

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Baltimore Division)**

**In re:** \*  
**Experimental Machine, Inc.,** \* **Case No. 16-25294 NVA**  
**Debtor.** \* **(Chapter 11)**  
\* \* \* \* \*

**AMENDED PLAN OF REORGANIZATION**

Experimental Machine, Inc., Debtor, by its attorneys, Michael S. Myers, and Scarlett, Croll & Myers, P.A., hereby proposes this Amended Plan of Reorganization pursuant to the provisions of Chapter 11 of the Bankruptcy Code. This Amended Plan of Reorganization is dated this 14<sup>th</sup> day of December, 2017.

ARTICLE I

Definitions

The definitions and rules of construction set forth in Sections 101, 102 and 1101 of the Bankruptcy Code shall apply when the terms defined or construed therein are used in this Plan. In addition, the following terms, when used in this Plan, shall, except if the context otherwise requires, supplement those definitions and rules.

Allowed Claim: A claim as defined in Section 101(5) of the Bankruptcy Code: (a) in respect of which a Proof of Claim has been filed with the Bankruptcy Court within the applicable period of limitations fixed by Local Bankruptcy Rules and the Rules of Bankruptcy Procedure; or (b) which is listed in the Debtor’s schedules filed by the Debtor with the Bankruptcy Court, including any amendments thereto, and is not listed as disputed, contingent or unliquidated as to amount; and further, as to any claim, either no objection to the allowance thereof has been filed,

such objection has been denied or the claim fixed as to the amount by an order of judgment which has become final by reason of the expiration of the period of appeal therefrom or from any decision on appeal without an appeal or further appeal having been taken.

Avoidance Actions: Claims and Causes of Action arising under Chapter 5 of the Bankruptcy Code.

Bankruptcy Code or Code: Title 11, United States Code.

Bankruptcy Court or Court: The United States Bankruptcy Court for the District of Maryland.

Causes of Action: Any and all actions, causes of action, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedy, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, mature, unmatured, disputed, undisputed, secured or unsecured, and whether asserted or assertable directly or derivatively, in law, equity or otherwise, now owned or hereafter acquired by the Debtor and the cash and non-cash proceeds thereof, whether arising under the Bankruptcy Code or other law including the Avoidance Actions.

Chapter 11: Chapter 11 of the Bankruptcy Code.

Claim: Any right to payment as defined in 11 U.S.C. Section 101(4) of the Bankruptcy Code, including, but not limited to, any and all claims arising from the rejection of executory contracts and unexpired leases of the Debtor.

Claims Objection Bar Date: Shall be one year from the Effective Date, as defined below, or one year from filing any amendment to a proof of claim, whichever is later.

Confirmation of Plan: The entry by this Court of an Order confirming the Plan, in accordance with Chapter 11 of the Bankruptcy Code.

Debtor: Experimental Machine, Inc.

Disputed Claim: A claim on which an objection has been filed.

Effective Date: The fifteenth (15th) day after an Order of Confirmation becomes final. If the fifteenth (15th) day is a Saturday, Sunday or legal holiday, the effective date shall be the next business day thereafter.

Filing Date: The date the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code, being November 18, 2016.

Operating Revenues: That revenue derived from the business operations of the Debtor a portion of which is dedicated to funding this Plan.

Order of Confirmation: The Order entered by the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

Plan: This Amended Plan of Reorganization and any further amendments hereto.

Priority Claims: All claims as defined by 11 U.S.C. Section 507(a).

Reorganized Debtor: The Debtor on and after the Effective Date.

Secured Creditors: The owners of secured indebtedness holding debts, demands or claims, of whatever character, for which the owners have a security interest.

Security Interest: Any mortgage, deed of trust, chattel mortgage, judgment lien of record or consensual lien, recorded in the appropriate jurisdiction, giving the owner thereof a valid, perfected, non-preferential lien on the Debtor's real or personal property.

Stockholder(s): Those persons or entities who hold presently issued stock of the Debtor, unless otherwise specified herein.

Tax Claims: All claims of governmental units pursuant to 11 U.S.C. Section 507(a)(8).

Unsecured Creditors: Any person or entity having a claim for which that person or entity does not have a security interest securing its claim.

## ARTICLE II

### Dedication of Assets

2.01 The Debtor hereby dedicates from its future Operational Revenues only those funds necessary to make all payments pursuant to the terms of this Plan as set forth herein.

## ARTICLE III

### Classification of Claims and Interest

3.01 Objection to Classification. Any holder of a Claim who or which fails to object in writing to the classifications provided in this Plan, and to file such objection with the Bankruptcy Court and to serve such objection upon the Debtor's counsel five (5) days prior to the date first set by the Bankruptcy Court for a hearing on confirmation of the Plan, shall be deemed to have accepted such classifications and to be bound thereby.

## ARTICLE IV

### Treatment of Claims or Interest Not Impaired Under the Plan

4.01 Class I. Unimpaired – Class I claims consist of the claims for costs and expenses of Administration as defined in Section 503(b) of the Bankruptcy Code. Such claims shall include, but not limited to, the claims of the Debtor's attorneys and accountants. Administrative Class I creditors shall be paid on the Effective Date of the Plan, in full, and in cash, the allowed amount of their claims by Order of this Court or in accordance with such agreements or arrangements as

may be made between the Debtor and holders of Class I claims. Pursuant to Section 1123(a)(2) of the Bankruptcy Code, Class I creditors are not a class of claims which are impaired under this Plan within the meaning of Section 1124 and are deemed to accept the Plan pursuant to Section 1126(f). After confirmation of the Plan, the Debtor shall pay the reasonable fees and expenses incurred by its professionals and attorneys in connection with the consummation of the Plan and the performance of any duties or obligations necessary or appropriate in connection with this Chapter 11 proceeding in the ordinary course of business without further order of the Court. Notwithstanding the foregoing, the Court shall retain jurisdiction to resolve any dispute regarding post Effective Date administrative claims incurred prior to the closing of this case. The Debtor shall also pay to the United States Trustee all fees owed and allowed under 28 U.S.C. § 1930 during this Chapter 11 proceeding at the time such payments are due.

4.02 Class II. Unimpaired – Class II claims shall consist of Priority Claims allowed pursuant to Section 507 of the Bankruptcy Code, including, but not limited to, tax claims of governmental units, including the Internal Revenue Service and the Comptroller of the State of Maryland, but only to such extent that such claims are entitled to priority under Section 507(a)(8). The indebtedness of the Debtor’s Class II creditors shall be paid their allowed priority claims in full and in cash on the Effective Date of the Plan.

4.03 Class V. Unimpaired - The indebtedness of the Debtor's Class V creditor, being Trinity, Bank of the West, was satisfied through the sale of equipment.

4.04 Class XI. Unimpaired - The Class XI claimholder, being Kirk Schmitt, shall retain his 100% ownership interest in the Reorganized Debtor.

ARTICLE V

Treatment of Claims or Interest of Creditors  
Which are Impaired Under the Plan

5.01 Class III. Impaired - The indebtedness of the Debtor's Class III creditor, being M&T Bank, shall be modified as follows:

a. The Debtor shall pay the Class III holder \$6,000.00 per month for the first nine (9) months after the Effective Date of the Plan beginning on the fifteenth (15th) day of January, 2018 and ending in September, 2018. Beginning in October, 2018, the Debtor shall make equal monthly payments of \$7,500.00 per month through July, 2019. And beginning in August, 2019, the Debtor will resume its normal monthly pre-petition payment amount until the claim is satisfied.

b. The holder of the Class III claim shall retain its liens in the property of the Debtor, pursuant to its security agreement with the Debtor.

c. Payments shall be applied to principal on all loans on a *pro rata* basis. The Debtor may prepay the loan to the Class III creditor, at any time, without penalty or cost to the Debtor.

d. From and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to affect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the Plan, pursuant to Bankruptcy Code § 1142(b).

**e. The modification of the debt due the Class III creditor shall not affect the liability of any guarantor, endorser or surety for such debt; however, as long as the Debtor remains in compliance with the provisions set forth in this Plan, and any order confirming this Plan as those provisions deal with the repayment of the claim owed by the Debtor to the Class III creditor, the Class III creditor shall not be permitted to proceed and is enjoined from proceeding against any guarantor, endorser or surety for debt owed by the Debtor.**

f. Upon the Debtor's failure to make payment to M&T Bank when and as due, M&T Bank shall send a notice to the Debtor's counsel by email to [mmyers@scarlettcroll.com](mailto:mmyers@scarlettcroll.com) setting forth the event of default and providing a 10-day period for the Debtor to cure the default. If the Debtor fails to cure the default, then the automatic stay of 11 U.S.C. § 362 shall be terminated as to M&T Bank at the sole election of M&T Bank". If there is a default under this Plan in the payments to the Class III secured creditor, then, after all periods of cure provided for under the loan documents, the Class III secured creditor may liquidate the collateral it maintains to secure its debt.

g. Except as modified herein, the present terms of the promissory note, security agreement and other loan documents shall remain effective and the reorganized Debtor shall execute such other modifications and agreements to effectuate the terms of this Plan as the Class III creditor may reasonably request.

5.02 Class IV. Impaired - The indebtedness of the Debtor's Class IV creditor, being

Wells Fargo shall be modified as follows:

a. The Debtor shall pay the Class IV holder \$2,200.00 per month after the Effective Date of the Plan beginning on the fifteenth (15th) day of January, 2018 through July, 2019. Thereafter, the Debtor shall make equal monthly payments of its normal pre-petition amount estimated to be \$3,300.00 per month until the claim is satisfied.

b. The holder of the Class IV claim shall retain its lien/leasehold interest in the property of the Debtor, pursuant to its security agreement/lease with the Debtor.

c. Payments shall be applied to principal on all loans on a *pro rata* basis. The Debtor may prepay the claim of the Class IV creditor, at any time, without penalty or cost to the Debtor.

d. From and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to affect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the Plan, pursuant to Bankruptcy Code § 1142(b).

**e. The modification of the debt due the Class IV creditor shall not affect the liability of any guarantor, endorser or surety for such debt; however, as long as the Debtor remains in compliance with the provisions set forth in this Plan, and any order confirming this Plan as those provisions deal with the repayment of the claim owed by the Debtor to the Class IV creditor, the Class IV creditor shall not be permitted to proceed and is enjoined from proceeding against any guarantor, endorser or surety for debt owed by the Debtor.**

f. If there is a default under this Plan in the payments to the Class IV secured/leasehold creditor, then, after all periods of cure provided for under the loan documents, and after the Class IV secured/leasehold creditor has obtained the appropriate permission from the Bankruptcy Court, the Class IV secured/leasehold creditor may repossess or liquidate its collateral or property.

g. Except as modified herein, the present terms of the promissory note, security agreement and other loan documents shall remain effective and the reorganized Debtor shall execute such other modifications and agreements to effectuate the terms of this Plan as the Class IV creditor may reasonably request.

5.03 Class VI. Impaired - The indebtedness of the Debtor's Class VI creditor, being

TCF, shall be modified as follows:

a. The Debtor shall pay the Class VI creditor \$3,349.00 per month for the first ten (10) months after the Effective Date of the Plan, beginning on the fifteenth (15th) day of January, 2018 through October, 2018. Thereafter, the Debtor shall make equal monthly payments to the Class VI creditor of \$5,023.00 per month until the Class VI creditor's claim is satisfied.

b. The holder of the Class VI claim shall retain its lien/leasehold interest in the property of the Debtor, pursuant to its lease agreement with the Debtor, until such time as the claim is satisfied. Upon full payment of the Class VI creditor's claims, its liens will be released.

c. Payments shall be applied on all leases on a *pro rata* basis. The Debtor may prepay the claim of the Class VI creditor, at any time, without penalty or cost to the Debtor.

d. From and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to affect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the Plan, pursuant to Bankruptcy Code § 1142(b).

**e. The modification of the debt due the Class VI creditor shall not affect the liability of any guarantor, endorser or surety for such debt; however, as long as the Debtor remains in compliance with the provisions set forth in this Plan, and any order confirming this Plan as those provisions deal with the repayment of the claim owed by the Debtor to the Class VI creditor, the Class VI creditor shall not be permitted to proceed and is enjoined from proceeding against any guarantor, endorser or surety for debt owed by the Debtor.**

f. Upon the Debtor's failure to make payment to TCF when and as due, TCF shall send a notice to the Debtor's counsel by email to [mmyers@scarletroll.com](mailto:mmyers@scarletroll.com) setting forth the event of default and providing a 10-day period for the Debtor to cure the default. If the Debtor fails to cure the default, then the automatic stay of 11 U.S.C. § 362 shall be terminated as to TCF at the sole election of TCF. If there is a default under this Plan in the payments to the Class VI secured creditor, then, after all periods of cure provided for under the loan documents, the Class VI secured creditor may liquidate the collateral it maintains to secure its debt.

g. Except as modified herein, the present terms of any promissory note, security agreement and other lease documents shall remain effective and the reorganized Debtor shall execute such other modifications and agreements to effectuate the terms of this Plan as the Class VI creditor may reasonably request.

5.05 Class VII. Impaired - The indebtedness of the Debtor's Class VII creditor, being Ford Motor Credit shall be modified as follows:

a. The Debtor shall pay the Class VII holder \$900.00 per month until the claim is satisfied.

b. The holder of the Class VII claim shall retain its lien/leasehold interest in the property of the Debtor, pursuant to its security agreement/lease with the Debtor.

c. Payments shall be applied to principal on all loans on a *pro rata* basis. The Debtor may prepay the claim of the Class VII creditor, at any time, without penalty or cost to the Debtor.

d. From and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to affect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the Plan, pursuant to Bankruptcy Code § 1142(b).

**e. The modification of the debt due the Class VII creditor shall not affect the liability of any guarantor, endorser or surety for such debt; however, as long as the Debtor remains in compliance with the provisions set forth in this Plan, and any order confirming this Plan as those provisions deal with the repayment of the claim owed by the Debtor to the Class VII creditor, the Class VII creditor shall not be permitted to proceed and is enjoined from proceeding against any guarantor, endorser or surety for debt owed by the Debtor.**

f. If there is a default under this Plan in the payments to the Class VII secured/leasehold creditor, then, after all periods of cure provided for under the loan documents, and after the Class VII secured/leasehold creditor has obtained the appropriate permission from the Bankruptcy Court, the Class VII secured/leasehold creditor may repossess or liquidate the its collateral or property.

g. Except as modified herein, the present terms of the promissory note, security agreement and other loan documents shall remain effective and the reorganized Debtor shall execute such other modifications and agreements to effectuate the terms of this Plan as the Class VII creditor may reasonably request.

#### 5.06 Class VIII. Impaired - The indebtedness of the Debtor's Class VIII

creditor, being Siemens Financial Services (“SFS”) shall be modified as follows:

a. The Debtor shall pay the Class VIII holder \$4,544.00 per month for the first ten (10) months after the Effective Date of the Plan beginning on the fifteenth (15th) day of January, 2018 through October, 2018. Thereafter, the Debtor shall make equal monthly payments of \$6,816.00 per month until the claim is satisfied.

b. The holder of the Class VIII claim shall retain its lien/leasehold interest in the property of the Debtor, pursuant to its security agreement/lease with the Debtor.

c. Payments shall be applied to principal on all loans on a *pro rata* basis. The Debtor may prepay the claim of the Class VIII creditor, at any time, without penalty or cost to the Debtor.

d. From and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to affect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the Plan, pursuant to Bankruptcy Code § 1142(b).

**e. The modification of the debt due the Class VIII creditor shall not affect the liability of any guarantor, endorser or surety for such debt; however, as long as the Debtor remains in compliance with the provisions set forth in this Plan, and any order confirming this Plan as those provisions deal with the repayment of the claim owed by the Debtor to the Class VIII creditor, the Class VIII creditor shall not be permitted to proceed and is enjoined from proceeding against any guarantor, endorser or surety for debt owed by the Debtor.**

f. If there is a default under this Plan in the payments to the Class VIII secured/leasehold creditor, then, after all periods of cure provided for under the loan documents, and after the Class VIII secured/leasehold creditor has obtained the appropriate permission from the Bankruptcy Court, the Class VIII secured/leasehold creditor may repossess or liquidate its collateral or property.

g. Except as modified herein, the present terms of the promissory note, security agreement and other loan documents shall remain effective and the reorganized Debtor shall execute such other modifications and agreements to effectuate the terms of this Plan as the Class VIII creditor may reasonably request.

5.07 Class IX. Impaired - The indebtedness of the Debtor's Class IX creditor,

being U.S. Bank, shall be modified as follows:

a. The Debtor shall pay the Class IX holder \$900.00 per month until the claim is satisfied.

b. The holder of the Class IX claim shall retain its lien/leasehold interest in the property of the Debtor, pursuant to its security agreement/lease with the Debtor.

c. Payments shall be applied to principal on all loans on a *pro rata* basis. The Debtor may prepay the claim of the Class IX creditor, at any time, without penalty or cost to the Debtor.

d. From and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to affect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the Plan, pursuant to Bankruptcy Code § 1142(b).

e. **The modification of the debt due the Class IX creditor shall not affect the liability of any guarantor, endorser or surety for such debt; however, as long as the Debtor remains in compliance with the provisions set forth in this Plan, and any order confirming this Plan as those provisions deal with the repayment of the claim owed by the Debtor to the Class IX creditor, the Class IX creditor shall not be permitted to proceed and is enjoined from proceeding against any guarantor, endorser or surety for debt owed by the Debtor.**

f. If there is a default under this Plan in the payments to the Class IX secured/leasehold creditor, then, after all periods of cure provided for under the loan documents, and after the Class IX secured/leasehold creditor has obtained the appropriate permission from the Bankruptcy Court, the Class IX secured/leasehold creditor may repossess or liquidate its collateral or property.

g. Except as modified herein, the present terms of the promissory note, security agreement and other loan documents shall remain effective and the reorganized Debtor shall execute such other modifications and agreements to effectuate the terms of this Plan as the Class IX creditor may reasonably request.

5.08 Class X. Impaired - Class X General Unsecured Creditors shall be paid on a *pro rata* basis from operation revenues as follows:

- a. \$10,000.00 per month from March, 2020 until December, 2020, and \$20,000.00 per month from January, 2021 until March, 2023.

The Debtor will pay interest on unsecured claims at the Treasury rate being .45%. The Debtor estimates total payouts to general unsecured claims will be \$640,000.00 which will pay all claims in full.

## ARTICLE VI

### Means of Execution of Plan

6.01 Class I and Class II Creditors shall be paid in full and in cash on the effective date of the Plan from proceeds held in the Debtor-in-Possession Account, or through such agreements or arrangements as may be made between the Reorganized Debtor and holders of Class I or Class II claims. Holders of Class III through Class X claims shall be paid directly from Operational Revenues and from proceeds from the sale of equipment or machinery. Any recoveries from

Avoidance Actions shall be distributed to unsecured creditors on a *pro rata* basis, however, the Debtor has not identified any such claims at this time.

6.02 The Reorganized Debtor shall continue to operate its business and conduct its affairs as a going-concern.

6.03 The Reorganized Debtor shall continue to employ the following individuals who are to serve, after confirmation of the Plan, as directors or officers of the Debtor.

<u>Name</u>	<u>Office or Directorship</u>
1. Kirk Schmidt	President

6.04 Objections to Claims. All objections to Claims shall be filed by the Claims Objection Date or shall be forever barred. Notwithstanding anything herein to the contrary, no payment shall be made on account of any Disputed Claim unless and until a Final Order has entered thereon. If a payment comes due on a Disputed Claim and no Final Order has been entered on an objection filed to that Disputed Claim, the Debtor may reserve the distribution to the Disputed Claim pending determination of the Disputed Claim(s) by this Court.

6.05 Cram Down. In the event that any Class of Claims is deemed impaired under this Plan and refuses to accept the terms of this Plan, the Debtor will move the Bankruptcy Court to confirm this Plan pursuant to Bankruptcy Code § 1129(b), which sets forth the so-called “cram-down” provisions of the Code.

6.06 Disputed Claims.

(a) No distribution or other payment or treatment shall be made on account of a Disputed Claim unless and until such Disputed Claim becomes an Allowed Claim. No distribution or other payment or treatment shall be made on account of a Disallowed Claim at any time.

(b) As to any unliquidated claim, the Bankruptcy Court may estimate the maximum allowable amount of such unliquidated claim under § 502(c) of the Bankruptcy Code. Any Final Order of the Bankruptcy Court that estimates an unliquidated claim irrevocably shall constitute and be a conclusive and final determination of the amount of the Allowed Claim of such Creditor. A Creditor whose Disputed Claim is estimated by the Bankruptcy Court shall not be entitled to any subsequent reconsideration or adjustment as a result of any subsequent adjudication or actual determination of the amount of the Claim, or otherwise, and the Creditor shall not have recourse to the Debtor, the Reorganized Debtor or any Assets, in the event the actual amount of the Creditor's Claim is at any time later determined to exceed the estimated amount.

(c) With respect to a Disputed Claim that later becomes an Allowed Claim, the Reorganized Debtor shall pay to the Holder of such Disputed Claim, an amount equal to such Holder's *pro rata* share of any distribution made to date to other holders of Claims in that Class.

6.07 Bar Date for Objections to Claims and Interests. Unless an earlier time is set by Final Order of the Bankruptcy Court, all objections to Claims or Interests must be filed with the Bankruptcy Court by the Claims Objection Bar Date. The failure by any party in interest, including the Debtor, to object to any Claim or Interest, whether or not unpaid, for purposes of voting shall not be deemed a waiver of such party's rights to object to, or re-examine, any such Claim or Interest, as applicable, in whole or in part.

6.08 Direction to Parties. From and after the Effective Date, the Reorganized Debtor may apply to the Bankruptcy Court for an order directing any necessary party to execute or deliver or to join in the execution or delivery of any instrument required to affect a transfer of property required under the Plan, and to perform any other act, including the satisfaction of any lien, that is necessary for the consummation of the Plan, pursuant to Bankruptcy Code § 1142(b).

6.09 Setoffs. The Reorganized Debtor shall, to the extent permitted under applicable law, setoff against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim, the claims, rights and causes of action of any nature (other than preference claims) that the Debtor may hold against the Holder of such Allowed Claim which are not otherwise waived, released or compromised in accordance with the Plan; provided, however, that neither such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor of any such claims, rights and causes of action that the Debtor possess against such Holder.

6.10 Nothing contained in this Plan or the Confirmation Order shall be deemed a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense that the Debtor has that is not specifically waived or relinquished by this Plan. The Reorganized Debtor shall have, retain, reserve and be entitled to assert all such Claims, Causes of Action, rights of setoff and other legal or equitable defenses that the Debtor has as fully as if this Chapter 11 case had not been commenced, and all of the Reorganized Debtor's legal and equitable rights respecting any Claim that is not specifically waived or relinquished by this Plan after the Effective Date.

## ARTICLE VII

### Effect of Confirmation of the Plan

7.01 Upon the entry of a Confirmation Order, all of the property of the Debtor's bankruptcy estate shall be vested in the Debtor. Except as provided in the Plan, all such property shall be free and clear of all claims and interests of creditors. The Debtor shall be entitled to manage affairs without further order of the Court, and shall be discharged from all of debts except as provided in the Plan.

7.02 All professionals engaged by the Debtor to perform work for the Debtor after the Effective Date of the Plan shall be compensated by the Debtor without the need of prior Court approval.

7.03 Upon the Effective Date, the provisions of the Plan bind the Debtor and any creditor, whether or not the claim or interest of such creditor is impaired under the Plan, and whether or not such creditor has accepted the Plan.

7.04 Upon the Effective Date, and except as provided in the Plan, the Debtor is discharged from any debt that arose before the Confirmation Date, and any debt of a kind specified in Sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not: (a) a proof of claim based on such debt is filed or deemed filed under Section 501 of the Bankruptcy Code; (b) such claim is allowed under Section 502 of the Bankruptcy Code; or (c) the holder of such claim has accepted the Plan.

7.05 The Order of Confirmation shall act as a discharge of the Debtor from all obligations other than those provided for in this Plan.

## ARTICLE VIII

### Provisions for Rejection of Executory Contracts

8.01 All Executory Contracts or Leases of the Debtor which are not expressly assumed or rejected prior to the Confirmation of the Plan, or for which an application to assume is not pending at the time of Confirmation, shall be deemed to be assumed by the Debtor as modified herein.

## ARTICLE IX

### Distribution and Unclaimed Property

9.01 Except as set forth in Paragraph 9.02, any funds to be distributed to holders of Allowed Claims that remain unclaimed by such claimants six (6) months after disbursement shall be considered an abandoned claim (hereinafter referred to as "Abandoned Claims") and shall become property held for the benefit of the Debtor's estate. Such funds will be distributed to the remaining unsecured creditors, on a *pro rata* basis, unless and until such claims are satisfied.

9.02 If check(s) distributed on Allowed Claims remain uncashed upon the Final Distribution, and such check(s), in the aggregate, total less than Five Hundred Dollars (\$500.00), such payment shall become property of the Debtor and shall not be distributed to the Debtor's creditors.

9.03 Distributions to Holders of Allowed Claims shall be made: (1) at the address set forth on the respective Proofs of Claim filed by such Holders; (2) at the addresses set forth in any written notices of address change delivered to the Debtor or the Reorganized Debtor after the date of any related Proof of Claim; or (3) at the address reflected in the Debtor's Schedules of Assets and Liabilities if no Proof of Claim has been filed and the Debtor and the Reorganized Debtor has not received a written notice of a change of address.

9.04 If the distribution to the Holder of any Allowed Claim is returned to the Reorganized Debtor as undeliverable, no further distribution shall be made to such Holder unless and until the Reorganized Debtor is notified in writing of such Holder's then current address. Undeliverable distributions shall be held until such time as a distribution becomes deliverable pursuant to the provisions set forth in this Plan.

9.05 Any Holder of an Allowed Claim who does not assert a Claim for an undeliverable distribution within six (6) months after the commencement of distribution to the applicable Class shall no longer have any claim to or interest in such undeliverable distribution and shall be forever

barred from receiving any distribution under the Plan and such amount shall be distributed in accordance with the terms of the Plan.

## ARTICLE X

### Injunction Against Interference of Plan And Discharge of Debtor

10.1 No Interference. No person or creditor will be permitted to commence or continue any action or proceeding or perform any act to interfere with the implementation and consummation of the Plan or the payments required to be made hereunder.

10.2 Injunction. **The Confirmation of the Plan will satisfy all Claims or causes of action arising out of any Claim addressed by the terms of the Plan and will operate, for any creditor who has voted for this Plan, as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of Debtor and/or the Debtor's directors, shareholders or officers, except as provided in the Plan. This injunction shall continue after the Plan has been completed and funded. This injunction shall also apply to enjoin a creditor (i) from commencing or continuing, in any manner, any action or other proceeding of any kind based upon, arising or deriving from any claim against the Debtor, against the Debtor, officers, directors and shareholders, or their respective officers, directors, employees, agents, representatives, financial advisors or attorneys (collectively referred to as the "Agents"), (ii) from enforcing, attaching, collecting or recovering, by any manner or means, any judgment, award, decree or order against the Debtor or the Agents, based upon, arising or deriving from any claim against the Debtor or the Agents, (iii) from creating, perfecting or enforcing**

any encumbrance of any kind against the Debtor or the Agents, based upon, arising or deriving from any claim against the Debtor or the Agents, (iv) from asserting against the Debtor or the Agents, any set-offs, right of subrogation, or recoupment against any obligation based upon, arising or deriving from any claim against the Debtor; and (v) from performing any act based upon, arising or deriving from any claim against the Debtor, in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan.

## ARTICLE XI

### General Provisions

11.01 The Debtor may modify this Plan at any time before the Confirmation of this Plan by the Bankruptcy Court, but may not modify the Plan so that the Plan, as modified, fails to meet the requirements of Sections 1122 and 1123 of the Bankruptcy Code. After the Debtor files a modification with the Bankruptcy Court, the Plan, as modified, shall become the Plan.

11.02 The Debtor may modify this Plan at any time after the confirmation of, or substantial consummation of, this Plan, but the Debtor may not modify the Plan so that the Plan, as modified, fails to meet the requirements of Sections 1122 and 1123 of the Bankruptcy Code. The Plan, as modified under these subsections, shall become the Plan only if the Bankruptcy Court, after notice and a hearing, confirms such Plan, as modified, pursuant to Section 1129 of the Bankruptcy Code; in addition, the circumstances must warrant such a modification.

11.03 Before or after Confirmation, or in the Order of Confirmation, the Debtor may, with the approval of the Bankruptcy Court, and so long as it does not materially and adversely affect the interest of the creditors, remedy any defect or admission, or reconcile any

inconsistencies in the Plan or amend the Plan in such a manner as may be necessary to carry out the purposes and effect of the Plan.

11.04 All creditors shall waive all interest on unsecured loans, late charges, penalties, attorney's fees, court costs and other charges of any kind not expressly set forth in this Plan.

11.05 Except for those creditors holding secured claims, which shall be governed by those provisions of this Plan dealing with the respective secured creditor, if any party-in-interest fails to receive the payment as provided under the Plan or questions the Debtor's compliance with the Plan in any way, such party shall provide the Debtor and the Debtor's undersigned attorneys with written notice thereof by certified mail, return receipt requested, and the Debtor may cure such non-compliance, if any, within thirty (30) days from receipt of such notice.

11.06 The Court shall retain jurisdiction, after Confirmation of the Plan, until completion of all provisions of this Plan, to insure the purposes and intent of the Plan are carried out. The Court shall retain jurisdiction herein to determine all claims against the Debtor, all disputes and litigation pending at the time of Confirmation of the Plan and any controversies which may arise and affect the Debtor's ability to carry out this Plan, until such disputes and litigation shall be concluded as set forth below, including, but not limited to:

1. Determining all valid liens and claims and amounts against the Debtor and its property;
2. Allowing the Debtor to enforce any claim or cause of action or causes of action which exists in its favor and which may not have been previously enforced by the Debtor;
3. Settling any disputes between the Debtor and its creditors;
4. Continuing to maintain jurisdiction and to stay enforcement of any liens or claims against the Debtor until Confirmation of this Plan;

5. Allowing the Debtor the rights and powers as a Debtor-in-Possession which includes the rights and power of a Trustee under the Bankruptcy Code, existing in favor of a Debtor-in-Possession before confirmation, to enforce causes of action which may not have been previously enforced or prosecuted herein by the Debtor, as Debtor-in-Possession, and allowing the Debtor to reserve all of those rights and powers held by it as a Debtor-in-Possession before Confirmation;

6. Approving or confirming a modification of this Plan after confirmation proposed by the Debtor, and granting moratoria and extensions to the payments required under the Plan to the Debtor's creditors in any of the Classes set out above for any reasonable period of time due to circumstances presently unforeseeable; and

7. Retaining such other jurisdiction as will insure that the intents and purposes of this Plan are fulfilled.

11.07 All claims and causes of action in favor of the Debtor are hereby reserved and retained to be prosecuted before and after Confirmation, and the Debtor expressly reserves any rights and powers it may enjoy as a Debtor-in-Possession to be utilized after Confirmation.

11.08 Upon ex parte application for good cause, this Court may (and reserves jurisdiction to) grant moratoria and payments to creditors in any of the classes set out above for any reasonable period of time due to circumstances presently unforeseeable. The Plan is not intended to be aborted, or this case dismissed or converted to a Chapter 7 (straight Bankruptcy) if payments are not timely made where moratoria or extensions can and should be granted by this Court for reasonable causes. "Good cause" shall not exist under this paragraph where defaults in payments are deemed "substantial" by the Court so as to constitute an "event of default".

11.09 Notwithstanding anything contained above, all distributions to Classes under this Plan will only be made after creditors in said Classes have had their claims fully fixed and allowed by the Court. However, objection(s) to any one Class will not preclude distribution to creditors in another Class, where there are no disputes regarding claims in said other Class.

11.10 Notwithstanding anything contained hereinabove, the Debtor reserves the right to object and/or defend against any and all claims herein.

11.11 Notwithstanding anything contained hereinabove, the Debtor may prepay any payment or installment under this Plan without penalty.

11.12 With respect to any dates established by this Plan for the distribution of the Debtor's funds or assets, the Debtor or the Plan Trustee may file, before the distribution date, a Notice of Proposed Distribution with the Bankruptcy Court and provide the Debtor's creditors notice and an opportunity for a hearing to object to any proposed distribution to be made by the Debtor. If no objections to the Notice are filed, the Debtor's creditors will have been considered to have consented to and approved of the proposed distribution to be made by the Debtor. If such a Notice is filed, the distribution of the funds or assets by the Debtor shall not be required to occur until thirty (30) days after the Notice period elapses or, if an objection is filed, thirty (30) days after the Bankruptcy Court enters a final non-appealable Order approving or modifying the proposed distribution, or until the time period set forth by this Plan, whichever date occurs later.

11.13 It shall be each of the Debtor's creditors' individual responsibility to maintain with the Bankruptcy Court, the Debtor, and the Debtor's attorneys, an accurate record of their current mailing address. If a creditor changes its address, said creditor shall notify, in writing, the Bankruptcy Court, the Debtor and the Debtor's attorneys of the change in address. If the notification requirements of this paragraph are not complied with, the creditor or party-in-interest

not complying with the requirements of this paragraph shall assume all of the risks of not receiving any share of any distribution made pursuant to the provisions of this Plan, and the Debtor shall not be responsible for or liable to said creditor or party-in-interest for any amounts to be distributed.

11.14 To the extent the terms of the Plan are inconsistent with the Debtor's Disclosure Statement, the terms of the Plan shall control.

Respectfully submitted,

Dated: December 14, 2017

/s/ Michael S. Myers  
Michael S. Myers  
Federal Bar No. 28450

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Certificate of Service

I HEREBY CERTIFY that on this 14<sup>th</sup> day of December, 2017, I caused a copy of the foregoing Amended Plan of Reorganization to be sent electronically, by ECF Guidelines, pursuant to Local Bankruptcy Rule 9013-4, Federal Bankruptcy Rules 5005(a)(2) and 7005, to:

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/s/ Michael S. Myers

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