



in accordance with § 502(b) of the Bankruptcy Code, (d) any Claim allowed under or pursuant to the terms of this Plan, or (e) any other Claim that has been allowed by a Final Order.

**1.3.** “Available Cash” means the following: (i) in the event the Mineral Rights are sold, all sales proceeds in excess of the costs of the sale transaction and accrued operating costs per Exhibit 2 to the Disclosure Statement; (ii) in the event of one or more sales of extracted gypsum, Cash in excess of the budgeted costs of putting the mine into production to fulfill the sales, accrued operating costs per Exhibit 2 to the Disclosure Statement, and the budgeted operating costs per Exhibit 2 to the Disclosure Statement for the three months following the month of the calculation.

**1.4.** “Bankruptcy Case” means the case number 08-17152 commenced by the Debtor on May 23, 2008.

**1.5.** “Bankruptcy Code” means Title 11 of the United States Code, as amended, in effect and applicable to the Bankruptcy Case concerning the Debtor.

**1.6.** “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

**1.7.** “Bar Date” means September 17, 2008, the date fixed by the Bankruptcy Court as the last date by which Claimants may file proofs of claim, unless the Court has set a different date by which a specific Claimant must file a proof of claim, in which case it means, for the specific Claimant, such different date set by the Court.

**1.8.** “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in Denver, Colorado are required or authorized by law to be closed.

**1.9.** “Cash” means legal tender of the United States, including amounts on deposit at financial institutions in checking accounts, money market accounts and the like.

**1.10.** “Causes of Action” means any and all Claims, rights, actions, chose in action, suits, causes of action, liens, judgments and damages belonging to the Debtor or its Estate and any and all liabilities, obligations, covenants, undertakings and debts owing to the Estate, whether arising prior to or after the Petition Date and in each case whether known or unknown, in law, equity or otherwise, including without limitation the claims asserted in the case of *College Partnership, Inc. v. Acentus Consulting Group, et al*, Case No. 2007 CV 2010, pending in the District Court for the County of Jefferson, Colorado, and those actions to avoid or recover pre-petition or post-petition transfers of money or property pursuant to applicable bankruptcy and non-bankruptcy law (including rights and remedies arising under Chapter 5 of the Bankruptcy Code).

**1.11.** “Claim” means: (a) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

**1.12.** “Claimant” means the holder of a Claim against the Debtor.

**1.13.** “Class” means a category of Claims or Interests described in Article 3 hereof.

**1.14.** “Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket corresponding to the Bankruptcy Case.

**1.15.** “Confirmation Order” means the order of the Bankruptcy Court confirming this Plan, or any amendment thereto, pursuant to § 1129 of the Bankruptcy Code.

**1.16.** “Court” means the United States Bankruptcy Court for the District of Colorado.

**1.17.** “Debtor” means Kingsley Capital, Inc., debtor and debtor in possession in the Bankruptcy Case.

**1.18.** “Disclosure Statement” means the disclosure statement and all exhibits thereto filed in this case pursuant to § 1125 of the Bankruptcy Code, and approved by the Bankruptcy Court, as may be amended or modified from time to time by any duly authorized amendment or modification.

**1.19.** “Disputed” means, as to a Claim: (a) if such Claim is not an Allowed Claim as of a particular point in time; (b) if no proof of claim has been filed by the Bar Date or has otherwise been deemed timely filed under applicable law, (i) that is listed on the Debtor’s Schedules as disputed, contingent or unliquidated or (ii) that is not listed on the Debtor’s Schedules; or (c) if a proof of Claim has been filed by the Bar Date or has otherwise been deemed timely filed under applicable law, for which an objection, complaint or request for estimation has been filed by the Debtor or any other party in interest within 270 days after the Effective Date, and such objection has not been withdrawn or denied in its entirety by Final Order.

**1.20.** “Disputed Claims Reserve” means the segregated interest bearing accounts established by the Debtor consistent with Section 9.6 of this Plan.

**1.21.** “Distribution” means any distribution made pursuant to the terms of this Plan.

**1.22.** “Effective Date” means the thirtieth day if such day is a Business Day, and otherwise the first Business Day after such thirtieth day, or such earlier date as the Debtor elects by written notice filed with the Court, after (a) the Confirmation Order (together with other orders entered in aid of Confirmation of this Plan, and signed contemporaneously with the Confirmation Order) has been entered pursuant to Bankruptcy Rules 5003 and 9021; and (b) all conditions precedent have been satisfied or waived as provided in Article 7 hereof.

**1.23.** “Estate” means the Debtor’s estate created pursuant to § 541 of the Bankruptcy Code upon the Petition Date.

**1.24.** “Final Order” means an order or judgment of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending; provided that if an appeal, or writ of certiorari, reargument or rehearing thereof has been filed or sought, such order of the Bankruptcy Court shall have been affirmed by the

highest court to which such order was appealed, or certiorari shall have been denied or 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 reargument or rehearing shall have expired; provided, further, 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 with respect to such order shall not cause such order not to be a Final Order.

**1.25.** “General Unsecured Claim” means any Claim against the Debtor that is not an Administrative Claim, Priority Unsecured Tax Claim, Priority Non-Tax Claim, Professional Fee Claim or Secured Claim.

**1.26.** “Interest” means the rights and interests of a holder of stock in the Debtor.

**1.27.** “Mineral Rights” means the mineral rights as of the Petition Date located in Utah owned by Good Earth Minerals, LLC, a Colorado limited liability company, of which the Debtor holds a 90% member interest.

**1.28.** “Person” means any individual, corporation, partnership, association, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated organization or governmental unit or subdivision thereof or other entity.

**1.29.** “Petition Date” means May 23, 2008, the date upon which the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

**1.30.** “Plan” means this plan of reorganization, as the same may be amended or modified from time to time by any duly authorized amendment or modification.

**1.31.** “Priority Non-Tax Claim” means a Claim which is entitled to priority treatment under § 507(a) of the Bankruptcy Code, excluding Claims entitled to priority under Bankruptcy Code §§ 507(a)(1) and 507(a)(8).

**1.32.** “Priority Unsecured Tax Claim” means a Claim or a portion of a Claim which is entitled to priority under § 507(a)(8) of the Bankruptcy Code.

**1.33.** “Professional Fee Claim” means any Claim of a Professional retained in the Bankruptcy Case pursuant to §§ 327 or 1103 of the Bankruptcy Code, for compensation or reimbursement of costs and expenses relating to services incurred prior to and including the Effective Date, when and to the extent any such Claim is Allowed by the Bankruptcy Court pursuant to §§ 329, 330, 331, 503(b), or 1103 of the Bankruptcy Code.

**1.34.** “Professional” means a professional person duly retained by the Debtor during the Bankruptcy Case pursuant to an order of the Court authorizing same.

**1.35.** “Pro Rata” means, in connection with a particular Allowed Claim and in connection with any Distribution, the ratio between the amount of such Allowed Claim and the aggregate amount of all Allowed Claims in such Class or Classes entitled to such Distribution.

**1.36.** “Ramona Property” shall mean the Debtor’s real property located in Ramona, California.

**1.37.** “Scheduled Claim” means a Claim that is listed by the Debtor in the Schedules.

**1.38.** “Schedules” means the schedules of assets and liabilities, schedules of executory contracts and unexpired leases, statements of financial affairs and other schedules and statements filed by the Debtor pursuant to Federal Rule of Bankruptcy Procedure 1007, and any amendments thereto.

**1.39.** “Secured Claim” means a Claim secured by a lien, as that term is defined in § 101(37) of the Bankruptcy Code, including, but not limited to, a judicial lien as that term is defined at § 101(36) of the Bankruptcy Code, against any property of the Estate, but only to the extent of the value, as determined by the Bankruptcy Court pursuant to § 506(a) of the Bankruptcy Code and Bankruptcy Rule 3012 or as otherwise agreed, of such Claimant’s interest in the Debtor’s interest in such property.

## **B. Rules of Interpretation**

For purposes of this Plan: (a) where appropriate in the relevant context, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) unless otherwise provided in this Plan, any references in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) unless otherwise provided in this Plan, any reference in this Plan to an existing document or appendix filed or to be filed means such document or appendix, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (d) unless otherwise specified herein, any reference to a Person as a Claimant or Interest holder includes that Person’s successors, assigns and affiliates; (e) unless otherwise specified, all references in this Plan to Sections and Articles are references to Sections and Articles of this Plan; (f) the words “herein”, “hereto” and “hereof” refer to this Plan in its entirety rather than to a particular portion of this Plan; (g) headings are utilized in this Plan for the convenience of reference only, and shall not constitute a part of this Plan for any other purpose; and (g) the rules of construction set forth in § 102 of the Bankruptcy Code will apply. To the extent that this Plan is inconsistent with the Disclosure Statement, the provisions of this Plan shall be controlling.

## **ARTICLE 2 PAYMENT OF CLAIMS NOT REQUIRED TO BE CLASSIFIED**

**2.1. Claims Not Classified.** No Class is designated for Administrative Claims, Professional Fee Claims or Priority Unsecured Tax Claims.

**2.2. Administrative Claims.** All Allowed Administrative Claims, other than Professional Fee Claims, shall be paid by the Debtor in full, in Cash, (a) as soon as practicable following the later of the Effective Date or the date upon which the Court enters a Final Order Allowing any such Administrative Claim, or (b) as such Claims may be due according to their terms in the ordinary course, or (c) as may be agreed upon between an Administrative Claim Claimant and the Debtor. In the event any Disputed Administrative Claims exist on the Effective Date, the Debtor shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Administrative Claims.

**2.3. Professional Fee Claims.** Except as otherwise agreed by the Claimant with a Professional Fee Claim, the Debtor shall pay all Professional Fee Claims as soon as practicable after a Final Order approving such compensation and reimbursement of expenses in accordance with Section 5.6 hereof. Except as otherwise agreed by the Claimant with a Professional Fee Claim, in the event any Disputed Professional Fee Claims exist on the Effective Date, the Debtor shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Professional Fee Claims. Any Allowed Professional Fee Claim not paid within ten (10) days of the Final Order approving such Claim shall accrue interest on the unpaid principal balance thereof at the rate of 6% per annum for the first two (2) months and 10% thereafter until paid in full.

**2.4. Priority Unsecured Tax Claims.** Unless otherwise agreed to by the Claimant with a Priority Unsecured Tax Claim, if the aggregate of all Allowed Priority Unsecured Tax Claims is equal to or less than \$1000.00, they shall be paid in full without interest on the Effective Date. Unless otherwise agreed to by the Claimant with an Allowed Priority Unsecured Tax Claim, if the aggregate of all Allowed Priority Unsecured Tax Claims is greater than \$1000.00, each Claimant with an Allowed Priority Unsecured Tax Claim will receive deferred Cash payments out of all Available Cash not necessary to pay Allowed Administrative Claims (including Professional Fee Claims) until such Allowed Priority Unsecured Tax Claim is paid in full with interest at the rate of 6% per annum from the Petition Date, provided that any amounts remaining unpaid on the date which is five years after the Petition Date will be paid on said date if a Business Day, and otherwise on the first Business Day following such date, together with any accrued or unpaid interest to that date. Any dispute over the rate of interest to be paid to the Claimant with a Priority Unsecured Tax Claim under this Section shall be resolved by the Bankruptcy Court on or prior to the Confirmation Date, or such other date as may be agreed to by such Claimant and the Debtor, as applicable. In the event any Disputed Priority Unsecured Tax Claims exist on the Effective Date, the Debtor shall at all times hold and maintain Cash in an amount equal to that portion of the Disputed Claims Reserve attributable to all Disputed Priority Unsecured Tax Claims.

### **ARTICLE 3 CLASSIFICATION AND VOTING OF CLAIMS AND INTERESTS**

**3.1. Criterion of Class.** A Claim is in a particular Class only to the extent that the Claim qualifies within the description of that Class and is in a different Class to the extent that the remainder of the Claim qualifies within the description of the different Class.

**3.2. Class Categories.** The following classes of Claims and Interests are designated pursuant to and in accordance with § 1123(a)(1) of the Bankruptcy Code, which classes shall be mutually exclusive:

CLASS	CLAIM	VOTING
Class 1	San Diego Secured Claim	Unimpaired/Not Entitled to Vote
Class 2	Fidelity Secured Claim	Unimpaired/ Not Entitled to Vote
Class 3	National Legal Secured Claim	Impaired/Entitled to Vote
Class 4	John Grace Secured Claim	Impaired/Entitled to Vote
Class 5	Burg Simpson Secured Claim	Impaired/Entitled to Vote
Class 6	Priority Non-Tax Claims	Impaired/Entitled to Vote
Class 7	General Unsecured Claims	Impaired/Entitled to Vote
Class 8	Insider General Unsecured Claims	Impaired/Entitled to Vote
Class 9	New Horizon Claims	Impaired/Entitled to Vote
Class 10	Interests	Unimpaired/Deemed to Accept

**3.3. Voting of Claims.** Each Claimant with an Allowed Claim in Classes 3, 4, 5, 6, 7, 8 and 9 shall be entitled to vote to accept or reject this Plan.

**3.4. Presumed Acceptances of Plan.** Classes 1, 2 and 10 are unimpaired under this Plan and, therefore, are conclusively presumed to have accepted this Plan.

#### ARTICLE 4 TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

The following treatment of and consideration to be received by Claimants with Allowed Claims and Allowed Interests pursuant to this Plan shall be in full settlement, release and discharge of such Allowed Claims and Allowed Interests.

**4.1. Class 1 (San Diego Secured Claim).** The Allowed Secured Claim of San Diego County shall retain its lien against the Ramona Property with the same validity, priority and effect it held immediately prior to the filing date of the Bankruptcy Case and shall be entitled to exercise any rights or remedies it may have against the Ramona Property.

**4.2. Class 2 (Fidelity Secured Claim).** The Allowed Secured Claim of Fidelity Mortgage Lenders, Inc. shall retain its lien against the Ramona Property with the same terms, validity, priority and effect it held immediately prior to the filing date of the Bankruptcy Case and shall be entitled to exercise any rights or remedies it may have against the Ramona Property.

**4.3. Class 3 (National Legal Secured Claim).** The holder of the Allowed Secured Claim of National Legal Systems, Inc. retain its lien against the Ramona Property with the same validity, priority and effect it held immediately prior to the filing date of the Bankruptcy Case and shall be entitled to exercise any rights or remedies it may have against the Ramona Property. As a result, the Class 3 Claim shall be deemed satisfied in full.

**4.4. Class 4 (John Grace/New Horizons Secured Claim).** The holder of the Allowed Secured Claim of John Grace or New Horizons, LLC (whichever is the proper holder) that is secured by a lien encumbering the Ramona Property shall retain its lien with the same validity, priority and effect it held immediately prior to the filing date of the Bankruptcy Case, shall be entitled to exercise any rights or remedies it may have against the Ramona Property and shall otherwise be treated as a Class 9 Claim.

**4.5. Class 5 (Burg Simpson Secured Claim).** The holder of the Secured Claim of

Burg Simpson Eldredge Hersh & Jardine, PC will retain its lien encumbering the Ramona Property with the same validity, priority and effect it held immediately prior to the filing date of the Bankruptcy Case and shall otherwise be treated as a Class 7 Claim.

**4.6. Class 6 (Priority Non-Tax Claims).** Commencing as soon as practicable after the Effective Date, the Claimants with Class 6 Claims, if any, shall receive Distributions of their Pro Rata share of Available Cash not used to pay Allowed Administrative Claims (including Professional Fee Claims), provided that all Allowed Class 6 Claims shall be paid in full on or before a date that is fifteen (15) months from the Effective Date.

**4.7. Class 7 (General Unsecured Claims).** Commencing as soon as practicable after the Effective Date, the Claimants with Allowed Class 7 Claims shall receive Distributions of 80% of Available Cash not used to pay or reserve for Allowed Administrative Claims, Professional Fee Claims, Allowed Priority Non-Tax Claims, and Allowed Priority Unsecured Tax Claims, pro rata.

Interest shall accrue on Allowed Class 7 Claims calculated from the Petition Date at the rate of 8.0% per annum through day that is the three (3) months' anniversary of the Effective Date; interest on the unpaid principal balance of the Allowed Claim at the rate of 10.0% per annum from said three (3) months' anniversary through the date that is the six (6) months' anniversary of the Effective Date; interest on the unpaid principal balance of the Allowed Claim at the rate of 12.0% per annum from the six (6) months' anniversary until paid in full. All payments will be applied first to interest and then to principal.

Except as provided in Section 5.2.8 of this Plan, the Allowed Class 7 Claims shall be paid on or before the date that is six (6) months after the Effective Date.

**4.8. Class 8 (Insider General Unsecured Claims).** The Allowed General Unsecured Claims of Dr. Janice Jones and John Grace ("Insider General Unsecured Claims") shall be subordinated to payment of Allowed Administrative Claims, Allowed Professional Fee Claims, and the Allowed Claims in Classes 6 and 7. Once the foregoing have been paid in full, the Claimants with Allowed Class 8 Claims shall receive Distributions of 50% of the Debtor's Available Cash, pro rata, until paid in full. Interest shall accrue on Allowed Class 8 Claims in the same manner and at the same rates as for Allowed Class 7 Claims.

**4.9. Class 9 (New Horizon Claims).** The Claim of New Horizons, LLC, and the Class 4 Claim shall be subordinated to payment of Allowed Administrative Claims, Allowed Professional Fee Claims, and the Allowed Claims in Classes 6 and 7, except as provided herein. As soon as reasonably practical following the date upon which the Debtor has (a) either paid or reserved for the payment of all Allowed Administrative Claims (including Professional Fee Claims) and Unsecured Priority Non-Tax Claims, and (b) all Claims in Class 6 and have been paid in full with interest, the Allowed Class 9 Claims shall receive Distributions of 20% of Available Cash until all Allowed Class 7 Claims are paid in full. Thereafter, the Allowed Class 9 Claims shall receive Distributions of 50% of all Available Cash until Class 8 Claims are paid in full, and all Available Cash thereafter until paid in full. The Class 9 Claims shall accrue interest at the rate of 10% per annum.

**4.10. Class 10 (Interests).** Except as otherwise provided herein, Holders of Interests shall remain unimpaired.

**ARTICLE 5  
MEANS OF IMPLEMENTATION OF THIS PLAN**

**5.1. Vesting of Assets.** On the Effective Date, all property of the Estate shall vest in the Debtor, free and clear of all claims and interests except as specifically set forth in this Plan.

**5.2. General Powers, Rights and Responsibilities of the Debtor Post-Effective Date.** The Debtor shall conduct its affairs in the ordinary course.

**5.2.1.** With regard to the Ramona Property, the Debtor may pursue either a sale or the acquisition of investment funds sufficient to satisfy the Allowed Class 1, 2, 3, 4, and 5 Allowed Claims, unless otherwise agreed by the Claimant with any such Claim.

**5.2.2.** The Debtor will pursue the realization of value from the collateral that secures the obligations of College Partnership to the Debtor, including the pursuit of any Causes of Action.

**5.2.3.** The Debtor will pursue development and sale of some or all of the Mineral Rights. The Debtor will cause 100% of all income of Good Earth Minerals, LLC to be distributed to the Debtor as if Good Earth Minerals, LLC were a division of the Debtor rather than a subsidiary until all Allowed Claims are satisfied and Debtor and Good Earth Minerals will enter into a written agreement for the same.

**5.2.4.** After the Effective Date, the Debtor shall have the authority to assert, prosecute, pursue, object to, compromise and settle in accordance with its reasonable business judgment, all Claims and Causes of Action.

**5.2.5.** The Debtor may borrow money on a secured or unsecured basis, provided that repayment of any such funds shall be subordinated to the repayment of all Claims hereunder, except as otherwise agreed by a particular Claimant.

**5.2.6.** Until all Allowed Claims in Class 7 have been paid in full, neither the Debtor nor Good Earth Minerals, LLC shall engage in any new business or retain any employees other than Dr. Janice Jones at her current draw of \$4500 per month plus benefits. Nothing herein shall preclude the Debtor or Good Earth Minerals, LLC from hiring such contract labor or independent contractors as it deems reasonable and necessary to conduct its business and carry out this Plan.

**5.2.7.** The Debtor shall perform a monthly calculation of Available Cash on or before the 15<sup>th</sup> of each month commencing in the calendar month that starts at least 30 days after the Effective Date and send a summary report thereof to all Claimants who request the same.

**5.2.8.** If the Debtor has not satisfied the Allowed Class 7 Claims in full within six (6)

months from the Effective Date, Good Earth Minerals, LLC, will initiate an auction process by which the Mineral Rights must be sold on or before eight (8) months from the Effective Date.

**5.3. Preservation of Causes of Action.** Unless expressly waived or relinquished, released, compromised or settled in this Plan, or in any contract, instrument, release or other agreement entered into or delivered in connection with this Plan: (a) the Debtor shall exclusively retain and may prosecute and enforce, and the Debtor expressly reserves and preserves for these purposes in accordance with §§ 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, any Claims, demands, rights and Causes of Action that the Debtor or its Estate may hold against any Person; and (b) no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), claim splitting or laches shall apply to such Claims and Causes of Action by virtue of or in connection with the Confirmation, consummation or effectiveness of this Plan.

**5.4. Single Claim Rule.** With respect to each Class of Claims, a Claimant shall be deemed to hold only a single Claim in such Class, regardless of how many separate Claims have been scheduled by the Debtor or filed by the Claimant. If any Claim or any portion of the Claim in a particular Class is Disputed, no distribution shall be made with respect to such Claim until all or a portion of the Claim is Allowed and the remainder, if any, is determined to be not Allowed by Final Order.

**5.5. Deadline for Filing Professional Fee Applications.** All parties seeking payment of Professional Fee Claims arising prior to the Effective Date must file with the Bankruptcy Court and serve upon the Debtor, a final application on or before the first Business Day which is the sixtieth (60th) day after the Effective Date (the "Fee Application Deadline"). On or prior to one (1) Business Day before the commencement of the hearing on Confirmation, Professionals who will seek reimbursement of Professional Fee Claims shall submit an estimate of such fees and expenses through the Confirmation Date to the Debtor. Any Professional failing to timely file and serve such application shall be forever barred from asserting any such right to payment. Notice of the Effective Date and the Fee Application Deadline shall be mailed by the Debtor not later than ten (10) calendar days after the Effective Date.

**5.6. Execution of Documents to Effectuate Plan.** Prior to the Effective Date, the Debtor shall execute any instruments or documents that are necessary to effectuate the provisions of this Plan. Claimants with Secured Claims and all other necessary parties shall execute or deliver, or join in the execution and delivery, of any instrument required to effect a transfer of property under this Plan, and shall perform any other act, including the satisfaction, release or assignment of any lien that is necessary for the consummation of this Plan. From and after the Effective Date, the Debtor shall have the exclusive power and authority to execute any instrument or document to effectuate the provisions of this Plan.

**5.7. Disallowance of Claims without Further Order of the Court.** As of the Confirmation Date, any Scheduled Claim designated as disputed, contingent or unliquidated in amount, and for which a proof of Claim has not been filed by the Claimant, shall be deemed expunged, without further act or deed. All Scheduled Claims that correspond to a proof of Claim filed by a particular Claimant shall be deemed to have been superseded by such later filed proof of Claim.

**5.8. Post-Confirmation Reports and Fees.** The Debtor shall be responsible for the filing of all post-Confirmation reports required during such periods with the U.S. Trustee and payment of all post-Confirmation fees charged or assessed under 28 U.S.C. § 1930. After the Effective Date, the Debtor shall be responsible for the filing of all post-Confirmation reports during such period with the Bankruptcy Court and the U.S. Trustee and payment of all post-Confirmation fees assessed under 28 U.S.C. § 1930 during such period.

## **ARTICLE 6 TREATMENT OF EXECUTORY CONTRACTS & UNEXPIRED LEASES**

**6.1. General Provisions.** All executory contracts and unexpired leases of the Debtor listed in the Schedules will be deemed assumed as of the Confirmation Date, unless a particular executory contract or unexpired lease (i) has previously been rejected pursuant to order of the Bankruptcy Court or applicable provisions of the Bankruptcy Code, or (ii) is the subject of a motion to reject such contract or lease filed by the Debtor. The amount necessary to cure any default proposed under this Plan shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

**6.2. Notice of Deemed Rejection/Rejection Bar Date.** No more than ten (10) Business Days following the Confirmation Date, the Debtor shall provide notice to all known parties to any executory contract or unexpired lease deemed rejected under this Article of their right to file a proof of Claim relating thereto. Any party to an executory contract or unexpired lease that is rejected in accordance with Section 6.1 shall file a proof of Claim for damages resulting from such rejection not later than thirty (30) days after the date of such notice. The failure to timely file a proof of Claim shall be deemed a waiver of any claim in connection with the rejection of such contract or lease.

## **ARTICLE 7 CONDITIONS PRECEDENT; CONFIRMATION & EFFECTIVE DATE**

**7.1. Conditions Precedent to Confirmation of this Plan.** Unless this condition is waived in accordance with Section 7.3, the Confirmation Order shall, among other things:

- 7.1.1.** Authorize the implementation of this Plan in accordance with its terms.
- 7.1.2.** Provide that any transfers effected or mortgages or other security documents entered into or to be effected or entered into under this Plan shall be and are exempt from any state, city, or other municipality transfer taxes, mortgage recording taxes, and any other stamp or similar taxes pursuant to § 1146(a) of the Bankruptcy Code.
- 7.1.3.** Approve in all respects the other settlements, transactions, and agreements to be effected pursuant to this Plan.
- 7.1.4.** Provide that the transfers of property by the Debtor to the Debtor: (A) are or shall be legal, valid, and effective transfers of property; (B) vest or shall vest the transferee with good title to such property free and clear of all claims and interests, except as expressly provided in this Plan or Confirmation Order; (C) do not and shall not constitute avoidable transfers under the Bankruptcy Code or under

applicable bankruptcy or nonbankruptcy law; and (D) do not and shall not subject the Debtor to any liability by reason of such transfer under the Bankruptcy Code or under applicable nonbankruptcy law, including any laws affecting successor or transferee liability.

**7.1.5.** Find that this Plan complies with all applicable provisions of the Bankruptcy Code, including that this Plan was proposed in good faith and that the Confirmation Order was not procured by fraud.

**7.2. Conditions Precedent to the Effective Date.** The Effective Date shall not occur and no obligations and rights set forth in this Plan and set to occur as of the Effective Date or thereafter shall come into existence, unless each of the following conditions is met or, alternatively, is waived in accordance with Section 7.3 hereof, on or before the Effective Date:

**7.2.1.** The Confirmation Order shall have been entered and become a Final Order.

**7.3. Waiver of Conditions Precedent.** Each of the conditions precedent in Sections 7.1 and 7.2 hereof may be waived or modified, in whole or in part, but only by the Debtor. Any such waiver or modification of a condition precedent in Section 7.1 or 7.2 hereof may be effected at any time upon filing a notice thereof with the Bankruptcy Court, without leave or order of the Bankruptcy Court and without any other formal action.

## **ARTICLE 8 EXCULPATION**

**Exculpation.** The Debtor and its respective members, employees and Professionals (acting in such capacity), shall neither have nor incur any liability to any Person for any act taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, implementation, administration, confirmation or consummation of this Plan, the Disclosure Statement, Plan Supplement or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan, or any act taken or omitted to be taken during the Bankruptcy Case, except for acts or omissions as a result of willful misconduct or gross negligence.

## **ARTICLE 9 PROVISIONS GOVERNING DISTRIBUTIONS**

**9.1. Distributions Only on Business Days.** Notwithstanding the foregoing provisions, if any Distribution called for under this Plan is due on a day other than a Business Day, then such Distribution shall instead be due on the next Business Day.

**9.2. Unclaimed Distributions.** Any Distributions (i) by checks which have been returned as undeliverable without a proper forwarding address and the Claimant fails to notify the Debtor in writing within 90 days of a proper address, and (ii) by checks which have not been negotiated within 90 days of issuance and the Claimant has not notified the Debtor in writing to stop payment and reissue the check, shall be deemed forfeited and the Claimant with such Claim shall be removed from the Distribution schedules and shall receive no further Distributions under this Plan. Any such Distributions shall become property of the Debtor.

**9.3. Disputed Distribution.** If any dispute arises as to the identity of a Claimant with an Allowed Claim who is to receive any distribution, the Debtor may, in lieu of making such distribution to such Claimant, make such distribution into a segregated account until the disposition shall be determined by Final Order of the Bankruptcy Court or by written agreement among the interested parties to such dispute.

**9.4. Transmittal of Payments and Notices.** All Distributions shall be made to a Claimant by regular first-class mail, postage prepaid, in an envelope addressed to such Claimant at the address listed on its proof of Claim filed with the Bankruptcy Court or, if no proof of Claim was filed, (i) at the address listed by the Debtor on the Schedules, (ii) as the Claimant may direct in writing, or (iii) otherwise at such Claimant's last known address. The Debtor shall take reasonable steps to ascertain the most current address of the Claimant whose distribution check is returned as undeliverable prior to treating such check as an Unclaimed Distribution. The date of payment or delivery shall be the date of mailing. Distributions made in accordance with the aforementioned provisions of this Section will be deemed made to the Claimant regardless of whether such Claimant actually receives the Distribution.

**9.5. Record Date for Distributions.** A Transferee of a Claim will be treated as the holder of the Claim for purposes of Distributions and otherwise provided written notice of the transfer signed by the original Claimant is delivered to the Debtor, and compliance with Bankruptcy Rule 3001, if applicable, is completed, at least 10 days prior to the next proposed Distribution. Absent such notice, in making any Distribution, the Debtor shall be entitled to recognize and deal for all purposes hereunder only with the Person who is listed on the proof of Claim filed with respect thereto or on the Debtor's Schedules as the holder thereof as of the close of business on the Confirmation Date and upon such other evidence or record of transfer or assignment known by such Persons as of the Confirmation Date. No amendments to Claims shall be permitted after the Effective Date.

**9.6. Disputed Claims Reserve.** Except to the extent the Court determines that a lesser amount is adequate, the Debtor shall, with each Distribution, deposit into one or more a separate interest-bearing Disputed Claims Reserve accounts established by the Debtor and that meet the requirements of § 345 of the Bankruptcy Code, Cash equal to the Distributions that would have been made to Claimants with Disputed Claims if such Claims were Allowed Claims in their full amounts. When a Disputed Claim becomes an Allowed Claim, the Debtor shall distribute to the Claimant with such Allowed Claim, as soon as practicable and in accordance with the provisions of this Plan (but in no event later than the next succeeding Distribution Date), Cash in the amount of all Distributions to which such Claimant would be entitled to if such Claimant's Claim were Allowed on the Effective Date. In no event shall the Debtor be responsible or liable for any loss to or of any amount reserved under this Plan unless such loss is the result of the Debtor's fraud or willful misconduct.

**9.7. Setoff and Recoupment.** Except as otherwise provided in this Plan, the Debtor may, but shall not be required to, set off against, or recoup from, any Claim and the Distributions to be made pursuant to this Plan in respect thereof, any Claims, defenses or Causes of Action of any nature whatsoever that the Debtor may have, but neither the failure to do so nor the allowance of any Claim under this Plan shall constitute a waiver or release by the Debtor of any right of setoff or recoupment against the Claimant with any Claim.

**9.8. Payment of Taxes on Distributions Received Pursuant to this Plan.** All Entities that receive Distributions under this Plan shall be responsible for reporting and paying, as applicable, taxes on account of their Distributions.

**9.9. Compliance With Tax Withholding and Reporting Requirements.** With respect to all instruments issued and distributions made under this Plan, the Debtor will comply with all withholding and reporting requirements of any federal, state, local or foreign taxing authority.

## **ARTICLE 10 PLAN INTERPRETATION, CONFIRMATION AND VOTING**

**10.1. Withdrawal and Modification of Plan.** This Plan may be withdrawn or modified by the Debtor at any time prior to the Confirmation Date. The Debtor may modify this Plan in any manner consistent with § 1127 of the Bankruptcy Code prior to substantial consummation thereof. Upon request by the Debtor, this Plan may be modified after substantial consummation with the approval of the Bankruptcy Court, provided that such modification does not affect the essential economic treatment of any Person that objects in writing to such modification.

**10.2. Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) with respect to matters of corporate governance, the laws of the State of Colorado applicable to contracts executed in such State by residents thereof and to be performed entirely within such State will govern the construction and implementation of this Plan and any agreements, documents and instruments executed in connection with this Plan.

**10.3. Cram Down.** The Debtor requests that, in the event that any impaired Class entitled to vote on this Plan accepts this Plan, the Bankruptcy Court confirm this Plan in accordance with the provisions of § 1129(b) of the Bankruptcy Code.

## **ARTICLE 11 RETENTION OF JURISDICTION BY BANKRUPTCY COURT**

**11.1.** From the Confirmation Date until entry of a final decree closing the Debtor's Bankruptcy Case (pursuant to 11 U.S.C. §350 and Bankruptcy Rule 3022), the Bankruptcy Court shall retain such jurisdiction as is legally permissible over the Bankruptcy Case for the following purposes:

- 11.1.1.** to hear and determine any and all objections to the allowance of any Claim or Administrative Claim, or any controversy as to the classification of Claims or any matters which may directly affect the obligations of the Debtor to any Claimants;
- 11.1.2.** to hear and determine any and all applications for compensation and reimbursement of expenses by Professionals;
- 11.1.3.** to hear and determine any and all pending motions for the assumption or rejection of executory contracts and unexpired leases, and to fix any Claims resulting therefrom;
- 11.1.4.** to adjudicate such contested matters and adversary proceedings as may be pending or

subsequently initiated in the Court;

**11.1.5.** to enforce and interpret the provisions of this Plan and the Confirmation Order;

**11.1.6.** to issue any injunction or other relief appropriate to implement the intent of this Plan, and to enter such further orders enforcing any injunctions or other relief issued under this Plan or pursuant to the Confirmation Order;

**11.1.7.** to modify this Plan pursuant to § 1127 of the Bankruptcy Code and the applicable Bankruptcy Rules;

**11.1.8.** to correct any defect, cure any omission, or reconcile any inconsistency in this Plan or in the Confirmation Order as may be necessary to carry out the purpose and the intent of this Plan;

**11.1.9.** to interpret and determine such other matters as the Confirmation Order may provide for, or as may be authorized under the Bankruptcy Code; and

**11.1.10.** to enter and implement such orders as may be appropriate in the event the Confirmation Order is, for any reason, stayed, reversed, revoked, modified or vacated.

Dated: \_\_\_\_\_, 2009

**Debtor and Debtor in Possession**

By: /s/Janice Jones

Its: President

**Onsager, Staelin & Guyerson, LLC**

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