure statement in accordance with section 1125 of the Bankruptcy Code. Any solicitation of this Plan will occur only in compliance with applicable provisions of securities and bankruptcy laws.

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¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Aerogroup International, Inc. (6119), AGI Holdco, Inc. (7087), Aerogroup International LLC (4658), Aerogroup International Holdings LLC (4312), Aerogroup Retail Holdings, Inc. (4650), and Aerogroup Gift Card Company, Inc. (7551). The mailing address for the Debtors, solely for purposes of notices and communications, is: 201 Meadow Road, Edison, New Jersey 08817.

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INTRODUCTION

Aerogroup International, Inc. and its Debtor subsidiaries in the above-captioned chapter 11 cases propose this joint plan of reorganization (the “Plan”). Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code in its respective chapter 11 case. Reference is made to the Disclosure Statement for a discussion of the Debtors’ history, business, properties and operations, projections, risk factors, a summary and analysis of this Plan, and certain related matters. There are other agreements and documents, which have been or will be filed with the Bankruptcy Court (as defined below) that are referenced in the Plan or the Disclosure Statement as exhibits, Plan Supplement or otherwise. All such agreements, documents, exhibits and Plan Supplement are incorporated into and are a part of this Plan as if fully set forth herein.

ARTICLE I

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

1.1 Defined Terms.

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

(1) “*ABL Priority Collateral*” means “ABL Priority Collateral” as set forth in the Prepetition Intercreditor Agreement.

(2) “*Administrative Claim*” means a Claim against any of the Debtors for any costs or expenses of administration of such Debtors’ Estate that is entitled to priority under section 507(a)(2) of the Bankruptcy Code, to the extent not previously paid, including, but not limited to, (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtors (such as wages, salaries and commissions for services rendered after the commencement of the Chapter 11 Cases and payments for inventory, leased equipment and premises); (b) any payment to be made under the Plan to cure a default on an assumed Executory Contract or assumed Unexpired Lease, (c) any postpetition cost, indebtedness or contractual obligation duly and validly incurred or assumed by a Debtor in the ordinary course of its business, (d) any Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order under section 546(c)(2)(A) of the Bankruptcy Code; (e) any Allowed Professional Fee Claims; and (f) any fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

(3) “*Administrative Claims Bar Date*” means the last date by which an Entity may file an Administrative Expense Request which shall be the day that is forty-five (45) days after the Effective Date or the first Business Day following such day.

(4) “*Administrative Claims Objection Deadline*” means the last day for filing an objection to any Administrative Expense Request, which shall be the later of (a) 180 days after the Effective Date, or (b) such other date specified in this Plan or ordered by the

Bankruptcy Court. The filing of a motion to extend the Administrative Claims Objection Deadline shall automatically extend the Administrative Claims Objection Deadline until a Final Order is entered on such motion. In the event that such motion to extend the Administrative Claims Objection Deadline is denied by the Bankruptcy Court, the Administrative Claims Objection Deadline shall be the later of (a) the current Administrative Claims Objection Deadline (as previously extended, if applicable) or (b) 30 days after the Bankruptcy Court's entry of an order denying the motion to extend the Administrative Claims Objection Deadline.

(5) “*Administrative Claims Reserve*” means the reserve of Cash established and maintained by the Plan Administrator for purposes of paying Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims and Allowed Non-Tax Priority Claims; provided, however, that the Administrative Claims Reserve may be subdivided into one or more sub-reserves for purposes of segregating those funds reserved for particular Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims or Allowed Non-Tax Priority Claims.

(6) “*Administrative Expense Request*” means a request for the payment of an Administrative Claim.

(7) “*Aerogroup International*” means Aerogroup International, Inc.

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

(9) “*AGI Holdco*” means AGI Holdco, Inc.

(10) “*Allowed*” means, as to a Claim (including any Administrative Claim) or any Interest or portion thereof (to the extent such Claim or Interest is not Disputed or Disallowed), (a) any Claim, proof of which (i) was timely Filed with the Bankruptcy Court or its duly appointed claims agent, (ii) was deemed timely filed pursuant to section 1111(a) of the Bankruptcy Code, or (iii) by a Final Order, was not required to be Filed; (b) any Claim or Interest that has been, or hereafter is, listed in the Schedules as liquidated in an amount other than zero or unknown and not Disputed or contingent (or as to which the applicable Proof of Claim has been withdrawn or Disallowed); and (c) any Claim or Interest which has been allowed (whether in whole or in part) by a Final Order (but only to the extent so allowed), and, in (a), (b) and (c) above, as to which no Objection to the allowance thereof, or action to subordinate, avoid, classify, reclassify, expunge, estimate or otherwise limit recovery with respect thereto, has been Filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or a Final Order; (d) any Claim allowed under or pursuant to the terms of the Plan; (e) any Claim arising from the recovery of property under sections 550 or 553 of the Bankruptcy Code which has been allowed in accordance with section 503(h) of the Bankruptcy Code; (f) a Claim relating to a rejected Executory Contract or Unexpired Lease that either (i) is not a Disputed Claim or (ii) has been allowed by a Final Order, in either case only if a Proof of Claim has been Filed by the applicable bar date or has otherwise been deemed timely Filed under applicable law; or (g) which is a Professional Fee Claim for which a fee award

amount has been approved by order of the Bankruptcy Court; provided, however, that Claims allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed” hereunder. Unless otherwise specified herein or by order of the Bankruptcy Court, “Allowed” shall not, for purposes of computation of distributions under this Plan, include interest on any Allowed Claim.

(11) “*Assumed Agreements*” has the meaning set forth in Section 6.1(b) hereof.

(12) “*Avoidance Actions*” means any and all Causes of Action which a trustee, debtor-in-possession, the estate or other appropriate party in interest may assert under sections 502(d), 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, or 553(b) of the Bankruptcy Code, or under related state or federal statutes and common law, including, without limitation, fraudulent transfer laws (whether or not litigation is commenced to prosecute such Causes of Action) and any other indirect claim of any kind whatsoever, whenever and wherever arising or asserted.

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

(14) “*Bankruptcy Code*” means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the Petition Date, together with all amendments and modifications thereto that are subsequently made applicable to the Chapter 11 Cases.

(15) “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

(16) “*Bankruptcy Rules*” means: (i) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code; (ii) the applicable Local Rules of Bankruptcy Practice and Procedure for the Bankruptcy Court; and (iii) any general or chamber rules, or standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, and each of the foregoing together with all amendments and modifications thereto that are subsequently made and as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

(17) “*Bar Date Order*” means the *Order Establishing Bar Date and Procedures for Filing Proofs of Claim for Secured, Priority, and 503(b)(9) Claims, and Approving the Form and Manner of Notice Thereof*, entered November 2, 2017 [D.I. 232].

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

(19) “*Cash or \$*” means the legal tender of the United States of America or the equivalent thereof, including bank deposits, checks and cash equivalents.

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

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

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

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

(24) “*Claims Objection Deadline*” means, individually and collectively, Administrative Claims Objection Deadline, the Section 503(b)(9) Objection Deadline, and the deadlines for objection to Secured Claims, Priority Tax Claims, Non-Tax Priority Claims or General Unsecured Claims.

(25) “*Claims and Solicitation Agent*” means Prime Clerk LLP, or such other the claims and solicitation agent the Debtors may retain in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court.

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

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

(28) “*Committee*” means the official committee of unsecured creditors appointed in these Chapter 11 Cases.

(29) “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

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

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

(32) “*Confirmation Order*” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of Bankruptcy Code, which order.

(33) “*Consummation*” means the occurrence of the Effective Date.

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

(35) “*Cure Amounts*” means (a) amounts (or such other amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) required to cure any monetary defaults; and (b) other obligations required to cure any non-monetary defaults under any Executory Contract or Unexpired Lease that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

(36) “*Cure Notice*” means each of the Plan Supplement Assumption Schedule and any Section 363 Sale Assumption Schedules, setting forth respective Cure Amounts for each of the Executory Contracts and Unexpired Leases.

(37) “*Debtors*” means, collectively, each of the following: AGI Holdco, Aerogroup International, Aerogroup International LLC, Aerogroup International Holdings LLC, Aerogroup Retail Holdings, Inc., and Aerogroup Gift Card Company, Inc.

(38) “*Deferred Contract*” means the Executory Contracts (and for the avoidance of doubt, not Unexpired Leases) identified in the Plan Supplement as Deferred Contracts.

(39) “*D&O Liability Insurance Policies*” means all insurance policies (including any “tail policy”) of any of the Debtors for current or former directors’, managers’, and officers’ liability.

(40) “*DIP Agent*” means Wilmington Savings Fund Society, FSB.

(41) “*DIP Budget*” means the budget attached to the DIP Order, as applicable.

(42) “*DIP Credit Agreement*” means that certain Amended and Restated Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of November 7, 2017, by and among Aerogroup International, Aerogroup International LLC, Aerogroup International Holdings LLC, Aerogroup Retail Holdings, Inc., and Aerogroup Gift Card Company, Inc., as Borrowers, AGI Holdco, as Guarantor, the DIP Agent, and the DIP Lender, as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

(43) “*DIP Documents*” means the DIP Credit Agreement, Interim DIP Order, Final DIP Order, or other “Loan Documents” (as defined in the DIP Credit Agreement), and any related agreements, instruments, documents, certificates and schedules delivered

from time to time in connection therewith, as amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

(44) “*DIP Facility*” means that certain postpetition debtor in possession loan facility pursuant to (i) the DIP Credit Agreement and any and all documents, instruments or agreements executed or delivered in connection therewith and (ii) the DIP Order.

(45) “*DIP Facility Claims*” means any and all of the Claims, held by the DIP Agent and the DIP Lender, against the Debtors arising under or in connection with the DIP Documents, including Claims for all accrued and unpaid principal, interest, fees, expenses, costs and other charges and amounts constituting “Obligations” (as defined in the DIP Credit Agreement).

(46) “*DIP Lender*” means Polk 33 Lending, LLC.

(47) “*DIP Order*” means the Interim DIP Order or Final DIP Order, as applicable.

(48) “*Disbursing Agent*” means any Person or Persons designated by the Debtors, the Reorganized Debtors or the Plan Administrator in their discretion, to serve as disbursing agent under the Plan with respect to Distributions to Holders in particular Classes of Claims; which may include, without limitation, the Claims and Solicitation Agent.

(49) “*Disclosure Statement*” means the disclosure statement for the Plan, as may be amended, supplemented or modified from time to time, including all exhibits and schedules thereto as approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

(50) “*Disclosure Statement Order*” means the order of the Bankruptcy Court approving the Disclosure Statement and the Solicitation.

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

(52) “*Distribution Record Date*” means the record date for determining entitlement to receive Distributions under the Plan on account of Allowed Claims, which date shall be the third (3rd) Business Day after the Confirmation Date at 5:00 p.m. prevailing Eastern Time.

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

(54) “*Equity Interest*” means all issued, unissued, authorized, or outstanding shares of stock and other ownership interests in any Debtor, together with any warrants, options, or contract rights to purchase or acquire such interests at any time.

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

(56) “*Exculpated Claim*” means a Claim arising out of or related to any act, omission, transaction, or other occurrence taking place prior to the Effective Date and in any way relating to (a) the in-court or out-of-court efforts to implement the Purchase Agreement(s), the IPCO License Agreement(s), or the Restructuring Side Letter Agreement; (b) the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement or Plan or any contract, instrument, release, or other agreement or document created or entered into in connection therewith including, but not limited to, the Purchase Agreement(s), the IPCO License Agreement(s), the Restructuring Side Letter Agreement, the Disclosure Statement, or the Plan; (c) the filing and prosecution of the Chapter 11 Cases; (d) the pursuit of Confirmation; (e) the pursuit of Consummation; (f) the administration and implementation of the Plan; and/or (g) the distribution of property under the Plan.

(57) “*Exculpated Party*” means, collectively: (a) the Debtors; and (b) the Committee; (c) the members of the Committee (serving in their capacities as such); and in each case, the respective Related Persons of each of the foregoing Entities.

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

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

(60) “*Fee Examiner*” means the fee examiner appointed pursuant to the Fee Examiner Order.

(61) “*Fee Examiner Order*” means the *Order Appointing Fee Examiner and Establishing Related Procedures for the Review of Professional Claims* [D.I. 217].

(62) “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

(63) “*Final DIP Order*” means the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing and Grant Security Interests and Superpriority Administrative Expense Status with Respect to the DIP Collateral; (II) Granting Adequate*

Protection to the Prepetition Secured Credit Parties; (III) Modifying the Automatic Stay; (IV) Authorizing the Debtors to Enter Into Agreements with Polk 33 Lending, LLC; (V) Authorizing Use of Cash Collateral, and (VI) Granting Related Relief, entered November 2, 2017 [D.I. 231].

(64) “*Final Order*” means an order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the Clerk of the Bankruptcy Court (or such other court) on the docket in the Chapter 11 Cases (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed and as to which: (a) the time to appeal, petition for *certiorari*, or move for a new trial, stay, reargument, or rehearing has expired and as to which no appeal, petition for *certiorari*, or motion for new trial, stay, reargument, or rehearing shall then be pending; or (b) if an appeal, writ of *certiorari*, new trial, stay, reargument, or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or *certiorari* shall have been denied, or a new trial, stay, reargument, or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for *certiorari*, or move for a new trial, stay, reargument, or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Bankruptcy Rules; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause an order not to be a Final Order.

(65) “*General Unsecured Claim*” means a Claim that is not a DIP Facility Claim, Administrative Claim, Professional Fee Claim, Section 503(b)(9) Claims, Priority Tax Claim, Other Secured Claim, Non-Tax Priority Claim, Revolver Claim, Term Loan Claim, Senior Notes Claims, Subordinated Notes Claim, or Intercompany Claim.

(66) “*Governmental Bar Date*” means the date established pursuant to Bankruptcy Rule 3002(c)(1), March 14, 2018.

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

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

(69) “*Indemnification Obligations*” means any obligation of any of the Debtors to indemnify, reimburse, or provide contribution to any present or former officer, director, or employee, or any present or former Professionals, advisors, or representatives of the Debtors, pursuant to by-laws, articles of incorporation, contract, or otherwise as may be in existence immediately prior to the Petition Date.

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

(71) “*Insured Claim*” means any Claim or portion of a Claim (other than a Workers Compensation Claim) that is insured under the Debtors’ insurance policies, but only to the extent of such coverage.

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

(73) “*Intercompany Contract*” means a contract between or among two or more Debtors or their direct or indirect non-Debtor subsidiaries (whether or not wholly owned by the Debtors).

(74) “*Intercompany Interest*” means an Interest held by a Debtor in another Debtor.

(75) “*Interim DIP Order*” means the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing and Grant Security Interests and Superpriority Administrative Expense Status with Respect to the DIP Collateral; (II) Granting Adequate Protection to the Prepetition Secured Credit Parties; (III) Modifying the Automatic Stay; (IV) Authorizing the Debtors to Enter Into Agreements with Polk 33 Lending, LLC; (V) Authorizing Use of Cash Collateral, (VI) Granting Related Relief; and (VII) Scheduling A Final Hearing*, entered October 20, 2017 [D.I. 194].

(76) “*IPCO Licensee*” means a licensee under an IPCO License Agreement.

(77) “*IPCO License Agreement*” means each license agreement whereby the Debtors or the Reorganized Debtors license certain rights in all or some of the Debtors’ Intellectual Property to a licensee in exchange for an agreed stream of royalty payments or other agreed compensation from such licensee.

(78) “*IPCO License Transition Period*” means the period that is 180 days after the Effective Date, or such other period as set forth in an IPCO Transition Services Agreement entered into in connection with such IPCO License Agreement.

(79) “*IPCO Transaction*” means a transaction in which, pursuant to this Plan, the Debtors or Reorganized Debtors enter into one or more IPCO License Agreements and receives one or more Royalty Advances, and the Debtors complete one or more Non-IP Asset Sales.

(80) “*IPCO Transition Services Agreement*” means an agreement among the Debtors or the Reorganized Debtors and an IPCO Licensee for services to be provided by the Reorganized Debtors to the IPCO Licensee to assist in the orderly transition of operations related to the IPCO License Agreement, a form of each such agreement to be filed with the Plan Supplement.

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

(82) “*Litigation Rights*” means the Causes of Action that the Debtors or their Estates may hold against any Person or Entity (except to the extent expressly released

under the Plan), including, without limitation, the right to pursue Avoidance Actions Reinstated pursuant to Section 5.8(a) of the Plan.

(83) “*New Board*” means the new board of directors of Reorganized Holdco.

(84) “*New Governance Documents*” means the corporate governance documents related to each of the Reorganized Debtors, including, but not limited to, charters, bylaws, operating agreements, or other organizational documents, which shall be included with the Plan Supplement.

(85) “*Non-IP Assets*” means all of the Debtors’ assets other than (a) assets that are licensed pursuant to an IPCO License Agreement and (b) assets that are otherwise required in connection with the operation of the Reorganized Debtors’ business.

(86) “*Non-IP Asset Purchase Agreement*” means an Asset Purchase Agreement which provides for the sale of certain or substantially all of the Non-IP Assets.

(87) “*Non-IP Asset Sale*” means the sale or sales of all Non-IP Assets pursuant to the Plan and one or more Non-IP Asset Purchase Agreements.

(88) “*Non-IP Asset Sale Proceeds*” mean all proceeds from a Non-IP Asset Sale.

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

(90) “*Non-Tax Priority Claims Bar Date*” means December 18, 2017 at 4:00 p.m., as established by the Bar Date Order.

(91) “*Other Secured Claim*” means a Secured Claim other than DIP Facility Claims, Term Loan Claims, or any leases treated as a capital lease in accordance with GAAP.

(92) “*Other Secured Claims Bar Date*” means December 18, 2017 at 4:00 p.m. (prevailing Eastern Time), as established by the Bar Date Order.

(93) “*Petition Date*” means September 15, 2017.

(94) “*Plan*” means this plan of reorganization, including the Plan Supplement and all exhibits, supplements, appendices and schedules, as each may be altered, amended, modified or supplemented from time to time.

(95) “*Plan Administrator*” means the entity or individual identified in the Plan Supplement, or other filing with the Bankruptcy Court, and retained as of the Effective Date pursuant to the Plan Administrator Agreement, as the employee or fiduciary responsible for implementing the applicable provisions of the Plan, or any replacement or successor thereto appointed in compliance with the Plan Administrator Agreement.

(96) “*Plan Administrator Agreement*” means an agreement, to be entered into as of the Effective Date, by the Debtors and the Plan Administrator, which sets forth, among other things, the duties, indemnification and compensation of the Plan Administrator, which shall be substantially in the form included with the Plan Supplement.

(97) “*Plan Administrator Assets*” means (i) the Cash necessary to (x) make all required Distributions on the Effective Date on account of Allowed Administrative Claims, Allowed Section 503(b)(9) Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Non-Tax Priority Claims, and (y) fund the Reserves, and (ii) any other assets identified in the Plan Supplement to be administered by the Plan Administrator.

(98) “*Plan Objection Deadline*” means January 4, 2018, at 4:00 p.m. (prevailing Eastern Time).

(99) “*Plan Supplement*” means any compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, which shall be filed by the Debtors no later than December 18, 2017 or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement.

(100) “*Plan Supplement Assumption Schedule*” means the schedule setting forth the respective Executory Contracts and Unexpired Leases to be assumed as of the Effective Date under section 365 of the Bankruptcy Code and to be filed with the Plan Supplement and served on the non-Debtor counterparties to all Executory Contracts and Unexpired Leases.

(101) “*Prepetition Agents*” means the Prepetition Term Loan Agent and the Prepetition Revolver Agent.

(102) “*Prepetition Intercreditor Agreement*” means that certain Intercreditor Agreement, dated as of June 9, 2014, between the Prepetition Agents and acknowledged by certain Debtors.

(103) “*Prepetition Liens*” means, collectively, the Liens held by the Prepetition Secured Credit Parties.

(104) “*Prepetition Notes Subordination Agreement*” means that certain Subordination and Intercreditor Agreement dated as of January 20, 2016, by and among Prepetition Senior Notes Agent, the Prepetition Subordinated Noteholders, AGI Holdco, and Aerogroup International, as amended, supplemented, restated, or otherwise modified prior to the Petition Date.

(105) “*Prepetition Revolver Agent*” means Wells Fargo Bank, National Association, in its capacity as administrative agent under the Prepetition Revolver Credit Agreement.

(106) “*Prepetition Revolver Credit Agreement*” means that certain Credit Agreement, dated as of June 9, 2014, by and among Aerogroup International, as Lead Borrower and the other Borrowers and the Guarantor identified therein, the Prepetition Revolver Agent, the repetition Revolver Lenders, and the other parties thereto, as amended, supplemented, restated, or otherwise modified prior to the Petition Date.

(107) “*Prepetition Revolver Credit Parties*” means the Prepetition Revolver Agent and the Prepetition Revolver Lenders.

(108) “*Prepetition Revolver Credit Documents*” means the Prepetition Revolver Credit Agreement and all related Loan Documents (as defined in the Prepetition Revolver Credit Agreement).

(109) “*Prepetition Revolver Lenders*” means the lenders party to the Prepetition Revolver Credit Agreement from time to time.

(110) “*Prepetition Secured Credit Parties*” means, collectively, the Prepetition Revolver Credit Parties, the Prepetition Term Loan Credit Parties, the Prepetition Senior Note Credit Parties, and the Prepetition Subordinated Noteholders.

(111) “*Prepetition Secured Note Credit Parties*” means, collectively, the Prepetition Senior Note Credit Parties and the Prepetition Subordinated Noteholders.

(112) “*Prepetition Senior Note Credit Parties*” means the Prepetition Senior Noteholders and the Prepetition Senior Notes Agent.

(113) “*Prepetition Senior Noteholders*” means the holders of the Prepetition Senior Notes.

(114) “*Prepetition Senior Notes*” means those certain Subordinated Convertible Notes due March 9, 2020, issued by AGI Holdco and Aerogroup International pursuant to Prepetition Senior Notes Purchase Agreement, as amended, supplemented, restated, or otherwise modified prior to the Petition Date.

(115) “*Prepetition Senior Notes Agent*” means Palladin Partners, LP, in its capacity as agent under the Prepetition Senior Notes Purchase Agreement.

(116) “*Prepetition Senior Notes Purchase Agreement*” that certain Purchase Agreement dated as of January 20, 2016, by and among, AGI Holdco, Aerogroup International, the Prepetition Senior Notes Agent, and the Purchasers, as defined therein, as amended, supplemented, restated, or otherwise modified prior to the Petition Date.

(117) “*Prepetition Subordinated Noteholders*” means the holders of the Prepetition Subordinated Notes.

(118) “*Prepetition Subordinated Notes*” means those certain Subordinated Convertible Non-Transferrable Notes due March 9, 2020, issued by AGI Holdco, as amended, supplemented, restated, or otherwise modified prior to the Petition Date.

(119) “*Prepetition Term Loan Agent*” means THL Corporate Finance, Inc., in its capacity as administrative agent under the Prepetition Term Loan Agreement.

(120) “*Prepetition Term Loan Agreement*” means that certain Term Loan Agreement, dated as of June 9, 2014 by and among Aerogroup International as Lead Borrower and the Borrowers and Guarantors named therein, THL Corporate Finance, Inc., as Administrative Agent, the lenders party thereto from time to time, and the other parties thereto, as amended, supplemented, restated, or otherwise modified prior to the Petition Date.

(121) “*Prepetition Term Loan Credit Documents*” means the Prepetition Term Loan Agreement and all related Loan Documents (as defined in the Prepetition Term Loan Agreement).

(122) “*Prepetition Term Loan Credit Parties*” means the Prepetition Term Loan Agent and the Prepetition Term Loan Lenders.

(123) “*Prepetition Term Loan Facility*” means that certain loan facility providing Aerogroup International with a term loan in the original principal amount of \$20,000,000 pursuant to Prepetition Term Loan Agreement.

(124) “*Prepetition Term Loan Lenders*” means the lenders party to the Prepetition Term Loan Agreement from time to time.

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

(126) “*Professional*” means a Person or Entity (a) employed in the Chapter 11 Cases in accordance with sections 327 and 1103 of the Bankruptcy Code pursuant to a Final Order and to be compensated for services rendered prior to or on the Effective Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

(127) “*Professional Fee Claim*” means a Claim by a Professional seeking an award by the Bankruptcy Court of compensation and reimbursement of expenses incurred through and including the Effective Date under sections 327, 328, 330, 331, 503(b), 1103, or 1129(a)(4) of the Bankruptcy Code.

(128) “*Professional Fee Reserve*” means the reserve of Cash established and maintained by the Plan Administrator for purposes of paying Allowed Professional Fee Claims.

(129) “*Proof of Claim*” means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

(130) “*Pro Rata*” means the proportion that an Allowed Claim or an Allowed Interest in a particular Class bears to the aggregate amount of all Allowed Claims or Allowed Interests in that Class.

(131) “*Purchaser*” means any purchaser in a Section 363 Sale or Non-IP Asset Sale.

(132) “*Purchase Agreements*” means the Section 363 Sale Purchase Agreement(s) and the Non-IP Asset Purchase Agreement(s).

(133) “*Reclamation Claim*” means each Claim to the extent asserted against one or more of the Debtors pursuant to section 546(c) of the Bankruptcy Code and/or other applicable law.

(134) “*Reinstated*” means (i) leaving unaltered the legal, equitable and contractual rights to which a Claim or Equity Interest entitles the Holder of the Claim or Equity Interest so as to leave such Claim or Equity Interest unimpaired in accordance with section 1124 of the Bankruptcy Code; or (ii) notwithstanding any contractual provision or applicable law that entitles the Holder of a Claim or Equity Interest to demand or receive accelerated payment of such Claim or Equity Interest after the occurrence of a default (a) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code; (b) reinstating the maturity of such Claim or Equity Interest as such maturity existed before such default; (c) compensating the Holder of a Claim or Equity Interest for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; and (d) not otherwise altering the legal, equitable, or contractual rights to which such Claim or Equity Interest entitles the Holder of such Claim or Equity Interest; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim or Equity Interest is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by the Plan, or conditioning such transactions or actions on certain factors, shall not be required to be reinstated in order to accomplish Reinstatement.

(135) “*Reclamation Claimant*” means a vendor or supplier of goods to one or more Debtors who has asserted a Reclamation Demand and/or a Reclamation Claim against one or more of the Debtors.

(136) “*Reclamation Demand*” means a demand for reclamation of certain goods pursuant to section 546(c) of the Bankruptcy Code and/or other applicable law.

(137) “*Related Persons*” means, with respect to any Person, such Person’s predecessors, successors, assigns and present and former Affiliates (whether by operation of law or otherwise) and subsidiaries, and each of the respective current and former officers, directors, principals, employees, shareholders, members, managers, management companies, advisory board members, partners, limited partners, general partners, agents,

financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals and any Person claiming by or through any of them, including heirs, executors, estates, servants, and nominees.

(138) “*Released Parties*” means, collectively, each of the following in its/their capacity as such: (a) each of the Debtors’ current and former officers and directors; (b) the Prepetition Secured Credit Parties; (c) the DIP Agent; (d) the DIP Lender; (e) the Committee (including Committee members in their individual capacities); (f) all Purchasers; and (g) all Holders of General Unsecured Claims, and in each case, the term “Released Parties” shall include the respective Related Persons of each of the foregoing Entities.

(139) “*Releasing Parties*” means, collectively (a) each of the Debtors’ current and former officers and directors; (b) the Prepetition Secured Credit Parties; (c) the DIP Agent; (d) the DIP Lender; (e) the Committee and (f) all Purchasers; provided that the term “Releasing Parties” shall not include any Related Persons of each of the foregoing Entities.

(140) “*Reorganization Transactions*” means, collectively, those mergers, amalgamations, consolidations, arrangements, continuances, restructurings, transfers, conversions, dispositions, liquidations, dissolutions, or other corporate transactions that the Debtors or the Reorganized Debtors reasonably determine to be necessary or desirable to implement the Plan with respect to the Debtors.

(141) “*Reorganized Debtor*” means a Debtor (or any successor thereto by merger, consolidation, or otherwise) on and after the Effective Date.

(142) “*Reorganized HoldCo*” means AGI Holdco, as reorganized pursuant to and under the Plan, or any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

(143) “*Reorganized HoldCo Equity*” means the common equity in Reorganized HoldCo to be authorized and issued on the Effective Date pursuant to the Plan, which shall constitute all of the common or other capital stock of Reorganized HoldCo.

(144) “*Reserves*” means, collectively, the Administrative Claims Reserve, the Section 503(b)(9) Claims Reserve, the Professional Fee Claim Reserve, and the Wind Down Reserve established and maintained by the Plan Administrator.

(145) “*Restructuring Side Letter Agreement*” means that certain Letter Agreement dated as of October 20, 2017, by and among THL Corporate Finance, Inc. and the Debtors.

(146) “*Retail Stores*” means, collectively, the stores operated by the Debtors set forth in Exhibit A to the petition for relief commencing each Chapter 11 Case.

(147) “*Revolver Claim*” means a Claim in favor of a Prepetition Revolver Credit Party arising under the Prepetition Revolver Credit Documents.

(148) “*Royalty Advance*” means a Cash advance to the Debtors or Reorganized Debtors of amounts owed by a licensee in connection with an IPCO License Agreement.

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

(150) “*Section 363 Sale*” means a sale of certain of certain of the Debtors’ Unexpired Leases under section 363 and 365 of the Bankruptcy Code pursuant to the Section 363 Sale Bidding Procedures.

(151) “*Section 363 Sale Assumption Schedule*” means the final schedule of Unexpired Leases assumed and assigned pursuant to a Section 363 Sale.

(152) “*Section 363 Sale Bidding Procedures*” means, if approved by the Bankruptcy Court, the procedures proposed in the Section 363 Sale Motion as modified by the Bankruptcy Court as part of such approval, including to provide relief only related to the potential sale of the Debtors’ Unexpired Leases.

(153) “*Section 363 Sale Motion*” means the *Motion of the Debtors for Entry of (I) an Order (A) Approving Bid Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Approving Procedures for the Assumption and Assignment of Executory Contracts or Unexpired Leases in Connection With the Sale, (C) Scheduling a Sale Hearing, and (D) Granting Certain Related Relief; and (II) An Order (A) Approving the Sale of the Debtors’ Assets, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Certain Related Relief*, filed on November 7, 2017 [D.I. 248].

(154) “*Section 363 Sale Purchase Agreement*” means any asset purchase agreement entered into in connection with a Section 363 Sale for any of the Debtors’ Unexpired Leases.

(155) “*Section 503(b)(9) Claim*” means a Claim asserted against a Debtor pursuant to section 503(b)(9) of the Bankruptcy Code.

(156) “*Section 503(b)(9) Claims Bar Date*” means December 18, 2017 at 4:00 p.m., as established by the Bar Date Order.

(157) “*Section 503(b)(9) Claims Objection Deadline*” means the last day for filing an objection to any request for the payment of a Section 503(b)(9) Claim, which shall be the later of (a) 90 days after the Effective Date, or (b) such other date specified in this Plan or ordered by the Bankruptcy Court. The filing of a motion to extend the Section 503(b)(9) Claims Objection Deadline shall automatically extend the Section 503(b)(9) Claims Objection Deadline until a Final Order is entered on such motion. In the event that such motion to extend the Section 503(b)(9) Claims Objection Deadline is denied by the Bankruptcy Court, the Section 503(b)(9) Claims Objection Deadline shall be the later of

(a) the current Section 503(b)(9) Claims Objection Deadline (as previously extended, if applicable) or (b) 30 days after the Bankruptcy Court's entry of an order denying the motion to extend the Section 503(b)(9) Claims Objection Deadline.

(158) "*Section 503(b)(9) Claims Reserve*" means the reserve of Cash established and maintained by the Plan Administrator for purposes of paying Allowed Section 503(b)(9) Claims.

(159) "*Section 9.5 Parties*" the Debtors, the Reorganized Debtors, the Released Parties, and the Exculpated Parties.

(160) "*Secured Claim*" means a Claim (a) secured by a Lien on property of an Estate to the extent of the value of such property, as determined in accordance with section 506(a) of the Bankruptcy Code, or (b) subject to a valid right of setoff.

(161) "*Secured Notes Claims*" means the Senior Notes Claims and the Subordinated Notes Claims.

(162) "*Secured Notes Equity Interest*" means 70% of the Reorganized Holdco Equity.

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

(164) "*Security*" has the meaning set forth in section 2(a)(1) of the Securities Act.

(165) "*Senior Notes Claim*" means a Claim in favor of a Prepetition Senior Notes Credit Party arising under the Prepetition Senior Notes.

(166) "*Senior Notes Equity Interest*" means the percentage of the Secured Notes Equity Interest equivalent in value to the Allowed amount of the Senior Notes Claims.

(167) "*Solicitation*" means the solicitation of votes in connection with the Plan pursuant to sections 1125 and 1126 of the Bankruptcy Code.

(168) "*Store Closing Order*" means the *Final Order (I) Authorizing Retail Store Closing Sales Free and Clear of All Liens, Claims and Encumbrances; (II) Approving the Store Closing Procedures; (III) Authorizing the Debtors to Assume the Liquidating Agent Agreement; (IV) Authorizing Customary Bonuses to Employees at the Closing Stores; and (V) Granting Related Relief* [D.I. 180].

(169) "*Subordinated Notes Claim*" means a Claim in favor of a Prepetition Subordinated Noteholder arising under the Prepetition Subordinated Notes.

(170) "*Subordinated Notes Equity Interest*" means the percentage of the Secured Notes Equity Interest available after distribution of the Senior Notes Equity Interest.

(171) “*Subsidiary Debtor*” means, individually or collectively, the debtors and debtors in possession other than AGI Holdco.

(172) “*Term Loan Claim*” means a Claim in favor of a Prepetition Term Loan Credit Party arising under the Prepetition Term Loan Credit Documents.

(173) “*Term Loan Equity Interest*” means up to 30% of the Reorganized Holdco Equity, which amount shall be reduced in connection with a Term Loan Exit Paydown, if applicable.

(174) “*Term Loan Equity Interest Value*” means the value of the Term Loan Equity Interest as of the Effective Date.

(175) “*Term Loan Exit Notes*” means notes issued by Reorganized Holdco, a form of which shall be included in the Plan Supplement, in an original aggregate principal amount equal to the Term Loan Exit Notes Principal, which notes shall be subject in all respects to the terms of the Restructuring Side Letter Agreement, including, without limitation, (a) bearing interest of 10% per annum, (b) maturing no later than five (5) years after the Effective Date, and (c) being payable on regularly scheduled payment dates and upon certain events requiring mandatory prepayments.

(176) “*Term Loan Exit Notes Principal*” means the Allowed amount of the Term Loan Claims less any Term Loan Exit Paydown and the Term Loan Equity Interest Value.

(177) “*Term Loan Exit Paydown*” means the amount of any Cash payment made prior to the issuance of the Term Loan Exit Notes, which payment reduces the outstanding principal amount of the Prepetition Term Loan Facility.

(178) “*Term Priority Collateral*” means “Term Priority Collateral” as set forth in the Prepetition Intercreditor Agreement.

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

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

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

(182) “*United States Trustee*” means the Office of the United States Trustee for the District of Delaware.

(183) “*Wind Down Expenses*” means all reasonable and documented expenses incurred by the Estates or the Plan Administrator, pursuant to Section 5.5(d) of this Plan, in connection with the administration of the Plan after the Effective Date, including, without limitation, for the retention of professionals and fees payable under 28 U.S.C. § 1930.

(184) “*Wind Down Reserve*” means the reserve of Cash established and maintained by the Plan Administrator to be used for purposes of paying the Wind Down Expenses and winding down the Debtors’ Estates as provided in this Plan.

(185) “*Workers Compensation Claim*” means a Claim held by an employee of the Debtors for workers compensation coverage under the workers compensation program applicable in the particular state in which the employee is employed by the Debtors.

1.2 Rules of Interpretation.

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

1.3 Governing Law.

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

ARTICLE II

CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS

2.1 Introduction.

The Plan constitutes a separate Plan with respect to each Debtor. A Claim or Equity Interest is classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Equity Interest is also classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Equity Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date. In accordance with section 1123(a)(1) of the Bankruptcy Code, DIP Facility Claims, Administrative Claims, Section 503(b)(9) Claims, Priority Tax Claims, and Professional Fee Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III.

2.2 Unclassified Claims. (not entitled to vote on the Plan)

- (a) *DIP Facility Claims*
- (b) *Administrative Claims*
- (c) *Section 503(b)(9) Claims*
- (d) *Priority Tax Claims*
- (e) *Professional Fee Claims*

2.3 Unimpaired Classes of Claims. (deemed to have accepted the Plan and, therefore, not entitled to vote on the Plan)

- (a) *Class 1: Revolver Claims*
- (b) *Class 2: Other Secured Claims*
- (c) *Class 3: Non-Tax Priority Claims*

2.4 Impaired/Voting Classes of Claims. (entitled to vote on the Plan)

- (a) *Class 4: Term Loan Claims*
- (b) *Class 5: Senior Notes Claims*
- (c) *Class 6: Subordinated Notes Claims*

2.5 Impaired/Non-Voting Classes of Claims and Equity Interests.
(deems to have rejected the Plan and, therefore, not entitled to vote on the Plan)

- (a) *Class 7: General Unsecured Claims*
- (b) *Class 8: Intercompany Claims*
- (c) *Class 9: Equity Interests*

ARTICLE III

CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND EQUITY INTERESTS

3.1 Unclassified Claims.

- (a) *DIP Facility Claims*

All DIP Facility Claims are and shall be deemed Allowed Secured Claims and superpriority Administrative Claims due and owing under the DIP Documents as of the Effective Date. On the Effective Date, except to the extent that a Holder of a DIP Facility Claim agrees to less favorable treatment, each holder of a DIP Facility Claim shall receive, in full, final and complete satisfaction of and in exchange for such Claim, an amount of Cash equal to the amount of such DIP Facility Claim (including, without limitation, all outstanding principal and accrued but unpaid interest, costs, fees and expenses owing as of the Effective Date, or any other amounts due and owing under the DIP Documents).

- (b) *Administrative Claims*

To the extent not previously paid during the Chapter 11 Cases, each holder of an Allowed Administrative Claim (other than holders of Professional Fee Claims, DIP Facility Claims, Claims for fees and expenses pursuant to 28 U.S.C. § 1930 accruing after the Effective Date, and claims arising pursuant to section 503(b)(1)(D) of the Bankruptcy Code) shall receive, in full, final and complete satisfaction of and in exchange for such Allowed Administrative Claim, an amount of Cash equal to the amount of such Allowed Administrative Claim on, or as soon as reasonably practicable after the later of (x) the Effective Date, or (y) the date (i) such Administrative Claim becomes due and Allowed or as otherwise Allowed by the Bankruptcy Court, or (ii) the amount of the Claim is otherwise agreed to by the Debtors, the Reorganized Debtors or the Plan Administrator and such Holder.

Except as otherwise provided herein, all requests for payment of Administrative Claims must be filed and served so as to be received by the Debtors, the Reorganized Debtors, and the Plan Administrator by the Administrative Claims Bar Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property and shall not be treated as a holder of an Administrative Claim for purposes of distribution, and such

Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be filed and served on the applicable Debtor and the requesting party no later than the Administrative Claims Objection Deadline.

(c) *Section 503(b)(9) Claims*

Except as otherwise provided herein, and subject to the requirements of this Plan, on, or as soon as reasonably practicable after the later of (x) the Effective Date, or (y) the date (i) such Section 503(b)(9) Claim becomes due and Allowed or as otherwise Allowed by the Bankruptcy Court, or (ii) the amount of the Claim is otherwise agreed to by the Debtors, Reorganized Debtors or the Plan Administrator and such Holder, the Holder of such Allowed Section 503(b)(9) Claim shall receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Allowed Section 503(b)(9) Claim, (a) Cash equal to the unpaid portion of the amount of such Allowed Section 503(b)(9) Claim or (b) such other less favorable treatment as to which such Holder and the Debtors, Reorganized Debtors or Plan Administrator shall have agreed upon in writing.

Except as otherwise provided herein, all holders of Section 503(b)(9) Claims must file a Proof of Claim so as to be received by the Claims and Solicitation Agent by the Section 503(b)(9) Claims Bar Date. Holders of Section 503(b)(9) Claims that are required to, but do not, file a Proof of Claim for such Section 503(b)(9) Claims by such date shall be forever barred, estopped, and enjoined from asserting such Section 503(b)(9) Claims against the Debtors or their property and shall not be treated as a holder of a Section 503(b)(9) Claim for purposes of distribution, and such Section 503(b)(9) Claims shall be deemed discharged as of the Effective Date.

(d) *Priority Tax Claims*

To the extent not previously paid during the Chapter 11 Cases, each holder of an Allowed Priority Tax Claim shall be paid, in full, final and complete satisfaction of such Claims, as applicable, at their option, as follows: (i) in Cash equal to the unpaid portion of the stated amount of such Allowed Priority Tax Claim on the later of (x) the Effective Date and (y) thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, (ii) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs, and (iii) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Debtors or Plan Administrator shall have agreed upon in writing.

(e) *Professional Fee Claims*

All final requests for Professional Fees for services rendered to the Debtors or the Committee prior to the Effective Date must be filed with the Bankruptcy Court and served on the Debtors, the Plan Administrator, the Committee, their respective counsel, the United States Trustee, and the Fee Examiner no later than sixty (60) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Any such applications shall be

reviewed in accordance with the procedures provided in the Fee Examiner Appointment Order and amounts due thereon shall be paid subject to, and following, the completion of such procedures and approval by the Bankruptcy Court.

3.2 Unimpaired Classes of Claims.

(a) *Class 1: Revolver Claims*

- i. Classification: Class 1 consists of any Revolver Claims against any Debtor, to the extent not previously paid in full pursuant to the Interim DIP Order.
- ii. Treatment: In full, final and complete satisfaction, settlement, release, and discharge of and in exchange for its Allowed Revolver Claim, each holder of an Allowed Revolver Claim shall receive an amount of Cash equal to the amount of such Allowed Revolver Claim on, or as soon as reasonably practicable thereafter, the later of (x) the Effective Date, or (y) the date (i) such Revolver Claim becomes due and Allowed or otherwise Allowed by the Bankruptcy Court, or (ii) the amount of the Claim is otherwise agreed to by the Debtors or the Plan Administrator and such Holder.
- iii. Voting: Class 1 is Unimpaired. Holders of Allowed Revolver Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

(b) *Class 2: Other Secured Claims*

- i. Classification: Class 2 consists of any Other Secured Claims against any Debtor which are filed so as to be received by the Claims and Solicitation Agent by the Other Secured Claims Bar Date. Holders of Other Secured Claims that are required to, but do not, file a Proof of Claim for such Other Secured Claims by such date shall be forever barred, estopped, and enjoined from asserting such Other Secured Claims against the Debtors or their property and shall not be treated as a holder of an Other Secured Claim for purposes of distribution, and such Other Secured Claims shall be deemed discharged as of the Effective Date.
- ii. Treatment: In full, final and complete satisfaction, settlement, release, and discharge of and in exchange for its Allowed Other Secured Claim, each holder of an Allowed Other Secured Claim shall receive, at the option of the Debtors or the Plan Administrator receive one of the following methods of treatment: (a) an amount of Cash equal to the due and unpaid portion of such Allowed Other Secured Claim on, or as soon as reasonably practicable thereafter, the later of (x) the Effective Date, or (y) the date (i) such Other

Secured Claim becomes due and Allowed or otherwise Allowed by the Bankruptcy Court, or (ii) the amount of the Claim is otherwise agreed to by the Debtors or the Plan Administrator and such Holder; (b) a return of the Holder's collateral securing such Other Secured Claim; (c) the treatment required under section 1124(2) of the Bankruptcy Code for such Other Secured Claim to be rendered unimpaired; or (d) such other treatment as agreed to by the Debtors or the Plan Administrator and such Holder.

- iii. Voting: Class 2 is Unimpaired. Holders of Allowed Other Secured Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

(c) *Class 3: Non-Tax Priority Claims*

- i. Classification: Class 3 consists of any Non-Tax Priority Claims against any Debtor which are filed so as to be received by the Claims and Solicitation Agent by the Non-Tax Priority Claims Bar Date. Holders of Non-Tax Priority Claims that are required to, but do not, file a Proof of Claim for such Non-Tax Priority Claims by such date shall be forever barred, estopped, and enjoined from asserting such Non-Tax Priority Claims against the Debtors or their property and shall not be treated as a holder of an Non-Tax Priority Claims for purposes of distribution, and such Non-Tax Priority Claims shall be deemed discharged as of the Effective Date.
- ii. Treatment: In full, final and complete satisfaction, settlement, release, and discharge of and in exchange for its Allowed Non-Tax Priority Claims, each Holder of an Allowed Non-Tax Priority Claim shall receive an amount of Cash equal to the amount of such Allowed Non-Tax Priority Claim on, or as soon as reasonably practicable thereafter, the later of (x) the Effective Date, or (y) the date (i) such Non-Tax Priority Claim becomes due and Allowed or otherwise Allowed by the Bankruptcy Court, or (ii) the amount of the Claim is otherwise agreed to by the Debtors or the Plan Administrator and such Holder.
- iii. Voting: Class 3 is Unimpaired. Holders of Allowed Non-Tax Priority Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan.

3.3 Impaired/Voting Classes of Claims.

(a) *Class 4: Term Loan Claims*

- i. Classification: Class 4 consists of any Term Loan Claims against any Debtor.
- ii. Allowance: On the Effective Date, the Term Loan Claims shall be deemed Allowed Claims in the aggregate amount of \$19,699,148.47, *less* amounts paid on such obligations during the Chapter 11 Cases, *plus* all accrued but unpaid interest, fees, costs, charges, or other amounts arising under the Prepetition Term Loan Documents.
- iii. Treatment: On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Term Loan Claim agrees to less favorable treatment, in full, final and complete satisfaction, settlement, release, and discharge of and in exchange for its Allowed Term Loan Claim, each holder of an Allowed Term Loan Claim shall receive such Holder's *Pro Rata* share of (i) the Term Loan Exit Notes, (ii) the Term Loan Exit Paydown, and (iii) the Term Loan Equity Interest.
- iv. Voting: Class 4 is Impaired. Holders of Allowed Term Loan Claims are entitled to vote to accept or reject the Plan.

(b) *Class 5: Senior Notes Claims*

- i. Classification: Class 5 consists of any Senior Notes Claims against any Debtor.
- ii. Allowance: On the Effective Date, the Senior Notes Claims shall be deemed Allowed Claims in the aggregate amount of \$19,052,301, *less* amounts paid on such obligations during the Chapter 11 Cases, *plus* all accrued but unpaid interest, fees, costs, charges, or other amounts outstanding as of the Petition Date arising under the Prepetition Senior Notes.
- iii. Treatment: On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Senior Notes Claim agrees to less favorable treatment, in full, final and complete satisfaction, settlement, release, and discharge of and in exchange for its Allowed Senior Notes Claim, each holder of an Allowed Senior Notes Claim shall receive (1) if 100% of the Allowed Senior Notes Claim agree to waive the contractual subordination of the Subordinated Notes Claims pursuant to the Prepetition Notes Subordination Agreement, such Holder's *Pro Rata* share of the Secured Notes Equity Interest (based

on the aggregate principal amount of the Allowed Secured Notes Claims) and (2) if 100% of the Allowed Senior Notes Claim do not agree to waive the contractual subordination of the Subordinated Notes Claims pursuant to the Prepetition Notes Subordination Agreement, such Holder's *Pro Rata* share of the Senior Notes Equity Interest.

- iv. Voting: Class 5 is Impaired. Holders of Allowed Senior Notes Claims are entitled to vote to accept or reject the Plan.

(c) *Class 6: Subordinated Notes Claims*

- i. Classification: Class 6 consists of any Subordinated Notes Claims against any Debtor.
- ii. Allowance: On the Effective Date, Subordinated Notes Claims shall be deemed Allowed Claims in the aggregate amount of \$8,856,163, *less* amounts paid on such obligations during the Chapter 11 Cases, *plus* all accrued but unpaid interest, fees, costs, charges, or other amounts outstanding as of the Petition Date arising under the Prepetition Subordinated Notes.
- iii. Treatment: On the Effective Date, or as soon as reasonably practicable thereafter, except to the extent that a Holder of an Allowed Subordinated Notes Claim agrees to less favorable treatment, in full, final and complete satisfaction, settlement, release, and discharge of and in exchange for its Allowed Subordinated Notes Claim, each holder of an Allowed Subordinated Notes Claim shall receive (1) if 100% of the Allowed Senior Notes Claim agree to waive the contractual subordination of the Subordinated Notes Claims pursuant to the Prepetition Notes Subordination Agreement, such Holder's *Pro Rata* share of the Secured Notes Equity Interest (based on the aggregate principal amount of the Allowed Secured Notes Claims) and (2) if 100% of the Allowed Senior Notes Claim do not agree to waive the contractual subordination of the Subordinated Notes Claims pursuant to the Prepetition Notes Subordination Agreement, such Holder's *Pro Rata* share of the Subordinated Notes Equity Interest.
- iv. Voting: Class 6 is Impaired. Holders of Allowed Subordinated Notes Claims are entitled to vote to accept or reject the Plan.

3.4 Impaired/Non-Voting Classes of Claims and Equity Interests.

(a) *Class 7: General Unsecured Claims*

- i. Classification: Class 7 consists of any General Unsecured Claims against any Debtor.

- ii. Treatment: Holders of General Unsecured Claims shall not be entitled to receive or retain any Distributions or other property on account of such General Unsecured Claims under the Plan. Pursuant to the Plan, all Allowed General Unsecured Claims against the Debtors shall be deemed, settled, cancelled, extinguished and discharged on the Effective Date.
- iii. Voting: Class 7 is Impaired. Holders of Allowed General Unsecured Claims are deemed to not have accepted the Plan and are not entitled to vote to accept or reject the Plan.

(b) *Class 8: Intercompany Claims*

- i. Classification: Class 8 consists of any Intercompany Claims.
- ii. Treatment: On the Effective Date, at the option of the Debtors or the Reorganized Debtors for the purpose of effecting the Plan, the Intercompany Claims shall either be (a) Reinstated, in full or in part, (b) resolved through set-off, distribution or contribution, in full or in part, or (c) cancelled and discharged in full or in part, in which case such discharged and satisfied portion shall be eliminated and the Holders thereof shall not be entitled to, and shall not receive or retain, any property or interest in property on account of such portion under the Plan.
- iii. Voting: Class 8 is Impaired. Holders of Intercompany Claims are deemed to not have accepted the Plan and are not entitled to vote to accept or reject the Plan.

(c) *Class 9: Equity Interests*

- i. Classification: Class 9 consists of any Equity Interests.
- ii. Treatment: There shall be no distributions under the Plan on account of Equity Interests and Holders of Equity Interests shall not be entitled to receive or retain any property under the Plan. Notwithstanding the foregoing, the Equity Interests may be Reinstated, discharged, cancelled, capitalized, or compromised at the option and sole discretion of the Reorganized Debtors.
- iii. Voting: Class 9 is Impaired. Holders of Equity Interests are deemed to not have accepted the Plan and are not entitled to vote to accept or reject the Plan.

3.5 Special Provisions Regarding Insured Claims.

Distributions under the Plan to each holder of an Insured Claim shall be in accordance with the treatment provided under the Plan for General Unsecured Claims;

provided, however, that the maximum amount of any Distribution under the Plan on account of an Allowed Insured Claim shall be limited to an amount equal to the applicable self-insured retention under the relevant insurance policy; provided further, however, that, to the extent a Holder has an Allowed Insured Claim, the amount of which exceeds the total coverage available from the relevant insurance policies of the Debtors, such Holder shall have an Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the coverage available from the relevant Debtors' insurance policies. Nothing in this section shall constitute a waiver of any Litigation Rights the Debtors may hold against any Person, including the Debtors' insurance carriers; and nothing in this section is intended to, shall, or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; provided, however, that the Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

3.6 Reclamation Claims.

To the extent that Reclamation Claimants seek to assert that their Reclamation Claims are Secured Claims under the Bankruptcy Code, the Debtors assert that the Reclamation Claims are not entitled to such treatment because the Reclamation Claimants' reclamation rights were subject at all times to the Prepetition Liens, and the goods sought to be reclaimed were worth less than the value of such liens. Moreover, no valid Reclamation Claims have yet been filed or received. Accordingly, each Reclamation Claimant shall be considered to be a Holder of a Class 7 General Unsecured Claim with respect to the value of the goods sold and delivered to the Debtors by such Reclamation Claimant, except to the extent that such Reclamation Claimant holds an Allowed Section 503(b)(9) Claim.

3.7 Reservation of Rights Regarding Claims.

Except as otherwise explicitly provided in the Plan, nothing shall affect the Debtors', the Reorganized Debtors' or the Plan Administrator's rights and defenses, both legal and equitable, with respect to any Claims, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

ARTICLE IV

ACCEPTANCE OR REJECTION OF PLAN

4.1 Impaired Classes of Claims and Equity Interests Entitled to Vote

Subject to Section 4.3 of the Plan, Holders of Claims or Equity Interests in each Impaired Class of Claims or Equity Interests are entitled to vote as a class to accept or reject the Plan, other than Classes that are presumed to reject the Plan as provided in Section 4.4. Accordingly, only the votes of Holders of Claims in Classes 4, 5, and 6 shall be solicited with respect to the Plan.

4.2 Acceptance by an Impaired Class

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

4.3 Presumed Acceptances by Unimpaired Classes

Classes 1, 2 and 3 are Unimpaired by the Plan. Under section 1126(f) of the Bankruptcy Code, Holders of such Claims are conclusively presumed to accept the Plan, and the votes of Holders of such Claims will not be solicited.

4.4 Classes Deemed to Not have Accepted the Plan

Holders of Claims and Equity Interests in Classes 7, 8, and 9 are not entitled to receive or retain any property under the Plan. Under section 1126(g) of the Bankruptcy Code, Holders of such Claims and Equity Interests are deemed to not have accepted the Plan, and the vote of Holders of such Claims and Equity Interests will not be solicited.

4.5 Summary of Classes Voting on the Plan

As a result of the provisions of Sections 4.2, 4.3 and 4.4 of this Plan, the votes of holders of Claims in Classes 4, 5, and 6 will be solicited with respect to this Plan.

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

Because Classes 7, 8, and 9 are deemed to have accepted the Plan, the Debtors will request confirmation of the Plan under section 1129(b) of the Bankruptcy Code.

4.7 Elimination of Vacant Classes

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

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

5.1 Reorganization Transactions

(a) On the Effective Date, the Debtors or the Reorganized Debtors, as applicable, will effectuate the Reorganization Transactions, and will take any actions as may be necessary or advisable to effect a corporate restructuring of their respective businesses or a corporate restructuring of the overall corporate structure of the Debtors, to

the extent provided herein. The actions to implement the Reorganization Transactions may include, consistent with the IPCO License Agreements and the Non-IP Asset Purchase Agreement: (i) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law and any other terms to which the applicable Entities may agree, including the formation of the entity or Entities that will comprise the Reorganized Debtors; (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (iii) the filing of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, dissolution, or other organizational documents pursuant to applicable state law; (iv) the execution and delivery of the New Governance Documents; (v) the execution and delivery of the IPCO License Agreements, subject to any post-closing execution and delivery periods provided for in the IPCO License Agreements; (vi) the execution and delivery of the Non-IP Asset Purchase Agreement, subject to any post-closing execution and delivery periods provided for in the Non-IP Asset Purchase Agreement; (vii) the execution and issuance of the Term Loan Exit Notes to the Holders of the Term Loan Claims (viii) the issuance of the Reorganized Holdco Equity in accordance with the Plan; and (iv) after cancellation of the Equity Interests in AGI Holdco, all other actions that the applicable Entities determine to be necessary or advisable, including making filings or recordings that may be required by law in connection with the Plan.

(b) On the Effective Date, except to the extent that a Holder of a DIP Facility Claim agrees to less favorable treatment, the Debtors or the Plan Administrator shall indefeasibly pay all DIP Facility Claims in Cash.

(c) On the Effective Date, or as soon after as reasonably practicable, the Debtors or the Plan Administrator shall: (i) make Distributions on account of the Allowed Administrative Claims, Allowed Section 503(b)(9) Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims, and Allowed Non-Tax Priority Claims; and (ii) fund the Reserves.

(d) On, as of, or after the Effective Date, in accordance with the Plan and the Plan Administrator Agreement, the Plan Administrator may enter into such transactions and may take such actions as may be necessary or appropriate to effect a wind-down of the Debtors' Estates, including, without limitation, administering, selling and otherwise liquidating the Plan Administrator Assets. The wind-down of the estates and the liquidation of such assets shall occur as promptly as possible after the Effective Date.

(e) The Confirmation Order shall and shall be deemed to, pursuant to sections 1123 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Reorganization Transactions.

(f) Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, the Plan shall be deemed a motion to approve an integrated compromise and settlement of the Debtors' agreement to release the Prepetition Secured Note Credit Parties pursuant to Section 9.2 of the Plan from all Causes of Action with respect thereto on the Effective Date, in exchange for the consent of the Prepetition Secured Note Credit Parties to the Debtors' waiver of Avoidance Actions pursuant to Section 5.8 of the Plan, the proceeds of which the Prepetition Secured Note Credit Parties would be entitled to if not waived. Further, although the Secured Note Credit Parties are not being paid in full pursuant to the Plan, their consent to the Plan rather than foreclosing on their liens, constitutes value to the Debtors and allows the Debtors to make distributions on certain claims, including Administrative Claims and Section 503(b)(9) Claims. The releases set forth in Section 9.2 of the Plan for the benefit of the Prepetition Secured Note Credit Parties are critical to the Prepetition Secured Note Credit Parties' willingness to (i) pursue the GBG Agreements, which provide certain vendors and customers with a continuing business partner and certain employees with continuing employment; and (ii) support the Plan, including its release of Avoidance Actions and creditor distributions. The entry of the Confirmation Order shall constitute the Bankruptcy Court's finding that such compromise and settlement is: (a) in exchange for good and valuable, mutual consideration; (b) a good faith settlement and compromise; (c) in the best interests of the debtors and all holders of claims and equity interests; (d) fair, equitable, and reasonable; and (e) given and made after due notice and opportunity for hearing.

5.2 Continued Corporate Existence

On and after the Effective Date, except as otherwise provided in the Plan, the Debtors shall continue to exist as the Reorganized Debtors after the Effective Date as separate legal entities, in accordance with the applicable laws in the respective jurisdictions in which they are incorporated or otherwise organized, and pursuant to the respective certificates or articles of incorporation, memoranda of association, articles of association, and by-laws, as applicable, of the Debtors in effect prior to the Effective Date, except to the extent such certificates or articles of incorporation, memoranda of association, articles of association, and by-laws, as applicable, are amended pursuant to the Plan.

5.3 Vesting of Assets in the Reorganized Debtors

On the Effective Date, except as otherwise provided herein or in any agreement, instrument or other document incorporated in the Plan (including, without limitation, the Plan Administrator Agreement), all property and assets of each Estate, including all Causes of Action (other than as released herein but subject to Reinstatement as set forth in Section 5.8(a)), and any other assets or property acquired by any of the Debtors during the Chapter 11 Cases or under or in connection with the Plan, other than the Plan Administrator Assets, shall vest in the Reorganized Debtors, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided herein, the Reorganized Debtors may operate their business and the Reorganized Debtors or the Plan Administrator, in accordance with the Plan and the Plan Administrator Agreement, may use, acquire, or dispose of property, and compromise or settle any Claims or Causes of

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

5.4 Plan Administrator

(a) The Plan Administrator Agreement. On and after the Effective Date, the Plan Administrator Agreement shall be deemed to be valid, binding, and enforceable in accordance with its terms and provisions. The Plan Administrator Agreement shall be substantially in the form contained in the Plan Supplement. After the Effective Date, the Plan Administrator Agreement may be amended in accordance with its terms without further order of the Court. The initial Plan Administrator shall be identified in the Plan Supplement and shall be agreed to by the Debtors and any IPCO Licensee.

(b) Rights and Powers of the Plan Administrator. The Plan Administrator shall, in addition to any powers and authority specifically set forth in other provisions of the Plan and in accordance with the Plan Administrator Agreement, be empowered to (i) effect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan, (ii) establish, as necessary, disbursement accounts for the deposit and distribution of all amounts distributed under the Plan, (iii) make Distributions in accordance with the Plan, (iv) object to Claims, as appropriate, (v) employ and compensate professionals to represent it with respect to its responsibilities, (vi) assert any of the Debtors' claims, Causes of Action, rights of setoff, or other legal or equitable defenses, and (vii) exercise such other powers as may be vested in the Plan Administrator by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Plan Administrator to be necessary and proper to implement the provisions hereof. The Plan Administrator may take any and all actions which it deems reasonably necessary or appropriate to defend against any Claim, including, without limitation, the right to: (a) exercise any and all judgment and discretion with respect to the manner in which to defend against or settle any Claim, including, without limitation, the retention of professionals, experts and consultants; and (b) enter into a settlement agreement or agreements without Bankruptcy Court-approval.

(c) Vesting of the Plan Administrator Assets. On the Effective Date, the Debtors and each of their Estates shall irrevocably vest in the Plan Administrator for purposes of administration of the Plan, all of their respective rights, title, and interest in and to all the Plan Administrator Assets. Except as specifically provided in the Plan or the Confirmation Order, the Plan Administrator Assets shall automatically vest in the Plan Administrator free and clear of all Claims, Liens, encumbrances, or interests, and such vesting shall be exempt from any stamp, real estate transfer, other transfer, mortgage reporting, sales, use, or other similar tax. The Plan Administrator shall be the exclusive representative of the Estates appointed pursuant to Bankruptcy Code section 1123(b)(3)(B) regarding all Plan Administrator Assets.

(d) Expenses of the Plan Administrator. The Plan Administrator shall receive reasonable compensation for services rendered pursuant to the Plan and the Plan Administrator Agreement without further Court order; provided, however, that the material terms of such compensation shall be disclosed as part of the Plan Supplement. In addition,

the amount of reasonable fees and expenses incurred by the Plan Administrator on or after the Effective Date (including, without limitation, reasonable attorney and professional fees and expenses) may be paid without further Court order.

(e) Termination or Replacement of the Plan Administrator. After the Chapter 11 Cases are closed and the Plan Administrator has completed all of the tasks necessary in order to fully and completely wind down, dissolve and/or terminate the Estates and to otherwise comply with its obligations under the terms of the Plan, the Plan Administrator shall have fully completed its duties under the Plan and thereby shall be fully released and discharged of its duties and obligations to carry out the terms of the Plan. Any replacement Plan Administrator shall be appointed pursuant to the Plan Administrator Agreement and shall be agreed to by the Reorganized Debtors and any IPCO Licensee.

5.5 Corporate Action; New Governance Documents; New Board

(a) Each of the matters provided for by the Plan and, as applicable, establishment of the capital and corporate structure, amending or modifying the Existing Governance Documents of any of the Debtors, or other corporate or related actions to be taken by or required of the Debtors or Reorganized Debtors, whether taken prior to or as of the Effective Date, shall be authorized without the need for any further corporate action or without any further action by or approval of any shareholders, directors or managers of the Debtors.

(b) On and after the Effective Date, the Reorganized Debtors, the officers and members of the boards of directors thereof, and the Plan Administrator are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Securities issued pursuant to the Plan, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan. The officers of any Reorganized Debtor or the Plan Administrator as the case may be, shall be authorized to certify or attest to any of the foregoing actions.

(c) Any New Governance Documents executed in connection with the Plan shall be consistent with the provisions of the Plan and the Bankruptcy Code, shall include, among other things (and only to the extent required by section 1123(a)(6) of the Bankruptcy Code), provisions prohibiting the issuance of non-voting equity securities. As applicable, after the Effective Date, each Reorganized Debtor may amend and restate its certificate of incorporation and other constituent documents as permitted by the laws of its respective jurisdiction of formation and its respective charter and bylaws.

(d) As of the Effective Date, the terms of the current members of the board of directors or managers, as applicable, of each Debtor shall expire and the initial New Board shall be appointed. Notwithstanding anything contained herein to the contrary, the New Board shall be disclosed at or before the Confirmation Hearing. After the Effective Date, the officers of each of the Reorganized Debtors shall be appointed in accordance with the respective New Governance Documents. Pursuant to section 1129(a)(5) of the Bankruptcy

Code, the Debtors will disclose in the Plan Supplement the identity and affiliations of any Person proposed to serve on the New Board or be an officer of each of the Reorganized Debtors. To the extent any such director or officer of the Reorganized Debtors is an “insider” under the Bankruptcy Code, the Debtors also will disclose the nature of any compensation to be paid to such director or officer. Each such director and officer shall serve from and after the Effective Date pursuant to the terms of the New Governance Documents.

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

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

5.7 Waiver of Avoidance Actions; Preservation and Pursuit of Litigation Rights; Resulting Claim Treatment

(a) Except as otherwise provided in the Plan or the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, on the Effective Date, each Debtor or Reorganized Debtor shall waive all of its respective rights and interest in Avoidance Actions that such Debtor or Reorganized Debtor may hold against any Entity; provided, however that in the event that any Entity asserts a Claim that has been released pursuant to Section 9.3 of the Plan, all Avoidance Actions against such Entity shall be Reinstated. A substantial number of the Avoidance Actions being waived constitute vendor or rent payments that might be recoverable as preferences under section 547 of the Bankruptcy Code. Based on the Debtors’ books and records, the aggregate amount of vendor and rent payments made during the 90 days prior to the Petition Date was approximately \$23 million.

(b) Notwithstanding the foregoing waiver of Avoidance Actions, each Debtor and Reorganized Debtor and the Plan Administrator shall be permitted to use any available defenses under section 502 of the Bankruptcy Code, including the assertion of an Avoidance Action to setoff against or otherwise reduce all or part of any Section 503(b)(9) Claim or any other Claim asserted against any of the Debtors’ Estates.

(c) Except as otherwise provided in the Plan or the Confirmation Order, or in any contract, instrument, release, indenture, or other agreement entered into in connection

with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, on the Effective Date, each Debtor or Reorganized Debtor shall retain all of the respective Litigation Rights that such Debtor or Reorganized Debtor may hold against any Entity. The Reorganized Debtors or the Plan Administrator (subject to the ultimate supervisory authority of each applicable Reorganized Debtor), as applicable, may enforce, sue on, settle, or compromise all such Litigation Rights, or may decline to do any of the foregoing with respect to any such Litigation Rights. The Reorganized Debtors or the Plan Administrator (or his or her successors) may pursue such retained Litigation Rights as appropriate, in accordance with the best interests of the Reorganized Debtors (or their successors) who hold such rights and retain such actions in accordance with applicable law and consistent with the terms of the Plan.

(d) If, as a result of the pursuit of any Litigation Rights, a Claim would arise from a recovery pursuant to section 550 of the Bankruptcy Code after Distributions under the Plan have commenced, making it impracticable to treat the Claim in accordance with the applicable provisions of Article III of the Plan, the Reorganized Debtors or the Plan Administrator shall be permitted to reduce the recovery by an amount that reflects the value of the treatment that would have been accorded to the Claim under the Plan, thereby effectively treating the Claim through the reduction.

5.8 Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors and their respective officers and the New Board or the Plan Administrator shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The officers of any Reorganized Debtor or the Plan Administrator, as the case may be, shall be authorized to certify or attest to any of the foregoing actions.

5.9 Section 1146(a) Exemption

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

5.10 Intercompany Claims

There shall be no distributions under the Plan on account of Intercompany Claims. Notwithstanding the foregoing, the Intercompany Claims may be Reinstated, discharged, cancelled, capitalized, or compromised at the option and sole discretion of the Reorganized Debtors.

5.11 Dissolution of the Committee

Upon the Effective Date, the Committee shall be dissolved; provided, however, that the Committee shall be deemed to continue in existence subsequent to the Effective Date for the limited purpose of undertaking all actions it deems reasonably necessary in connection with the prosecution of the final fee applications of Professionals retained by the Committee subject to the DIP Budget.

5.12 Wind Down Expenses.

The Wind Down Expenses shall be paid from the Wind Down Reserve without further order of the Court and shall not be paid by the Reorganized Debtors. The Reorganized Debtors shall have no liability for any such expenses; provided, however, that any expenses of the Reorganized Debtors incurred in connection with (i) the payment of, or the adjudication of the Claims to be paid by the Reorganized Debtors, or (ii) the performance of obligations of the Reorganized Debtors under the Plan, shall be paid by the Reorganized Debtors; provided, further, however, that in the event that any of the Chapter 11 Cases remain open for a period of time solely for the benefit of the Reorganized Debtors, the Reorganized Debtors shall pay fees payable under 28 U.S.C. § 1930 and other expenses of administration accrued during such period.

ARTICLE VI

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1 Assumption of Executory Contracts and Unexpired Leases

(a) Except as otherwise provided in the Plan, as of the Effective Date, each Executory Contract and Unexpired Lease shall be deemed automatically rejected unless such Executory Contract or Unexpired Lease (i) was previously assumed or rejected upon motion by a Final Order, (ii) previously expired or terminated pursuant to its own terms, (iii) is the subject of any pending motion, including to assume, to assume on modified terms, to reject or to make any other disposition filed by a Debtor on or before the Effective Date, (iv) is listed on the Plan Supplement Assumption Schedule or the Section 363 Sale Assumption Schedule, (v) is a Deferred Contract; (vi) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, or (vi) is a limited liability company agreement, operating agreement, or similar agreement among any Debtor and any direct or indirect subsidiary of any Debtor (whether or not wholly owned).

(b) The Confirmation Order shall constitute an order of the Bankruptcy Court under section 365(a) of the Bankruptcy Code approving the following as of the Effective Date pursuant to sections 365(a) and 1123 of the Bankruptcy Code: (i) if not previously approved, the assumption of the Executory Contracts and Unexpired Leases as set forth on the Plan Supplement Assumption Schedule or the Section 363 Sale Assumption Schedule; (ii) the assumption of the Executory Contracts and Unexpired Leases described in Sections 6.1(a)(v), 6.1(a)(vi), 6.6, 6.7(a), 6.8, and 6.9 (the Executory Contracts and Unexpired

Leases assumed in (i) and (ii) collectively, the “Assumed Agreements”), (iii) the rejection of any other Executory Contracts or Unexpired Leases that are not addressed in (i) or (ii) and that has not been previously assumed; and (iv) the agreed extension of the Debtors’ time to assume or reject the Deferred Contracts for the length of the IPCO License Transition Period.

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

(d) Except as otherwise provided herein or agreed to by the Debtors with the applicable counterparty, each Assumed Agreement shall include all modifications, amendments, supplements, restatements or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated hereunder. Modifications, amendments, supplements and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

(e) The assumption of Executory Contracts and Unexpired Leases hereunder may include the assignment of certain of such contracts to Affiliates or the Purchasers. The Reorganized Debtors shall retain the ability to Reinstate any Intercompany Contracts without further notice or approval of the Bankruptcy Court notwithstanding any rejection under the Plan.

6.2 Assignment of Executory Contracts and Unexpired Leases

To the extent provided under the Bankruptcy Code or other applicable law, any Assumed Agreement transferred and assigned pursuant to this Plan shall remain in full force and effect for the benefit of the transferee or assignee in accordance with its terms, notwithstanding any provision in such Assumed Agreement (including those of the type described in section 365(b)(2) of the Bankruptcy Code) that prohibits, restricts or conditions such transfer or assignment. To the extent provided under the Bankruptcy Code or other applicable law, any provision that prohibits, restricts or conditions the assignment or transfer of any such Assumed Agreement or that terminates or modifies such Assumed

Agreement or allows the counterparty to such Assumed Agreement to terminate, modify, recapture, impose any penalty, condition, renewal or extension or modify any term or condition upon any such transfer and assignment constitutes an unenforceable anti-assignment provision and is void and of no force or effect.

6.3 Cure of Defaults and Objections to Assumption

(a) Any Cure Amounts due under an Executory Contract or Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by Cure. If there is a dispute regarding (a) the nature or amount of any Cure, (b) the ability of any Reorganized Debtor or any assignee to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, Cure shall occur following the entry of a Final Order by the Bankruptcy Court resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided, however, that the Debtors or Reorganized Debtors, as applicable, shall be authorized to reject any Executory Contract or Unexpired Lease to the extent the Debtors or Reorganized Debtors, in the exercise of their sound business judgment, conclude that the Cure Amount as determined by such Final Order, renders assumption of such Executory Contract or Unexpired Lease unfavorable to the Debtors or Reorganized Debtors.

(b) Any objection to the assumption of an Executory Contract or Unexpired Lease pursuant to the Plan, including any objection to the proposed Cure Amount set forth on the Plan Supplement Assumption Schedule, must be filed with the Bankruptcy Court by the Plan Objection Deadline, or such other date as may be established by the Bankruptcy Court and noticed to counterparties; provided, that any objection to the proposed Cure Amount set forth on the Section 363 Assumption Schedule, must be filed in accordance with the Section 363 Sale Bidding Procedures, as applicable. Any such objection, if not resolved, will be heard by the Bankruptcy Court at the Confirmation Hearing. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption and to the Cure Amount set forth on the Plan Supplement Assumption Schedule. The Debtors and the Reorganized Debtor, as applicable, may settle any such objections without any further notice to, or action, order or approval of, the Bankruptcy Court.

6.4 Pre-existing Payment and Other Obligations

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

replace, goods previously purchased by the contracting Debtors or Reorganized Debtors, as applicable.

6.5 Rejection Damages Claims and Objections to Rejection

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against the any Debtor, any Reorganized Debtor, or the Plan Administrator or the properties of any of them unless a Proof of Claim is filed with the Claims and Solicitation Agent within thirty (30) days after entry of the Confirmation Order. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease; any other Claims held by a party to a rejected contract or lease shall have been evidenced by a Proof of Claim filed by earlier applicable Bar Dates or shall be barred and unenforceable.

6.6 Assumption of Utility Service Agreements

In the event that there is in effect between the Debtors and any utility immediately prior to the Effective Date, with respect to any property leased pursuant to an Assumed Agreement, any utility service agreement or related agreement providing a reduced rate to the Debtors, which agreement has not been previously assumed, rejected or terminated, but is considered to be an Executory Contract, such agreement shall be deemed to be assumed pursuant to section 365 of the Bankruptcy Code and Section 6.1 of the Plan; provided, however, that no Cure shall be owed with respect to any such agreement, and in the event that a utility asserts any Cure, at the election of the Debtors such utility's agreement shall not be deemed assumed and shall instead be deemed rejected pursuant to section 365 of the Bankruptcy Code under the Plan.

6.7 Treatment of Compensation and Benefit Programs

(a) With respect to any employees of the Debtors employed following the Effective Date, except to the extent (i) otherwise provided for in the Plan, (ii) previously assumed or rejected by an order of the Bankruptcy Court entered on or before the Confirmation Date, (iii) the subject of a pending motion to reject filed by a Debtor on or before the Confirmation Date, or (iv) previously terminated, all employee compensation and benefit programs of the Debtors in effect during the pendency of the Chapter 11 Cases, including all health and welfare plans, 401(k) plans, pension plans within the meaning of Title IV of the Employee Retirement Income Security Act of 1974, as amended, and all benefits subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before or after the Petition Date and in effect during the pendency of the Chapter 11 Cases, shall be deemed to be, and shall be treated as though they are, Executory Contracts that are assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 6.1 of the Plan. Nothing contained herein shall be deemed to modify the existing terms of such employee compensation and benefit programs, including, without limitation, the Debtors' and the Reorganized Debtors' rights of termination and amendment thereunder.

(b) The Debtors' existing vacation policies will be reinstated on the Effective Date for any employees of the Debtors employed following the Effective Date that have not received a notice of termination prior to or on the Effective Date. Accordingly, those employees will be entitled to a cash payment of earned but unused vacation time in the event of a subsequent termination of employment after the Effective Date, if such payment is in accordance with the Debtors' prepetition vacation policies.

(c) As of the Effective Date, any and all stock based incentive plans or stock ownership plans of the Debtors entered into before the Effective Date, or other agreements or documents giving rise to Equity Interests, including the contingent cash components of any such plans, agreements, or documents, shall be terminated. To the extent such plans, agreements, or documents are considered to be Executory Contracts, such plans, agreements, or documents shall be deemed to be, and shall be treated as though they are, Executory Contracts that are rejected pursuant to section 365 of the Bankruptcy Code under the Plan. Any Claims resulting from such rejection shall constitute Equity Interests. From and after the Effective Date, stock options, whether included in a contract, agreement or otherwise, will have no value and will not entitle any Holder thereof to purchase or otherwise acquire any equity interests in any of the Reorganized Debtors.

6.8 Certain Indemnification Obligations Owed by Debtors.

(a) To the extent that the D&O Liability Insurance Policies are considered to be Executory Contracts, notwithstanding anything in the Plan to the contrary, effective as of the Effective Date, the Debtors shall be deemed to have assumed all unexpired D&O Liability Insurance Policies with respect to the Debtors' directors, managers, officers, and employees serving on or prior to the Petition Date pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order will constitute the Court's approval of the Debtors' assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Reorganized Debtors under the Plan as to which no Proof of Claim need be filed.

(b) The Debtors shall be authorized to continue their D&O Liability Insurance Policies and obtain reasonably sufficient tail coverage (i.e., director, manager, and officer insurance coverage that extends beyond the end of the policy period) under a D&O Liability Insurance Policy for the current and former directors, officers, and managers. After the Effective Date, the Reorganized Debtors shall not terminate or otherwise reduce the coverage under any D&O Liability Insurance Policy (including such tail coverage liability insurance) in effect and, if necessary, shall be authorized to purchase a new D&O Liability Insurance Policy on terms no less favorable to such Persons than the existing policies. All members, managers, directors, and officers of the Debtors who served in such capacity at any time prior to the Effective Date of the Plan shall be entitled to the full benefits of any such policy for the full term of such policy regardless of whether such members, managers, directors, and/or officers remain in such positions after the Effective Date.

6.9 Continuing Obligations Owed to Debtors.

(a) Any confidentiality agreement entered into between any of the Debtors and any supplier of goods or services requiring the parties to maintain the confidentiality of each other's proprietary information shall be deemed to be, and shall be treated as though it is, an Executory Contract that is assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 6.1 of the Plan.

(b) Any indemnity agreement entered into between any of the Debtors and any supplier of goods or services requiring the supplier to provide insurance in favor of any of the Debtors, to warrant or guarantee such supplier's goods or services, or to indemnify any of the Debtors for claims arising from the goods or services shall be deemed to be, and shall be treated as though it is, an Executory Contract that is assumed and assigned pursuant to section 365 of the Bankruptcy Code, and Section 6.1 of the Plan.

(c) Continuing obligations of third parties to the Debtors under insurance policies, contracts, or leases that have otherwise ceased to be executory or have otherwise expired on or prior to the Effective Date, including, without limitation, continuing obligations to pay insured claims, to defend against and process claims, to refund premiums or overpayments, to provide indemnification, contribution or reimbursement, to grant rights of first refusal, to maintain confidentiality, or to honor releases, shall continue and shall be binding on such third parties notwithstanding any provision to the contrary in the Plan, unless otherwise specifically terminated by the Debtors or by order of Bankruptcy Court.

(d) To the extent any insurance policy under which the insurer has a continuing obligation to pay the Debtors or a third party on behalf of the Debtors is held by the Bankruptcy Court to be an Executory Contract, such insurance policy shall be treated as though it is an Executory Contract that is assumed pursuant to section 365 of the Bankruptcy Code and Section 6.1 of the Plan. Any and all Claims (including Cure Amounts) arising under or related to any insurance policies or related insurance agreements that are assumed by the Debtors prior to or as of the Effective Date: (i) shall not be discharged; (ii) shall be Allowed Administrative Claims; and (iii) shall be paid in full in the ordinary course of business of the Reorganized Debtors as set forth in Section 3.1(b) of the Plan.

6.10 Limited Extension of Time to Assume or Reject.

(a) Neither the exclusion nor inclusion of any contract or lease in a Cure Notice, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. In the event of a dispute as to whether a contract or lease is executory or unexpired, the right of the Debtors or the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after entry of a Final Order by the Bankruptcy Court determining that the contract or lease is executory or unexpired.

(b) In the event the Debtors or the Reorganized Debtors become aware after the Confirmation Date of the existence of an Executory Contract or Unexpired Lease that was not included in the Schedules, the right of the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after the date on which the Debtors or the Reorganized Debtors become aware of the existence of such contract or lease.

(c) Notwithstanding section 365(d)(4)(A)(ii) of the Bankruptcy Code or anything else herein to the contrary, the right of the Reorganized Debtors to move to assume or reject a Deferred Contract shall be extended until the end of the IPCO License Transition Period. In exchange for the agreement of each Deferred Contract counterparty to (i) to permit such an extension of the time to assume or reject such Deferred Contracts and (ii) to continue to fulfill its obligations under such Deferred Contract during the extension period, the Debtors or Reorganized Debtors shall pay each Deferred Contract counterparty consideration in the amount of \$1,250 Cash on the Effective Date, or as soon as reasonably practicable thereafter. The Confirmation Order shall be deemed to, pursuant to sections 365 and 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, approve the compromise and settlement between the Debtors and the non-debtor counterparties to the Deferred Contracts to the agreed extension of the Debtors' time to determine whether to assume or reject such Deferred Contracts.

6.11 Postpetition Contracts and Leases.

The Debtors shall not be required to assume or reject any contract or lease entered into by the Debtors after the Petition Date. Any such contract or lease shall continue in effect in accordance with its terms after the Effective Date, unless the Debtor has obtained a Final Order of the Bankruptcy Court approving rejection or other termination of such contract and lease.

6.12 Treatment of Claims Arising From Assumption or Rejection.

All Allowed Claims for Cure arising from the assumption of any Executory Contract or unexpired lease shall be treated as Administrative Claims pursuant to Section 3.1(b) of the Plan; all Allowed Claims arising from the rejection of an Executory Contract or Unexpired Lease shall be treated, to the extent applicable, as General Unsecured Claims, unless otherwise ordered by Final Order of the Bankruptcy Court; and all other Allowed Claims relating to an Executory Contract or Unexpired Lease shall have such status as they may be entitled to under the Bankruptcy Code as determined by Final Order of the Bankruptcy Court.

ARTICLE VII

PROVISIONS GOVERNING DISTRIBUTIONS

7.1 Distributions for Allowed Claims

Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to Holders of Allowed Claims shall be made on or as soon as practicable

after the Effective Date. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Section 8.2 of the Plan and on such day as selected by the Reorganized Debtors or the Plan Administrator in their sole discretion. Distributions made after the Effective Date shall be deemed to have been made on the Effective Date.

7.2 Sources of Cash for Distributions

Except as otherwise provided in the Plan or the Confirmation Order, all Cash necessary for the Debtors, the Reorganized Debtors or the Plan Administrator to make payments pursuant to the Plan shall be obtained from the proceeds of the Non-IP Asset Sales, the Section 363 Sale, and/or the Royalty Advance and the Debtors' Cash balances. Cash payments to be made pursuant to the Plan shall be made by the Reorganized Debtors, the Plan Administrator, or the Disbursing Agent as set forth below.

7.3 Interest on Claims; Dividends

(a) Unless otherwise specifically provided for in the Plan or the Confirmation Order, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Unless otherwise specifically provided for in the Plan or the Confirmation Order, interest shall not accrue or be paid upon any Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Claim becomes an Allowed Claim.

(b) No Holder of a Claim who is entitled to shares of Reorganized Holdco Equity shall be entitled to dividends on such shares unless such Holder's Claim is an Allowed Claim as of the applicable record date for such dividends.

7.4 Designation; Distributions by Disbursing Agent and Plan Administrator

(a) On or before the Effective Date, the Debtors may designate a Person or Entity to serve as the Disbursing Agent under the Plan on terms and conditions mutually agreeable between the Debtors and such Person or Entity. If applicable, the name of the Person or Entity designated by the Debtors to serve as the Disbursing Agent and their proposed compensation shall be included in the Plan Supplement.

(b) On or before the Effective Date, the Debtors shall designate the Distributions delegated to the Disbursing Agent and the Plan Administrator; provided, however, that all Distributions on account of the DIP Facility Claims shall be made by the Debtors or the Reorganized Debtors unless the DIP Lender has otherwise consented. Except as otherwise provided for herein, all other Distributions shall be made by the Debtors or the Reorganized Debtors.

(c) If the Disbursing Agent is an independent third party designated to serve in such capacity, such Disbursing Agent shall receive, without further approval from the Bankruptcy Court, reasonable compensation for distribution services rendered pursuant to the Plan and reimbursement of reasonable out of pocket expenses incurred in connection

with such services from the Reorganized Debtors or the Plan Administrator. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

7.5 Means of Cash Payment

(a) Cash payments under this Plan shall be in U.S. funds, and shall be made, at the option, and in the sole discretion, of the Reorganized Debtors or the Plan Administrator, by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Reorganized Debtors. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Reorganized Debtors or the Plan Administrator in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to this Plan in the form of checks issued by the Reorganized Debtors or the Plan Administrator shall be null and void if not cashed within 120 days of the date of the issuance thereof. Requests for reissuance of any check shall be made directly to the Reorganized Debtors or the Plan Administrator.

(b) For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

7.6 Fractional Distributions

Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or more being rounded up and fractions less than half of a dollar being rounded down.

7.7 De Minimis Distributions

Notwithstanding anything to the contrary contained in the Plan, neither the Debtors nor the Plan Administrator shall be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$25. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$25 shall have such Claim discharged and shall be forever barred from asserting such Claim against the Debtors, the Reorganized Debtors, the Plan Administrator or their respective property. Any Cash or other property not distributed pursuant to this provision shall be the property of the Reorganized Debtors, free of any restrictions thereon.

7.8 Delivery of Distributions

(a) Distributions to Holders of Allowed Claims shall be made (a) at the addresses set forth on the Proofs of Claim filed by such Holders, (b) at the addresses listed in the Schedules if no Proof of Claim has been filed, or (c) at the addresses set forth in any written notices of address changes delivered to the Debtors, the Reorganized Debtors, the

Plan Administrator or the Disbursing Agent after the date of any related Proof of Claim or after the date of the Schedules if no Proof of Claim was filed.

(b) If any Holder's Distribution is returned as undeliverable, a reasonable effort shall be made to determine the current address of such Holder, but no further Distributions to such Holder shall be made unless and until the Disbursing Agent is notified of such Holder's then current address, at which time all missed Distributions shall be made to such Holder without interest. Unless otherwise agreed between the Reorganized Debtors, the Plan Administrator and the Disbursing Agent, amounts in respect of undeliverable Distributions made by the Disbursing Agent shall be returned to the Reorganized Debtors or the Plan Administrator and held in trust by the Reorganized Debtors or the Plan Administrator until such Distributions are claimed, at which time the applicable amounts shall be returned to the Disbursing Agent for distribution pursuant to the Plan.

(c) All claims for undeliverable Distributions must be made on or before the second (2nd) anniversary of the Effective Date, after which date all unclaimed property shall revert to the Reorganized Debtors or the Plan Administrator free of any restrictions thereon and the claims of any Holder or successor to such Holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. Nothing contained in the Plan shall require any Debtor, any Reorganized Debtor, the Plan Administrator or any Disbursing Agent, as applicable, to attempt to locate any Holder of an Allowed Claim.

7.9 Application of Distribution Record Date

At the close of business on the Distribution Record Date, the claims registers for all Claims shall be closed, and there shall be no further changes in the record holders of such Claims. Except as provided herein, the Reorganized Debtors, the Plan Administrator, and the Disbursing Agent, as applicable, and each of their respective agents, successors, and assigns shall have no obligation to recognize any transfer of Claims occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record holders stated on the claims registers as of the close of business on the Distribution Record Date irrespective of the number of Distributions to be made under the Plan to such Persons or the date of such Distributions.

7.10 Withholding, Payment, and Reporting Requirements

In connection with the Plan and all Distributions under the Plan, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding, payment, and reporting requirements imposed by any federal, state, provincial, local, or foreign taxing authority, and all Distributions under the Plan shall be subject to any such withholding, payment, and reporting requirements. The Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. For example, with respect to any employee-related withholding, if the Debtors are obligated by law to withhold amounts from Distributions to a present or former employee to satisfy such present or former employee's tax and other payroll obligations, the Disbursing Agent may withhold a portion of the Distributions

allocated to the Holder of an Allowed Claim that is a present or former employee, whether such Distributions are in the form of Cash, in such amount as is determined necessary to satisfy such Holder's tax and other payroll obligations with respect to the Distributions. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding, and other tax obligations, on account of such Distribution that would be imposed upon the Reorganized Debtors or the Plan Administrator in connection with such Distribution, and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the Disbursing Agent for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Reorganized Debtors or the Plan Administrator in connection with such Distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Section 7.8 of the Plan.

7.11 Setoffs

The Reorganized Debtors or the Plan Administrator may, but shall not be required to, set off against any Claim or any Allowed 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 may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtors or the Plan Administrator of any such claim that the Debtors or the Reorganized Debtors may have against such Holder.

7.12 Prepayment

Except as otherwise provided in the Plan, any ancillary documents entered into in connection herewith, or the Confirmation Order, the Reorganized Debtors or the Plan Administrator shall have the right to prepay, without penalty, all or any portion of an Allowed Claim entitled to payment in Cash at any time; provided, however, that any such prepayment shall not be violative of, or otherwise prejudice, the relative priorities and parities among the Classes of Claims.

7.13 No Distribution in Excess of Allowed Amounts

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim (excluding payments on account of interest due and payable from and after the Effective Date pursuant to the Plan, if any).

7.14 Allocation of Distributions

All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States

federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

7.15 Joint Distributions

The Reorganized Debtors or the Plan Administrator may, in their sole discretion, direct that Distributions be made jointly to any Holder of a Claim and any other entity who has asserted, or whom the Reorganized Debtors or the Plan Administrator have determined to have, an interest in such Claim. Except as otherwise provided in the Plan or in the Confirmation Order, and notwithstanding the joint nature of any Distribution, all Distributions made by or at the direction of the Reorganized Debtors or the Plan Administrator shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any nature whatsoever against the Debtors or any of their assets or properties as set forth in Section 9.1 of the Plan.

7.16 Claims Paid or Payable by Third Parties

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

ARTICLE VIII

PROCEDURES FOR RESOLVING DISPUTED CLAIMS

8.1 Prosecution of Objections to Claims

(a) *Objections to Claims.*

Except as set forth in the Plan or any applicable Court order, all objections to Claims must be filed and served on the Holder of such Claim by the applicable Claims Objection Deadline, as the same may be extended by the Bankruptcy Court. If a timely objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been allowed earlier. Notice of any motion for an order extending any Claims Objection Deadline shall be required to be given only to those Persons or Entities that have requested notice in the Chapter 11 Cases, or to such Persons as the Bankruptcy Court shall order.

(b) *Estimation Proceedings.*

The Debtors, the Reorganized Debtors or the Plan Administrator may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtors, the Reorganized Debtors or the Plan Administrator have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection.

In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court, as applicable. If the estimated amount constitutes a maximum limitation on such Claim, the Reorganized Debtors or the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned Claims objection, estimation, and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanisms.

(c) *Authority to Prosecute Objections.*

After the Effective Date, only the Reorganized Debtors or the Plan Administrator shall have the authority to file objections to Claims and to settle, compromise, withdraw, or litigate to judgment objections to Claims, including Professional Fee Claims, Section 503(b)(9) Claims, Administrative Claims and Reclamation Claims; provided, however, that the foregoing shall not prohibit the filing of objections to Professional Fee Claims and Administrative Claims by parties in interest. The Reorganized Debtors or the Plan Administrator may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

8.2 Treatment of Disputed Claims(a) *No Distributions Pending Allowance.*

No payments or Distributions will be made on account of a Disputed Claim or, if less than the entire Claim is a Disputed Claim, the portion of a Claim that is Disputed, until such Disputed Claim becomes an Allowed Claim. Notwithstanding any other provisions of the Plan or the Plan Administrator Agreement, the Reorganized Debtors or the Plan Administrator may, in their discretion and without liability on account of such action, make a payment or Distribution on account of the undisputed portion of a Disputed Claim.

(b) *Distributions on Account of Disputed Claims Once They Are Allowed.*

The Reorganized Debtors, the Plan Administrator and the Disbursing Agent, as applicable, shall make Distributions on account of any Disputed Claim that has become an Allowed Claim, as soon as reasonably practicable after the date (i) such Dispute Claim

becomes an Allowed Claim, or (ii) the amount of the Claim is otherwise agreed to by the Debtors, the Reorganized Debtors or the Plan Administrator and such Holder. Such Distributions shall be made pursuant to the provisions of the Plan governing the applicable Class. Such Distributions shall be based upon the Distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

8.3 Accounts; Reserves

The Plan Administrator shall, subject to and in accordance with the provisions of this Plan and the Plan Administrator Agreement create, fund and withdraw funds from the following Reserves, as appropriate:

(a) *Administrative Claims Reserve.*

On the Effective Date (or as soon reasonably practicable thereafter), the Plan Administrator shall create and fund the Administrative Claims Reserve to be used by the Plan Administrator to pay Distributions on account of Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims and Allowed Non-Tax Priority Claims; provided, however, that the Administrative Claims Reserve may be subdivided into one or more sub-reserves for purposes of segregating those funds reserved for particular Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Secured Claims or Allowed Non-Tax Priority Claims. In the event that any Cash remains in the Administrative Claims Reserve after payment of all Allowed Claims to be paid thereunder, such Cash shall be distributed to the Reorganized Debtors.

(b) *Section 503(b)(9) Claims Reserve.*

On the Effective Date (or as soon reasonably practicable thereafter), the Plan Administrator shall create and fund the Section 503(b)(9) Claims Reserve to be used by the Plan Administrator to pay Distributions on account of Allowed 503(b)(9) Claims as set forth in the Plan. The Plan Administrator will be obligated to pay all Allowed Section 503(b)(9) Claims designated to be paid from the proceeds of the Section 503(b)(9) Claims Reserve in excess of the amounts actually deposited in the Section 503(b)(9) Claims Reserve. In the event that any Cash remains in the Section 503(b)(9) Claims Reserve after payment of all Allowed Section 503(b)(9) Claims, such Cash shall be distributed to the Reorganized Debtors.

(c) *Professional Fee Reserve.*

The Plan Administrator shall create and fund the Professional Fee Reserve thirty (30) days after the Effective Date (or as soon reasonably practicable thereafter) to the amount of the budgeted but unpaid Professional fees projected through the Effective Date, which amount shall be used to pay Allowed Professional Fee Claims held by (i) any professionals working on behalf of the Debtors and (ii) counsel and any advisers to the Committee. In the event that any Cash remains in the Professional Fee Reserve after payment of all Allowed Professional Fee Claims, such Cash shall be distributed to the Reorganized Debtors.

(d) *Wind Down Reserve.*

On the Effective Date (or as soon reasonably practicable thereafter), the Plan Administrator shall create and fund the Wind Down Reserve to be used by the Plan Administrator to pay all Wind Down Expenses. In the event that any Cash remains in the Wind Down Reserve after the Chapter 11 Cases are closed and the Plan Administrator has completed all of the tasks necessary in order to fully and completely wind down, dissolve and/or terminate the Estates and to otherwise comply with its obligations under the terms of the Plan, such Cash shall be distributed to the Reorganized Debtors.

ARTICLE IX

EFFECT OF CONFIRMATION OF THE PLAN

9.1 Discharge of Claims

(a) *Discharge of Claims.*

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

9.2 Certain Releases by the Debtors

Notwithstanding anything contained herein to the contrary, as of the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, the Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, the Estates, and any person or entity seeking to exercise the rights of the Debtors' Estates (including the Plan Administrator) from any and all Claims, obligations, suits, judgments, damages, demands, debts, remedies, Causes of Action (including Avoidance Actions), rights of setoff, other rights, and liabilities whatsoever, whether for tort, contract, violations of federal or state securities laws, Avoidance Actions, including any derivative Claims, asserted or that could possibly have been asserted directly or indirectly on behalf of the Debtors, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and

any and all Causes of Action asserted or that could possibly have been asserted on behalf of the Debtors, that the Debtors, the Reorganized Debtors, the Estates, or Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors or their Affiliates, the conduct of the debtors' businesses, the in-court or out-of-court efforts to implement the Plan, the Restructuring Side Letter Agreement, or the Purchase Agreements; the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement or Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Disclosure Statement or the Plan; the filing and prosecution of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, prepetition contracts and agreements with one or more Debtors, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date; provided that to the extent that a Claim or Cause of Action is determined by a Final Order to have constituted fraud, gross negligence or willful misconduct, such Claim or Cause of Action shall not be so released.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the release set forth in this Section 9.2, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that such release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims released by this Section 9.2; (c) in the best interests of the Debtors and all holders of Claims and Equity Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors asserting any Claim or Cause of Action released by this Section 9.2.

9.3 Certain Releases by Holders of Claims

Notwithstanding anything contained herein to the contrary, as of the Effective Date, (x) the Releasing Parties and (y) in exchange for the waiver of the Avoidance Actions pursuant to Section 5.7(a) of the Plan and the treatment otherwise provided under the Plan, the Holders of Claims against and Equity Interests in the Debtors and the Reorganized Debtors, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Released Parties from any and all Claims, Equity Interests, obligations, rights, liabilities, actions, causes of action, choses in action, suits, debts, damages, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, remedies, rights of set-off, third-party claims, subrogation claims, contribution claims, reimbursement

claims, indemnity claims, counterclaims, and crossclaims (including all claims and actions against any Entities under the Bankruptcy Code) whatsoever, whether for tort, contract, violations of federal or state securities laws, Avoidance Actions, including any derivative Claims, asserted or that could be asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors or the Debtors' restructuring; the formulation, preparation, solicitation, dissemination, negotiation, or filing of the Disclosure Statement or Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with or pursuant to the Purchase Agreements, the Restructuring Side Letter Agreement, the Disclosure Statement, or the Plan; the filing and prosecution of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, prepetition contracts and agreements with one or more Debtors, or any other act or omission, transaction, agreement, event, or other occurrence taking place before the Effective Date; provided that to the extent that a Claim or Cause of Action is determined by a Final Order to have constituted fraud, gross negligence or willful misconduct, such Claim or Cause of Action shall not be so released. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any obligations arising on or after the Effective Date of any party under the Plan, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

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

9.4 Exculpation

Effective as of the Effective Date, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim; provided, however, that the foregoing "exculpation" shall have no effect on the liability of any Entity that results from any act or omission that is determined in a

Final Order to have constituted actual fraud, gross negligence or willful misconduct. The Exculpated Parties have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of acceptances and rejections of the Plan and the making of distributions pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violation of any applicable, law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

9.5 Injunction

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

9.6 Protection Against Discriminatory Treatment

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor or any Entity with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Cases.

9.7 Release of Liens

Except as otherwise provided herein or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date and

concurrently with the applicable distributions made pursuant to the Plan and in the case of a Secured Claim, in satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Reorganized Debtors or the Plan Administrator for the benefit of Holders receiving Distributions, as applicable.

ARTICLE X

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

10.1 Conditions Precedent to Confirmation

The following are conditions precedent to the occurrence of the Confirmation Date, each of which must be satisfied or waived pursuant to Section 10.3 hereof:

(a) an order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered; and

(b) the proposed Confirmation Order shall be in form and substance reasonably satisfactory to the Debtors, the DIP Lender, the Prepetition Term Loan Agent and any Purchaser.

(c) entry of an order, which may be the Confirmation Order, approving all Section 363 Sales or one or more Non-IP Asset Sales, and the Debtors entry into the Purchase Agreement or Purchase Agreements in connection therewith.

10.2 Conditions Precedent to the Effective Date

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

(a) the Plan, the Plan Supplement, and all other documents related to the Restructuring Transactions shall be in full force and effect;

(b) the Confirmation Order shall have been entered;

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

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

(e) on the Effective Date, all DIP Facility Claims shall be indefeasibly paid-in-full in Cash;

(f) all material authorizations, consents, and regulatory approvals required, if any, in connection with consummation of the Plan shall have been obtained;

(g) all material actions, documents, and agreements necessary to implement the Plan shall have been effected or executed; and

(h) the Plan Administrator Agreement, in substantially the form filed as an exhibit in the Plan Supplement shall be finalized for execution.

10.3 Waiver of Conditions Precedent

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

10.4 Effect of Non-Occurrence of Conditions to Consummation

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

ARTICLE XI

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

11.1 Modification of Plan

Effective as of the date hereof, (a) the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtors, the Reorganized Debtors or the Plan Administrator may amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

11.2 Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw the Plan before the Confirmation Date and to file subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then (a) the Plan will be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto will be null and void in

all respects; and (c) nothing contained in the Plan shall (1) constitute a waiver or release of any Claims, Equity Interests or Causes of Action, (2) prejudice in any manner the rights of any Debtor or any other Entity, or (3) constitute an admission, acknowledgement, offer or undertaking of any sort by any Debtor or any other Entity.

11.3 Confirmation of the Plan

The Debtors request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept the Plan pursuant to section 1126 of the Bankruptcy Code.

ARTICLE XII

RETENTION OF JURISDICTION

12.1 Retention of Jurisdiction

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

(a) to determine any and all applications, adversary proceedings, and contested matters pending as of the Effective Date, if any;

(b) to determine any and all objections to the allowance of Claims and Equity Interests, if any;

(c) to determine any and all applications for allowance of compensation and reimbursement of expenses;

(d) to determine any and all controversies and disputes arising under or in connection with the Plan, any settlements contemplated under the Plan, and such other matters as may be provided for in the Confirmation Order;

(e) to effectuate payments under and performance of the provisions of the Plan;

(f) to enter such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(g) to determine the Debtors' motion, if any, to modify the Plan in accordance with section 1127 of the Bankruptcy Code;

(h) to issue orders in aid of execution of the Plan, to the extent authorized by section 1142 of the Bankruptcy Code;

(i) to consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, in the Confirmation Order;

(j) to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan and any related documents;

(k) to hear and determine any issue for which the Plan or any related document requires a Final Order of the Bankruptcy Court;

(l) to hear and determine any request for relief from the injunction provided for under section 9.5 of this Plan;

(m) to enter a final decree closing the Chapter 11 Cases;

(n) to determine any matter (i) with respect to the Restructuring Side Letter Agreement, (ii) under any Purchase Agreement, or (iii) any other agreement entered into in connection with a Section 363 Sale or Non-IP Asset Sale;

(o) to enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order, as well as to ensure that distributions to holders of Allowed Claims and Equity Interests are accomplished pursuant to the provisions of the Plan;

(p) to make such determinations and enter such orders as may be necessary to effectuate all the terms and conditions of this Plan, including distributions from the Debtors, the Reorganized Debtors, the Disbursing Agent, or the Plan Administrator, as applicable; and

(q) to establish the amount of any reserve required to be withheld from any distribution under this Plan on account of any disputed, contingent or unliquidated claim.

The foregoing list is illustrative only and not intended to limit in any way the Bankruptcy Court's exercise of jurisdiction. If the Bankruptcy Court abstains from exercising jurisdiction or is otherwise without jurisdiction over any matter arising out of the Chapter 11 Cases, including the matters set forth in this Article, this Article shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 General Settlement of Claims

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

13.2 Subordination

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

13.3 Additional Documents

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

13.4 Payment of Statutory Fees

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

13.5 Substantial Consummation

“Substantial Consummation of the Plan,” as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

13.6 Reservation of Rights

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

13.7 Successors and Assigns

The rights, benefits and obligations of any Entity 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, affiliate, officer, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

13.8 Service of Documents

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall be served on:

Debtors and Reorganized Debtors:

AeroGroup International, Inc.

201 Meadow Road
Edison, NJ 08817-6002
Attention: Jonathan A. Weiss
Email: jweiss@aerosoles.com

with a copy to:

Ropes & Gray LLP

1211 Avenue of the Americas
New York, NY 11036
Attention: Gregg M. Galardi
William A. McGee
Email: gregg.galardi@ropesgray.com
william.mcgee@ropesgray.com

and

Bayard, P.A.

222 Delaware Avenue, Suite 900
Wilmington, Delaware 19801
Attention: Scott D. Cousins
Erin R. Fay
Email: scousins@bayardlaw.com
efay@bayardlaw.com

13.9 Term of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases (pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court) and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

13.10 Entire Agreement

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

13.11 Plan Supplement Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Claims and Solicitation Agent's website at <https://cases.primeclerk.com/Aerosoles/> or the Bankruptcy Court's website at www.deb.uscourts.gov. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

13.12 Non-Severability

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

Dated: December 4, 2017

AEROGROUP INTERNATIONAL, INC.
AGI HOLDCO, INC.
AEROGROUP INTERNATIONAL LLC
AEROGROUP INTERNATIONAL HOLDINGS LLC
AEROGROUP RETAIL HOLDINGS, INC.
AEROGROUP GIFT CARD COMPANY, INC.

By: /s/ Mark Weinsten
Name: Mark Weinsten
Chief Restructuring Officer