

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
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<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	Bankruptcy Court Order releasing all liens, including the security interest recorded at Reel/Frame 0385/0512

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Continental Illinois National Bank and Trust Company of Chicago		10/14/2009	COMPANY:

**RECEIVING PARTY DATA**

<b>Name:</b>	Parker-Petrie, Inc.
<b>Street Address:</b>	255 South Ridge Road
<b>Internal Address:</b>	c/o Edwin C. Parker
<b>City:</b>	Lake Forest
<b>State/Country:</b>	ILLINOIS
<b>Postal Code:</b>	60045
<b>Entity Type:</b>	CORPORATION: DELAWARE

**PROPERTY NUMBERS Total: 6**

Property Type	Number	Word Mark
Registration Number:	0574351	DUR-O-WAL
Registration Number:	0689737	RAPID
Registration Number:	0696623	LADUR TYPE
Registration Number:	0825588	SPIDER-FORM
Registration Number:	1082552	LADUR-EYE
Registration Number:	1082553	DUR-O-EYE

**CORRESPONDENCE DATA**

Fax Number: (312)862-2200  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 312-862-6371  
 Email: renee.prescan@kirkland.com  
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**CH \$165.00 0574351**

**900146128**

**TRADEMARK  
 REEL: 004084 FRAME: 0703**

Address Line 2: Kirkland & Ellis LLP  
Address Line 4: Chicago, ILLINOIS 60654

ATTORNEY DOCKET NUMBER:	38725-29 RMP
NAME OF SUBMITTER:	Renee M. Prescan
Signature:	/Renee M. Prescan/
Date:	10/26/2009

**Total Attachments: 185**

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)		
<b>In re:</b>	)		<b>Chapter 11</b>
	)		
<b>DAYTON SUPERIOR CORPORATION,</b>	)		<b>Case No. 09-11351 (BLS)</b>
<b>a Delaware corporation,<sup>1</sup></b>	)		
	)		
<b>Debtor.</b>	)		
	)		

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING THE  
FIRST AMENDED PLAN OF REORGANIZATION FOR DAYTON SUPERIOR  
CORPORATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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The First Amended Plan of Reorganization for Dayton Superior Corporation under Chapter 11 of the Bankruptcy Code, dated August 25, 2009, (as amended, modified or supplemented, including by the Subsequent Plan Modifications (as defined below), the "Plan") having been filed with the Bankruptcy Court (the "Court") (Docket No. 496) by the above-captioned debtor and debtor-in-possession (the "Debtor"); and the Disclosure Statement for the First Amended Plan of Reorganization for Dayton Superior Corporation under Chapter 11 of the Bankruptcy Code, dated August 25, 2009 (the "Disclosure Statement"), having been filed with this Court (Docket No. 494); and the Disclosure Statement, and appropriate Ballots for voting on the Plan, having been approved, and transmitted to Holders<sup>2</sup> of Class 4 Claims, Class 5 Claims and Class 6 Claims against the Debtor, pursuant to that certain Order (A) Approving The

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are: EIN: XX-XXX6346. The Debtor's mailing address is 7777 Washington Village Dr., Suite 130, Dayton, Ohio 45459.

<sup>2</sup> All capitalized terms used and not otherwise defined in this Confirmation Order shall have the meanings ascribed to them in the Plan.



Disclosure Statement, (B) Establishing The Voting Record Date, Voting Deadline And Other Dates, (C) Approving Procedures For Soliciting, Receiving And Tabulating Votes On The Plan And For Filing Objections To The Plan And (D) Approving The Manner And Forms Of Notice And Other Related Documents, dated as of August 25, 2009 (Docket No. 492, the “**Solicitation Procedures Order**”); and a copy of the Plan as subsequently modified since the entry of the Solicitation Procedures Order being attached hereto as Exhibit 1; and a redline copy of the Plan showing the modifications thereto since the entry of the Solicitation Procedures Order being attached hereto as Exhibit 2 (such plan modifications, the “**Subsequent Plan Modifications**”); and the Debtor having filed its Memorandum of Law in Support of Entry of an Order Confirming the First Amended Plan of Reorganization for Dayton Superior Corporation under Chapter 11 of the Bankruptcy Code, with this Court on October 12, 2009 (the “**Confirmation Memorandum**”); and the hearing to consider the confirmation of the Plan having been held before this Court on October 14, 2009 (the “**Confirmation Hearing**”) after due and sufficient notice was given to Holders of Claims against, and Equity Interests in, the Debtor and other parties in interest in accordance with the Solicitation Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the local bankruptcy rules of this Court, in each case as established by the affidavits of service, mailing and/or publication filed with this Court prior to the Confirmation Hearing (collectively, the “**Notice Affidavits**”);<sup>3</sup> and upon all of the proceedings held before this Court and after full consideration of: (i) each of the objections to the confirmation of the Plan filed with this Court and not subsequently withdrawn, settled or deemed moot (the “**Objections**”); (ii) the Affidavits of

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<sup>3</sup> The Notice Affidavits are located at Docket Nos. 544, 545 and 546.

Tabulation of Votes with respect to the First Amended Plan of Reorganization for Dayton Superior Corporation under Chapter 11 of the Bankruptcy Code, filed on October 9, 2009 (Docket No. 618) and October 13, 2009 (Docket No. 637) by Kurtzman Carson Consulting, LLC, the Debtor's voting and claims agent; (iii) testimony proffered or presented at the Confirmation Hearing, (iv) the declarations and/or affidavits filed with this Court; (v) all other evidence proffered or adduced at, memoranda and objections filed in connection with and arguments of counsel made at, the Confirmation Hearing; and (vi) the entire record of the above-captioned chapter 11 case; and after due deliberation thereon; and good cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>4</sup>**

A. Chapter 11 Petition. On April 19, 2009 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court (the "**Chapter 11 Case**"). The Debtor is operating its business and managing its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Chapter 11 Case. On April 30, 2009, the United States Trustee (the "**U.S. Trustee**") appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "**Committee**").

B. Exclusive Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157(b)(2) and 1334(a)). This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The confirmation of the Plan is

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<sup>4</sup> The findings and conclusions set forth in this Confirmation Order and in the record of the Confirmation Hearing constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

a core proceeding under 28 U.S.C. § 157(b)(2) and this Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code.

C. Judicial Notice. This Court takes judicial notice of the docket of the Chapter 11 Case maintained by the Clerk of this Court and/or its duly-appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered and all evidence and arguments made, proffered or adduced at, the hearings held before this Court during the pendency of the Chapter 11 Case.

D. Solicitation of Votes. Votes for acceptance or rejection of the Plan were solicited in good faith and in compliance with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018 and all other applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, and all other applicable rules, laws and regulations. All procedures used to distribute Ballots to the applicable Holders of Claims and to tabulate the Ballots were fair and reasonable and conducted in accordance with the Solicitation Procedures Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, and all other applicable rules, laws, and regulations.

E. Notice of Confirmation Hearing. The Debtor has given proper and sufficient notice of the Confirmation Hearing as required by Bankruptcy Rule 3017(d). Due, adequate and sufficient notice of the Confirmation Hearing, along with the deadlines for voting on or filing objections to the Plan, has been given to all known Holders of Claims and Equity Interests substantially in accordance with the procedures set forth in the Solicitation Procedures Order. The Disclosure Statement, Plan, Ballots and Solicitation Procedures Order were transmitted and

served in compliance with the Solicitation Procedures Order and the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, and all other applicable rules, laws, and regulations, and such transmittal and service were adequate and sufficient under the circumstances.

F. Subsequent Plan Modifications. Adequate and sufficient notice of the Subsequent Plan Modifications has been given and no other or further notice is or shall be required and such Subsequent Plan Modifications are approved in full.

G. Burden of Proof. The Debtor, as the proponent of the Plan, has the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

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

(1) Proper Classification (11 U.S.C. §§ 1122 & 1123(a)(1)). In addition to Administrative Claims, DIP Facility Claims and Priority Tax Claims, which need not be classified, the Plan designates eight Classes of Claims and Equity Interests. The Claims and Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests, as the case may be, in each such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan and such Classes are proper. Thus, the Plan satisfies Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(2) Specify Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan specifies that Other Priority Claims (Class 1), Other Secured Claims (Class 2) and Secured Tax Claims (Class 3) are Unimpaired under the Plan, thereby satisfying Section 1123(a)(2) of the Bankruptcy Code (collectively, the "Unimpaired Classes").

(3) Specify Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan designates Prepetition Term Loan Credit Facility Claims (Class 4), Subordinated Notes Claims (Class 5), General Unsecured Claims (Class 6), Junior Convertible Notes Claims (Class 7) and Equity Interests (Class 8) as Impaired and specifies the treatment of

Claims and Equity Interests in those Classes, thereby satisfying Section 1123(a)(3) of the Bankruptcy Code.

(4) No Discrimination Within Classes (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtor for each Claim or Equity Interest in each respective Class unless the Holder of a particular Claim or Equity Interest has agreed to a less favorable treatment of such Claim or Equity Interest, thereby satisfying Section 1123(a)(4) of the Bankruptcy Code.

(5) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan provides adequate and proper means for implementation of the Plan, thereby satisfying Section 1123(a)(5) of the Bankruptcy Code.

(6) Non-Voting Equity Securities (11 U.S.C. § 1123(a)(6)). The Plan provides that the certificate of incorporation of the Reorganized Debtor shall prohibit the issuance of non-voting equity securities to the extent required by Section 1123(a)(6) of the Bankruptcy Code, thereby satisfying Section 1123(a)(6) of the Bankruptcy Code.

(7) Selection of Directors and Officers (11 U.S.C. § 1123(a)(7)). Pursuant to Article V(M) of the Plan, the initial officers of the Reorganized Debtor shall be the officers of the Debtor existing immediately prior to the Effective Date. The board of directors of the Reorganized Debtor were identified by the Debtor at or prior to the Confirmation Hearing. At or prior to the Confirmation Hearing, the Debtor disclosed the identity and affiliations of any Person (each, a "**New Director**") proposed to serve on the initial board of directors of the Reorganized Debtor (the "**Reorganized Board**"), and, to the extent such Person is an insider other than by virtue of being a director, the nature of any compensation for such Person. On the Effective Date, the board of directors of the Reorganized Debtor shall be reconstituted and declassified as provided in the Amended Organization Documents of the Reorganized Debtor, and the New Directors shall be appointed as the directors of the Reorganized Debtor. The directors and officers of the Reorganized Debtor were selected in a manner consistent with the interests of creditors and with public policy, thereby satisfying Section 1123(a)(7) of the Bankruptcy Code. No action required by the Plan, including, but not limited to, the appointment of the New Directors, shall be, or be deemed to be, a "change of control" under any contract, agreement or other document to which the Debtor is a party or otherwise bound.

(8) Additional Plan Provisions (11 U.S.C. § 1123(b)). The Plan's provisions are appropriate, in the best interests of the Debtor and its Estate and not inconsistent with the applicable provisions of the Bankruptcy Code, including, without limitation, provisions for (i) the assumption or rejection of executory contracts and unexpired leases; (ii) the Reorganized Debtor's retention of certain Litigation Claims that the Debtor had or had power to assert immediately prior to the Effective Date, whether directly or derivatively; and (iii) releases of various persons and entities, exculpation of various persons and entities with respect to actions related to or taken in furtherance of the

Chapter 11 Case and preliminary and permanent injunctions against certain actions against the Debtor, its Estate and its properties.

(9) Identification of Plan (Bankruptcy Rule 3016(a)). The Plan is dated and identifies the entity submitting it, thereby satisfying Bankruptcy Rule 3016(a).

I. The Debtor's Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtor has complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Section 1129(a)(2) of the Bankruptcy Code. Specifically:

(1) The Debtor is a proper debtor under Section 109 of the Bankruptcy Code and proper proponent of the Plan under Section 1121(a) of the Bankruptcy Code.

(2) The Debtor has complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of this Court.

(3) The Debtor has complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, and the Solicitation Procedures Order in transmitting the Plan, the Disclosure Statement, the Ballots and related documents and notices and in soliciting and tabulating votes on the Plan.

J. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtor has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying Section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, this Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Case and the formulation and confirmation of the Plan. The Debtor, the Committee, the Indenture Trustee, the Ad Hoc Noteholders Committee, the Backstop Parties, the Prepetition Term Loan Lenders and the Administrative and Collateral Agents (and each of their respective Related Persons) have negotiated the Plan and participated in the Plan formulation process at arms' length and in good faith. The Chapter 11 Case was filed and the Plan was proposed with the legitimate and honest purpose of reorganizing the Debtor and maximizing the value of the



Debtor's assets and expeditiously distributing the New Securities and Documents and other consideration to the Debtor's creditors and interest holders pursuant to the Plan.

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

L. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtor has complied with Section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as the initial directors and officers of the Reorganized Debtor after confirmation of the Plan have been fully disclosed to the extent such information is available, and the appointment to, or continuance in, such offices of such persons is consistent with the interests of Holders of Claims against and Equity Interests in the Debtor and with public policy. To the extent available, the identity of any insider that will be employed or retained by the Reorganized Debtor and the nature of such insider's compensation have also been fully disclosed.

M. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Debtor is not subject to any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtor. Thus, Section 1129(a)(6) of the Bankruptcy Code is not applicable in the Chapter 11 Case.

N. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies Section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis set forth in Exhibit E to the

Disclosure Statement and other evidence proffered or adduced at the Confirmation Hearing (a) are persuasive and credible, (b) have not been controverted by other evidence and (c) establish that each Holder of a Claim or Equity Interest in an Impaired Class either (i) has accepted the Plan or (ii) will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

O. Acceptance by Classes (11 U.S.C. § 1129(a)(8)). Under Section 1126(f) of the Bankruptcy Code, the Holders of Other Priority Claims (Class 1), Other Secured Claims (Class 2) and Secured Tax Claims (Class 3) are Unimpaired and, thus, are conclusively presumed to have accepted the Plan. The Holders of the Prepetition Term Loan Credit Facility Claims (Class 4), Subordinated Notes Claims (Class 5) and General Unsecured Claims (Class 6) have voted to accept the Plan in accordance with Sections 1126(c) of the Bankruptcy Code. The Holders of the Junior Convertible Notes Claims (Class 7) and Equity Interests (Class 8) are deemed to have rejected the Plan pursuant to Section 1126(g) of the Bankruptcy Code. Although Section 1129(a)(8) of the Bankruptcy Code is not satisfied with respect to such rejecting Classes identified above, the Plan may nevertheless be confirmed because the Plan satisfies Section 1129(b) of the Bankruptcy Code with respect to such rejecting Classes. Article IV(E) of the Plan contemplates the non-consensual confirmation of the Plan.

P. Treatment of Administrative Claims, Other Priority Claims and Priority Tax Claims (11 U.S.C. § 1129(a)(9)). The treatment of Allowed Administrative Claims and Allowed Other Priority Claims under Article II(A) and Article III(B)(1) of the Plan, respectively, satisfies

the requirements of Section 1129(a)(9)(A) and (B) of the Bankruptcy Code, and the treatment of Allowed Priority Tax Claims under Article II(C) of the Plan satisfies the requirements of Section 1129(a)(9)(C) of the Bankruptcy Code, thereby satisfying Section 1129(a)(9) of the Bankruptcy Code.

Q. Acceptance by At Least One Impaired Class of Claims (11 U.S.C. § 1129(a)(10)). The Prepetition Term Loan Credit Facility Claims (Class 4), Subordinated Notes Claims (Class 5) and General Unsecured Claims (Class 6) are Impaired Classes of Claims that have voted to accept the Plan in accordance with Sections 1126(c) of the Bankruptcy Code, determined without including any acceptance of the Plan by “insiders,” thereby satisfying Section 1129(a)(10) of the Bankruptcy Code.

R. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence proffered or adduced at the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence, and (iii) establishes that the Plan is feasible and that there is a reasonable prospect of the Reorganized Debtor being able to meet its financial obligations under the Plan and its business in the ordinary course and that confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtor, thereby satisfying the requirements of section 1129(a)(11) of the Bankruptcy Code.

S. Payment of Fees (11 U.S.C. § 1129(a)(12)). All fees payable under 28 U.S.C. § 1930 have been paid or will be paid pursuant to Article XII(B) of the Plan, thereby satisfying Section 1129(a)(12) of the Bankruptcy Code.

T. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Pursuant to Article VI(H) of the Plan, the Reorganized Debtor shall continue to pay all retiree benefits of the Debtor

for the duration of the period for which the Debtor has obligated itself to provide such benefits, thereby satisfying Section 1129(a)(13) of the Bankruptcy Code to the extent such section is applicable to the Debtor.

U. No Unfair Discrimination; Fair and Equitable (11 U.S.C. § 1129(b)). The Holders of the Junior Convertible Notes Claims (Class 7) and Equity Interests (Class 8) (collectively, the “**Rejecting Classes**”) are deemed to have rejected the Plan. The evidence proffered or adduced at the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence and (iii) establishes that the Plan does not discriminate unfairly, and is fair and equitable, with respect to the Rejecting Classes, as required by sections 1129(b)(1) and (b)(2) of the Bankruptcy Code, because no Holder of any interest that is junior to the Claims and Equity Interests represented by the respective Rejecting Class will receive or retain any property under the Plan on account of such junior interest, and no Holder of a Claim in a Class senior to the Rejecting Classes is receiving more than 100% recovery on account of its Claim. Thus, the Plan may be confirmed notwithstanding the deemed rejection of the Plan by the Rejecting Classes.

V. Principal Purpose of Plan (11 U.S.C. § 1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933 (15 U.S.C. § 77e).

W. Good Faith Solicitation (11 U.S.C. § 1125(e)). The evidence proffered or adduced at the Confirmation Hearing (i) is persuasive and credible, (ii) has not been controverted by other evidence and (iii) establishes that the Debtor, the Reorganized Debtor, the Committee, the Ad Hoc Noteholders Committee, the Backstop Parties, the Administrative and Collateral Agents, the Indenture Trustee, and the respective Holders of the DIP Facility Claims, Prepetition

Term Loan Credit Facility Claims and Subordinated Notes Claims (and each of their respective Related Persons) (collectively, the “**Protected Parties**”) have, as applicable, (a) solicited acceptances or rejections of the Plan and subscriptions to the Rights Offering in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1125 and 1126 of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court, and any applicable non-bankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation and (b) participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and any applicable non-bankruptcy law, rule or regulation in the offer and issuance of any securities under the Plan. Accordingly, each of the Protected Parties is entitled to the protections afforded by Section 1125(e) of the Bankruptcy Code and the exculpation, release and limitation of liability provisions and protections set forth in Article X of the Plan.

X. Satisfaction of Confirmation Requirements. Based on the foregoing, the Plan satisfies the requirements for confirmation set forth in Section 1129 of the Bankruptcy Code.

Y. Retention of Jurisdiction. This Court may properly retain jurisdiction over the matters set forth in Article XI of the Plan and as contemplated herein.

Z. Classification Takes Into Account Subordination Rights. The classification and manner of satisfying all Claims and Equity Interests under the Plan takes into consideration all contractual, legal and equitable subordination and turnover rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise, that a Holder of a Claim or Equity Interest may have against other Holders of a Claim or Equity Interest with respect to any distribution made pursuant to the Plan.

AA. Rights Offering. The Debtor conducted the Rights Offering and distributed the Subscription Rights in accordance with the Rights Offering Order.

BB. Findings Regarding Third-Party Releases and Related Provisions. The release, exculpation and injunction provisions contained in the Plan, including, without limitation, those contained in Article X of the Plan, (i) have been negotiated in good faith and at arms' length, (ii) are consistent with sections 105, 1123(b)(6), 1129, and 1142 of the Bankruptcy Code and applicable caselaw, and (iii) are each necessary for the Debtor's successful reorganization and are integral to the structure of the Plan and formed part of the agreement among all parties in interest embodied therein.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Confirmation of the Plan. The Plan is approved and confirmed under Section 1129 of the Bankruptcy Code. Each of the terms and conditions of the Plan, and the exhibits and schedules thereto, are an integral part of the Plan and are incorporated by reference into this Confirmation Order. The Plan complies with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the local bankruptcy rules of this Court relating to and regarding confirmation. The Plan, as modified by the Plan Modifications, is deemed accepted by all creditors who have previously accepted the Plan and such acceptances cannot be withdrawn, and the Debtor is not required to prepare or distribute a new disclosure statement with respect to the Plan Modifications.

2. Objections. All Objections to confirmation of the Plan that have not been withdrawn, waived, or settled and all reservations of rights included therein, are overruled on the

merits and for the reasons set forth on the record at the Confirmation Hearing. All withdrawn objections are deemed withdrawn with prejudice.

3. Provisions of Plan and Confirmation Order Nonseverable and Mutually Dependent. The provisions of the Plan and this Confirmation Order, including the findings of fact and conclusions of law set forth herein, are non-severable and mutually dependent.

4. Plan Classification Controlling. The classification of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications set forth on the Ballots tendered to or returned by the Debtor's creditors in connection with voting on the Plan (a) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan, (b) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims or Equity Interests under the Plan for distribution purposes, and (c) may not be relied upon by any creditor or interest holder as representing the actual classification of such Claims or Equity Interests under the Plan for distribution or any other purpose (other than for evidencing the vote of such party on the Plan).

5. Distributions are Fair. The distribution of Cash, New Stock and the other New Securities and Documents to the Holders of Allowed Claims in exchange for their Allowed Claims is fair and for reasonably equivalent value. 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, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to the Plan.

6. Binding Effect. Pursuant to Section 1141 and the other applicable provisions of the Bankruptcy Code, effective as of the Effective Date and without limiting or altering Article X(G) of the Plan, the provisions of the Plan (including the exhibits and schedules to, and all documents and agreements executed pursuant to or in connection with, the Plan) and this Confirmation Order shall be binding on (a) the Debtor, (b) all Holders of Claims against and Equity Interests in the Debtor, whether or not Impaired under the Plan and whether or not such Holders have accepted or rejected the Plan, (c) each Person or Entity receiving, retaining or otherwise acquiring property under the Plan, (d) any non-Debtor party to an executory contract or unexpired lease with the Debtor, (e) any Person or Entity making an appearance in the Chapter 11 Case or any other party-in-interest in this Chapter 11 Case, and (f) each of the foregoing's respective Related Persons.

7. Claims Arising Under the DIP Facility Credit Agreement. On the Effective Date, the Allowed DIP Facility Claims shall be indefeasibly paid in full in Cash in full satisfaction, settlement, discharge and release of, and in exchange for, such DIP Facility Claims. Upon indefeasible payment and satisfaction in full of all Allowed DIP Facility Claims, the DIP Facility Credit Agreement and Prepetition Revolving Credit Agreement, and all "Loan Documents" as defined therein, respectively, and all Liens and security interests granted to secure the DIP Facility Claims and/or Prepetition Revolving Credit Agreement Claims, shall be immediately terminated, extinguished and released, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person, and the respective Administrative and Collateral Agents shall promptly execute and deliver to the Reorganized Debtor such instruments of termination,



release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor. Notwithstanding the above, any indemnity provisions contained in the DIP Facility Credit Agreement shall survive such termination, release and satisfaction in the manner and to the extent set forth therein.

8. Corporate Existence. The Debtor shall continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation pursuant to the applicable law in the State of Delaware and pursuant to the Amended Organizational Documents.

9. Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in the Plan or this Confirmation Order, on and after the Effective Date, all property and assets of the Debtor and its Estate (including, without limitation, Causes of Action and, unless otherwise waived pursuant to an order of this Court, the Avoidance Actions) and any property and assets acquired by the Debtor pursuant to the Plan or during the Chapter 11 Case shall vest in the Reorganized Debtor, free and clear of any and all Liens, Claims, Equity Interests, charges or other encumbrances. Except as otherwise provided in the Plan or this Confirmation Order, on and after the Effective Date, the Reorganized Debtor may (i) operate its business, (ii) use, acquire, transfer or dispose of property and (iii) compromise or settle any Claims, Causes of Action or Litigation Claims, in each case without notice to, hearing before, supervision of or approval by this Court and free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules or the local rules of this Court, other than those restrictions expressly imposed by the Plan or this Confirmation Order.

10. Release of Liens, Claims and Equity Interests. Except as otherwise provided in this Confirmation Order, the Plan or in any contract, instrument, release or other agreement or

document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor.

11. New Stock. On the Effective Date, the Reorganized Debtor shall issue the New Stock pursuant to the terms set forth herein and in the Plan. The New Stock shall be subject to dilution by the Rights Offering. The aggregate number of shares of New Stock to be issued on the Effective Date (after giving effect to all of the transactions contemplated by the Plan, including the Rights Offering) shall be 1,000,000 shares (the “**Aggregate Effective Date New Stock Issuance**”). After giving effect to the Restructuring Transactions, the holders of New Stock shall become the holders of the Post-Effective Date Equity Interests, which shall be subject to dilution by any equity issued in connection with the Equity Incentive Program. The Reorganized Debtor shall not be obligated to list the New Stock on a national securities exchange, nor shall Holdings be obligated to list the Post-Effective Date Equity Interests on a national securities exchange.

12. Restructuring Transactions. The Debtor is authorized to consummate the Restructuring Transactions described in Article V(B) of the Plan, subject to the terms and conditions set forth therein and in this Confirmation Order.

13. Distributions Exempt from Securities Laws.

(a) On the Effective Date, each of the Reorganized Debtor, Intermediate Holdings and Holdings is authorized to and shall issue, as applicable, the New Stock, the Intermediate Holdings Common Stock and Post-Effective Date Equity Interests, the New Credit Agreement Documents (as defined below) and any and all other securities, notes, stock, instruments, certificates, and other documents or agreements required to be issued, executed or delivered pursuant to the Plan (collectively with the Subscription Rights, the "New Securities and Documents"), in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. The issuance of the New Securities and Documents and the distribution thereof under the Plan, and distribution and exercise of the Subscription Rights, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code except to the extent that: (i) the Holders of any of the foregoing are "underwriters," as that term is defined in section 1145 of the Bankruptcy Code, and (ii) the Subscription Rights, Rights Offering and the Rights Offering Shares were offered and distributed to, or exercised by, any Rights Offering Participant or Backstop Party, in which case such Subscription Rights, Rights Offering and the Rights Offering Shares are exempt from such registration pursuant to Section 4(2) of the Securities Act. Without limiting the effect of section 1145 of the Bankruptcy Code, all documents, agreements, and instruments entered into and delivered on or as of the Effective

Date contemplated by or in furtherance of the Plan, including, without limitation, the Revolver Exit Facility Credit Agreement, the Term Loan Exit Facility Term Sheet, the Term Loan Exit Facility Credit Agreement, the Holdings LLC Agreement, the Registration Agreement, the Securityholders Agreement, and any other agreement or document related to or entered into in connection with any of the foregoing, shall become, and the Backstop Rights Purchase Agreement shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by such applicable agreement).

(b) Upon the Effective Date, after giving effect to the transactions contemplated hereby, the authorized capital stock or other equity securities of the Reorganized Debtor shall be that number of shares of New Stock as may be designated in the Amended Organizational Documents. Without limiting the effect of section 1145 of the Bankruptcy Code, on the Effective Date, Holdings will enter into the Registration Agreement with each Person (a) who by virtue of the issuance by Holdings to such Person on the Effective Date of the Post-Effective Date Equity Interests and/or its relationship with Holdings could reasonably be deemed to be an “underwriter” or “affiliate” (as such terms are used within the meaning of applicable securities laws) of Holdings, (b) who requests in writing that Holdings execute such agreement, and (c) who enters into the Holdings LLC Agreement and the Securityholders Agreement. In connection with the distribution of Post-Effective Date Equity Interests to current or former employees of the Debtor, Holdings may take whatever actions are necessary to comply with applicable federal, state, local and international tax withholding obligations, including

withholding from distributions a portion of the Post-Effective Date Equity Interests and selling such securities to satisfy tax withholding obligations including, without limitation, income, social security and Medicare taxes.

14. Exit Financing. On the Effective Date, the Reorganized Debtor shall be authorized to execute and deliver the Revolver Exit Facility Credit Agreement and the Term Loan Exit Facility Credit Agreement, as well as execute, deliver, file, record and issue any notes, documents (including UCC financing statements), instruments or agreements in connection therewith, including, without limitation, the Term Loan Exit Intercreditor Agreement (collectively, the "New Credit Agreement Documents"), and perform their obligations under the New Credit Agreement Documents, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by any applicable New Credit Agreement Document). The Liens and security interests to be granted by the Reorganized Debtor pursuant to the terms of the New Credit Agreement Documents shall be deemed perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the New Credit Agreement Documents.

15. New Equity Documents. On the Effective Date, Holdings shall be authorized and directed to enter into and consummate the transactions contemplated by the Holdings LLC Agreement, the Securityholders Agreement, the Registration Agreement and such documents, and any agreement or document entered into in connection therewith, shall become effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of this Court, act or action under applicable law,

regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by the Holdings LLC Agreement, the Securityholders Agreement or the Registration Agreement). Except for Holdings, entry into the Securityholders Agreement and the Registration Agreement is voluntary and no Holder of Subordinated Notes Claims will be required, pursuant to the Plan, to enter into such agreements; provided, however, that any Person who enters into the Registration Agreement shall also, as a condition thereto, enter into the Securityholders Agreement.

16. Discharge of the Debtor. To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or this Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims of any kind or nature whatsoever against the Debtor, the Estate or any of its assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims. Except as otherwise expressly provided by the Plan or this Confirmation Order, upon the Effective Date, the Debtor and its Estate shall be deemed discharged and released under, and to the fullest extent provided by, section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code, whether or not (i) a proof of the claim based on such debt is filed or deemed filed under section 501 of the Bankruptcy Code; (ii) such claim is allowed under

section 502 of the Bankruptcy Code; or (iii) the holder of such claim has accepted or rejected the Plan (or failed to vote on the Plan).

17. Releases, Exculpation and Limitation of Liability. The releases, exculpation and limitation of liability provisions contained in the Plan, including, but not limited to, those provided in Article X of the Plan, are fair and equitable and given for valuable consideration and are in the best interest of the Debtor and all parties-in-interest, and, accordingly, are hereby authorized, approved and binding on all Persons and Entities described therein.

18. Injunctions. The injunctions contained in the Plan, including, but not limited to, those provided in Article X(F) of the Plan, are hereby authorized, approved and binding on all Persons and Entities described therein. Except as otherwise provided in the Plan, this Confirmation Order or in any document, instrument, release, or other agreement entered into in connection with the Plan or approved by order of this Court, and without limiting or altering Section 524(a) of the Bankruptcy Code, this Confirmation Order constitutes an injunction from and after the Effective Date restraining all Persons or Entities who have held, hold, or may hold Claims against or Equity Interests in the Debtor from taking any of the following actions against any of the Debtor, the Reorganized Debtor, the Estate, or any of their respective assets or property: (A) commencing or continuing, in any manner or in any place, any action or other proceeding with respect to any such Claims or Equity Interests; (B) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree or order with respect to any such Claims or Equity Interests; (C) creating, perfecting, or enforcing any Lien or encumbrance with respect to any such Claims or Equity Interests; (D) asserting a setoff or right of subrogation of any kind against any debt, liability or obligation due to the Debtor with respect to any such

Claims or Equity Interests; and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan with respect to any such Claims or Equity Interests; provided, however, that nothing contained herein shall preclude such Persons or Entities from exercising their rights pursuant to and consistent with the terms of the Plan, this Confirmation Order or in any document, instrument, release, or other agreement entered into in connection with the Plan or approved by order of this Court. Pursuant to Article X(F) of the Plan, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

19. Assumed Contracts and Leases.

(a) Generally. All of the Executory Contracts and Unexpired Leases of the Debtor are hereby assumed in accordance with the provisions and requirements of Sections 365 and 1123 of the Bankruptcy Code, effective as of the Effective Date (collectively, the “Assumed Contracts”), except those Executory Contracts and Unexpired Leases that (i) have been previously assumed or rejected by order of this Court, (ii) are the subject of a motion to assume or reject pending on the Effective Date, (iii) are identified on Plan Schedule 4, (iv) are rejected pursuant to the terms of the Plan or this Confirmation Order, or (v) previously expired or terminated pursuant to their own respective terms. To the extent any provision in any Assumed Contract (including, without limitation, any “change of control” provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the commencement of this Chapter 11 Case, the transactions effectuated by the Plan or the Debtor’s assumption of such Executory Contract or Unexpired Lease, then such provision shall be deemed modified such that



the transactions contemplated by the Plan shall not entitle the non-debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Each Assumed Contract shall revest in and be fully enforceable by the Reorganized Debtor in accordance with its terms and conditions.

(b) Assumption of Director and Officer Insurance Policies. The Debtor, and upon the Effective Date, the Reorganized Debtor, shall assume all of the D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code. Entry of this Confirmation Order shall constitute this Court's approval of the Debtor's foregoing assumption of each of the D&O Liability Insurance Policies, each of which shall be deemed to be an Assumed Contract. Notwithstanding anything to the contrary contained herein, 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 shall be deemed and treated as an Assumed Contract hereunder as to which no Proof of Claim or cure claim need be Filed. Notwithstanding anything to the contrary contained herein, confirmation of the Plan shall not impair or otherwise modify any rights of the Reorganized Debtor under the D&O Liability Insurance Policies.

(c) Indemnification Provisions. Except as otherwise provided herein, all indemnification provisions currently in place (whether in the by-laws, certificate of incorporation, board resolutions, contracts, or otherwise) for the directors, officers and employees of the Debtor who served in such capacity as of the Petition Date with respect to or based upon any act or omission taken or omitted in such capacities, for or on behalf of the

Debtor, will be Reinstated (or assumed, as the case may be), and shall survive confirmation and consummation of the Plan and the occurrence of the Effective Date.

(d) Compensation and Benefit Programs. Except as otherwise provided herein, all employment and severance policies, and all compensation and benefit plans, policies, and programs of the Debtor applicable to its employees, retirees, and non-employee directors and the employees and retirees of its subsidiaries, including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, life, and accidental death and dismemberment insurance plans, are treated as Assumed Contracts under the Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. Any payment obligations under any assumed employment contracts and benefit plans that have been or purport to have been accelerated as a result of the commencement of this Chapter 11 Case or the consummation of any transactions contemplated by the Plan shall be Reinstated and such acceleration shall be rescinded and deemed not to have occurred.

(e) Workers' Compensation Programs. Except as otherwise provided herein, as of the Effective Date, the Debtor and the Reorganized Debtor shall continue to honor their obligations under: (i) all applicable workers' compensation laws in states in which the Reorganized Debtor operates; and (ii) the Debtor's written contracts, agreements, agreements of indemnity, self-insured workers' compensation bonds, and any other policies, programs, and plans regarding or relating to workers' compensation and workers' compensation insurance. All such contracts and agreements are treated as Assumed Contracts under the Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the

Bankruptcy Code. Notwithstanding anything to the contrary contained herein, confirmation of the Plan shall not impair or otherwise modify any rights of the Reorganized Debtor under any such contracts, agreements, policies, programs or plans regarding or relating to workers' compensation or workers' compensation insurance.

20. Approval of Assumed Contracts.

(a) Court Approval. The Debtor's assumption of the Assumed Contracts is hereby approved. The Assumed Contracts shall remain in full force and effect for the benefit of the Reorganized Debtor, notwithstanding any provision in such Assumed Contract (including, without limitation, those described in Sections 365(b), (c), (e) and (f) of the Bankruptcy Code) or under applicable non-bankruptcy law that purports to (a) terminate, modify, or restrict, or permit the applicable non-Debtor party to terminate, modify or restrict, such contract or lease or the Debtor's rights, benefits and privileges thereunder; (b) create or impose, or permit the applicable non-Debtor party to create or impose, any additional duties, obligations, penalties, default rates of interest or payments (monetary and non-monetary) upon the Debtor or Reorganized Debtor, in either case as a result of or in connection with (i) the filing of a petition for relief under Chapter 11 of the Bankruptcy Code by the Debtor or (ii) the Debtor's insolvency or financial condition at any time before the Chapter 11 Case is closed, and/or (c) prohibit, condition, or restrict assignment or transfer of such contract or lease by the Debtor.

(b) Cure Disputes. Any counterparty to an Assumed Contract that failed to object timely to the proposed assumption or cure amount is hereby deemed to have assented to such matters and is deemed to have forever released and waived any objection to the proposed assumption and cure amount. The amounts, if any, due by the Debtor pursuant to each Assumed

Contract that are required to be paid as cure under section 365 of the Bankruptcy Code shall be satisfied by payment of such amount in Cash on the Effective Date, or as soon thereafter as is practicable, or on such other terms as the parties to such Assumed Contract may otherwise agree in writing. In the event of a dispute regarding the amount and timing of any cure payments, the Debtor and applicable non-Debtor parties shall promptly confer after the Effective Date to attempt to resolve any such dispute consensually without further order of this Court. In the event such dispute cannot be resolved consensually by the applicable parties, then the Debtor shall, within thirty (30) days after the Effective Date, file a notice of dispute with this Court (and promptly serve such notice on the applicable counter-party) and such dispute shall be set for a status conference at the next scheduled omnibus hearing in this Chapter 11 Case, with subsequent evidentiary hearings to be established by this Court as and if necessary. The payments, if any, or other actions, if any, that this Court determines the Debtor is required to pay or otherwise perform to assume the applicable Assumed Contract pursuant to Section 365(b)(1) of the Bankruptcy Code shall be promptly paid or undertaken as required by Final Order resolving the applicable dispute. If an objection to the proposed cure amount is sustained by Final Order of this Court, the Debtor or Reorganized Debtor, as applicable, in its sole option, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it by filing written notice thereof with this Court, and serving such notice on the applicable counter-party, within ten (10) days of the entry of such Final Order.

21. Approval of Rejected Contracts. All of the Executory Contracts and Unexpired Leases of the Debtor that are identified on Plan Schedule 4, or that are otherwise rejected pursuant to the terms of the Plan or this Confirmation Order, (collectively, the "Rejected

Contracts") are rejected by the Debtor and such rejection is hereby approved by this Court effective as of the Effective Date (the "Rejection Date"); provided that, with respect to the rejection of any unexpired lease of non-residential real property, such Rejection Date shall occur on the later of (i) the Effective Date or (ii) the date on which the Debtor has vacated the applicable leased premises. All proofs of claim with respect to Claims arising from or in connection with the Rejected Contracts, if any, must be filed with this Court within thirty (30) days after the applicable Rejection Date (such Claims, the "Rejection Claims"). Any and all Rejection Claims not filed within such time will be forever barred from assertion against the Debtor or Reorganized Debtor, its Estate, or property unless otherwise ordered by this Court or provided for in the Plan. All Rejection Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in the Plan and this Confirmation Order.

22. Corporate Action

(a) Pursuant to Section 1142(b) of the Bankruptcy Code, each of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, notes, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan, including, without limitation, the distribution of the securities to be issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtor, in each case without further notice to, hearing before or order of this Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the

Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable or by any other Person (except for those expressly required pursuant hereto or the Plan).

(b) Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to the Plan that would otherwise require approval of the stockholders, directors or members of the Debtor (as of prior to the Effective Date) shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, directors, managers or partners of the Debtor, or the need for any approvals, authorizations, actions or consents of any Person.

(c) All matters provided for in the Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, in connection with the Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, notes, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in the Plan, and to perform any and all

other acts or actions that are necessary or appropriate to comply with or consummate the terms and conditions of the Plan, in each case in the name of and on behalf of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The secretary and any assistant secretary of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, shall be authorized to certify or attest to any of the foregoing actions.

23. Authority to Act. The Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, and their respective officers and directors, are authorized and empowered pursuant to Section 303 of the Delaware General Corporation Law and other applicable corporation, limited liability company and limited partnership laws, to take any and all actions necessary or desirable to implement the transactions contemplated by the Plan and this Confirmation Order, in each case without any requirement of further vote, consent, approval, authorization or other action by the stockholders, security holders, officers, directors, partners, managers, members or other applicable owners or notice to, order of, or hearing before this Court. Each federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Plan and the transactions contemplated thereby.

24. Exemption From Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, (a) the issuance, transfer, or exchange (or deemed issuance, transfer or exchange) of notes or equity securities under the Plan or this Confirmation Order, including, without limitation, the

New Stock, the Intermediate Holdings Common Stock, the Post-Effective Date Equity Interests, the Subscription Rights, the New Credit Agreement Documents and the other New Securities and Documents; (b) the creation, attachment or perfection of any mortgage, deed of trust, Lien, pledge, or other security interest; (c) the making or assignment of any lease or sublease; or (d) the making or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan or this Confirmation Order (including, without limitation, any merger agreements, agreements of consolidation, restructuring, disposition, liquidation, or dissolution, deeds, bills of sale, and transfers of tangible property) will not be subject to, and are hereby exempted from, any Stamp or Similar Tax. Except as otherwise ordered by this Court, all sales, transfers, and assignments of owned and leased property approved by this Court on or prior to the Effective Date, shall be deemed to have been in furtherance of, or in connection with, the Plan. Each federal, state, commonwealth, local, foreign, or other Governmental Unit is hereby authorized and directed to accept any and all documents, mortgages, and instruments necessary or appropriate to effectuate, implement or consummate the transactions contemplated by the Plan and this Confirmation Order, including, without limitation, the New Credit Agreement Documents.

25. Bar Date for Administrative Claims. Except as otherwise provided herein or in the Plan, unless previously Filed or paid, requests for payment of Administrative Claims must be Filed with this Court and served on the Reorganized Debtor pursuant to the procedures specified in the notice of entry of this Confirmation Order, substantially in the form attached hereto as Exhibit 3 (the “Notice of Confirmed Plan”), by no later than December 15, 2009 (the “Administrative Claims Bar Date”). Holders of Administrative Claims that are required to File



and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtor or the Reorganized Debtor or its Estate and property and such Administrative Claims shall be deemed discharged as of the Effective Date. All Administrative Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in the Plan and this Confirmation Order. Any objections to such requests for payment of Administrative Claims must be Filed with this Court and served on the Reorganized Debtor and the requesting party by the later of (a) one hundred twenty (120) days after the Effective Date and (b) sixty (60) days after the Filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by order of this Court.

26. Professional Fee Claims.

(a) Professional Fees Bar Date. The Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must File with this Court and serve on the Reorganized Debtor and such other Entities designed by this Confirmation Order an application for final allowance of such Professional Fee Claim by no later than the Business Day that is sixty (60) days after the Effective Date, or such other date as approved by order of this Court (the "Professional Fees Bar Date"); provided that the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed on and after the Effective Date, including those fees and expenses incurred by Professionals in connection with the implementation and consummation of the Plan, in each case without further application or notice to, hearing before or order of this Court; provided, further, that any professional who

may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Court order, pursuant to the Ordinary Course Professionals Order. Each Holder of an Allowed Professional Fee Claim shall be paid by the Reorganized Debtor in Cash within five Business Days of entry of the order approving such Allowed Professional Fee Claim. Notwithstanding the foregoing, the Debtor shall, on the Effective Date and as part of the Transaction Expenses, pay the Rights Offering Commitment Fee and Expense Reimbursement (each as defined in the Rights Offering Order) and pay the Ad Hoc Noteholders Committee Fees and Expenses and all unpaid reasonable fees and expenses (whether accrued prepetition or postpetition) of the Prepetition Term Loan Agent and Prepetition Term Loan Lenders, including all accrued and unpaid reasonable fees and expenses (whether accrued prepetition or postpetition) of Gibson, Dunn & Crutcher, LLP, Broadpoint Capital, Inc. and Young Conaway Stargatt & Taylor, LLP payable pursuant to the Term Loan Exit Facility Credit Agreement as Administrative Claims in the ordinary course of business, without application by or on behalf of any such parties to this Court, and without notice and a hearing; provided however that, if the Debtor or Reorganized Debtor and any such Entity cannot agree on the amount of fees and expenses to be paid to such party, the reasonableness of any such fees and expenses shall be determined by this Court.

(b) Service of Final Fee Applications. All final fee applications of Professionals shall be filed with this Court and actually served on or prior to the Professional Fees Bar Date upon the following parties (collectively, the "Notice Parties") (i) Latham & Watkins LLP, Counsel to the Debtor, 885 Third Avenue, New York, New York 10022-4834

(Attn: Joseph S. Fabiani); (ii) Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Mark Kenney); (iii) Kirkland & Ellis LLP, Counsel to the Ad Hoc Noteholders Committee, 601 Lexington Avenue, New York, NY 10022-4611 (Attn: Christopher Marcus) and (iv) Stroock & Stroock & Lavan LLP, Counsel to the Creditors' Committee, 180 Maiden Lane, New York, New York 10038 (Attn: Erez Gilad).

(c) Objections to and Hearing to Approve Final Fee Applications. Any objection to any final fee application shall be filed with this Court, together with proof of service thereof, and served upon the applicable Professional and the other Notice Parties, so as to be actually received not later than 4:00 p.m. (prevailing Eastern Time) on the date that is twenty (20) days after such final fee application is filed with this Court and served upon the Notice Parties (the "**Professional Fees Objection Deadline**"). Only those objections made in writing and timely filed and received by the Professional Fees Objection Deadline will be considered by this Court. If no objection to a final fee application is timely filed and served in accordance with the procedures set forth herein, then this Court may enter a final order approving such uncontested final fee application without further notice and the Reorganized Debtor may pay the amounts described in such uncontested final fee application (or if any final fee application is the subject of an objection, the Reorganized Debtor may pay the undisputed amounts described in such final fee application). The hearing to consider approval of the final fee applications, if necessary, will be held as soon as reasonably practicable after the expiration of the Professional Fees Objection Deadline and the date of such hearing will be promptly provided to the applicable Professional and Notice Parties and posted on the Debtor's restructuring website.

27. Resolution of Disputed Claims. Except as otherwise ordered by this Court, any Claim that is not an Allowed Claim shall be determined, resolved, or adjudicated in accordance with the terms of this Confirmation Order and the Plan, including, without limitation, Article VIII of the Plan.

28. No Distributions Pending Allowance. Notwithstanding any other provision of the Plan or this Confirmation Order to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim has become an Allowed Claim.

29. No Postpetition Interest on Claims. Unless otherwise specifically provided for in the Plan or this Confirmation Order, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim (other than a Holder of a Secured Tax Claim, DIP Facility Claim or a Prepetition Term Loan Credit Facility Claim with respect to such applicable Claim) shall be entitled to interest accruing on or after the Petition Date on any Claim.

30. Reserve for Disputed General Unsecured Claims. Prior to making any distributions of Cash to Holders of Allowed General Unsecured Claims from the General Unsecured Claims Cash Escrow, the Reorganized Debtor or other applicable Distribution Agent shall establish appropriate reserves for Disputed General Unsecured Claims by withholding from any such distributions an amount equal to one hundred percent (100%) of distributions to which Holders of Disputed General Unsecured Claims would be entitled to under the Plan as of such

date as if such Disputed General Unsecured Claims were Allowed in full in the amount asserted by the Holder thereof in its respective timely filed Proof of Claim; provided, however, that the Debtor and the Reorganized Debtor shall have the right to file a motion seeking to estimate such amounts. The Reorganized Debtor or other applicable Distribution Agent shall also establish appropriate reserves for Disputed Claims in other Classes as it determines necessary and appropriate.

31. General Unsecured Claims Cash Escrow. Notwithstanding any other provision of the Plan or this Confirmation Order to the contrary, the Debtor and Reorganized Debtor shall only be obligated to satisfy Allowed General Unsecured Claims from the General Unsecured Claims Cash Escrow and no other asset or property of the Debtor, the Reorganized Debtor or its Estate shall be required to be used or otherwise monetized to pay or otherwise fund such Allowed Claims.

32. Payment of Statutory Fees. All outstanding fees payable pursuant to section 1930 of title 28, United States Code shall be paid on, or as soon as reasonably practicable after, the Effective Date. All such fees payable after the Effective Date shall be paid prior to the closing of the Chapter 11 Case when due or as soon thereafter as practicable

33. Payment of Fees and Expenses of Indenture Trustee. On the Effective Date or as soon as reasonably practicable thereafter (and, thereafter, upon request by the Indenture Trustee with respect to fees and expenses of the Indenture Trustee relating to post-Effective Date service under the Plan), the Reorganized Debtor shall pay in full in Cash all outstanding reasonable and documented fees and expenses of the Indenture Trustee for the Subordinated Notes and its counsel.

34. Dissolution of the Committee. After the Effective Date, the Committee shall dissolve automatically and its members shall be released and discharged from all rights, duties and responsibilities arising from, or related to, the Chapter 11 Case.

35. Termination of Equity Interests. On the Effective Date, except as otherwise provided in the Plan or this Confirmation Order, the Equity Interests in the Debtor shall be terminated, cancelled and extinguished.

36. Notice of Confirmed Plan. In accordance with Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), as soon as reasonably practicable after the Confirmation Date, the Debtor shall serve the Notice of Confirmed Plan by first-class mail, postage prepaid on all known creditors, equity security holders, and other parties in interest in this Chapter 11 Case; provided, however, that such notice need not be given or served under or pursuant to the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court or this Confirmation Order to any Person or Entity to whom the Debtor mailed a notice of the Confirmation Hearing, but received such notice returned marked “undeliverable as addressed,” “moved-left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtor has been informed in writing by such Person or Entity of that Person’s or Entity’s new mailing address. The notice described herein is adequate and appropriate under the particular circumstances and no other or further notice is necessary or required.

37. No Liability for Protected Parties. Based on the factual findings described in this Confirmation Order, the Protected Parties are not, and on account of or with respect to the offer or issuance of any security under the Plan, and/or solicitation of votes on the Plan, will not be, liable at any time for any violation of any applicable law, rule, or regulation governing the

solicitation of acceptances or rejections of the Plan or the offer and issuance of any securities under the Plan, including pursuant to the Backstop Rights Purchase Agreement. The Protected Parties have solicited votes on the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the local bankruptcy rules of this Court and all other applicable rules, laws, and regulations and are, therefore, entitled to, and are hereby granted, the protections afforded by Section 1125(e) of the Bankruptcy Code and the exculpation, release and limitation of liability provisions set forth in Article Ten of the Plan.

38. Pending Litigation. Except as set forth in the provisos below, and subject to the occurrence of the Effective Date, nothing in the Plan or this Confirmation Order shall impair the respective rights, if any, of the Debtor (or the Reorganized Debtor) or non-Debtor Persons or Entities that are party to any action involving the Debtor and pending in any federal or state court as of the Petition Date (a “Prepetition Action”) to have such federal or state court retain jurisdiction over and determine such Prepetition Action, to the extent permitted by, and subject to the provisions of, applicable non-bankruptcy law; provided however that (i) the Debtor and the Reorganized Debtor reserve their rights to request that any Prepetition Action be removed to, and/or determined by, this Court, (ii) the non-Debtor parties to such action reserve all of their respective rights to oppose any such request, and (iii) the Debtor, the Reorganized Debtor and the non-Debtor parties to such Prepetition Action expressly reserve their respective rights, if any, to arbitration of any and all Claims asserted or assertable in such action; provided further that the Debtor and Reorganized Debtor shall have until one hundred twenty (120) days after the Effective Date (or such later date as approved by this Court for cause shown after notice and hearing) to file with this Court a notice requesting that any such Prepetition Action be removed

to, and/or determined by, this Court, and the Debtor's deadline for requesting such removal is hereby extended and approved pursuant to Bankruptcy Rule 9027; provided further that any distribution or payment on account of any Claim that becomes an Allowed Claim pursuant to the resolution of any Prepetition Action shall be governed by the terms and conditions of the Plan and this Confirmation Order.

39. 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.

40. Estimation Proceedings and Other Rights. Any and all rights of the Debtor and Reorganized Debtor under Section 502(c) and Section 502(e) of the Bankruptcy Code are reserved.

41. Reversal or Modification of Confirmation Order. Except as otherwise provided in this Confirmation Order, if any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated or stayed by subsequent order of this Court, or any other court of competent jurisdiction, such reversal, stay, modification or vacatur shall not affect the validity or enforceability of any act, obligation, indebtedness, liability, priority or Lien incurred or undertaken by the Debtor or the Reorganized Debtor, as applicable, prior to the date that the Debtor received actual written notice of the effective date of such reversal, stay, modification or vacatur. Notwithstanding any such reversal, stay, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, or in reliance on, this Confirmation Order prior to the date that the Debtor received actual written notice of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by



the provisions of this Confirmation Order and the Plan, or any amendments or modifications thereto, in effect prior to the date that the Debtor received such actual written notice.

42. Failure to Consummate Plan. If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in this Confirmation Order, the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Equity Interests in the Debtor; (2) prejudice in any manner the rights of the Debtor, any Holders or any other Entity; (3) constitute an Allowance of any Claim or Equity Interest; or (4) constitute an admission, acknowledgment, offer or undertaking by the Debtor, any Holders or any other Entity in any respect.

43. Retention of Jurisdiction. Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court shall retain jurisdiction over the Chapter 11 Case and all matters arising under, arising in, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction over the matters set forth in Article XI of the Plan. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Confirmation Order.

44. Equity Incentive Program. As soon as practical after the Effective Date, Holdings will adopt and implement a post-Effective Date director and officer equity incentive program providing for the issuance from time to time, as approved by the board of managers of Holdings, of Post-Effective Date Equity Interests representing, in the aggregate, up to ten percent (10%) of the common equity interests of Holdings, on a fully-diluted basis, as of the Effective Date.

45. Headings. The headings contained within this Confirmation Order are used for the convenience of the parties and shall not alter or affect the meaning of the text of this Confirmation Order.

46. Distribution Record Date. Notwithstanding anything to the contrary in the Plan, the “Distribution Record Date” shall mean the Effective Date.

47. Existing Board of Directors. The existing board of directors of the Debtor will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of this Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

48. Environmental Matters. As to the United States, its agencies, departments, or agents (collectively, the “United States”), nothing in this Confirmation Order or the Plan discharges, releases, or precludes: (i) any environmental liability to the United States that is not a Claim; (ii) any environmental Claim of the United States arising on or after the Confirmation Date; (iii) any environmental liability to the United States on the part of the Debtor or Reorganized Debtor as the owner or operator of real property after the Confirmation Date; or (iv) any environmental liability to the United States on the part of any Person other than the Debtor or Reorganized Debtor. Nor shall anything in this Confirmation Order or the Plan enjoin or otherwise bar the United States from asserting or enforcing, outside this Court, any liability described in this paragraph.

49. Pension Plan Matters. The Debtor established and maintained a pension plan for certain of its employees known as the Dayton Superior Corporation Master Pension Plan (the “Pension Plan”). The Pension Benefit Guaranty Corporation (“PBGC”), a United States

Government corporation, guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV of ERISA. Under the Plan, the Pension Plan will not be terminated, and the Reorganized Debtor will assume and continue to maintain the Pension Plan in accordance with applicable law. Nothing in the Plan will be construed as discharging, releasing, or relieving the Debtor, or its successors, including the Reorganized Debtor, or any party, in any capacity, from any liability for minimum funding under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083 or liability under 29 U.S.C. §§ 1362 and 1307 with respect to the Pension Plan or the PBGC. The PBGC and the Pension Plan will not be enjoined or precluded from seeking to enforce such liability as a result of any provision of the Plan or this Confirmation Order.

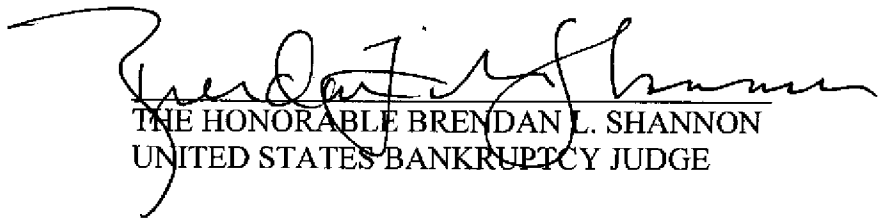
50. Arlington Independent School District. Notwithstanding anything to the contrary in the Plan or in this Confirmation Order, any Allowed Secured Claim of Arlington ISD, the City of University Park, Highland Park ISD, and Valwood Improvement Authority arising from property taxes due for the 2009 tax year shall be paid by the Debtor in the ordinary course and such claimant shall retain any lien securing such claim until such claim is paid in full.

51. References to Plan Provisions. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan (and the exhibits and schedules thereto) be confirmed in its entirety and incorporated herein by reference.

52. Confirmation Order Controlling. If there is any conflict or inconsistency between the Plan and this Confirmation Order, the terms of this Confirmation Order shall control and govern.

53. Immediate Effectiveness of this Confirmation Order. Pursuant to Bankruptcy Rule 3020(e), the ten day stay of this Confirmation Order imposed thereby is waived and the Debtor is hereby authorized to consummate the Plan and the transactions contemplated thereby immediately upon the entry of this Confirmation Order upon the docket and upon the satisfaction or waiver of the conditions set forth in Article IX of the Plan.

Dated: October 14, 2009  
Wilmington, DE



THE HONORABLE BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**[Plan of Reorganization]**

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

<b>In re:</b>	)	
	)	<b>Chapter 11</b>
<b>DAYTON SUPERIOR CORPORATION,</b>	)	
<b>a Delaware corporation,<sup>1</sup></b>	)	<b>Case No. 09-11351 (BLS)</b>
<b>Debtor.</b>	)	
	)	

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**FIRST AMENDED PLAN OF REORGANIZATION  
FOR DAYTON SUPERIOR CORPORATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Counsel for the Debtor and Debtor-in-Possession

Dated: October 14, 2009

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are : EIN: XX-XXX6346. The Debtor's mailing address is 7777 Washington Village Dr., Suite 130, Dayton, OH 45459.

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**PLAN SCHEDULES**

- |                 |  |
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**FIRST AMENDED PLAN OF REORGANIZATION  
FOR DAYTON SUPERIOR CORPORATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dayton Superior Corporation, as debtor and debtor-in-possession ("**Dayton**" or the "**Debtor**"), proposes the following plan of reorganization (the "**Plan**") for the resolution of the outstanding Claims (as defined below) against, and Equity Interests (as defined below) in, the Debtor. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code (as defined below). Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, accomplishments during the Chapter 11 Case (as defined below), projections and properties, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents, which are or will be filed with the Bankruptcy Court (as defined below), that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Schedules. All such Exhibits and Plan Schedules are incorporated into and are a part of this Plan as if set forth in full herein. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127 and Fed. R. Bankr. P. 3019, the Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

**ARTICLE I.**

**RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS**

*A. Rules of Interpretation, Computation of Time and Governing Law*

For purposes herein: (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) 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 the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to "Articles", "Sections", "Exhibits" and "Plan Schedules" are references to Articles, Sections, Exhibits and Plan Schedules hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (i) 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 that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be. The provisions of

Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

*B. Defined Terms*

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

1. “*Accrued Professional Compensation*” means, with respect to a particular Professional, an Administrative Claim of such Professional for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date (including, without limitation, expenses of the members of the Committee incurred as members of the Committee in discharge of their duties as such).

2. “*Ad Hoc Noteholders Committee*” means that certain ad hoc committee of Holders of the Subordinated Notes in existence as of the Petition Date, whose membership consists of OCM Principal Opportunities Fund IV Delaware, L.P., Sola Ltd and Whippoorwill Associates, Inc. (or their respective affiliates).

3. “*Ad Hoc Noteholders Committee Fees and Expenses*” means all unpaid reasonable and documented fees and out-of-pocket expenses of the Ad Hoc Noteholders Committee incurred in connection with the Chapter 11 Case, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of the Ad Hoc Noteholders Committee Professionals, including, but not limited to, such fees and expenses incurred in connection with objecting to the DIP Facility.

4. “*Ad Hoc Noteholders Committee Professionals*” means, collectively, Kirkland & Ellis LLP, Pachulski Stang Ziehl & Jones LLP and Imperial Capital LLC.

5. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Chapter 11 Case that are Allowed under section 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtor (such as wages, salaries, and commissions for services and payments for inventory, leased equipment, and leased premises); (b) Accrued Professional Compensation and any other compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under section 327, 330, 331, 363, or 503(b) of the Bankruptcy Code to the extent incurred prior to the Effective Date; (c) all fees and charges assessed against the Estate under section 1930, chapter 123, of title 28, United States Code; (d) the DIP Facility Claims; (e) the Allowed Indenture Trustee Fees; and (f) the reasonable fees and expenses of the Ad Hoc Noteholders Committee Professionals.

6. “*Administrative Claims Bar Date*” means the Business Day which is thirty (30) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

7. “*Administrative and Collateral Agents*” means, in their respective capacities as such, the administrative agents and collateral agents and their predecessors for or under the DIP

Facility, the Prepetition Revolving Credit Facility and the Prepetition Term Loan Credit Facility, including, without limitation, General Electric Capital Corporation as prior administrative agent under the Prepetition Term Loan Credit Facility.

8. “*Affiliate*” means an “affiliate” as defined in section 101(2) of the Bankruptcy Code.

9. “*Aggregate Effective Date New Stock Issuance*” shall have the meaning ascribed to it in Article V.F hereof.

10. “*Allowed*” means, with respect to a Claim, an Allowed Claim in a particular Class or category specified. Any reference herein to a particular Allowed Claim includes both the secured and unsecured portions of such Claim.

11. “*Allowed Claim*” means any Claim that is not a Disputed Claim and (a) for which a Proof of Claim has been timely Filed by the applicable Claims Bar Date and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtor in its Schedules as liquidated in a specified amount and is not disputed or contingent and for which no contrary Proof of Claim has been timely Filed; or (c) that is expressly Allowed pursuant to the terms of this Plan or Final Order of the Bankruptcy Court.

The term “Allowed Claim” shall not, for purposes of computing distributions under this Plan, include interest on such Claim from and after the Petition Date, except as provided in section 506(b) of the Bankruptcy Code or as otherwise expressly set forth in this Plan.

12. “*Allowed \_\_\_\_\_ Claim*” means an Allowed Claim of the type described.

13. “*Amended Organizational Documents*” means the amended and restated certificate of incorporation and by-laws or other applicable organizational documents of the Reorganized Debtor in substantially the form attached to this Plan as Exhibit A or Filed with the Plan Supplement.

14. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510 or 542-553 of the Bankruptcy Code.

15. “*Backstop Commitment*” means the agreement by each Backstop Party pursuant to the Backstop Rights Purchase Agreement to purchase its Backstop Proportion of all of the Rights Offering Shares that are not purchased by the Rights Offering Participants as part of the Rights Offering.

16. “*Backstop Parties*” means those Holders of Subordinated Notes Claims that provided the Backstop Commitment, which Holders are OCM Principal Opportunities Fund IV Delaware, L.P. and Sola Ltd, or their respective affiliates.

17. "*Backstop Proportion*" has the meaning set forth in the Backstop Rights Purchase Agreement.

18. "*Backstop Rights Purchase Agreement*" means the Backstop Rights Purchase Agreement attached to this Plan as Exhibit B, which agreement was approved by the Bankruptcy Court in the Rights Offering Order.

19. "*Ballots*" means the ballots accompanying the Disclosure Statement upon which certain Holders of Impaired Claims (modified, as necessary, based on voting party in accordance with the Disclosure Statement Order) entitled to vote shall, among other things, indicate their acceptance or rejection of this Plan, which includes the Master Ballots and Beneficial Holder Ballots, which were approved by the Disclosure Statement Order.

20. "*Bankruptcy Code*" means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

21. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Case.

22. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, in each case as amended from time to time and as applicable to the Chapter 11 Case.

23. "*Beneficial Holder*" means, as of the applicable date of determination, a beneficial owner of the Subordinated Notes, Junior Convertible Notes or Equity Interests as reflected in the records maintained by the Registered Record Owner or Intermediary Record Owner, as applicable.

24. "*Beneficial Holder Ballots*" means the ballots accompanying the Disclosure Statement upon which Beneficial Holders of Class 5 Subordinated Note Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

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

26. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

27. "*Causes of Action*" means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counter-claims, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act

or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Case, including through the Effective Date.

28. "*Chapter 11 Case*" means the chapter 11 bankruptcy case, with case number 09-11351, commenced by the Debtor on the Petition Date in the Bankruptcy Court.

29. "*Claim*" means any "claim" against the Debtor as defined in section 101(5) of the Bankruptcy Code.

30. "*Claims Bar Date*" means August 25, 2009, or such other date by which Claims must be Filed, as ordered by the Bankruptcy Court.

31. "*Claims Objection Bar Date*" means, for each Claim, the later of (a) one hundred twenty (120) days after the Effective Date; (b) sixty (60) days after the Filing of a Proof of Claim for, or request for payment of, such Claim and (c) such other date as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

32. "*Claims Register*" means the official register of Claims maintained by the Voting and Claims Agent.

33. "*Class*" means a category of Holders of Claims or Equity Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

34. "*Class A Common Units*" shall have the meaning ascribed to it in Article V.B hereof.

35. "*Class A Preferred Units*" shall have the meaning ascribed to it in Article V.B hereof.

36. "*Collateral*" means any property or interest in property of the Debtor's Estate that is subject to a valid and enforceable Lien to secure a Claim.

37. "*Commission*" means the U.S. Securities and Exchange Commission.

38. "*Committee*" means the official committee of unsecured creditors of the Debtor appointed by the United States Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code, as reconstituted from time to time.

39. "*Committee Members*" means the members of the Committee, namely: (a) U.S. Bank National Association, as indenture trustee for the Junior Convertible Notes; (b) OCM Principal Opportunities Fund IV Delaware, L.P.; (c) Whippoowill Distressed Opportunity Fund, L.P.; (d) The Bank of New York Mellon, as Indenture Trustee; (e) Ulma Form Works Inc. and (f) Alsina Forms Co. Inc., and in the case of each of the foregoing, their respective successors and assigns.

40. "*Confirmation Date*" means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.



41. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

42. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

43. “*Contribution Percentage*” shall have the meaning ascribed to it in Article V.B hereof.

44. “*Consummation*” means the occurrence of the Effective Date.

45. “*Debtor*” means Dayton Superior Corporation, in its capacity as debtor in this Chapter 11 Case.

46. “*Debtor in Possession*” means the Debtor, as debtor in possession in this Chapter 11 Case.

47. “*DIP Agent*” means General Electric Capital Corporation, in its capacity as administrative agent and collateral agent under the DIP Facility.

48. “*DIP Facility*” means that certain \$165 million Senior Secured Priming and Super-Priority Debtor-in-Possession Revolving Credit Agreement (as amended from time to time), dated as of April 22, 2009, by and among the Debtor, the DIP Lenders and the DIP Agent.

49. “*DIP Facility Claim*” means any Claim of the DIP Agent or any DIP Lender arising from, under or in connection with the DIP Facility Credit Agreement (including, without limitation, any and all “Obligations” as defined therein), the other “Loan Documents” as defined therein and/or the DIP Orders.

50. “*DIP Facility Credit Agreement*” means that certain Senior Secured Priming and Superpriority Debtor-In-Possession Revolving Credit Agreement, dated as of April 22, 2009, among the Debtor, as borrower, the DIP Lenders, and the DIP Agent (as amended, waived, supplemented, refinanced and as otherwise modified from time to time).

51. “*DIP Lenders*” means the DIP Agent and the banks, financial institutions and other lender parties to the DIP Facility from time to time.

52. “*DIP Orders*” means, collectively, the Interim DIP Order and Final DIP Order.

53. “*Disclosure Statement*” means that certain Disclosure Statement for First Amended Plan of Reorganization for Dayton Superior Corporation under Chapter 11 of the Bankruptcy Code, as amended, supplemented, or modified from time to time, that was approved by the Disclosure Statement Order and describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

54. “*Disclosure Statement Order*” means that certain Order (A) Approving the Disclosure Statement, (B) Establishing the Voting Record Date, Voting Deadline, and Other

*Dates, (C) Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan and (D) Approving the Manner and Forms of Notice and Other Related Documents*, entered by the Bankruptcy Court on August 25, 2009 [Docket No. 492], as the order may be amended from time to time.

55. “*Disputed Claim*” means any Claim, or any portion thereof, that has not been Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court, and

(a) if no Proof of Claim has been timely Filed by the applicable Claims Bar Date, a Claim which has been listed on the Schedules as unliquidated, contingent, or disputed, or in zero or unknown amount, and which has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(b) if a Proof of Claim has been timely Filed by the applicable Claims Bar Date, a Claim designated on such Proof of Claim as unliquidated, contingent or disputed, or in zero or unknown amount, and which has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(c) if a Proof of Claim has been timely Filed by the applicable Claims Bar Date, a Claim (i) as to which the Debtor has timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court or for which such time period to object or file a request for estimation has not yet expired as of the applicable date of determination or (ii) which is otherwise disputed by the Debtor in accordance with applicable law, in each case which objection, request for estimation or dispute has not been withdrawn, overruled or determined by a Final Order; or

(d) for which a Proof of Claim was required to be filed by order of the Bankruptcy Court, but as to which a Proof of Claim was not timely or properly Filed in this Chapter 11 Case; or

(e) that is disputed by the Debtor in accordance with the provisions of this Plan.

56. “*Distribution Agent*” means the Reorganized Debtor or any party designated by the Reorganized Debtor to serve as distribution agent under this Plan. For purposes of distributions under this Plan to the Holders of Allowed DIP Facility Claims, Allowed Prepetition Term Loan Credit Facility Claims and Allowed Subordinated Notes Claims, the DIP Agent, the Prepetition Term Loan Agent and Indenture Trustee, respectively, will be and shall act as the Distribution Agent.

57. “*Distribution Record Date*” means the date for determining which Holders of Claims are eligible to receive distributions hereunder and shall be the Effective Date.

58. “*D&O Liability Insurance Policies*” means all insurance policies for directors and officers’ liability maintained by the Debtor as of the Petition Date.

59. “*Effective Date*” means the Business Day that this Plan becomes effective as provided in Article IX hereof.

60. “*Entity*” means an “entity” as defined in section 101(15) of the Bankruptcy Code.

61. “*Equity Incentive Program*” means a post-Effective Date director and officer equity incentive program providing for the issuance from time to time, as approved by the board of managers of Holdings, of Post-Effective Date Equity Interests representing, in the aggregate, up to ten percent (10%) of the common equity interests of Holdings, on a fully-diluted basis, as of the Effective Date.

62. “*Equity Interest*” means (a) any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding shares of stock, together with (i) any options, warrants or contractual rights to purchase or acquire any such Equity Securities at any time with respect to the Debtor, and all rights arising with respect thereto and (ii) the rights of any Entity to purchase or demand the issuance of any of the foregoing and shall include: (1) conversion, exchange, voting, participation, and dividend rights; (2) liquidation preferences; (3) options, warrants, and put rights; and (4) share-appreciation rights, and (b) any Claim against the Debtor subordinated pursuant to section 510(b) of the Bankruptcy Code, in each case as in existence immediately prior to the Effective Date.

63. “*Equity Security*” means an “equity security” as defined in section 101(16) of the Bankruptcy Code.

64. “*Estate*” means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

65. “*Exchange Act*” means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as now in effect or hereafter amended, and any similar federal, state or local law.

66. “*Exculpated Parties*” means, collectively: (a) the Debtor; (b) the Reorganized Debtor; (c) the Committee and the members thereof in their capacity as such; (d) the Ad Hoc Noteholders Committee and the members thereof in their capacity as such; (e) the DIP Lenders; (f) the Prepetition Revolving Lenders; (g) the Prepetition Term Loan Lenders; (h) the Holders of the Subordinated Notes Claims; (i) the Backstop Parties; (j) the Administrative and Collateral Agents; and (k) the Indenture Trustee, and the respective Related Persons of each of the foregoing Entities; provided however, that no Non-Released Party will be an Exculpated Party.

67. “*Exculpation*” means the exculpation provision set forth in Article X.D hereof.

68. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

69. “*Exhibit*” means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time).

70. "File" or "Filed" or "Filing" means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

71. "Final DIP Order" means that certain *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Post-Petition Financing, (2) Authorizing Use of Cash Collateral and Repayment of Prepetition Revolving Loan Debt, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, and (5) Modifying Automatic Stay*, entered by the Bankruptcy Court on June 5, 2009 [Docket No. 265], as such order may be amended from time to time.

72. "Final Order" means an order of the Bankruptcy Court as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtor or the Reorganized Debtor, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, no stay pending appeal has been granted or such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; provided, however, 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 preclude such order from being a Final Order.

73. "First Contribution" shall have the meaning ascribed to it in Article V.B hereof.

74. "General Unsecured Claim" means any Claim against the Debtor that is not a/an: (a) DIP Facility Claim; (b) Administrative Claim; (c) Priority Tax Claim; (d) Secured Tax Claim, (e) Other Priority Claim; (e) Other Secured Claim; (f) Prepetition Term Loan Credit Facility Claim; (g) Subordinated Notes Claim, (h) a Junior Convertible Notes Claim or (i) Equity Interest.

75. "General Unsecured Claims Cash Amount" means \$1,787,323.

76. "General Unsecured Claims Cash Escrow" means the escrow created by the Debtor or Reorganized Debtor to exclusively hold the General Unsecured Claims Cash Amount.

77. "Governmental Unit" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

78. "Holder" means an Entity holding a Claim against, or Equity Interest in, the Debtor and, with respect to the Subordinated Notes Claims, the beneficial holder thereof as of the applicable date of determination or any authorized agent of such Entity who has completed and executed a Ballot or on whose behalf a Master Ballot has been completed and executed in accordance with the voting instructions that are attached to the Ballot or Master Ballot, as applicable.

79. “*Holdings*” shall have the meaning ascribed to it in Article V.B hereof.
80. “*Holdings LLC Agreement*” means that certain limited liability company agreement of Holdings, in substantially the form attached to this Plan as Exhibit C or Filed with the Plan Supplement.
81. “*Impaired*” means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.
82. “*Indemnification Provision*” means each of the indemnification provisions currently in place (whether in the bylaws, certificates of incorporation, board resolutions, employment contracts or otherwise) for the current and former directors, officers, employees, attorneys, other professionals and agents of the Debtor who served in such capacity on or any time after the Petition Date.
83. “*Indemnified Parties*” means, collectively, the Debtor and each of its officers, directors and employees, each in their respective capacities as such and solely to the extent that each such party was serving in such capacity on or any time after the Petition Date; provided however, that no Non-Released Party will be an Indemnified Party.
84. “*Indenture*” means that certain indenture governing the Subordinated Notes, dated as of June 16, 2000, (as amended, waived, supplemented, refinanced and as otherwise modified from time to time) between the Debtor, as issuer, certain guarantors, and the Indenture Trustee.
85. “*Indenture Trustee*” means United States Trust Company of New York, in its capacity as indenture trustee for the Subordinated Notes.
86. “*Indenture Trustee Fees*” means the reasonable fees and reasonable unpaid out-of-pocket costs and expenses incurred by the Indenture Trustee through the Effective Date in accordance with the Indenture.
87. “*Initial Distribution Date*” means, subject to the “Treatment” sections in Article III hereof, the date that is as soon as practicable after the Effective Date, but no later than thirty (30) days after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims.
88. “*Interim DIP Order*” means that certain *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Post-Petition Financing, (2) Authorizing Use of Cash Collateral and Repayment of Prepetition Revolving Loan Debt, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, and (5) Modifying Automatic Stay*, entered by the Bankruptcy Court on April 21, 2009 [Docket No. 67].
89. “*Intermediary Record Owners*” means, as of the applicable date of determination, the banks, brokerage firms, or the agents thereof as the Entity through which the Beneficial Holders hold the Subordinated Notes, Junior Convertible Notes or Equity Interests, as applicable.

90. “*Intermediate Holdings*” shall have the meaning ascribed to it in Article V.B hereof.

91. “*Intermediate Holdings Common Stock*” shall have the meaning ascribed to it in Article V.B hereof.

92. “*IRC*” means the Internal Revenue Code of 1986, as amended.

93. “*IRS*” means the Internal Revenue Service of the United States of America.

94. “*Junior Convertible Notes*” means those certain Junior Convertible Subordinated Notes Due 2029 issued by the Debtor and governed by the Junior Convertible Notes Indenture.

95. “*Junior Convertible Notes Claim*” means any Claim arising from, under or in connection with the Junior Convertible Notes Indenture, other than pursuant to Section 6.7 thereof.

96. “*Junior Convertible Notes Indenture*” means that certain Junior Convertible Subordinated Indenture, dated October 5, 1999 (as amended, waived, supplemented, refinanced and as otherwise modified from time to time), between the Debtor and Firstar Bank, N.A., as debenture trustee.

97. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code, and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

98. “*Litigation Claims*” means the claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that the Debtor or Estate may hold against any Entity, including, without limitation, the Causes of Action of the Debtor. A non-exclusive list of the Litigation Claims held by the Debtor as of the Effective Date is attached hereto as Plan Schedule 1 or Filed with the Plan Supplement, which shall be deemed to include any derivative actions filed against the Debtor as of the Effective Date and any Causes of Action against any Non-Released Party.

99. “*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

100. “*Master Ballots*” means the ballot distributed to the Registered Record Owners or Intermediary Record Owners, as applicable, of the Subordinated Notes to record the votes of the Beneficial Holders of the Subordinated Notes as of the Voting Record Date applicable to Subordinated Notes Claims.

101. “*Net Exit Proceeds*” means an amount of Cash equal to: (i) the Rights Offering Amount; *plus* (ii) an amount of Cash proceeds from the Revolver Exit Facility equal to (x) the total borrowings available to the Reorganized Debtor under the Revolver Exit Facility as of the Effective Date, but excluding amounts available thereunder as “Permitted Overadvances” (as defined in the Revolver Exit Facility Term Sheet), less (y) \$20 million; *plus* (iii) the Cash on

hand of the Debtor as of the Effective Date; *minus* (iv) the Transaction Expenses; *minus* (v) the Required Plan Payments.

102. “*New Board*” means the initial board of directors of the Reorganized Debtor.

103. “*New Stock*” means the shares of common stock or other equity securities of the Reorganized Debtor authorized to be issued pursuant to this Plan (and subject to the Restructuring Transactions) and the Amended Organizational Documents.

104. “*Non-Released Party*” means each of the Entities listed as Non-Released Parties on Plan Schedule 2 attached hereto or Filed with the Plan Supplement.

105. “*Non-Voting Classes*” means, collectively, Classes 1, 2, 3, 7, and 8.

106. “*Ordinary Course Professionals Order*” means that certain *Order Authorizing the Debtor to Employ and Compensate Certain Professionals in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date*, entered by the Bankruptcy Court on May 18, 2009 [Docket No. 207], as such order may be amended from time to time.

107. “*Other Priority Claim*” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

108. “*Other Secured Claim*” means any Secured Claim other than an Administrative Claim, DIP Facility Claim, Secured Tax Claim or Prepetition Term Loan Credit Facility Claim.

109. “*Payment Waterfall*” means first, payment in full of all Transaction Expenses; second, payment in full of the Required Plan Payments (in each case to the extent not Reinstated as permitted by the Bankruptcy Code and this Plan); and third, to the extent of the remaining Net Exit Proceeds, for general corporate purposes.

110. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

111. “*Petition Date*” means April 19, 2009, the date on which the Debtor commenced the Chapter 11 Case.

112. “*Plan*” means this *First Amended Plan of Reorganization of Dayton Superior Corporation Under Chapter 11 of the Bankruptcy Code*, dated October [14], 2009, including the Exhibits and Plan Schedules and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

113. “*Plan Schedule*” means a schedule annexed to either this Plan or as an appendix to the Disclosure Statement (as amended, modified or otherwise supplemented from time to time).

114. "*Plan Supplement*" means, collectively, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Exhibits and Plan Schedules, all of which are incorporated by reference into, and are an integral part of, this Plan, as all of the same may be amended, modified, replaced and/or supplemented from time to time, which shall be filed with the Bankruptcy Court on or before September 21, 2009.

115. "*Post-Effective Date Equity Interest*" shall have the meaning ascribed to it in Article V.B hereof.

116. "*Post-Money Equity Value*" means \$275 million, less the aggregate amount of Indebtedness (as defined in the Backstop Rights Purchase Agreement and specifically including the Rights Offering Commitment Fee, the Transaction Expenses, the Ad Hoc Noteholders Committee Fees and Expenses, and the unfunded pension obligations) of Reorganized Debtor and its subsidiary plus Cash (as defined in the Backstop Rights Purchase Agreement) of the Reorganized Debtor and its subsidiary, in both cases as of the Effective Date, after giving effect to the restructuring contemplated by this Plan, including the Rights Offering and the application of the proceeds thereof.

117. "*Prepetition Intercreditor Agreement*" means that certain intercreditor agreement, dated as of March 3, 2008 (as amended, waived, supplemented, refinanced and as otherwise modified from time to time), with respect to the Prepetition Revolving Credit Agreement and Prepetition Term Loan Credit Agreement.

118. "*Prepetition Revolving Agent*" means General Electric Capital Corporation, in its capacity as administrative agent and collateral agent under the Prepetition Revolving Credit Agreement.

119. "*Prepetition Revolving Credit Agreement*" means that certain Revolving Credit Agreement, dated as of March 3, 2008, among the Debtor, as borrower, the Prepetition Revolving Lenders, and the Prepetition Revolving Agent (as amended, waived, supplemented, refinanced and as otherwise modified from time to time).

120. "*Prepetition Revolving Credit Agreement Claim*" means any Claim of the Prepetition Revolving Agent or any Prepetition Revolving Lender arising from, under or in connection with the Prepetition Revolving Credit Agreement (including, without limitation, any and all "Obligations" as defined therein) and/or the other "Loan Documents" as defined therein.

121. "*Prepetition Revolving Lenders*" means the Prepetition Revolving Agent and the other lenders party to the Prepetition Revolving Credit Agreement from time to time.

122. "*Prepetition Term Loan Agent*" means Silver Point Finance, LLC, in its capacity as administrative agent under the Prepetition Term Loan Credit Agreement.

123. "*Prepetition Term Loan Credit Agreement*" means that certain Amended and Restated Term Loan Credit Agreement, dated as of March 3, 2008, among the Debtor, as borrower, the Prepetition Term Loan Lenders, the Prepetition Term Loan Agent and General



Electric Capital Corporation, as collateral agent (as amended, waived, supplemented, refinanced and as otherwise modified from time to time).

124. "*Prepetition Term Loan Credit Facility Claim*" means any Claim of the Prepetition Term Loan Agent (or predecessor agent) or any Prepetition Term Loan Lender arising from, under or in connection with the Prepetition Term Loan Credit Agreement (including, without limitation, any and all "Obligations" as defined therein) and/or the other "Loan Documents" as defined therein.

125. "*Prepetition Term Loan Lenders*" means the Prepetition Term Loan Agent and the lenders party to the Prepetition Term Loan Credit Agreement from time to time.

126. "*Prepetition Term Loan Payment Amount*" means \$13,000,000 in Cash (plus any additional amount that the Debtor elects to pay in Cash, at its sole discretion, upon the closing of the Term Loan Exit Facility).

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

128. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

129. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code for Accrued Professional Compensation.

130. "*Professional Fees Bar Date*" means the Business Day that is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

131. "*Proof of Claim*" means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

132. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class (or several Classes taken as a whole) bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class (or several Classes taken as a whole), unless this Plan provides otherwise.

133. "*Pro Rata Share of the Rights Offering Shares*" means, with respect to an applicable Rights Offering Participant, the proportion that (a) the Allowed amount of Subordinated Notes Claims held by such Rights Offering Participant bears to (b) the aggregate Allowed amount of all Subordinated Notes Claims held by all Rights Offering Participants.

134. "*Registered Record Owners*" means, as of the applicable date of determination, the respective owners of the Subordinated Notes, Junior Convertible Notes or Equity Interests whose holdings thereof are in their own name.

135. “*Registration Agreement*” means the Registration Agreement, in substantially the form attached to this Plan as Exhibit E or Filed with the Plan Supplement.

136. “*Reinstated*” means, with respect to any Claim, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the holder of such Claim in accordance with Section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default: (i) 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 or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim arises from any failure to perform a non-monetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim (other than the Debtor or an insider of the Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

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 their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members), partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, in each case acting in such capacity on or any time after the Petition Date, and any Person claiming by or through any of them; provided, however, that no insurer of the Debtor and no Non-Released Party shall constitute a Related Person.

138. “*Release*” means the release given by the Releasing Parties to the Released Parties as set forth in Article X.B hereof.

139. “*Released Party*” means, collectively: (a) the Debtor; (b) the Reorganized Debtor; (c) the Committee and the members thereof in their capacity as such; (d) the Ad Hoc Noteholders Committee and the members thereof in their capacity as such; (e) the DIP Lenders; (f) the Prepetition Revolving Lenders; (g) the Prepetition Term Loan Lenders; (h) the Holders of the Subordinated Notes Claims; (i) the Backstop Parties; (j) the Administrative and Collateral Agents; and (k) the Indenture Trustee, and the respective Related Persons of each of the foregoing; provided however, that no Non-Released Party shall constitute a Released Party.

140. “*Releasing Party*” has the meaning set forth in Article X.B hereof.

141. “*Remaining Rights Offering Shares*” means those Rights Offering Shares that are not subscribed for pursuant to the Rights Offering prior to the expiration of the Subscription Deadline.

142. “*Reorganized Debtor*” means Dayton Superior Corporation, a Delaware corporation, as reorganized pursuant to this Plan on or after the Effective Date.

143. “*Required Plan Payments*” means the aggregate amount of Cash payable pursuant to this Plan in respect of (i) the Allowed DIP Facility Claims, the Allowed Administrative Claims, the Allowed Other Secured Claims, the Allowed Other Priority Claims, the Allowed Priority Tax Claims and the Allowed Secured Tax Claims against the Debtor, (ii) the General Unsecured Claims Cash Amount and (iii) the Prepetition Term Loan Payment Amount.

144. “*Restructuring Transaction*” means, collectively, the First Contribution, the Second Contribution and the other transactions described in Article V.B hereof.

145. “*Revolver Exit Facility*” means the senior secured revolving exit facility in the aggregate principal amount of \$110 million to be entered into by the Reorganized Debtor on the Effective Date with terms and conditions substantially consistent with, or with terms no less favorable in the aggregate for the Debtor and/or Reorganized Debtor than, those set forth in the Revolver Exit Facility Term Sheet, or such other terms and conditions as approved in writing by the Debtor and the Ad Hoc Noteholders Committee.

146. “*Revolver Exit Facility Credit Agreement*” means that certain Revolver Exit Facility Credit Agreement, in substantially the form attached to this Plan as Exhibit F or Filed with the Plan Supplement.

147. “*Revolver Exit Facility Term Sheet*” means the term sheet setting forth the terms and conditions of the Revolver Exit Facility, in substantially the form attached to this Plan as Exhibit G or Filed with the Plan Supplement.

148. “*Rights Offering*” means that certain \$100 million rights offering of New Stock to be offered to the Rights Offering Participants, the terms of which are set forth in Article V.H of this Plan and which were approved by the Bankruptcy Court in the Rights Offering Order.

149. “*Rights Offering Amount*” means \$100 million.

150. “*Rights Offering Order*” means that certain *Order Authorizing the Debtor to (I) Enter into a Backstop Rights Purchase Agreement in Connection with a Contemplated Rights Offering, (II) Conduct Rights Offering, and (III) Pay Certain Fees to the Backstop Parties on the Terms Set Forth in the Backstop Rights Purchasing Agreement*, entered by the Bankruptcy Court on August 24, 2009, [Docket No. 480], as such order may be amended from time to time.

151. “*Rights Offering Participant*” means each Holder of a Subordinated Notes Claim that is an “accredited investor,” as defined in Rule 501(a) of Regulation D under the Securities Act, as of the Rights Offering Record Date.

152. “*Rights Offering Purchaser*” means a Rights Offering Participant who timely and properly executes and delivers the Subscription Form to the Debtor or other Entity specified in the Subscription Form prior to the expiration of the Subscription Deadline.

153. "*Rights Offering Record Date*" means the date for determining which Holders of Subordinated Notes Claims are eligible to participate in the Rights Offering and shall be the Voting Record Date applicable to Subordinated Notes Claims, or such other date as designated in an order of the Bankruptcy Court.

154. "*Rights Offering Shares*" means the New Stock to be issued and sold through the Rights Offering (including the Remaining Rights Offering Shares to be issued pursuant to the Backstop Rights Purchase Agreement).

155. "*Scheduled*" means with respect to any Claim or Equity Interest, the status and amount, if any, of such Claim or Equity Interest as set forth in the Schedules.

156. "*Schedules*" means the schedules of assets and liabilities, schedules of Executory Contracts, and statement of financial affairs filed by the Debtor pursuant to section 521 of the Bankruptcy Code and the applicable Bankruptcy Rules, as such Schedules they may be amended, modified, or supplemented from time to time.

157. "*Second Contribution*" shall have the meaning ascribed to it in Article V.B hereof.

158. "*Secured Claim*" means a Claim that is secured by a Lien on property in which the Debtor's Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

159. "*Secured Tax Claim*" means any Secured Claim which, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

160. "*Securities Act*" means the Securities Act of 1933, 15 U.S.C. §§ 77c-77aa, as now in effect or hereafter amended, and any similar federal, state or local law.

161. "*Securityholders Agreement*" means the Securityholders Agreement, in substantially the form attached to this Plan as Exhibit H or Filed with the Plan Supplement.

162. "*Stamp or Similar Tax*" means any stamp tax, recording tax, personal property tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

163. "*Subordinated Notes*" means those certain 13% Senior Subordinated Notes due 2009 issued under the Indenture.

164. "*Subordinated Notes Claim*" means any Claim arising from, under or in connection with the Subordinated Notes or Indenture.

165. “*Subscription Commencement Date*” means the date on which the Subscription Period commences, which shall be the earliest date reasonably practicable occurring after the Rights Offering Record Date.

166. “*Subscription Deadline*” means the date on which the Rights Offering shall expire as set forth in the Subscription Form, which date shall be the Voting Deadline.

167. “*Subscription Form*” means that certain form to be distributed to Rights Offering Participants pursuant to which such Rights Offering Participants may exercise their Subscription Rights, which form is attached hereto as Exhibit I and was approved by the Bankruptcy Court under the Rights Offering Order.

168. “*Subscription Notification Date*” means a date that is not later than five (5) Business Days following the Subscription Deadline.

169. “*Subscription Payment Amount*” means, with respect to a particular Rights Offering Purchaser, an amount of Cash equal to the Rights Offering Amount multiplied by such Rights Offering Purchaser’s subscribed for portion of its Pro Rata Share of the Rights Offering Shares.

170. “*Subscription Payment Date*” means a date that is not later than five (5) Business Days following the applicable Subscription Notification Date (or such later date as approved in writing by the Debtor or Reorganized Debtor); provided, however, that such date must occur on or prior to the Effective Date.

171. “*Subscription Period*” means the time period during which the Rights Offering Participants may subscribe to purchase the Rights Offering Shares, which period shall commence on the Subscription Commencement Date and expire on the Subscription Deadline.

172. “*Subscription Price*” shall have the meaning ascribed to it in Article V.H hereof.

173. “*Subscription Right*” means the right to participate in the Rights Offering, which right shall be non-Transferable and non-certificated as set forth in Article V.H of this Plan.

174. “*Subsequent Distribution*” means any distribution of property under this Plan to Holders of Allowed Claims other the initial distribution given on the Initial Distribution Date.

175. “*Subsequent Distribution Date*” means the last Business Day of the month following the end of each calendar quarter after the Effective Date; provided, however, that if the Effective Date is within thirty (30) days of the end of a calendar quarter, then the first Subsequent Distribution Date will be the last Business Day of the month following the end of the first calendar quarter after the calendar quarter in which the Effective Date falls.

176. “*Term Loan Exit Facility*” means the senior, secured term loan exit credit facility in the aggregate principal amount equal to (i) the aggregate Allowed Prepetition Term Loan Credit Facility Claims, minus (ii) the sum of (a) the Prepetition Term Loan Payment Amount plus (b) any fees and expenses payable under the Prepetition Term Loan Credit Agreement that are paid as Transaction Expenses, with terms and conditions substantially consistent with, or

with terms no less favorable in the aggregate for the Debtor and/or Reorganized Debtor than, those set forth in the Term Loan Exit Facility Term Sheet or such other terms and conditions as approved in writing by the Debtor, the Ad Hoc Notcholders Committee and the Prepetition Term Loan Agent, but in each case subject to the terms and conditions of the Term Loan Exit Intercreditor Agreement.

177. “*Term Loan Exit Facility Credit Agreement*” means the credit agreement with respect to the Term Loan Exit Facility, in substantially the form attached to this Plan as Exhibit J or Filed with the Plan Supplement.

178. “*Term Loan Exit Facility Term Sheet*” means the term sheet setting forth the terms and conditions of the Term Loan Exit Facility, in substantially the form attached to this Plan as Exhibit K or Filed with the Plan Supplement.

179. “*Term Loan Exit Intercreditor Agreement*” means that certain intercreditor agreement with respect to the Revolver Exit Facility and Term Loan Exit Facility, substantially in the form Filed with the Plan Supplement.

180. “*Transaction Expenses*” means the aggregate amount of reasonable fees and expenses payable by the Debtor in connection with the Chapter 11 Case, including the fees and expenses payable to the DIP Lenders and the Backstop Parties, all fees and expenses (whether accrued prepetition or postpetition) of the Prepetition Term Loan Lenders and the Prepetition Term Loan Agent (including all accrued and unpaid fees and expenses (whether accrued prepetition or postpetition) of Gibson, Dunn & Crutcher, LLP, Broadpoint Capital, Inc. and Young Conaway Stargatt & Taylor, LLP), and including the Ad Hoc Notcholders Committee Fees and Expenses, as well as the fees and expenses payable under the Revolver Exit Facility and the 1% closing fee payable to the Prepetition Term Loan Lenders as described in the Term Loan Exit Facility Term Sheet.

181. “*Transfer*” or “*Transferable*” means, with respect to any security or the right to receive a security or to participate in any offering of any security, including the Rights Offering, (i) the sale, transfer, pledge, hypothecation, encumbrance, assignment, constructive sale, participation in, or other disposition of such security or right or the beneficial ownership thereof, (ii) the offer to make such a sale, transfer, constructive sale, or other disposition, and (iii) each option, agreement, arrangement, or understanding, whether or not in writing and whether or not directly or indirectly, to effect any of the foregoing. The term “constructive sale” for purposes of this definition means (i) a short sale with respect to such security or right, (ii) entering into or acquiring an offsetting derivative contract with respect to such security or right, (iii) entering into or acquiring a futures or forward contract to deliver such security or right, or (iv) entering into any transaction that has substantially the same effect as any of the foregoing. The term “beneficially owned” or “beneficial ownership” as used in this definition shall include, with respect to any security or right, the beneficial ownership of such security or right by a Person and by any direct or indirect subsidiary of such Person.

182. “*Unexpired Lease*” means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

183. “*Unimpaired*” means, with respect to a Class of Claims or Equity Interests, a Claim or an Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

184. “*Voting and Claims Agent*” means Kurtzman Carson Consultants LLC, in its capacity as solicitation, notice, claims and balloting agent for the Debtor, pursuant to that certain *Order Authorizing the Debtor Pursuant to Section 156(c) of the Judicial Code, Bankruptcy Rule 2002 and Local Rule 2002-1(f) for Authorization to (i) Employ and Retain Kurtzman Carson Consultants LLC as Notice, Claims and Balloting Agent for the Debtor and (ii) Appoint Kurtzman Carson Consultants LLC as Agent of the Bankruptcy Court*, entered by the Bankruptcy Court on April 21, 2009 [Docket No. 49].

185. “*Voting Classes*” means, collectively, Classes 4, 5 and 6.

186. “*Voting Deadline*” means October 1, 2009 at 5:00 p.m. prevailing Pacific Time for all Holders of Claims, which is the date and time by which all Ballots, Beneficial Holder Ballots and Master Ballots, as applicable, must be received by the Voting and Claims Agent in accordance with the Disclosure Statement Order, or such other date and time as may be established by the Bankruptcy Court with respect to any Voting Class.

187. “*Voting Record Date*” means the date for determining which Holders of Claims are entitled to receive the Disclosure Statement and vote to accept or reject this Plan, as applicable, which date is August 10, 2009 with respect to Claims in Classes 5, 7 and 8, and which date is August 25, 2009 with respect to all other Claims, as set forth in the Disclosure Statement Order.

## ARTICLE II.

### ADMINISTRATIVE, DIP FACILITY AND PRIORITY TAX CLAIMS

#### A. *Administrative Claims*

Subject to sub-paragraph 1 below, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim either (i) payment in full in Cash for the unpaid portion of such Allowed Administrative Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or Reorganized Debtor, as applicable, and such Holder; provided, however, that Administrative Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court.

#### 1. Bar Date for Administrative Claims

Except as otherwise provided in this Article II.A hereof, unless previously Filed or paid, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of

the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtor or the Reorganized Debtor or its Estate and property and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.F hereof. Objections to such requests must be Filed and served on the Reorganized Debtor and the requesting party by the later of (a) 120 days after the Effective Date and (b) 60 days after the Filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by order of the Bankruptcy Court.

## 2. Professional Compensation and Reimbursement Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtor and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Professional Fee Claim no later than the Professional Fees Bar Date; provided that the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date, including those fees and expenses incurred by Professionals in connection with the implementation and consummation of this Plan, in each case without further application or notice to or order of the Bankruptcy Court; provided, further, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the Effective Date, without further Bankruptcy Court order, pursuant to the Ordinary Course Professionals Order. Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtor and the requesting party by the later of (a) 90 days after the Effective Date and (b) 30 days after the Filing of the applicable request for payment of the Professional Fee Claim. Each Holder of an Allowed Professional Fee Claim shall be paid by the Reorganized Debtor in Cash within five Business Days of entry of the order approving such Allowed Professional Fee Claim. Notwithstanding the foregoing, the Debtor shall, on the Effective Date and as part of the Transaction Expenses, pay the Ad Hoc Noteholders Committee Fees and Expenses and all unpaid reasonable fees and expenses (whether accrued prepetition or postpetition) of the Prepetition Term Loan Agent and Prepetition Term Loan Lenders, including all accrued and unpaid reasonable fees and expenses (whether accrued prepetition or postpetition) of Gibson, Dunn & Crutcher, LLP, Broadpoint Capital, Inc. and Young Conaway Stargatt & Taylor, LLP payable pursuant to the Term Loan Exit Facility Term Sheet as Administrative Claims in the ordinary course of the business, without application by or on behalf of any such parties to the Bankruptcy Court, and without notice and a hearing; provided however that, if the Debtor or Reorganized Debtor and any such Entity cannot agree on the amount of fees and expenses to be paid to such party, the reasonableness of any such fees and expenses shall be determined by the Bankruptcy Court.



*B. DIP Facility Claims*

Unless otherwise agreed to by the DIP Lenders, the Allowed DIP Facility Claims shall be indefeasibly paid in full in Cash on the Effective Date in full satisfaction, settlement, discharge and release of, and in exchange for, such DIP Facility Claims. Upon indefeasible payment and satisfaction in full of all Allowed DIP Facility Claims, the DIP Facility Credit Agreement and Prepetition Revolving Credit Agreement, and all "Loan Documents" as defined therein, respectively, and all Liens and security interests granted to secure the DIP Facility Claims and/or Prepetition Revolving Credit Agreement Claims, shall be immediately terminated, extinguished and released and/or assigned to the Reorganized Debtor's lenders under the Revolver Exit Facility, as applicable, and the respective Administrative and Collateral Agents shall promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor. Notwithstanding the above, any indemnity provisions contained in the DIP Facility Credit Agreement shall survive such termination, release and satisfaction in the manner and to the extent set forth therein.

*C. Priority Tax Claims*

The legal, equitable and contractual rights of the Holders of Priority Tax Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor or Reorganized Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (b) such other less favorable treatment as agreed to in writing by the Debtor or Reorganized Debtor, as applicable, and such Holder; provided, however, that such parties may further agree for the payment of such Allowed Priority Tax Claim at a later date; or (c) pursuant to and in accordance with sections 1129(a)(9)(C) and (D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtor or Reorganized Debtor, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, further, that Priority Tax Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (c) above shall be made in equal quarterly Cash payments beginning on the Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Priority Tax Claim.

### ARTICLE III.

#### CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

*A. Summary*

All Claims and Equity Interests, except Administrative Claims, DIP Facility Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims and Priority Tax Claims have not been classified as described below.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including, without limitation, voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. This Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

<u>Class</u>	<u>Claim</u>	<u>Status</u>	<u>Voting Rights</u>
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Secured Tax Claims	Unimpaired	Deemed to Accept
4	Prepetition Term Loan Credit Facility Claims	Impaired	Entitled to Vote
5	Subordinated Notes Claims	Impaired	Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote
7	Junior Convertible Notes Claims	Impaired	Deemed to Reject
8	Equity Interests	Impaired	Deemed to Reject

B. *Classification and Treatment of Claims and Equity Interests*

1. Class 1 – Other Priority Claims

- (a) *Classification:* Class 1 consists of the Other Priority Claims against the Debtor.
- (b) *Treatment:* The legal, equitable and contractual rights of the Holders of Class 1 Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 1 Claim is an Allowed Class 1 Claim on the Effective Date or (ii) the date on which such Class 1 Claim becomes an Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor or Reorganized Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor or Reorganized Debtor and the Holder of such Allowed Class 1 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; provided, however, that Class 1 Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court.
- (c) *Voting:* Class 1 is an Unimpaired Class, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan.

2. Class 2 – Other Secured Claims

- (a) *Classification:* Class 2 consists of the Other Secured Claims against the Debtor.
- (b) *Treatment:* The legal, equitable and contractual rights of the Holders of Class 2 Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 2 Claim is an Allowed Class 2 Claim on the Effective Date or (ii) the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim, at the election of the Debtor or Reorganized Debtor: (A) Cash equal to the amount of such Allowed Class 2 Claim; (B) such other less favorable treatment as to which the Debtor or

Reorganized Debtor and the Holder of such Allowed Class 2 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; provided, however, that Class 2 Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court. Each Holder of an Allowed Other Secured Claim shall retain the Liens securing its Allowed Other Secured Claim as of the Effective Date until full and final payment of such Allowed Other Secured Claim is made as provided herein. On the full payment or other satisfaction of such obligations, the Liens securing such Allowed Other Secured Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

- (c) *Voting:* Class 2 is an Unimpaired Class, and the Holders of Class 2 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 2 Claims are not entitled to vote to accept or reject this Plan.

### 3. Class 3—Secured Tax Claims

- (a) *Classification:* Class 3 consists of the Secured Tax Claims against the Debtor.
- (b) *Treatment:* The legal, equitable and contractual rights of the Holders of Class 3 Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 3 Claim is an Allowed Class 3 Claim as of the Effective Date or (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim due and payable on or prior to the Effective Date shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtor or Reorganized Debtor: (a) Cash in an amount equal to the amount of such Allowed Class 3 Claim; (b) such other less favorable treatment as agreed to in writing by the Debtor or Reorganized Debtor, as applicable, and such Holder; provided, however, that such parties may further agree for the payment of such Allowed Class 3 Claim at a later date; or (c) pursuant to and in accordance with sections 1129(a)(9)(C) and (D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Class 3 Claim payable in regular installment payments over a period ending not more than five years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular

taxing authority and the Debtor or Reorganized Debtor, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, further, that Class 3 Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court. Each Holder of an Allowed Class 3 Claim shall retain the Liens securing its Allowed Class 3 Claim as of the Effective Date until full and final payment of such Allowed Class 3 Claim is made as provided herein. On the full payment or other satisfaction of such obligations, the Liens securing such Allowed Class 3 Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any installment payments to be made under clause (c) above shall be made in equal quarterly Cash payments beginning on the first Subsequent Distribution Date following the Effective Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Secured Tax Claim.

- (c) *Voting:* Class 3 is an Unimpaired Class, and the Holders of Class 3 Claims shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan.

#### 4. Class 4 – Prepetition Term Loan Credit Facility Claims

- (a) *Classification:* Class 4 consists of the Prepetition Term Loan Credit Facility Claims against the Debtor.
- (b) *Allowance:* On the Effective Date, the Prepetition Term Loan Credit Facility Claims shall be deemed Allowed in an aggregate amount equal to \$103,152,385, plus reasonable fees and expenses and accrued postpetition interest (calculated at the rate provided for in the Term Loan Exit Facility Term Sheet).
- (c) *Treatment:* On the Effective Date, the Prepetition Term Loan Credit Agreement and all “Loan Documents” as defined therein shall be replaced in their entirety by the Term Loan Exit Facility Credit Agreement and all “Loan Documents” as defined therein. On the Effective Date, the Distribution Agent shall receive for and on behalf of each and every Holder of an Allowed Prepetition Term Loan Credit Facility Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, (i) the Prepetition Term Loan Payment Amount; and (ii) the notes issued in connection with the Term Loan Exit Facility, which the Distribution Agent shall promptly distribute Pro Rata to or for the benefit

of Holders of Allowed Prepetition Term Loan Credit Facility Claims. Upon the Distribution Agent's receipt of the foregoing, the Prepetition Term Loan Credit Agreement and all "Loan Documents" as defined therein, and all Liens securing such Allowed Prepetition Term Loan Credit Facility Claims, shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. The Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor.

- (d) *Voting:* Class 4 is Impaired, and Holders of Class 4 Claims are entitled to vote to accept or reject this Plan.

5. Class 5 – Subordinated Notes Claims

- (a) *Classification:* Class 5 consists of the Subordinated Notes Claims against the Debtor.
- (b) *Allowance:* On the Effective Date, the Subordinated Notes Claims shall be deemed Allowed in an aggregate amount equal to \$161,636,231.
- (c) *Treatment:* On the Effective Date, the Distribution Agent shall receive for and on behalf of each and every Holder of an Allowed Subordinated Notes Claim who executes and delivers to Holdings a counterpart signature to the Holdings LLC Agreement, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, one hundred percent (100%) of the New Stock, which shall be subject to dilution as a result of the Rights Offering and, after giving effect to the Restructuring Transactions, the Equity Incentive Program. The number of shares of New Stock to be issued pursuant to this sub-paragraph (c) shall be equal to the excess of the Aggregate Effective Date New Stock Issuance over the aggregate number of Rights Offering Shares. The Distribution Agent shall promptly distribute the New Stock on a Pro Rata basis to the Holders of Allowed Subordinated Notes Claims.
- (d) *Voting:* Class 5 is Impaired, and Holders of Class 5 Claims are entitled to vote to accept or reject this Plan.

6. Class 6 – General Unsecured Claims

- (a) *Classification:* Class 6 consists of the General Unsecured Claims against the Debtor.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 6

Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes Allowed, each Holder of an Allowed Class 6 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 6 Claim, at the election of the Debtor or Reorganized Debtor: (A) its Pro Rata share of the General Unsecured Claims Cash Amount or (B) such other less favorable treatment as to which the Debtor or Reorganized Debtor and the Holder of such Allowed Class 6 Claim shall have agreed upon in writing.

- (c) *Voting:* Class 6 is Impaired, and Holders of Class 6 Claims are entitled to vote to accept or reject this Plan.

7. Class 7 – Junior Convertible Notes Claims

- (a) *Classification:* Class 7 consists of the Junior Convertible Notes Claims against the Debtor.
- (b) *Treatment:* On the Effective Date, all Class 7 Junior Convertible Notes Claims shall be deemed canceled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and the Holders of such Junior Convertible Notes Claims shall not receive any distribution or retain any property on account of such Junior Convertible Notes Claims. The treatment of the Junior Convertible Notes Claims under this Plan is in accordance with and gives effect to the provisions of Section 510(a) of the Bankruptcy Code.
- (c) *Voting:* Class 7 is an Impaired Class, and the Holders of Class 7 Claims will be conclusively deemed to have rejected this Plan. Therefore, Holders of Class 7 Claims will not be entitled to vote to accept or reject this Plan.

8. Class 8 – Equity Interests

- (a) *Classification:* Class 8 consists of the Equity Interests in the Debtor.
- (b) *Treatment:* On the Effective Date, all Class 8 Equity Interests shall be deemed canceled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and the Holders of such Equity Interests shall not receive any distribution or retain any property on account of such Equity Interests.
- (c) *Voting:* Class 8 is an Impaired Class, and the Holders of Class 8 Equity Interests will be conclusively deemed to have rejected this Plan. Therefore, Holders of Class 8 Claims will not be entitled to vote to accept or reject this Plan.

*C. Special Provision Governing Unimpaired Claims*

Except as otherwise provided herein, nothing under this Plan shall affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

*D. Discharge of Claims*

Except as otherwise provided herein and effective as of the Effective Date: (i) the rights afforded herein and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, settlement, 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 Debtor or any of its assets, property, or Estate; (ii) this Plan shall bind all Holders of Claims and Equity Interests, notwithstanding whether any such Holders abstained from voting to accept or reject this Plan or voted to reject this Plan; (iii) all Claims and Equity Interests shall be satisfied, discharged, and released in full, and the Debtor's liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (iv) all Entities shall be precluded from asserting against the Debtor, the Debtor's Estate, the Reorganized Debtor, each of their successors and assigns, and each of 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.

**ARTICLE IV.**

**ACCEPTANCE OR REJECTION OF THE PLAN**

*A. Presumed Acceptance of Plan*

Classes 1, 2, and 3 are Unimpaired under this Plan, and are, therefore, presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code.

*B. Voting Classes*

Each Holder of an Allowed Claim as of the applicable Voting Record Date in each of the Voting Classes (Classes 4, 5 and 6) shall be entitled to vote to accept or reject this Plan.

*C. Acceptance by Impaired Classes of Claims*

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted this Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept this Plan.

*D. Presumed Rejection of Plan*

Classes 7 and 8 are Impaired and Holders of Class 7 Junior Convertible Notes Claims and Class 8 Equity Interests shall receive no distribution under this Plan on account of their Junior



Convertible Notes Claims or Equity Interests and are, therefore, presumed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code.

*E. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code*

The Debtor requests confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept this Plan pursuant to section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify this Plan or any Exhibit or Plan Schedule in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

**ARTICLE V.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

*A. General Settlement of Claims*

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 this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to this Plan.

*B. Restructuring Transactions*

On the Effective Date and without limiting any rights and remedies of the Debtor or Reorganized Debtor under this Plan or applicable law, the Reorganized Debtor shall enter into the Restructuring Transactions as follows:

1. The First Contribution. Immediately following the issuance of New Stock pursuant to Article III.B.5(c) hereof and the Rights Offering (including the issuance of any Remaining Rights Offering Shares pursuant to the Backstop Rights Purchase Agreement), each holder of any shares of New Stock shall, automatically and without any further action on the part of any Person or order of the Bankruptcy Court, be deemed to contribute (the "First Contribution") each such share of New Stock issued to such holder pursuant to this Plan to a Delaware limited liability company to be organized to hold, indirectly through Intermediate Holdings (as defined below), 100% of the equity securities of the Debtor as of the Effective Date ("Holdings"), in exchange for the issuance by Holdings to each such holder of (x) a number of class A preferred units of Holdings (the "Class A Preferred Units") equal to the product obtained by multiplying (A) the aggregate number of Class A Preferred Units to be issued and outstanding by Holdings as of the Effective Date (after giving effect to the restructuring contemplated by this Plan, including the Rights Offering and the transactions contemplated by the Backstop Rights Purchase Agreement) times (B) the quotient obtained by dividing the number of shares of New Stock contributed to Holdings by such holder in the First Contribution, by the aggregate number of shares of New Stock contributed to Holdings in the First Contribution (such quotient, with respect to each such holder, the "Contribution Percentage"), and (y) a number of class A common units of Holdings (the "Class A Common Units") equal to the product obtained by multiplying (A) the aggregate number of Class A Common Units to be issued and outstanding by

Holdings as of the Effective Date (after giving effect to the restructuring contemplated by this Plan, including the Rights Offering and the transactions contemplated by the Backstop Rights Purchase Agreement) times (B) such holder's Contribution Percentage; it being understood, for the avoidance of doubt, that the ratio of Class A Preferred Units to Class A Common Units shall be the same with respect to each such holder. The Class A Preferred Units and Class A Common Units of Holdings issued pursuant to the First Contribution are herein referred to as the "Post-Effective Date Equity Interests." In connection with the receipt by any Person of New Stock on the Effective Date pursuant to this Plan, subject to the Restructuring Transactions, and in connection with the issuance by Holdings to any Person of the Post-Effective Date Equity Interests on the Effective Date, and in each case as a condition thereto, such Person shall execute and deliver to Holdings a joinder to the Holdings LLC Agreement.

2. The Second Contribution. Immediately following the First Contribution, Holdings shall, automatically and without any further action on the part of any Person or order of the Bankruptcy Court, be deemed to contribute (the "Second Contribution") each such share of New Stock contributed to Holdings pursuant to the First Contribution to a Delaware corporation to be organized to hold 100% of the equity securities of the Debtor as of the Effective Date ("Intermediate Holdings"), in exchange for the issuance by Intermediate Holdings to Holdings of 100% of the common stock, par value \$0.01 per share, of Intermediate Holdings ("Intermediate Holdings Common Stock"), to be issued and outstanding as of the Effective Date.

*C. Corporate Existence*

The Debtor shall continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation pursuant to the applicable law in the State of Delaware and pursuant to the Amended Organizational Documents.

*D. Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all property and assets of the Estate (including, without limitation, Causes of Action and, unless otherwise waived pursuant to an order of the Bankruptcy Court, Avoidance Actions) and any property and assets acquired by the Debtor pursuant hereto shall vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances. Except as may be provided herein, on and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor shall pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

*E. Exit Facilities and Sources of Cash for Plan Distributions*

On the Effective Date, the Reorganized Debtor shall be authorized to execute and deliver the Revolver Exit Facility Credit Agreement and the Term Loan Exit Facility Credit Agreement, as well as execute, deliver, file, record and issue any notes, documents (including UCC financing statements), or agreements in connection therewith, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than expressly required by the Revolver Exit Facility Credit Agreement or Term Loan Exit Facility Credit Agreement). Except as otherwise provided in this Plan or the Confirmation Order, all Cash necessary for the Reorganized Debtor to make payments required pursuant to this Plan will be obtained from the Reorganized Debtor's Cash balances, including Cash from operations, the proceeds of the Rights Offering and the proceeds of the Revolver Exit Facility. Cash payments to be made pursuant to this Plan will be made by the Reorganized Debtor.

*F. New Stock*

On the Effective Date, the Reorganized Debtor shall issue New Stock to Holders of Allowed Subordinated Notes Claims pursuant to the terms set forth herein. The New Stock shall be subject to dilution by the Rights Offering. The aggregate number of shares of New Stock to be issued on the Effective Date (after giving effect to all of the transactions contemplated by the Plan, including the Rights Offering) shall be 1,000,000 shares (the "Aggregate Effective Date New Stock Issuance"). After giving effect to the Restructuring Transactions, the holders of New Stock shall become the holders of the Post-Effective Date Equity Interests, which shall be subject to dilution by any equity issued in connection with the Equity Incentive Program. The Reorganized Debtor shall not be obligated to list the New Stock on a national securities exchange, nor shall Holdings be obligated to list the Post-Effective Date Equity Interests on a national securities exchange.

*G. Securityholders Agreement; Registration Agreement*

On the Effective Date, Holdings shall be authorized and directed to enter into and consummate the transactions contemplated by the Securityholders Agreement, the Registration Agreement and such documents, and any agreement or document entered into in connection therewith, shall become effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by the Securityholders Agreement or the Registration Agreement). Except for Holdings, entry into the Securityholders Agreement and the Registration Agreement is voluntary and no Holder of Subordinated Notes Claims will be required, pursuant to this Plan, to enter into such agreements; provided, however, that any Person who, pursuant to Article V.J. hereof or otherwise with the consent of Holdings, enters into the Registration Agreement shall also, as a condition thereto, enter into the Securityholders Agreement.

## H. *Rights Offering*

### 1. Issuance of Rights.

Each Rights Offering Participant will receive Subscription Rights to subscribe for its Pro Rata Share of the Rights Offering Shares for an aggregate purchase price equal to the applicable Subscription Payment Amount. In accordance with the Backstop Rights Purchase Agreement, the Backstop Parties have committed to purchase all Remaining Rights Offering Shares. The Rights Offering Shares, including the Remaining Rights Offering Shares, will be issued to the Rights Offering Participants and the Backstop Parties, as applicable, for an aggregate purchase price equal to the Rights Offering Amount.

### 2. Subscription Period.

The Rights Offering shall commence on the Subscription Commencement Date and shall expire on the Subscription Deadline. Each Rights Offering Participant that intends or desires to participate in the Rights Offering must affirmatively elect to exercise its Subscription Rights, and provide written notice thereof to the Entities specified in the Subscription Form, on or prior to the Subscription Deadline in accordance with the terms of this Plan and the Subscription Form. On the Subscription Deadline, all Remaining Rights Offering Shares shall be allocated to, and purchased by, the Backstop Parties in accordance with the terms and conditions of the Backstop Rights Purchase Agreement.

### 3. Exercise of Subscription Rights and Payment of Subscription Payment Amount.

On the Subscription Commencement Date, the Debtor or other applicable Distribution Agent will mail the Subscription Form to each Rights Offering Participant known as of the Rights Offering Record Date, together with appropriate instructions for the proper completion, due execution, and timely delivery of the Subscription Form, as well as instructions for the payment of the eventual Subscription Payment Amount for that portion of the Subscription Rights sought to be exercised by such Person. The Debtor may adopt, with the prior written consent of the Ad Hoc Noteholders Committee, such additional detailed procedures consistent with the provisions of this Plan to more efficiently administer the exercise of the Subscription Rights.

In order to exercise the Subscription Rights, each Rights Offering Participant must return a duly completed Subscription Form (making a binding and irrevocable commitment to participate in the Rights Offering) to the Debtor or other Entity specified in the Subscription Form so that such form is actually received by the Debtor or such other Entity on or before the Subscription Deadline. If the Debtor or such other Entity for any reason does not receive from a given holder of Subscription Rights a duly completed Subscription Form on or prior to the Subscription Deadline, then such holder shall be deemed to have forever and irrevocably relinquished and waived its right to participate in the Rights Offering. On the Subscription Notification Date, the Debtor will notify each Rights Offering Purchaser of its respective allocated portion of Rights Offering Shares, and in the case of the Backstop Parties, the Debtor will notify each Backstop Party on or before the third (3<sup>rd</sup>) Business Day after the Subscription Deadline of its portion of the Remaining Rights Offering Shares that such Backstop Party is

obligated to purchase pursuant to the Backstop Rights Purchase Agreement. Each Rights Offering Purchaser (other than the Backstop Parties, whose payments will be received by the Debtor on the Effective Date in accordance with the Backstop Rights Purchase Agreement) must tender its Subscription Payment Amount to the Debtor so that it is actually received on or prior to the Subscription Payment Date. In the event the Debtor receives any payments for the exercise of Subscription Rights prior to the Effective Date, such payments shall be held in a separate account until the Effective Date. In the event the conditions to the Effective Date are not met or waived, such payments shall be returned, without accrual or payment of any interest thereon, to the applicable Rights Offering Purchaser, without reduction, offset or counter-claim.

4. Number of Rights Offering Shares.

The number of Rights Offering Shares to be sold pursuant to the Rights Offering shall be determined by dividing the Rights Offering Amount by the Subscription Price. The "Subscription Price" means the quotient obtained by dividing the Post-Money Equity Value by the aggregate number of shares of New Stock issued and outstanding on the Effective Date (after giving effect to all of the transactions contemplated by the Plan, including the Rights Offering).

5. No Transfer; Detachment Restrictions; No Revocation.

The Subscription Rights are not Transferable or detachable. Any such Transfer or detachment, or attempted Transfer or detachment, will be null and void and the Debtor will not treat any purported transferee of the Subscription Rights separate from the Subordinated Notes Claims as the holder of any Subscription Rights. Once a Rights Offering Participant has exercised any of its Subscription Rights by properly executing and delivering a Subscription Form to the Debtor or other Entity specified in the Subscription Form, such exercise may only be revoked, rescinded or annulled in the sole discretion of the Debtor or Reorganized Debtor.

6. Distribution of Rights Offering Shares.

On, or as soon as reasonably practicable after, the Effective Date, the Reorganized Debtor or other applicable Distribution Agent shall distribute the Rights Offering Shares purchased by each Rights Offering Purchaser, which shares shall be subject to the Restructuring Transactions.

7. Validity of Exercise of Subscription Rights.

All questions concerning the timeliness, validity, form, and eligibility of any exercise, or purported exercise, of Subscription Rights shall be determined by the Debtor or Reorganized Debtor. The Debtor or Reorganized Debtor, in its discretion reasonably exercised in good faith, may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such times as they may determine, or reject the purported exercise of any Subscription Rights. Subscription Forms shall be deemed not to have been received or accepted until all irregularities have been waived or cured within such time as the Debtor or Reorganized Debtor determines in its discretion reasonably exercised in good faith. The Debtor or Reorganized Debtor will use commercially reasonable efforts to give written notice to any Rights Offering Participant regarding any defect or irregularity in connection with any purported exercise of Subscription Rights by such Person and may permit such defect or irregularity to be

cured within such time as they may determine in good faith to be appropriate; provided, however, that neither the Debtor and Reorganized Debtor nor any of its Related Persons shall incur any liability for giving, or failing to give, such notification and opportunity to cure.

8. Rights Offering Proceeds.

The proceeds of the Rights Offering will constitute a portion of the Net Exit Proceeds, which will be used to fund Cash payments required to be made under this Plan in accordance with the Payment Waterfall.

I. *Equity Incentive Program*

As soon as practical after the Effective Date, Holdings will adopt and implement a post-Effective Date director and officer equity incentive program providing for the issuance from time to time, as approved by the board of managers of Holdings, of Post-Effective Date Equity Interests representing, in the aggregate, up to ten percent (10%) of the common equity interests of Holdings, on a fully-diluted basis, as of the Effective Date.

J. *Issuance of New Securities and Related Documentation*

On the Effective Date, each of the Reorganized Debtor, Intermediate Holdings and Holdings is authorized to and shall issue, as applicable, the New Stock, the Intermediate Holdings Common Stock and Post-Effective Date Equity Interests and any and all other securities, notes, stock, instruments, certificates, and other documents or agreements required to be issued, executed or delivered pursuant to this Plan (collectively with the Subscription Rights, the "New Securities and Documents"), in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. The issuance of the New Securities and Documents and the distribution thereof under this Plan, and distribution and exercise of the Subscription Rights, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code, Section 4(2) of the Securities Act and/or other applicable exemptions. Without limiting the effect of section 1145 of the Bankruptcy Code, all documents, agreements, and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of this Plan, including, without limitation, the Revolver Exit Facility Credit Agreement, the Term Loan Exit Facility Credit Agreement, the Registration Agreement, the Securityholders Agreement, and any other agreement or document related to or entered into in connection with any of the foregoing, shall become, and the Backstop Rights Purchase Agreement shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by such applicable agreement).

Upon the Effective Date, after giving effect to the transactions contemplated hereby, the authorized capital stock or other equity securities of the Reorganized Debtor shall be that number of shares of New Stock as may be designated in the Amended Organizational Documents. Without limiting the effect of section 1145 of the Bankruptcy Code, on the Effective Date,

Holdings will enter into the Registration Agreement with each Person (a) who by virtue of the issuance by Holdings to such Person on the Effective Date of the Post-Effective Date Equity Interests and/or its relationship with Holdings could reasonably be deemed to be an "underwriter" or "affiliate" (as such terms are used within the meaning of applicable securities laws) of Holdings, (b) who requests in writing that Holdings execute such agreement, and (c) who enters into the Holdings LLC Agreement and the Securityholders Agreement. In connection with the distribution of Post-Effective Date Equity Interests to current or former employees of the Debtor, Holdings may take whatever actions are necessary to comply with applicable federal, state, local and international tax withholding obligations, including withholding from distributions a portion of the Post-Effective Date Equity Interests and selling such securities to satisfy tax withholding obligations including, without limitation, income, social security and Medicare taxes.

*K. Release of Liens, Claims and Equity Interests*

Except as otherwise provided herein or in any contract, instrument, release or other agreement or document entered into or delivered in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII hereof, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor.

*L. Certificate of Incorporation and Bylaws*

The certificates or articles of incorporation and by-laws of the Debtor shall be amended or succeeded, as necessary, to satisfy the provisions of this Plan and the Bankruptcy Code, and shall (i) include, among other things, pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) authorize the issuance of New Stock in an amount not less than the amount necessary to permit the distributions thereof required or contemplated by this Plan; (iii) to the extent necessary or appropriate, include restrictions on the Transfer of New Stock; and (iv) to the extent necessary or appropriate, include such provisions as may be needed to effectuate and consummate this Plan and the transactions contemplated herein. After the Effective Date, the Reorganized Debtor may amend and restate its certificate or articles of incorporation and by-laws, and other applicable organizational documents, as permitted by applicable law. The Amended Organizational Documents shall provide the Reorganized Debtor with the authority to issue shares of New Stock sufficient for the issuance of the shares pursuant to this Plan, inclusive of the Rights Offering Shares, prior to giving effect to the Restructuring Transactions.

*M. Directors and Officers of the Reorganized Debtor*

The New Board shall initially consist of up to four (4) directors, who shall consist of the Chief Executive Officer of the Reorganized Debtor and up to three (3) directors to be designated by OCM Principal Opportunities Fund IV Delaware, L.P., and, which directors shall be identified in the Plan Supplement as Plan Schedule 3. Any directors elected pursuant to this section shall be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code. As of the Effective Date, the initial officers of the Reorganized Debtor shall be the officers of the Debtor existing immediately prior to the Effective Date. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose, at or prior to the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the initial board of directors of the Reorganized Debtor, and, to the extent such Person is an insider other than by virtue of being a director, the nature of any compensation for such Person. Each such director and officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the Amended Organizational Documents and the other constituent and organizational documents of the Reorganized Debtor. The existing board of directors of the Debtor will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

*N. Corporate Action*

Each of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, may take any and all actions to execute, deliver, File or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, including, without limitation, the distribution of the securities to be issued pursuant hereto in the name of and on behalf of the Reorganized Debtor, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable or by any other Person (except for those expressly required pursuant hereto).

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, directors or members of the Debtor (as of prior to the Effective Date) shall be deemed to have been so approved and shall be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, directors, managers or partners of the Debtor, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, in connection with this Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders,



officers or directors of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The secretary and any assistant secretary of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, shall be authorized to certify or attest to any of the foregoing actions.

*O. Cancellation of Notes, Certificates and Instruments*

On the Effective Date, except to the extent otherwise provided herein, all notes, stock, instruments, certificates, agreements and other documents evidencing the DIP Facility Claims, Prepetition Revolving Credit Agreement Claims, Prepetition Term Loan Credit Facility Claims, Subordinated Notes Claims, the Junior Convertible Notes Claims and the Equity Interests shall be canceled, and the obligations of the Debtor thereunder or in any way related thereto shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

On the Effective Date, except to the extent otherwise provided herein, the Indenture and Junior Convertible Notes Indenture shall each be deemed to be canceled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code, and the obligations of the Debtor thereunder shall be fully released, terminated, extinguished and discharged. The Indenture shall continue in effect solely for the purposes of: (1) allowing Holders of the Subordinated Notes Claims to receive distributions under this Plan; and (2) allowing and preserving the rights of the Indenture Trustee to (a) make distributions in satisfaction of Allowed Subordinated Notes Claims, (b) exercise its charging liens against any such distributions, and (c) seek compensation and reimbursement for any fees and expenses incurred in making such distributions. Upon completion of all such distributions, the Subordinated Notes and the Indenture shall terminate completely. From and after the Effective Date, the Indenture Trustee shall have no duties or obligations under the Indenture other than to make distributions. As of the Effective Date, the Subordinate Notes shall be surrendered to the Indenture Trustee in accordance with the terms of the Indenture. All surrendered and canceled Subordinated Notes held by the Indenture Trustee shall be disposed of in accordance with the applicable terms and conditions of the Indenture.

*P. Distributions from General Unsecured Claims Cash Amount*

For the purposes of determining distributions to be made from the General Unsecured Claims Cash Amount, each Holder of an Allowed General Unsecured Claim will receive its Pro Rata share of the General Unsecured Claims Cash Amount, subject to the procedures set forth in Article VIII hereof, from the General Unsecured Claims Cash Escrow.

## ARTICLE VI.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### A. *Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, all Executory Contracts and Unexpired Leases of the Debtor will be deemed assumed in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts (including, without limitation, employment agreements) and Unexpired Leases that:

- (i) have been rejected by order of the Bankruptcy Court;
- (ii) are the subject of a motion to reject pending on the Effective Date;
- (iii) are identified on Plan Schedule 4 hereto or in the Plan Supplement (in either case which Exhibit may be amended by the Debtor to add or remove Executory Contracts and Unexpired Leases by filing with the Bankruptcy Court an amended Exhibit and serving it on the affected contract parties at least ten (10) days prior to the Voting Deadline); or
- (iv) are rejected pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any Executory Contract or Unexpired Lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. To the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to this Plan (including, without limitation, any "change of control" provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the Reorganized Debtor's assumption of such Executory Contract or Unexpired Lease, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Each Executory Contract and Unexpired Lease assumed pursuant to this Article VI shall revest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of this Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable law.

#### B. *Assignment of Executory Contracts or Unexpired Leases*

In the event of an assignment of an Executory Contract or Unexpired Lease, at least twenty days prior to the Confirmation Hearing, the Debtor shall serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption and assignment, which will: (a) list the applicable cure amount, if any; (b) identify the party to which the Executory Contract or Unexpired Lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court; additionally, the Debtor shall file with the Bankruptcy Court a list of such Executory Contracts and Unexpired Leases to be assigned and the proposed cure amounts. Any applicable cure amounts shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy

Code, by payment of the cure amount in Cash on the Effective Date or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assignment or any related cure amount must be filed, served and actually received by the Debtor at least five days prior to the Confirmation Hearing. Any counterparty to an Executory Contract and Unexpired Lease that fails to object timely to the proposed assignment or cure amount will be deemed to have consented to such assignment of its Executory Contract or Unexpired Lease. The Confirmation Order shall constitute an order of the Bankruptcy Court approving any proposed assignments of Executory Contracts or Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

In the event of a dispute regarding (a) the amount of any cure payment, (b) the ability of any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assigned or (c) any other matter pertaining to assignment, the applicable cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assignment. If an objection to assignment or cure amount is sustained by the Bankruptcy Court, the Reorganized Debtor in its sole option, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming and assigning it.

*C. Rejection of Executory Contracts or Unexpired Leases*

All Executory Contracts and Unexpired Leases listed on Plan Schedule 4 shall be deemed rejected as of the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

*D. Claims on Account of the Rejection of Executory Contracts or Unexpired Leases*

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection.

Any Entity that is required to file a Proof of Claim arising from the rejection of an Executory Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtor, the Reorganized Debtor or the Estate, and the Debtor, the Reorganized Debtor and their Estate and property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.F hereof.

*E. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to this Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. At least twenty (20) days prior to the Confirmation Hearing, the Debtor shall file and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption, which will: (1) list the applicable cure amount, if any; and (2) describe the procedures for filing objections thereto.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount must be filed, served and actually received by the Debtor at least five (5) days prior to the Confirmation Hearing. Any counterparty to an Executory Contract and Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such matters and will be deemed to have forever released and waived any objection to the proposed assumption and cure amount. In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the 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 (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. If an objection to Cure is sustained by the Bankruptcy Court, the Debtor or Reorganized Debtor, as applicable, in its sole option, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it.

*F. Assumption of Director and Officer Insurance Policies*

The Debtor, and upon the Effective Date, the Reorganized Debtor, shall assume all of the D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained herein, confirmation of this 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 shall be deemed and treated as an Executory Contract that has been assumed by the Debtor hereunder as to which no Proof of Claim need be Filed. Notwithstanding anything to the contrary contained herein, confirmation of this Plan shall not impair or otherwise modify any rights of the Reorganized Debtor under the D&O Liability Insurance Policies.

*G. Indemnification Provisions*

Except as otherwise provided herein, all indemnification provisions currently in place (whether in the by-laws, certificate of incorporation, board resolutions, contracts, or otherwise) for the directors, officers and employees of the Debtor who served in such capacity as of the Petition Date with respect to or based upon any act or omission taken or omitted in such

capacities, for or on behalf of the Debtor, will be Reinstated (or assumed, as the case may be), and shall survive effectiveness of this Plan; provided, however, that no indemnification provisions for any Non-Released Party shall survive the Effective Date.

#### *H. Compensation and Benefit Programs*

Except as otherwise provided in this Plan, all employment and severance policies, and all compensation and benefit plans, policies, and programs of the Debtor applicable to its employees, retirees, and non-employee directors and the employees and retirees of its subsidiaries, including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, life, and accidental death and dismemberment insurance plans, are treated as Executory Contracts under this Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. Any payment obligations under any assumed employment contracts and benefit plans that have been or purport to have been accelerated as a result of the commencement of this Chapter 11 Case or the consummation of any transactions contemplated by this Plan shall be Reinstated and such acceleration shall be rescinded and deemed not to have occurred.

The Debtor established and maintained a pension plan for certain of its employees known as the Dayton Superior Corporation Master Pension Plan (the "Pension Plan"). The Pension Benefit Guaranty Corporation ("PBGC"), a United States Government corporation, guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV of ERISA. Under this Plan, the Pension Plan will not be terminated, and the Reorganized Debtor will assume and continue to maintain the Pension Plan in accordance with applicable law. Nothing in this Plan will be construed as discharging, releasing, or relieving the Debtor, or its successors, including the Reorganized Debtor, or any party, in any capacity, from any liability for minimum funding under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083 or liability under 29 U.S.C. §§ 1362 and 1307 with respect to the Pension Plan or the PBGC. The PBGC and the Pension Plan will not be enjoined or precluded from seeking to enforce such liability as a result of any provision of this Plan or the Confirmation Order.

#### *I. Workers' Compensation Benefits*

Except as otherwise provided in this Plan, as of the Effective Date, the Debtor and the Reorganized Debtor shall continue to honor their obligations under: (i) all applicable workers' compensation laws in states in which the Reorganized Debtor operates; and (ii) the Debtor's written contracts, agreements, agreements of indemnity, self-insurer workers' compensation bonds, and any other policies, programs, and plans regarding or relating to workers' compensation and workers' compensation insurance. All such contracts and agreements are treated as Executory Contracts under this Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. Notwithstanding anything to the contrary contained herein, confirmation of this Plan shall not impair or otherwise modify any rights of the Reorganized Debtor under any such contracts, agreements, policies, programs or plans regarding or relating to workers' compensation or workers' compensation insurance.

## ARTICLE VII.

### PROVISIONS GOVERNING DISTRIBUTIONS

#### A. *Distributions for Claims Allowed as of the Effective Date*

Except as otherwise provided in the "Treatment" sections in Article III hereof or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Disputed Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Article VIII hereof.

#### B. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim (other than a Holder of a Secured Tax Claim, DIP Facility Claim or a Prepetition Term Loan Credit Facility Claim with respect to such applicable Claim) shall be entitled to interest accruing on or after the Petition Date on any Claim.

#### C. *Distributions by Reorganized Debtor or Other Applicable Distribution Agent*

Other than as specifically set forth below, the Reorganized Debtor or other applicable Distribution Agent shall make all distributions required to be distributed under this Plan. Distributions on account of the DIP Facility Claims, Prepetition Term Loan Credit Facility Claims and Subordinated Notes Claims shall be made to the DIP Agent, the Prepetition Term Loan Agent and the Indenture Trustee, respectively. The Reorganized Debtor may employ or contract with other entities to assist in or make the distributions required by this Plan.

#### D. *Delivery and Distributions and Undeliverable or Unclaimed Distributions*

##### 1. Record Date for Distributions

On the Distribution Record Date, the Claims Register shall be closed. Accordingly, the Reorganized Debtor or other applicable Distribution Agent will have no obligation to recognize the Transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute securities, property, notices and other documents only to those Holders of Allowed Claims who are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. The Reorganized Debtor or other applicable Distribution Agent shall be entitled to recognize and deal for all purposes under this Plan with only those record holders stated on the Claims Register, or their books and records, as of the

close of business on the Distribution Record Date. For purposes of Subordinated Notes Claims, the record Holder thereof as of the Distribution Record Date shall be the Indenture Trustee.

## 2. Delivery of Distributions in General

Except as otherwise provided herein, the Debtor, the Reorganized Debtor or other applicable Distribution Agent, as applicable, shall make distributions to Holders of Allowed Claims, or in care of their authorized agents, as appropriate, at the address for each such Holder or agent as indicated on the Debtor's books and records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined in the sole discretion of the Debtor or the Reorganized Debtor, as applicable; and *provided further*, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

All distributions to Holders of Subordinated Notes Claims shall be governed by the Indenture and shall be deemed completed when made to the Indenture Trustee. The Indenture Trustee may effect any distribution to Holders of Subordinated Notes Claims through the book-entry transfer facilities of The Depository Trust Company, who shall distribute the same to its participants in accordance with their respective holdings of Subordinated Notes as of the Distribution Record Date.

## 3. Minimum Distributions

Notwithstanding anything herein to the contrary, no Distribution Agent shall be required to make distributions or payments of less than \$25.00 (whether in Cash or otherwise) or to make partial distributions or payments of fractions of dollars. Whenever any payment or distribution of a fraction of a dollar or share of New Stock under this Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar or share of New Stock (up or down), with half dollars and half shares of New Stock or less being rounded down.

No Distribution Agent shall have any obligation to make a distribution on account of an Allowed Claim if: (a) the aggregate amount of all distributions authorized to be made on the Subsequent Distribution Date in question is or has an economic value less than \$25,000, unless such distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an Allowed Claim on such Subsequent Distribution Date does not constitute a final distribution to such Holder and is or has an economic value less than \$25.00, which shall be treated as an undeliverable distribution under Article VII.D.4 below.

## 4. Undeliverable Distributions

### (a) Holding of Certain Undeliverable Distributions

If the distribution to any Holder of an Allowed Claim is returned to the Distribution Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then current address, at which time all currently due missed distributions shall be made to such Holder on the next Subsequent Distribution Date. Undeliverable distributions shall remain in the possession of

the Reorganized Debtor, subject to Article VII.D.4(b) hereof, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends or other accruals of any kind on account of their distribution being undeliverable.

(b) Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim (or any successor or assignee or other Person or Entity claiming by, through, or on behalf of, such Holder) that does not assert a right pursuant to this Plan for an undeliverable or unclaimed distribution within one (1) year after the later of the Effective Date or the date such distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed distribution against the Debtor or its Estate, the Reorganized Debtor or its property. In such cases, any Cash for distribution on account of such rights for undeliverable or unclaimed distributions shall become the property of the Estates free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary. Any Cash, New Stock and/or other New Securities and Documents or other property held for distribution on account of such Claim shall be canceled and of no further force or effect. Nothing contained in this Plan shall require the Debtor, Reorganized Debtor, or any Distribution Agent to attempt to locate any Holder of an Allowed Claim.

(c) Failure to Present Checks

Checks issued by the Distribution Agent on account of Allowed Claims shall be null and void if not negotiated within 180 days after the issuance of such check. In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, no later than 180 days after the issuance of such checks, the Reorganized Debtor shall File with the Bankruptcy Court a list of the Holders of any un-negotiated checks. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtor for as long as the Chapter 11 Case stays open. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim with respect to which such check originally was issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 365 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and be discharged and forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtor or its property. In such cases, any Cash held for payment on account of such Claims shall be property of the Reorganized Debtor, free of any Claims of such Holder with respect thereto. Nothing contained herein shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

*E. Compliance with Tax Requirements/Allocations*

In connection with this Plan and all distributions hereunder, the Reorganized Debtor or other applicable Distribution Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtor or other applicable Distribution Agent shall be authorized to take any and all



actions that may be necessary or appropriate to comply with such withholding and reporting requirements. All persons holding Claims shall be required to provide any information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of this Plan to the contrary, each Holder of an Allowed Claim shall have the 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. Any Cash, New Stock, New Securities and Documents and/or other consideration or property to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution pursuant to Article VII.D.4 of this Plan.

*F. Allocation of Plan Distributions Between Principal and Interest*

To the extent that any Allowed Claim entitled to a distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for income tax purposes to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

*G. Means of Cash Payment*

Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option and in the sole discretion of the Reorganized Debtor, by (a) checks drawn on, or (b) wire transfer from, a domestic bank selected by the Reorganized Debtor. Cash payments to foreign creditors may be made, at the option of the Reorganized Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

*H. Timing and Calculation of Amounts to Be Distributed*

On the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective Date, on the Subsequent Distribution Date occurring after such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims in the applicable Class. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in the applicable class treatment or in Article VIII hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals on the distributions provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*I. Setoffs*

Without altering or limiting any of the rights and remedies of the Debtor and Reorganized Debtor under section 502(d) of the Bankruptcy Code, all of which rights and remedies are hereby reserved, the Debtor and the Reorganized Debtor may, but shall not be required to, withhold (but not setoff except as set forth below) from the distributions called for hereunder on account of any Allowed Claim an amount equal to any claims, Causes of Action and Litigation Claims of any nature that the Debtor or the Reorganized Debtor may hold against the Holder of any such Allowed Claim. In the event that any such claims, Causes of Action or Litigation Claims are

adjudicated by Final Order or otherwise resolved against the applicable Holder, the Debtor and Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), the amount of such adjudicated or resolved claims, Causes of Action or Litigation Claims. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such claims, Causes of Action or Litigation Claims. Notwithstanding anything to the contrary contained herein, the Debtor and the Reorganized Debtor shall not offset any amounts against Allowed Subordinated Notes Claims.

*J. Surrender of Cancelled Instruments or Securities*

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by the instruments, securities, notes, or other documentation canceled pursuant to Article V.O hereto, the Holder of such Claim shall tender the applicable instruments, securities, notes or other documentation evidencing such Claim to the Reorganized Debtor or other applicable Distribution Agent unless waived in writing by the Debtor or the Reorganized Debtor, as applicable.

Any Holder of a Claim that is required, but that fails, to surrender or is deemed to have failed to surrender the applicable note or security required to be tendered hereunder within one (1) year after the Effective Date shall have its Claim and its distribution pursuant to this Plan on account of such Claim discharged and shall be forever barred from asserting any such Claim against the Reorganized Debtor or its property. In such cases, any Cash, New Stock and/or other New Securities and Documents or other property held for distribution on account of such Claim shall be canceled and of no further force or effect.

*K. Lost, Stolen, Mutilated or Destroyed Securities*

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim evidenced by a security or note that has been lost, stolen, mutilated, or destroyed shall, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Reorganized Debtor and other applicable Distribution Agent: (x) evidence reasonably satisfactory to the Reorganized Debtor and other applicable Distribution Agent of such loss, theft, mutilation, or destruction; and (y) such security or indemnity as may be required by the Reorganized Debtor and other applicable Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim. Upon compliance with this Article VII.K as determined by the Debtor or Reorganized Debtor by a Holder of a Claim evidenced by a security or note, such Holder shall, for all purposes under this Plan, be deemed to have surrendered such security or note to the Reorganized Debtor and other applicable Distribution Agent.

## ARTICLE VIII.

### PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

#### A. *Resolution of Disputed Claims*

##### 1. Allowance of Claims

After the Effective Date, the Reorganized Debtor shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim, except with respect to any Claim deemed Allowed under this Plan. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim.

##### 2. Prosecution of Objections to Claims

After the Confirmation Date but before the Effective Date, the Debtor, and after the Effective Date, the Reorganized Debtor, shall have the exclusive authority to File objections to Claims and settle, compromise, withdraw or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in an Unimpaired Class or otherwise; provided, however, this provision shall not apply to Professional Fee Claims. From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtor shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

##### 3. Claims Estimation

After the Confirmation Date but before the Effective Date, the Debtor, and after the Effective Date, the Reorganized Debtor may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal relating to any such objection. All of the aforementioned Claims and objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

#### 4. Deadline to File Objections to Claims

Any objections to Claims shall be Filed no later than the Claims Objection Bar Date. Moreover, notwithstanding the expiration of the Claims Objection Bar Date, the Debtor or Reorganized Debtor shall continue to have the right to amend any claims objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed.

##### *B. No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim has become an Allowed Claim.

##### *C. Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims*

On each Subsequent Distribution Date (or such earlier date as determined by the Reorganized Debtor in its sole discretion), the Reorganized Debtor or other applicable Distribution Agent will make distributions (a) on account of any Disputed Claim that has become an Allowed Claim during the preceding calendar quarter, and (b) on account of previously Allowed Claims of property that would have been distributed to the Holders of such Claim on the dates distributions previously were made to Holders of Allowed Claims in such Class had the Disputed Claims that have become Allowed Claims or disallowed by Final Order of the Bankruptcy Court been Allowed or disallowed, as applicable, on such dates. Such distributions will be made pursuant to the applicable provisions of Article III of this Plan.

##### *D. Reserve for Disputed General Unsecured Claims*

Prior to making any distributions of Cash to Holders of Allowed General Unsecured Claims from the General Unsecured Claims Cash Escrow, the Reorganized Debtor or other applicable Distribution Agent shall establish appropriate reserves for Disputed General Unsecured Claims by withholding from any such distributions an amount equal to one hundred percent (100%) of distributions to which Holders of Disputed General Unsecured Claims would be entitled to under this Plan as of such date as if such Disputed General Unsecured Claims were Allowed in full in the amount asserted by the Holder thereof in its respective timely filed Proof of Claim; provided, however, that the Debtor and the Reorganized Debtor shall have the right to file a motion seeking to estimate such amounts. The Reorganized Debtor or other applicable Distribution Agent shall also establish appropriate reserves for Disputed Claims in other Classes as it determines necessary and appropriate.

## ARTICLE IX.

### CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

#### *A. Conditions Precedent to Confirmation*

It shall be a condition to confirmation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. The Bankruptcy Court shall have entered a Final Order in form and in substance satisfactory to the Debtor and the Ad Hoc Noteholders Committee approving the Disclosure Statement with respect to this Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.
2. This Plan and all schedules, documents, supplements and exhibits to this Plan shall have been filed in form and substance acceptable to the Debtor and the Ad Hoc Noteholders Committee.
3. The proposed Confirmation Order shall be in form and substance acceptable to the Debtor and the Ad Hoc Noteholders Committee.
4. The board of directors of the Reorganized Debtor shall have been selected.

#### *B. Conditions Precedent to Consummation*

It shall be a condition to Consummation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof.

1. The Confirmation Order shall have been entered and become a Final Order in a form and in substance satisfactory to the Debtor and the Ad Hoc Noteholders Committee and no stay of the Confirmation Order shall have been entered. The Confirmation Order shall provide that, among other things, the Debtor or the Reorganized Debtor, as appropriate, is authorized and directed to take all actions necessary or appropriate to consummate this Plan, including, without limitation, entering into, implementing and consummating the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with or described in this Plan.
2. The Bankruptcy Court shall have entered one or more Final Orders (which may include the Confirmation Order) authorizing the assumption and rejection of Executory Contracts and Unexpired Leases by the Debtor as contemplated in this Plan and the Plan Supplement.
3. All documents and agreements necessary to implement this Plan, including, without limitation, the Revolver Exit Facility, the Term Loan Exit Facility and the Backstop Rights Purchase Agreement, in each case in form and substance acceptable to the Debtor and the Ad Hoc Noteholders Committee, shall have (a) been tendered for delivery, and (b) been effected or executed by all Entities party thereto. All conditions precedent all to such documents and

agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

4. All consents, actions, documents, certificates and agreements necessary to implement this Plan shall have been effected or executed and delivered to the required parties and, to the extent required, Filed with the applicable governmental units in accordance with applicable laws.

5. The Debtor shall have received the Rights Offering Amount, in Cash, net of any fees or expenses authorized by Order of the Bankruptcy Court to be paid from the Rights Offering Amount.

6. The Confirmation Date shall have occurred.

*C. Waiver of Conditions*

The conditions to confirmation of this Plan and to Consummation of this Plan set forth in this Article IX may be waived by the Debtor with the consent of the Ad Hoc Noteholders Committee (not to be unreasonably withheld) without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate this Plan. The failure to satisfy or waive a condition to Consummation may be asserted by the Debtor or the Reorganized Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor or Reorganized Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

*D. Effect of Non Occurrence of Conditions to Consummation*

If the Consummation of this Plan does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Equity Interests in the Debtor; (2) prejudice in any manner the rights of the Debtor, any Holders or any other Entity; (3) constitute an Allowance of any Claim or Equity Interest; or (4) constitute an admission, acknowledgment, offer or undertaking by the Debtor, any Holders or any other Entity in any respect.

## ARTICLE X.

### RELEASE, INJUNCTION AND RELATED PROVISIONS

*A. General*

Notwithstanding anything contained herein to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective distributions and treatments hereunder, takes into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise. Pursuant to the terms contained in this Plan, among other things, the subordination provisions contained in the Indenture is hereby eliminated and each holder of a Subordinated Notes Claim shall receive and be entitled to retain the property as set forth in this

Plan. As of the Effective Date, any and all contractual, legal and equitable subordination rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise, relating to the allowance, classification and treatment of all Allowed Claims and their respective distributions and treatments hereunder are settled, compromised, terminated and released pursuant hereto; provided, however, that nothing contained herein shall preclude any Person or Entity from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan.

In accordance with the provisions of this Plan, including Article VIII hereof, and pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date (1) the Reorganized Debtor may, in its sole and absolute discretion, compromise and settle Claims against it and (2) the Reorganized Debtor may, in its respective sole and absolute discretion, compromise and settle Causes of Action against other Entities.

*B. Release*

RELEASE BY THE DEBTOR. EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE DEBTOR AND REORGANIZED DEBTOR, IN THEIR INDIVIDUAL CAPACITY AND AS DEBTOR-IN-POSSESSION, (COLLECTIVELY, THE "DEBTOR RELEASING PARTIES") WILL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER PROVIDED A FULL DISCHARGE, WAIVER AND RELEASE TO THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER RELEASED, WAIVED AND DISCHARGED BY THE DEBTOR RELEASING PARTIES) AND THEIR RESPECTIVE PROPERTIES FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LITIGATION CLAIMS AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY IN WHOLE OR IN PART TO THE DEBTOR, THE CHAPTER 11 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR THE SOLICITATION OF VOTES ON THIS PLAN THAT SUCH DEBTOR RELEASING PARTY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF THE DEBTOR, ITS ESTATE OR THE REORGANIZED DEBTOR (WHETHER DIRECTLY OR DERIVATIVELY) AGAINST ANY OF THE RELEASED PARTIES; PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE SHALL NOT OPERATE TO WAIVE OR RELEASE (I) ANY CAUSES OF ACTION EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN OR THE PLAN SUPPLEMENT; (II) ANY CAUSES OF ACTION ARISING

FROM GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT AS DETERMINED BY FINAL ORDER OF THE BANKRUPTCY COURT OR ANY OTHER COURT OF COMPETENT JURISDICTION; AND/OR (III) THE RIGHTS OF SUCH DEBTOR RELEASING PARTY TO ENFORCE THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, INDENTURES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO FINAL ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL BE EFFECTIVE AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR ORDER OF THE BANKRUPTCY COURT, ACT OR ACTION UNDER APPLICABLE LAW, REGULATION, ORDER, OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR APPROVAL OF ANY PERSON AND THE CONFIRMATION ORDER WILL PERMANENTLY ENJOIN THE COMMENCEMENT OR PROSECUTION BY ANY PERSON OR ENTITY, WHETHER DIRECTLY, DERIVATIVELY OR OTHERWISE, OF ANY CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, OR LIABILITIES RELEASED PURSUANT TO THIS RELEASE.

RELEASE BY THIRD PARTIES. EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, AND WITHOUT LIMITING THE SCOPE OF THE RELEASE PROVIDED BY THE DEBTOR ABOVE, EACH HOLDER OF A CLAIM THAT HAS AFFIRMATIVELY VOTED TO ACCEPT THE PLAN (COLLECTIVELY, THE "NON-DEBTOR RELEASING PARTIES" AND TOGETHER WITH THE DEBTOR RELEASING PARTIES, THE "RELEASING PARTIES") WILL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER PROVIDED A FULL DISCHARGE, WAIVER AND RELEASE TO THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER RELEASED, WAIVED AND DISCHARGED BY THE NON-DEBTOR RELEASING PARTIES) AND THEIR RESPECTIVE PROPERTIES FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LITIGATION CLAIMS AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY IN WHOLE OR IN PART TO THE DEBTOR, THE CHAPTER 11 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR THE SOLICITATION OF VOTES ON THIS PLAN THAT SUCH NON-DEBTOR RELEASING PARTY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY) AGAINST ANY OF THE RELEASED PARTIES; PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE SHALL NOT OPERATE TO WAIVE OR RELEASE (I) ANY CAUSES OF ACTION EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN OR THE PLAN SUPPLEMENT; (II) ANY CAUSES OF ACTION ARISING FROM GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT AS DETERMINED BY FINAL ORDER OF THE BANKRUPTCY COURT OR ANY OTHER COURT OF COMPETENT JURISDICTION;



AND/OR (III) THE RIGHTS OF SUCH NON-DEBTOR RELEASING PARTY TO ENFORCE THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, INDENTURES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO FINAL ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL BE EFFECTIVE AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR ORDER OF THE BANKRUPTCY COURT, ACT OR ACTION UNDER APPLICABLE LAW, REGULATION, ORDER, OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR APPROVAL OF ANY PERSON AND THE CONFIRMATION ORDER WILL PERMANENTLY ENJOIN THE COMMENCEMENT OR PROSECUTION BY ANY PERSON OR ENTITY, WHETHER DIRECTLY, DERIVATIVELY OR OTHERWISE, OF ANY CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, OR LIABILITIES RELEASED PURSUANT TO THIS RELEASE.

C. *Discharge of Claims*

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate shall be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

D. *Exculpation*

The Exculpated Parties shall neither have nor incur any liability to any Entity for any claims or Causes of Action arising on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Consummation of this Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtor, the approval of the Disclosure Statement or confirmation or Consummation of this Plan; *provided, however*, that the foregoing provisions shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence, fraud or willful misconduct; *provided, further*, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, the above referenced documents, actions or inactions;

*provided, further, however* that the foregoing provisions shall not apply to any acts, omissions, Claims, Causes of Action or other obligations expressly set forth in and preserved by this Plan or the Plan Supplement.

*E. Preservation of Rights of Action*

1. Maintenance of Causes of Action

Except as otherwise provided in this Article X or elsewhere in this Plan or the Confirmation Order, after the Effective Date, the Reorganized Debtor shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action and Litigation Claims, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case. The Reorganized Debtor, as the successors in interest to the Debtor and the Estate, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Litigation Claims without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action or Litigation Claim against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), the Debtor expressly reserves such Cause of Action or Litigation Claim for later adjudication by the Debtor or the Reorganized Debtor (including, without limitation, Causes of Action and Litigation Claims not specifically identified or of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Litigation Claims upon or after the confirmation of this Plan or Consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action or Litigation Claims have been expressly released in this Plan (including, without limitation, and for the avoidance of doubt, the Release contained in Article X.B hereof) or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtor and the Reorganized Debtor expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

*F. Injunction*

EXCEPT AS OTHERWISE PROVIDED IN THIS PLAN, FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION OR OTHER PROCEEDING, OR CREATING, PERFECTING OR ENFORCING ANY LIEN OF ANY KIND, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY,

OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, EQUITY INTEREST, OR REMEDY RELEASED OR TO BE RELEASED, EXCULPATED OR TO BE EXCULPATED, OR DISCHARGED OR TO BE DISCHARGED PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER. BY ACCEPTING DISTRIBUTIONS PURSUANT TO THIS PLAN, EACH HOLDER OF AN ALLOWED CLAIM WILL BE DEEMED TO HAVE SPECIFICALLY CONSENTED TO THIS INJUNCTION. ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASE UNDER SECTION 105 OR 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE.

*G. Binding Nature Of Plan*

ON THE EFFECTIVE DATE, AND EFFECTIVE AS OF THE EFFECTIVE DATE, THIS PLAN SHALL BIND, AND SHALL BE DEEMED BINDING UPON, ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR, AND SUCH HOLDER'S RESPECTIVE SUCCESSORS AND ASSIGNS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING WHETHER OR NOT SUCH HOLDER (I) WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THIS PLAN, (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASE OR (III) FAILED TO VOTE TO ACCEPT OR REJECT THIS PLAN OR AFFIRMATIVELY VOTED TO REJECT THIS PLAN.

**ARTICLE XI.**

**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, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor and this Plan as legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any Claim;
2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or before the Confirmation Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date and such payment shall not be subject to the approval of the Bankruptcy Court;
3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the

Debtor or Reorganized Debtor may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, those matters related to any amendment to this Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed;

4. resolve any issues related to any matters adjudicated in the Chapter 11 Case;
5. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;
6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor after the Effective Date, provided that the Reorganized Debtor shall reserve the right to commence actions in all appropriate forums and jurisdictions;
7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with this Plan, the Plan Supplement or the Disclosure Statement;
8. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan; provided, however, that any dispute arising under or in connection with the Revolver Exit Facility or the Term Loan Exit Facility shall be dealt with in accordance with the provisions of the applicable document;
9. hear and determine all Causes of Action that are pending as of the Effective Date or that may be commenced in the future;
10. issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of this Plan, except as otherwise provided in this Plan;
11. enforce the terms and condition of this Plan and the Confirmation Order;
12. resolve any cases, controversies, suits or disputes with respect to the Release, the Exculpation, the Indemnification and other provisions contained in Article X hereof and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;
13. hear and determine the Litigation Claims by or on behalf of the Debtor or Reorganized Debtor;
14. enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

15. resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; *provided, however*, that any dispute arising under or in connection with the Revolver Exit Facility or the Term Loan Exit Facility shall be dealt with in accordance with the provisions of the applicable document; and

16. enter an order concluding or closing the Chapter 11 Case.

## ARTICLE XII.

### MISCELLANEOUS PROVISIONS

#### A. *Dissolution of the Committee*

After the Effective Date, the Committee shall dissolve automatically and its members shall be released and discharged from all rights, duties and responsibilities arising from, or related to, the Chapter 11 Case.

#### B. *Payment of Statutory Fees*

All outstanding fees payable pursuant to section 1930 of title 28, United States Code shall be paid on the Effective Date. All such fees payable after the Effective Date shall be paid prior to the closing of the Chapter 11 Case when due or as soon thereafter as practicable.

#### C. *Payment of Fees and Expenses of Indenture Trustee*

On the Effective Date or as soon as reasonably practicable thereafter (and, thereafter, upon request by the Indenture Trustee with respect to fees and expenses of the Indenture Trustee relating to post-Effective Date service under this Plan), the Reorganized Debtor shall pay in full in Cash all outstanding reasonable and documented fees and expenses of the Indenture Trustee and its counsel.

#### D. *Modification of Plan*

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtor or the Reorganized Debtor, as applicable, may, upon order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan. A Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

*E. Revocation of Plan*

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File subsequent chapter 11 plans. If the Debtor revokes or withdraws this Plan, or if confirmation of this Plan or Consummation of this Plan does not occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

*F. Successors and Assigns*

This Plan shall be binding upon and inure to the benefit of the Debtor, and its respective successors and assigns, including, without limitation, the Reorganized Debtor. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

*G. Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and this Plan is Consummated. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

*H. Further Assurances*

The Debtor or the Reorganized Debtor, as applicable, all Holders of Claims receiving distributions hereunder and all other Entities 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 this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

*I. Severability*

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this 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 will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

*J. Service of Documents*

All notices, requests, and demands to or upon the Debtor or the Reorganized Debtor to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Dayton Superior Corporation  
Attn: Eric R. Zimmerman & Edward J. Puisis  
7777 Washington Village Drive, Suite 130  
Dayton, Ohio 45459  
Fax: 937-428-9115

**with copies to:**

Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022  
Attn: Keith A. Simon  
Fax: 212-751-4864

*K. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code*

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan, including the Revolver Exit Facility and the Term Loan Exit Facility, (ii) the issuance of New Stock (both under this Plan and pursuant to the Rights Offering) and (iii) the maintenance or creation of security or any Lien as contemplated by the Revolver Exit Facility and the Term Loan Exit Facility.

*L. Governing Law*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

*M. Tax Reporting and Compliance*

The Reorganized Debtor is hereby authorized, on behalf of the Debtor, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor for all taxable periods ending after the Petition Date through, and including, the Effective Date.

*N. Schedules*

All exhibits and schedules to this Plan, including the Exhibits and Plan Schedules, are incorporated and are a part of this Plan as if set forth in full herein.

*O. No Strict Construction*

This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, the Debtor, the Backstop Parties, the Ad Hoc Noteholders Committee and the Committee and their respective professionals. Each of the foregoing was represented by counsel of its choice who either (a) participated in the formulation and documentation of, or (b) was afforded the opportunity to review and provide comments on, this Plan, the Disclosure Statement, Exhibits and Plan Schedules, and the agreements and documents ancillary or related thereto. Accordingly, unless explicitly indicated otherwise, the general rule of contract construction known as "contra proferentem" or other rule of strict construction shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, Exhibits and Plan Schedules, and the documents ancillary and related thereto.

*P. Conflicts*

In the event that a provision of the Disclosure Statement conflicts with a provision of this Plan, the terms of this Plan shall govern and control to the extent of such conflict.



Dated: October 14, 2009

Respectfully submitted,

DAYTON SUPERIOR CORPORATION

By: /s/ Edward J. Puisis

Title: Executive Vice President and Chief  
Financial Officer

**Exhibit 2**

**[Redline of Plan of Reorganization]**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

DAYTON SUPERIOR CORPORATION,  
a Delaware corporation,<sup>1</sup>  
Debtor.

)  
) Chapter 11  
)  
)  
)  
)  
)  
)  
)

Case No. 09-11351 (BLS)

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FIRST AMENDED PLAN OF REORGANIZATION  
FOR DAYTON SUPERIOR CORPORATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

---

**RICHARDS, LAYTON & FINGER, P.A.**

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Counsel for the Debtor and Debtor-in-Possession

Dated: ~~August 25~~, October 14, 2009

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are : EIN: XX-XXX6346. The Debtor's mailing address is 7777 Washington Village Dr., Suite 130, Dayton, OH 45459.

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## **EXHIBITS**

Exhibit A	Amended Organizational Documents
Exhibit B	Backstop Rights Purchase Agreement
Exhibit C	Holdings LLC Agreement
Exhibit D	[Reserved]
Exhibit E	Registration Agreement
Exhibit F	Revolver Exit Facility Credit Agreement
Exhibit G	Revolver Exit Facility Term Sheet
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Exhibit I	Subscription Form
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**PLAN SCHEDULES**

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**FIRST AMENDED PLAN OF REORGANIZATION  
FOR DAYTON SUPERIOR CORPORATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dayton Superior Corporation, as debtor and debtor-in-possession ("**Dayton**" or the "**Debtor**"), proposes the following plan of reorganization (the "**Plan**") for the resolution of the outstanding Claims (as defined below) against, and Equity Interests (as defined below) in, the Debtor. The Debtor is the proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code (as defined below). Reference is made to the Disclosure Statement (as such term is defined herein and distributed contemporaneously herewith) for a discussion of the Debtor's history, business, results of operations, historical financial information, accomplishments during the Chapter 11 Case (as defined below), projections and properties, and for a summary and analysis of this Plan and the treatment provided for herein. There also are other agreements and documents, which are or will be filed with the Bankruptcy Court (as defined below), that are referenced in this Plan or the Disclosure Statement as Exhibits and Plan Schedules. All such Exhibits and Plan Schedules are incorporated into and are a part of this Plan as if set forth in full herein. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127 and Fed. R. Bankr. P. 3019, the Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

**ARTICLE I.**

**RULES OF INTERPRETATION, COMPUTATION OF TIME,  
GOVERNING LAW AND DEFINED TERMS**

*A. Rules of Interpretation, Computation of Time and Governing Law*

For purposes herein: (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) 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 the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to "Articles", "Sections", "Exhibits" and "Plan Schedules" are references to Articles, Sections, Exhibits and Plan Schedules hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof," "hereunder" and "hereto" refer to this Plan in its entirety rather than to a particular portion of this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) any reference to an Entity as a Holder of a Claim or Equity Interest includes such Entity's successors and assigns; (h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (i) 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 that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be. The provisions of

Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

*B. Defined Terms*

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

1. *"Accrued Professional Compensation"* means, with respect to a particular Professional, an Administrative Claim of such Professional for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date (including, without limitation, expenses of the members of the Committee incurred as members of the Committee in discharge of their duties as such).

2. *"Ad Hoc Noteholders Committee"* means that certain ad hoc committee of Holders of the Subordinated Notes in existence as of the Petition Date, whose membership consists of OCM Principal Opportunities Fund IV Delaware, L.P., Sola Ltd and Whippoorwill Associates, Inc. (or their respective affiliates).

3. *"Ad Hoc Noteholders Committee Fees and Expenses"* means all unpaid reasonable and documented fees and out-of-pocket expenses of the Ad Hoc Noteholders Committee incurred in connection with the Chapter 11 Case, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of the Ad Hoc Noteholders Committee Professionals, including, but not limited to, such fees and expenses incurred in connection with objecting to the DIP Facility.

4. *"Ad Hoc Noteholders Committee Professionals"* means, collectively, Kirkland & Ellis LLP, Pachulski Stang Ziehl & Jones LLP and Imperial Capital LLC.

5. *"Administrative Claim"* means a Claim for costs and expenses of administration of the Chapter 11 Case that are Allowed under section 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) any actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the businesses of the Debtor (such as wages, salaries, and commissions for services and payments for inventory, leased equipment, and leased premises); (b) Accrued Professional Compensation and any other compensation for legal, financial, advisory, accounting, and other services and reimbursement of expenses Allowed by the Bankruptcy Court under section 327, 330, 331, 363, or 503(b) of the Bankruptcy Code to the extent incurred prior to the Effective Date; (c) all fees and charges assessed against the Estate under section 1930, chapter 123, of title 28, United States Code; (d) the DIP Facility Claims; (e) the Allowed Indenture Trustee Fees; and (f) the reasonable fees and expenses of the Ad Hoc Noteholders Committee Professionals.

6. *"Administrative Claims Bar Date"* means the Business Day which is thirty (30) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

7. *"Administrative and Collateral Agents"* means, in their respective capacities as such, the administrative agents and collateral agents and their predecessors for or under the DIP

Facility, the Prepetition Revolving Credit Facility and the Prepetition Term Loan Credit Facility, including, without limitation, General Electric Capital Corporation as prior administrative agent under the Prepetition Term Loan Credit Facility.

8. “*Affiliate*” means an “affiliate” as defined in section 101(2) of the Bankruptcy Code.

9. “*Aggregate Effective Date New Stock Issuance*” shall have the meaning ascribed to it in Article V.F hereof.

10. “*Allowed*” means, with respect to a Claim, an Allowed Claim in a particular Class or category specified. Any reference herein to a particular Allowed Claim includes both the secured and unsecured portions of such Claim.

11. “*Allowed Claim*” means any Claim that is not a Disputed Claim and (a) for which a Proof of Claim has been timely Filed by the applicable Claims Bar Date and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtor in its Schedules as liquidated in a specified amount and is not disputed or contingent and for which no contrary Proof of Claim has been timely Filed; or (c) that is expressly Allowed pursuant to the terms of this Plan or Final Order of the Bankruptcy Court.

The term “Allowed Claim” shall not, for purposes of computing distributions under this Plan, include interest on such Claim from and after the Petition Date, except as provided in section 506(b) of the Bankruptcy Code or as otherwise expressly set forth in this Plan.

12. “*Allowed \_\_\_\_\_ Claim*” means an Allowed Claim of the type described.

13. “*Amended Organizational Documents*” means the amended and restated certificate of incorporation and by-laws or other applicable organizational documents of the Reorganized Debtor in substantially the form attached to this Plan as Exhibit A or Filed with the Plan Supplement.

14. “*Avoidance Actions*” means any and all avoidance, recovery, subordination or other actions or remedies that may be brought by and on behalf of the Debtor or its Estate under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies arising under sections 502, 510 or 542-553 of the Bankruptcy Code.

15. “*Backstop Commitment*” means the agreement by each Backstop Party pursuant to the Backstop Rights Purchase Agreement to purchase its Backstop Proportion of all of the Rights Offering Shares that are not purchased by the Rights Offering Participants as part of the Rights Offering.

16. "*Backstop Parties*" means those Holders of Subordinated Notes Claims that provided the Backstop Commitment, which Holders are OCM Principal Opportunities Fund IV Delaware, L.P. and Sola Ltd, or their respective affiliates.

17. "*Backstop Proportion*" has the meaning set forth in the Backstop Rights Purchase Agreement.

18. "*Backstop Rights Purchase Agreement*" means the Backstop Rights Purchase Agreement attached to this Plan as Exhibit B, which agreement was approved by the Bankruptcy Court in the Rights Offering Order.

19. "*Ballots*" means the ballots accompanying the Disclosure Statement upon which certain Holders of Impaired Claims (modified, as necessary, based on voting party in accordance with the Disclosure Statement Order) entitled to vote shall, among other things, indicate their acceptance or rejection of this Plan, which includes the Master Ballots and Beneficial Holder Ballots, which were approved by the Disclosure Statement Order.

20. "*Bankruptcy Code*" means Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended from time to time and as applicable to the Chapter 11 Case.

21. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware, or any other court having jurisdiction over the Chapter 11 Case.

22. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, in each case as amended from time to time and as applicable to the Chapter 11 Case.

23. "*Beneficial Holder*" means, as of the applicable date of determination, a beneficial owner of the Subordinated Notes, Junior Convertible Notes or Equity Interests as reflected in the records maintained by the Registered Record Owner or Intermediary Record Owner, as applicable.

24. "*Beneficial Holder Ballots*" means the ballots accompanying the Disclosure Statement upon which Beneficial Holders of Class 5 Subordinated Note Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

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

26. "*Cash*" means the legal tender of the United States of America or the equivalent thereof.

27. "*Causes of Action*" means any claims, causes of action (including Avoidance Actions), demands, actions, suits, obligations, liabilities, cross-claims, counter-claims, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in contract, in tort, in law, or

in equity, or pursuant to any other theory of law, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Case, including through the Effective Date.

28. “*Chapter 11 Case*” means the chapter 11 bankruptcy case, with case number 09-11351, commenced by the Debtor on the Petition Date in the Bankruptcy Court.

29. “*Claim*” means any “claim” against the Debtor as defined in section 101(5) of the Bankruptcy Code.

30. “*Claims Bar Date*” means August 25, 2009, or such other date by which Claims must be Filed, as ordered by the Bankruptcy Court.

31. “*Claims Objection Bar Date*” means, for each Claim, the later of (a) one hundred twenty (120) days after the Effective Date; (b) sixty (60) days after the Filing of a Proof of Claim for, or request for payment of, such Claim and (c) such other date as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

32. “*Claims Register*” means the official register of Claims maintained by the Voting and Claims Agent.

33. “*Class*” means a category of Holders of Claims or Equity Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

34. “*Class A Common Units*” shall have the meaning ascribed to it in Article V.B hereof.

35. “*Class A Preferred Units*” shall have the meaning ascribed to it in Article V.B hereof.

36. “*Collateral*” means any property or interest in property of the Debtor’s Estate that is subject to a valid and enforceable Lien to secure a Claim.

37. “*Commission*” means the U.S. Securities and Exchange Commission.

38. “*Committee*” means the official committee of unsecured creditors of the Debtor appointed by the United States Trustee in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code, as reconstituted from time to time.

39. “*Committee Members*” means the members of the Committee, namely: (a) U.S. Bank National Association, as indenture trustee for the Junior Convertible Notes; (b) OCM Principal Opportunities Fund IV Delaware, L.P.; (c) Whippoorwill Distressed Opportunity Fund, L.P.; (d) The Bank of New York Mellon, as Indenture Trustee; (e) Ulma Form Works Inc. and (f) Alsina Forms Co. Inc., and in the case of each of the foregoing, their respective successors and assigns.

40. “*Confirmation Date*” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court.

41. “*Confirmation Hearing*” means the hearing held by the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code to consider confirmation of this Plan, as such hearing may be adjourned or continued from time to time.

42. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

43. “*Contribution Percentage*” shall have the meaning ascribed to it in Article V.B hereof.

44. “*Consummation*” means the occurrence of the Effective Date.

45. “*Debtor*” means Dayton Superior Corporation, in its capacity as debtor in this Chapter 11 Case.

46. “*Debtor in Possession*” means the Debtor, as debtor in possession in this Chapter 11 Case.

47. “*DIP Agent*” means General Electric Capital Corporation, in its capacity as administrative agent and collateral agent under the DIP Facility.

48. “*DIP Facility*” means that certain \$165 million Senior Secured Priming and Super-Priority Debtor-in-Possession Revolving Credit Agreement (as amended from time to time), dated as of April 22, 2009, by and among the Debtor, the DIP Lenders and the DIP Agent.

49. “*DIP Facility Claim*” means any Claim of the DIP Agent or any DIP Lender arising from, under or in connection with the DIP Facility Credit Agreement (including, without limitation, any and all “Obligations” as defined therein), the other “Loan Documents” as defined therein and/or the DIP Orders.

50. “*DIP Facility Credit Agreement*” means that certain Senior Secured Priming and Superpriority Debtor-In-Possession Revolving Credit Agreement, dated as of April 22, 2009, among the Debtor, as borrower, the DIP Lenders, and the DIP Agent (as amended, waived, supplemented, refinanced and as otherwise modified from time to time).

51. “*DIP Lenders*” means the DIP Agent and the banks, financial institutions and other lender parties to the DIP Facility from time to time.

52. “*DIP Orders*” means, collectively, the Interim DIP Order and Final DIP Order.

53. “*Disclosure Statement*” means that certain Disclosure Statement for First Amended Plan of Reorganization for Dayton Superior Corporation under Chapter 11 of the Bankruptcy Code, as amended, supplemented, or modified from time to time, that was approved

by the Disclosure Statement Order and describes this Plan, including all exhibits and schedules thereto and references therein that relate to this Plan.

54. “*Disclosure Statement Order*” means that certain Order (A) *Approving the Disclosure Statement*, (B) *Establishing the Voting Record Date, Voting Deadline, and Other Dates*, (C) *Approving Procedures for Soliciting, Receiving and Tabulating Votes on the Plan and for Filing Objections to the Plan* and (D) *Approving the Manner and Forms of Notice and Other Related Documents*, entered by the Bankruptcy Court on August 25, 2009 [Docket No. 492], as the order may be amended from time to time.

55. “*Disputed Claim*” means any Claim, or any portion thereof, that has not been Allowed pursuant to this Plan or a Final Order of the Bankruptcy Court, and

(a) if no Proof of Claim has been timely Filed by the applicable Claims Bar Date, a Claim which has been listed on the Schedules as unliquidated, contingent, or disputed, or in zero or unknown amount, and which has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(b) if a Proof of Claim has been timely Filed by the applicable Claims Bar Date, a Claim designated on such Proof of Claim as unliquidated, contingent or disputed, or in zero or unknown amount, and which has not been resolved by written agreement of the parties or a Final Order of the Bankruptcy Court; or

(c) if a Proof of Claim has been timely Filed by the applicable Claims Bar Date, a Claim (i) as to which the Debtor has timely filed an objection or request for estimation in accordance with this Plan, the Bankruptcy Code, the Bankruptcy Rules, and any orders of the Bankruptcy Court or for which such time period to object or file a request for estimation has not yet expired as of the applicable date of determination or (ii) which is otherwise disputed by the Debtor in accordance with applicable law, in each case which objection, request for estimation or dispute has not been withdrawn, overruled or determined by a Final Order; or

(d) for which a Proof of Claim was required to be filed by order of the Bankruptcy Court, but as to which a Proof of Claim was not timely or properly Filed in this Chapter 11 Case; or

(e) that is disputed by the Debtor in accordance with the provisions of this Plan.

56. “*Distribution Agent*” means the Reorganized Debtor or any party designated by the Reorganized Debtor to serve as distribution agent under this Plan. For purposes of distributions under this Plan to the Holders of Allowed DIP Facility Claims, Allowed Prepetition Term Loan Credit Facility Claims and Allowed Subordinated Notes Claims, the DIP Agent, the Prepetition Term Loan Agent and Indenture Trustee, respectively, will be and shall act as the Distribution Agent.

57. "*Distribution Record Date*" means the date for determining which Holders of Claims are eligible to receive distributions hereunder and shall be the ~~Voting Deadline or such other date as designated in an order of the Bankruptcy Court~~ **Effective Date**.

58. "*D&O Liability Insurance Policies*" means all insurance policies for directors and officers' liability maintained by the Debtor as of the Petition Date.

59. "*Effective Date*" means the Business Day that this Plan becomes effective as provided in Article IX hereof.

60. "*Entity*" means an "entity" as defined in section 101(15) of the Bankruptcy Code.

61. "*Equity Incentive Program*" means a post-Effective Date director and officer equity incentive program providing for the issuance from time to time, as approved by the board of managers of Holdings, of Post-Effective Date Equity Interests representing, in the aggregate, up to ten percent (10%) of the common equity interests of Holdings, on a fully-diluted basis, as of the Effective Date.

62. "*Equity Interest*" means (a) any Equity Security in the Debtor, including, without limitation, all issued, unissued, authorized or outstanding shares of stock, together with (i) any options, warrants or contractual rights to purchase or acquire any such Equity Securities at any time with respect to the Debtor, and all rights arising with respect thereto and (ii) the rights of any Entity to purchase or demand the issuance of any of the foregoing and shall include: (1) conversion, exchange, voting, participation, and dividend rights; (2) liquidation preferences; (3) options, warrants, and put rights; and (4) share-appreciation rights, and (b) any Claim against the Debtor subordinated pursuant to section 510(b) of the Bankruptcy Code, in each case as in existence immediately prior to the Effective Date.

63. "*Equity Security*" means an "equity security" as defined in section 101(16) of the Bankruptcy Code.

64. "*Estate*" means the bankruptcy estate of the Debtor created by virtue of section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

65. "*Exchange Act*" means the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a *et seq.*, as now in effect or hereafter amended, and any similar federal, state or local law.

66. "*Exculpated Parties*" means, collectively: (a) the Debtor; (b) the Reorganized Debtor; (c) the Committee and the members thereof in their capacity as such; (d) the Ad Hoc Noteholders Committee and the members thereof in their capacity as such; (e) the DIP Lenders; (f) the Prepetition Revolving Lenders; (g) the Prepetition Term Loan Lenders; (h) the Holders of the Subordinated Notes Claims; (i) the Backstop Parties; (j) the Administrative and Collateral Agents; and (k) the Indenture Trustee, and the respective Related Persons of each of the foregoing Entities; provided however, that no Non-Released Party will be an Exculpated Party.

67. "*Exculpation*" means the exculpation provision set forth in Article X.D hereof.



68. “*Executory Contract*” means a contract to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

69. “*Exhibit*” means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement (as such exhibits are amended, modified or otherwise supplemented from time to time).

70. “*File*” or “*Filed*” or “*Filing*” means file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

71. “*Final DIP Order*” means that certain *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Post-Petition Financing, (2) Authorizing Use of Cash Collateral and Repayment of Prepetition Revolving Loan Debt, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, and (5) Modifying Automatic Stay*, entered by the Bankruptcy Court on June 5, 2009 [Docket No. 265], as such order may be amended from time to time.

72. “*Final Order*” means an order of the Bankruptcy Court as to which the time to appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for *certiorari*, new trial, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtor or the Reorganized Debtor, or, in the event that an appeal, writ of *certiorari*, new trial, reargument, or rehearing thereof has been sought, no stay pending appeal has been granted or such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or *certiorari*, new trial, reargument or rehearing shall have been denied and the time to take any further appeal, petition for *certiorari*, or move for a new trial, reargument or rehearing shall have expired; provided, however, 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 preclude such order from being a Final Order.

73. “*First Contribution*” shall have the meaning ascribed to it in Article V.B hereof.

74. “*General Unsecured Claim*” means any Claim against the Debtor that is not a/an: (a) DIP Facility Claim; (b) Administrative Claim; (c) Priority Tax Claim; (d) Secured Tax Claim, (e) Other Priority Claim; (e) Other Secured Claim; (f) Prepetition Term Loan Credit Facility Claim; (g) Subordinated Notes Claim, (h) a Junior Convertible Notes Claim or (i) Equity Interest.

75. “*General Unsecured Claims Cash Amount*” means \$1,787,323.

76. “*General Unsecured Claims Cash Escrow*” means the escrow created by the Debtor or Reorganized Debtor to exclusively hold the General Unsecured Claims Cash Amount.

77. “*Governmental Unit*” means a “governmental unit” as defined in section 101(27) of the Bankruptcy Code.

78. "Holder" means an Entity holding a Claim against, or Equity Interest in, the Debtor and, with respect to the Subordinated Notes Claims, the beneficial holder thereof as of the applicable date of determination or any authorized agent of such Entity who has completed and executed a Ballot or on whose behalf a Master Ballot has been completed and executed in accordance with the voting instructions that are attached to the Ballot or Master Ballot, as applicable.

79. "Holdings" shall have the meaning ascribed to it in Article V.B hereof.

80. "Holdings LLC Agreement" means that certain limited liability company agreement of Holdings, in substantially the form attached to this Plan as Exhibit C or Filed with the Plan Supplement.

81. "Impaired" means, when used in reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

82. "Indemnification Provision" means each of the indemnification provisions currently in place (whether in the bylaws, certificates of incorporation, board resolutions, employment contracts or otherwise) for the current and former directors, officers, employees, attorneys, other professionals and agents of the Debtor who served in such capacity on or any time after the Petition Date.

83. "Indemnified Parties" means, collectively, the Debtor and each of its officers, directors and employees, each in their respective capacities as such and solely to the extent that each such party was serving in such capacity on or any time after the Petition Date; provided however, that no Non-Released Party will be an Indemnified Party.

84. "Indenture" means that certain indenture governing the Subordinated Notes, dated as of June 16, 2000, (as amended, waived, supplemented, refinanced and as otherwise modified from time to time) between the Debtor, as issuer, certain guarantors, and the Indenture Trustee.

85. "Indenture Trustee" means United States Trust Company of New York, in its capacity as indenture trustee for the Subordinated Notes.

86. "Indenture Trustee Fees" means the reasonable fees and reasonable unpaid out-of-pocket costs and expenses incurred by the Indenture Trustee through the Effective Date in accordance with the Indenture.

87. "Initial Distribution Date" means, subject to the "Treatment" sections in Article III hereof, the date that is as soon as practicable after the Effective Date, but no later than thirty (30) days after the Effective Date, when distributions under this Plan shall commence to Holders of Allowed Claims.

88. "Interim DIP Order" means that certain *Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (1) Approving Post-Petition Financing, (2) Authorizing Use of Cash Collateral and Repayment of Prepetition Revolving Loan Debt, (3) Granting Liens and Providing Superpriority Administrative Expense Status, (4) Granting Adequate Protection, and*

(5) *Modifying Automatic Stay*, entered by the Bankruptcy Court on April 21, 2009 [Docket No. 67].

89. “*Intermediary Record Owners*” means, as of the applicable date of determination, the banks, brokerage firms, or the agents thereof as the Entity through which the Beneficial Holders hold the Subordinated Notes, Junior Convertible Notes or Equity Interests, as applicable.

90. “*Intermediate Holdings*” shall have the meaning ascribed to it in Article V.B hereof.

91. “*Intermediate Holdings Common Stock*” shall have the meaning ascribed to it in Article V.B hereof.

92. “*IRC*” means the Internal Revenue Code of 1986, as amended.

93. “*IRS*” means the Internal Revenue Service of the United States of America.

94. “*Junior Convertible Notes*” means those certain Junior Convertible Subordinated Notes Due 2029 issued by the Debtor and governed by the Junior Convertible Notes Indenture.

95. “*Junior Convertible Notes Claim*” means any Claim arising from, under or in connection with the Junior Convertible Notes Indenture, other than pursuant to Section 6.7 thereof.

96. “*Junior Convertible Notes Indenture*” means that certain Junior Convertible Subordinated Indenture, dated October 5, 1999 (as amended, waived, supplemented, refinanced and as otherwise modified from time to time), between the Debtor and Firstar Bank, N.A., as debenture trustee.

97. “*Lien*” means a “lien” as defined in section 101(37) of the Bankruptcy Code, and, with respect to any asset, includes, without limitation, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind, or any other type of preferential arrangement that has the practical effect of creating a security interest, in respect of such asset.

98. “*Litigation Claims*” means the claims, rights of action, suits or proceedings, whether in law or in equity, whether known or unknown, that the Debtor or Estate may hold against any Entity, including, without limitation, the Causes of Action of the Debtor. A non-exclusive list of the Litigation Claims held by the Debtor as of the Effective Date is attached hereto as Plan Schedule 1 or Filed with the Plan Supplement, which shall be deemed to include any derivative actions filed against the Debtor as of the Effective Date and any Causes of Action against any Non-Released Party.

99. “*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

100. “*Master Ballots*” means the ballot distributed to the Registered Record Owners or Intermediary Record Owners, as applicable, of the Subordinated Notes to record the votes of

the Beneficial Holders of the Subordinated Notes as of the Voting Record Date applicable to Subordinated Notes Claims.

101. “*Net Exit Proceeds*” means an amount of Cash equal to: (i) the Rights Offering Amount; *plus* (ii) an amount of Cash proceeds from the Revolver Exit Facility equal to (x) the total borrowings available to the Reorganized Debtor under the Revolver Exit Facility as of the Effective Date, but excluding amounts available thereunder as “Permitted Overadvances” (as defined in the Revolver Exit Facility Term Sheet), less (y) \$20 million; *plus* (iii) the Cash on hand of the Debtor as of the Effective Date; *minus* (iv) the Transaction Expenses; *minus* (v) the Required Plan Payments.

102. “*New Board*” means the initial board of directors of the Reorganized Debtor.

103. “*New Stock*” means the shares of common stock or other equity securities of the Reorganized Debtor authorized to be issued pursuant to this Plan (and subject to the Restructuring Transactions) and the Amended Organizational Documents.

104. “*Non-Released Party*” means each of the Entities listed as Non-Released Parties on Plan Schedule 2 attached hereto or Filed with the Plan Supplement.

105. “*Non-Voting Classes*” means, collectively, Classes 1, 2, 3, 7, and 8.

106. “*Ordinary Course Professionals Order*” means that certain *Order Authorizing the Debtor to Employ and Compensate Certain Professionals in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date*, entered by the Bankruptcy Court on May 18, 2009 [Docket No. 207], as such order may be amended from time to time.

107. “*Other Priority Claim*” means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

108. “*Other Secured Claim*” means any Secured Claim other than an Administrative Claim, DIP Facility Claim, Secured Tax Claim or Prepetition Term Loan Credit Facility Claim.

109. “*Payment Waterfall*” means first, payment in full of all Transaction Expenses; second, payment in full of the Required Plan Payments (in each case to the extent not Reinstated as permitted by the Bankruptcy Code and this Plan); and third, to the extent of the remaining Net Exit Proceeds, for general corporate purposes.

110. “*Person*” means a “person” as defined in section 101(41) of the Bankruptcy Code and also includes any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other Entity, whether acting in an individual, fiduciary or other capacity.

111. “*Petition Date*” means April 19, 2009, the date on which the Debtor commenced the Chapter 11 Case.

112. "Plan" means this *First Amended Plan of Reorganization of Dayton Superior Corporation Under Chapter 11 of the Bankruptcy Code*, dated ~~August 25,~~October [14], 2009, including the Exhibits and Plan Schedules and all supplements, appendices, and schedules thereto, either in its present form or as the same may be altered, amended, modified or otherwise supplemented from time to time.

113. "Plan Schedule" means a schedule annexed to either this Plan or as an appendix to the Disclosure Statement (as amended, modified or otherwise supplemented from time to time).

114. "Plan Supplement" means, collectively, the compilation of documents and forms of documents, and all exhibits, attachments, schedules, agreements, documents and instruments referred to therein, ancillary or otherwise, including, without limitation, the Exhibits and Plan Schedules, all of which are incorporated by reference into, and are an integral part of, this Plan, as all of the same may be amended, modified, replaced and/or supplemented from time to time, which shall be filed with the Bankruptcy Court on or before September 21, 2009.

115. "Post-Effective Date Equity Interest" shall have the meaning ascribed to it in Article V.B hereof.

116. "Post-Money Equity Value" means \$275 million, less the aggregate amount of Indebtedness (as defined in the Backstop Rights Purchase Agreement and specifically including the Rights Offering Commitment Fee, the Transaction Expenses, the Ad Hoc Noteholders Committee Fees and Expenses, and the unfunded pension obligations) of Reorganized Debtor and its subsidiary plus Cash (as defined in the Backstop Rights Purchase Agreement) of the Reorganized Debtor and its subsidiary, in both cases as of the Effective Date, after giving effect to the restructuring contemplated by this Plan, including the Rights Offering and the application of the proceeds thereof.

117. "Prepetition Intercreditor Agreement" means that certain intercreditor agreement, dated as of March 3, 2008 (as amended, waived, supplemented, refinanced and as otherwise modified from time to time), with respect to the Prepetition Revolving Credit Agreement and Prepetition Term Loan Credit Agreement.

118. "Prepetition Revolving Agent" means General Electric Capital Corporation, in its capacity as administrative agent and collateral agent under the Prepetition Revolving Credit Agreement.

119. "Prepetition Revolving Credit Agreement" means that certain Revolving Credit Agreement, dated as of March 3, 2008, among the Debtor, as borrower, the Prepetition Revolving Lenders, and the Prepetition Revolving Agent (as amended, waived, supplemented, refinanced and as otherwise modified from time to time).

120. "Prepetition Revolving Credit Agreement Claim" means any Claim of the Prepetition Revolving Agent or any Prepetition Revolving Lender arising from, under or in connection with the Prepetition Revolving Credit Agreement (including, without limitation, any and all "Obligations" as defined therein) and/or the other "Loan Documents" as defined therein.

121. "*Prepetition Revolving Lenders*" means the Prepetition Revolving Agent and the other lenders party to the Prepetition Revolving Credit Agreement from time to time.

122. "*Prepetition Term Loan Agent*" means Silver Point Finance, LLC, in its capacity as administrative agent under the Prepetition Term Loan Credit Agreement.

123. "*Prepetition Term Loan Credit Agreement*" means that certain Amended and Restated Term Loan Credit Agreement, dated as of March 3, 2008, among the Debtor, as borrower, the Prepetition Term Loan Lenders, the Prepetition Term Loan Agent and General Electric Capital Corporation, as collateral agent (as amended, waived, supplemented, refinanced and as otherwise modified from time to time).

124. "*Prepetition Term Loan Credit Facility Claim*" means any Claim of the Prepetition Term Loan Agent (or predecessor agent) or any Prepetition Term Loan Lender arising from, under or in connection with the Prepetition Term Loan Credit Agreement (including, without limitation, any and all "Obligations" as defined therein) and/or the other "Loan Documents" as defined therein.

125. "*Prepetition Term Loan Lenders*" means the Prepetition Term Loan Agent and the lenders party to the Prepetition Term Loan Credit Agreement from time to time.

126. "*Prepetition Term Loan Payment Amount*" means \$13,000,000 in Cash (plus any additional amount that the Debtor elects to pay in Cash, at its sole discretion, upon the closing of the Term Loan Exit Facility).

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

128. "*Professional*" means (a) any Entity employed in the Chapter 11 Case pursuant to section 327, 363 or 1103 of the Bankruptcy Code or otherwise and (b) any Entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(4) of the Bankruptcy Code.

129. "*Professional Fee Claim*" means a Claim under sections 328, 330(a), 331, 363, 503 or 1103 of the Bankruptcy Code for Accrued Professional Compensation.

130. "*Professional Fees Bar Date*" means the Business Day that is sixty (60) days after the Effective Date or such other date as approved by order of the Bankruptcy Court.

131. "*Proof of Claim*" means a proof of Claim Filed against the Debtor in the Chapter 11 Case.

132. "*Pro Rata*" means the proportion that (a) the Allowed amount of a Claim or Equity Interest in a particular Class (or several Classes taken as a whole) bears to (b) the aggregate Allowed amount of all Claims or Equity Interests in such Class (or several Classes taken as a whole), unless this Plan provides otherwise.

133. “*Pro Rata Share of the Rights Offering Shares*” means, with respect to an applicable Rights Offering Participant, the proportion that (a) the Allowed amount of Subordinated Notes Claims held by such Rights Offering Participant bears to (b) the aggregate Allowed amount of all Subordinated Notes Claims held by all Rights Offering Participants.

134. “*Registered Record Owners*” means, as of the applicable date of determination, the respective owners of the Subordinated Notes, Junior Convertible Notes or Equity Interests whose holdings thereof are in their own name.

135. “*Registration Agreement*” means the Registration Agreement, in substantially the form attached to this Plan as Exhibit E or Filed with the Plan Supplement.

136. “*Reinstated*” means, with respect to any Claim, (a) leaving unaltered the legal, equitable, and contractual rights to which a Claim entitles the holder of such Claim in accordance with Section 1124 of the Bankruptcy Code or (b) notwithstanding any contractual provision or applicable law that entitles the holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default: (i) 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 or of a kind that section 365(b)(2) of the Bankruptcy Code expressly does not require to be cured; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim arises from any failure to perform a non-monetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim (other than the Debtor or an insider of the Debtor) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim.

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 their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members), partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives, and other professionals, in each case acting in such capacity on or any time after the Petition Date, and any Person claiming by or through any of them; provided, however, that no insurer of the Debtor and no Non-Released Party shall constitute a Related Person.

138. “*Release*” means the release given by the Releasing Parties to the Released Parties as set forth in Article X.B hereof.

139. “*Released Party*” means, collectively: (a) the Debtor; (b) the Reorganized Debtor; (c) the Committee and the members thereof in their capacity as such; (d) the Ad Hoc Noteholders Committee and the members thereof in their capacity as such; (e) the DIP Lenders; (f) the Prepetition Revolving Lenders; (g) the Prepetition Term Loan Lenders; (h) the Holders of the Subordinated Notes Claims; (i) the Backstop Parties; (j) the Administrative and Collateral

Agents; and (k) the Indenture Trustee, and the respective Related Persons of each of the foregoing; provided however, that no Non-Released Party shall constitute a Released Party.

140. “*Releasing Party*” has the meaning set forth in Article X.B hereof.

141. “*Remaining Rights Offering Shares*” means those Rights Offering Shares that are not subscribed for pursuant to the Rights Offering prior to the expiration of the Subscription Deadline.

142. “*Reorganized Debtor*” means Dayton Superior Corporation, a Delaware corporation, as reorganized pursuant to this Plan on or after the Effective Date.

143. “*Required Plan Payments*” means the aggregate amount of Cash payable pursuant to this Plan in respect of (i) the Allowed DIP Facility Claims, the Allowed Administrative Claims, the Allowed Other Secured Claims, the Allowed Other Priority Claims, the Allowed Priority Tax Claims and the Allowed Secured Tax Claims against the Debtor, (ii) the General Unsecured Claims Cash Amount and (iii) the Prepetition Term Loan Payment Amount.

144. “*Restructuring Transaction*” means, collectively, the First Contribution, the Second Contribution and the other transactions described in Article V.B hereof.

145. “*Revolver Exit Facility*” means the senior secured revolving exit facility in the aggregate principal amount of \$110 million to be entered into by the Reorganized Debtor on the Effective Date with terms and conditions substantially consistent with, or with terms no less favorable in the aggregate for the Debtor and/or Reorganized Debtor than, those set forth in the Revolver Exit Facility Term Sheet, or such other terms and conditions as approved in writing by the Debtor and the Ad Hoc Noteholders Committee.

146. “*Revolver Exit Facility Credit Agreement*” means that certain Revolver Exit Facility Credit Agreement, in substantially the form attached to this Plan as Exhibit F or Filed with the Plan Supplement.

147. “*Revolver Exit Facility Term Sheet*” means the term sheet setting forth the terms and conditions of the Revolver Exit Facility, in substantially the form attached to this Plan as Exhibit G or Filed with the Plan Supplement.

148. “*Rights Offering*” means that certain \$100 million rights offering of New Stock to be offered to the Rights Offering Participants, the terms of which are set forth in Article V.H of this Plan and which were approved by the Bankruptcy Court in the Rights Offering Order.

149. “*Rights Offering Amount*” means \$100 million.

150. “*Rights Offering Order*” means that certain *Order Authorizing the Debtor to (I) Enter into a Backstop Rights Purchase Agreement in Connection with a Contemplated Rights Offering, (II) Conduct Rights Offering, and (III) Pay Certain Fees to the Backstop Parties on the*



*Terms Set Forth in the Backstop Rights Purchasing Agreement*, entered by the Bankruptcy Court on August 24, 2009, [Docket No. 480], as such order may be amended from time to time.

151. “*Rights Offering Participant*” means each Holder of a Subordinated Notes Claim that is an “accredited investor,” as defined in Rule 501(a) of Regulation D under the Securities Act, as of the Rights Offering Record Date.

152. “*Rights Offering Purchaser*” means a Rights Offering Participant who timely and properly executes and delivers the Subscription Form to the Debtor or other Entity specified in the Subscription Form prior to the expiration of the Subscription Deadline.

153. “*Rights Offering Record Date*” means the date for determining which Holders of Subordinated Notes Claims are eligible to participate in the Rights Offering and shall be the Voting Record Date applicable to Subordinated Notes Claims, or such other date as designated in an order of the Bankruptcy Court.

154. “*Rights Offering Shares*” means the New Stock to be issued and sold through the Rights Offering (including the Remaining Rights Offering Shares to be issued pursuant to the Backstop Rights Purchase Agreement).

155. “*Scheduled*” means with respect to any Claim or Equity Interest, the status and amount, if any, of such Claim or Equity Interest as set forth in the Schedules.

156. “*Schedules*” means the schedules of assets and liabilities, schedules of Executory Contracts, and statement of financial affairs filed by the Debtor pursuant to section 521 of the Bankruptcy Code and the applicable Bankruptcy Rules, as such Schedules they may be amended, modified, or supplemented from time to time.

157. “*Second Contribution*” shall have the meaning ascribed to it in Article V.B hereof.

158. “*Secured Claim*” means a Claim that is secured by a Lien on property in which the Debtor’s Estate has an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

159. “*Secured Tax Claim*” means any Secured Claim which, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

160. “*Securities Act*” means the Securities Act of 1933, 15 U.S.C. §§ 77c-77aa, as now in effect or hereafter amended, and any similar federal, state or local law.

161. “*Securityholders Agreement*” means the Securityholders Agreement, in substantially the form attached to this Plan as Exhibit H or Filed with the Plan Supplement.

162. “*Stamp or Similar Tax*” means any stamp tax, recording tax, personal property tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

163. “*Subordinated Notes*” means those certain 13% Senior Subordinated Notes due 2009 issued under the Indenture.

164. “*Subordinated Notes Claim*” means any Claim arising from, under or in connection with the Subordinated Notes or Indenture.

165. “*Subscription Commencement Date*” means the date on which the Subscription Period commences, which shall be the earliest date reasonably practicable occurring after the Rights Offering Record Date.

166. “*Subscription Deadline*” means the date on which the Rights Offering shall expire as set forth in the Subscription Form, which date shall be the Voting Deadline.

167. “*Subscription Form*” means that certain form to be distributed to Rights Offering Participants pursuant to which such Rights Offering Participants may exercise their Subscription Rights, which form is attached hereto as Exhibit I and was approved by the Bankruptcy Court under the Rights Offering Order.

168. “*Subscription Notification Date*” means a date that is not later than five (5) Business Days following the Subscription Deadline.

169. “*Subscription Payment Amount*” means, with respect to a particular Rights Offering Purchaser, an amount of Cash equal to the Rights Offering Amount multiplied by such Rights Offering Purchaser’s subscribed for portion of its Pro Rata Share of the Rights Offering Shares.

170. “*Subscription Payment Date*” means a date that is not later than five (5) Business Days following the applicable Subscription Notification Date (or such later date as approved in writing by the Debtor or Reorganized Debtor); provided, however, that such date must occur on or prior to the Effective Date.

171. “*Subscription Period*” means the time period during which the Rights Offering Participants may subscribe to purchase the Rights Offering Shares, which period shall commence on the Subscription Commencement Date and expire on the Subscription Deadline.

172. “*Subscription Price*” shall have the meaning ascribed to it in Article V.H hereof.

173. “*Subscription Right*” means the right to participate in the Rights Offering, which right shall be non-Transferable and non-certificated as set forth in Article V.H of this Plan.

174. “*Subsequent Distribution*” means any distribution of property under this Plan to Holders of Allowed Claims other than the initial distribution given on the Initial Distribution Date.

175. “*Subsequent Distribution Date*” means the last Business Day of the month following the end of each calendar quarter after the Effective Date; provided, however, that if the Effective Date is within thirty (30) days of the end of a calendar quarter, then the first Subsequent Distribution Date will be the last Business Day of the month following the end of the first calendar quarter after the calendar quarter in which the Effective Date falls.

176. “*Term Loan Exit Facility*” means the senior, secured term loan exit credit facility in the aggregate principal amount equal to (i) the aggregate Allowed Prepetition Term Loan Credit Facility Claims, minus (ii) the sum of (a) the Prepetition Term Loan Payment Amount plus (b) any fees and expenses payable under the Prepetition Term Loan Credit Agreement that are paid as Transaction Expenses, with terms and conditions substantially consistent with, or with terms no less favorable in the aggregate for the Debtor and/or Reorganized Debtor than, those set forth in the Term Loan Exit Facility Term Sheet or such other terms and conditions as approved in writing by the Debtor, the Ad Hoc Noteholders Committee and the Prepetition Term Loan Agent, but in each case subject to the terms and conditions of the Term Loan Exit Intercreditor Agreement.

177. “*Term Loan Exit Facility Credit Agreement*” means the credit agreement with respect to the Term Loan Exit Facility, in substantially the form attached to this Plan as Exhibit J or Filed with the Plan Supplement.

178. “*Term Loan Exit Facility Term Sheet*” means the term sheet setting forth the terms and conditions of the Term Loan Exit Facility, in substantially the form attached to this Plan as Exhibit K or Filed with the Plan Supplement.

179. “*Term Loan Exit Intercreditor Agreement*” means that certain intercreditor agreement with respect to the Revolver Exit Facility and Term Loan Exit Facility, ~~in~~ substantially in the form attached to this Plan as Exhibit L or Filed with the Plan Supplement, ~~which, unless otherwise ordered by the Bankruptcy Court, shall be substantially consistent with the Prepetition Intercreditor Agreement.~~

180. “*Transaction Expenses*” means the aggregate amount of reasonable fees and expenses payable by the Debtor in connection with the Chapter 11 Case, including the fees and expenses payable to the DIP Lenders and the Backstop Parties, all fees and expenses (whether accrued prepetition or postpetition) of the Prepetition Term Loan Lenders and the Prepetition Term Loan Agent (including all accrued and unpaid fees and expenses (whether accrued prepetition or postpetition) of Gibson, Dunn & Crutcher, LLP, Broadpoint Capital, Inc. and Young Conaway Stargatt & Taylor, LLP), and including the Ad Hoc Noteholders Committee Fees and Expenses, as well as the fees and expenses payable under the Revolver Exit Facility and the 1% closing fee payable to the Prepetition Term Loan Lenders as described in the Term Loan Exit Facility Term Sheet.

181. “*Transfer*” or “*Transferable*” means, with respect to any security or the right to receive a security or to participate in any offering of any security, including the Rights Offering,

(i) the sale, transfer, pledge, hypothecation, encumbrance, assignment, constructive sale, participation in, or other disposition of such security or right or the beneficial ownership thereof, (ii) the offer to make such a sale, transfer, constructive sale, or other disposition, and (iii) each option, agreement, arrangement, or understanding, whether or not in writing and whether or not directly or indirectly, to effect any of the foregoing. The term "constructive sale" for purposes of this definition means (i) a short sale with respect to such security or right, (ii) entering into or acquiring an offsetting derivative contract with respect to such security or right, (iii) entering into or acquiring a futures or forward contract to deliver such security or right, or (iv) entering into any transaction that has substantially the same effect as any of the foregoing. The term "beneficially owned" or "beneficial ownership" as used in this definition shall include, with respect to any security or right, the beneficial ownership of such security or right by a Person and by any direct or indirect subsidiary of such Person.

182. "*Unexpired Lease*" means a lease to which the Debtor is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

183. "*Unimpaired*" means, with respect to a Class of Claims or Equity Interests, a Claim or an Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

184. "*Voting and Claims Agent*" means Kurtzman Carson Consultants LLC, in its capacity as solicitation, notice, claims and balloting agent for the Debtor, pursuant to that certain *Order Authorizing the Debtor Pursuant to Section 156(c) of the Judicial Code, Bankruptcy Rule 2002 and Local Rule 2002-1(f) for Authorization to (i) Employ and Retain Kurtzman Carson Consultants LLC as Notice, Claims and Balloting Agent for the Debtor and (ii) Appoint Kurtzman Carson Consultants LLC as Agent of the Bankruptcy Court*, entered by the Bankruptcy Court on April 21, 2009 [Docket No. 49].

185. "*Voting Classes*" means, collectively, Classes 4, 5 and 6.

186. "*Voting Deadline*" means October 1, 2009 at 5:00 p.m. prevailing Pacific Time for all Holders of Claims, which is the date and time by which all Ballots, Beneficial Holder Ballots and Master Ballots, as applicable, must be received by the Voting and Claims Agent in accordance with the Disclosure Statement Order, or such other date and time as may be established by the Bankruptcy Court with respect to any Voting Class.

187. "*Voting Record Date*" means the date for determining which Holders of Claims are entitled to receive the Disclosure Statement and vote to accept or reject this Plan, as applicable, which date is August 10, 2009 with respect to Claims in Classes 5, 7 and 8, and which date is August 25, 2009 with respect to all other Claims, as set forth in the Disclosure Statement Order.

## ARTICLE II.

### ADMINISTRATIVE, DIP FACILITY AND PRIORITY TAX CLAIMS

#### A. *Administrative Claims*

Subject to sub-paragraph 1 below, on the later of the Effective Date or the date on which an Administrative Claim becomes an Allowed Administrative Claim, or, in each such case, as soon as practicable thereafter, each Holder of an Allowed Administrative Claim will receive, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim either (i) payment in full in Cash for the unpaid portion of such Allowed Administrative Claim; or (ii) such other less favorable treatment as agreed to in writing by the Debtor or Reorganized Debtor, as applicable, and such Holder; provided, however, that Administrative Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court.

#### 1. Bar Date for Administrative Claims

Except as otherwise provided in this Article II.A hereof, unless previously Filed or paid, requests for payment of Administrative Claims must be Filed and served on the Reorganized Debtor pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than the Administrative Claims Bar Date. Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtor or the Reorganized Debtor or its Estate and property and such Administrative Claims shall be deemed discharged as of the Effective Date. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.F hereof. Objections to such requests must be Filed and served on the Reorganized Debtor and the requesting party by the later of (a) 120 days after the Effective Date and (b) 60 days after the Filing of the applicable request for payment of Administrative Claims, if applicable, as the same may be modified or extended from time to time by order of the Bankruptcy Court.

#### 2. Professional Compensation and Reimbursement Claims

Professionals or other Entities asserting a Professional Fee Claim for services rendered before the Effective Date must File and serve on the Reorganized Debtor and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court an application for final allowance of such Professional Fee Claim no later than the Professional Fees Bar Date; provided that the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date, including those fees and expenses incurred by Professionals in connection with the implementation and consummation of this Plan, in each case without further application or notice to or order of the Bankruptcy Court; provided, further, that any professional who may receive compensation or reimbursement of expenses pursuant to the Ordinary Course Professionals Order may continue to receive such compensation and reimbursement of expenses for services rendered before the

Effective Date, without further Bankruptcy Court order, pursuant to the Ordinary Course Professionals Order. Objections to any Professional Fee Claim must be Filed and served on the Reorganized Debtor and the requesting party by the later of (a) 90 days after the Effective Date and (b) 30 days after the Filing of the applicable request for payment of the Professional Fee Claim. Each Holder of an Allowed Professional Fee Claim shall be paid by the Reorganized Debtor in Cash within five Business Days of entry of the order approving such Allowed Professional Fee Claim. Notwithstanding the foregoing, the Debtor shall, on the Effective Date and as part of the Transaction Expenses, pay the Ad Hoc Noteholders Committee Fees and Expenses and all unpaid reasonable fees and expenses (whether accrued prepetition or postpetition) of the Prepetition Term Loan Agent and Prepetition Term Loan Lenders, including all accrued and unpaid reasonable fees and expenses (whether accrued prepetition or postpetition) of Gibson, Dunn & Crutcher, LLP, Broadpoint Capital, Inc. and Young Conaway Stargatt & Taylor, LLP payable pursuant to the Term Loan Exit Facility Term Sheet as Administrative Claims in the ordinary course of the business, without application by or on behalf of any such parties to the Bankruptcy Court, and without notice and a hearing; provided however that, if the Debtor or Reorganized Debtor and any such Entity cannot agree on the amount of fees and expenses to be paid to such party, the reasonableness of any such fees and expenses shall be determined by the Bankruptcy Court.

*B. DIP Facility Claims*

Unless otherwise agreed to by the DIP Lenders, the Allowed DIP Facility Claims shall be indefeasibly paid in full in Cash on the Effective Date in full satisfaction, settlement, discharge and release of, and in exchange for, such DIP Facility Claims. Upon indefeasible payment and satisfaction in full of all Allowed DIP Facility Claims, the DIP Facility Credit Agreement and Prepetition Revolving Credit Agreement, and all "Loan Documents" as defined therein, respectively, and all Liens and security interests granted to secure the DIP Facility Claims and/or Prepetition Revolving Credit Agreement Claims, shall be immediately terminated, extinguished and released and/or assigned to the Reorganized Debtor's lenders under the Revolver Exit Facility, as applicable, and the respective Administrative and Collateral Agents shall promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor. Notwithstanding the above, any indemnity provisions contained in the DIP Facility Credit Agreement shall survive such termination, release and satisfaction in the manner and to the extent set forth therein.

*C. Priority Tax Claims*

The legal, equitable and contractual rights of the Holders of Priority Tax Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Priority Tax Claim is an Allowed Priority Tax Claim as of the Effective Date or (ii) the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Priority Tax Claim, at the election of the Debtor or Reorganized Debtor: (a) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (b) such other less favorable treatment as agreed to in writing by the Debtor

or Reorganized Debtor, as applicable, and such Holder; provided, however, that such parties may further agree for the payment of such Allowed Priority Tax Claim at a later date; or (c) pursuant to and in accordance with sections 1129(a)(9)(C) and (D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Priority Tax Claim payable in regular installment payments over a period ending not more than five years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtor or Reorganized Debtor, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, further, that Priority Tax Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court. Any installment payments to be made under clause (c) above shall be made in equal quarterly Cash payments beginning on the Subsequent Distribution Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Priority Tax Claim.

**ARTICLE III.**

**CLASSIFICATION AND TREATMENT  
OF CLASSIFIED CLAIMS AND EQUITY INTERESTS**

*A. Summary*

All Claims and Equity Interests, except Administrative Claims, DIP Facility Claims and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims and Priority Tax Claims have not been classified as described below.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including, without limitation, voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. This Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid, released or otherwise settled prior to the Effective Date.

Summary of Classification and Treatment of Classified Claims and Equity Interests

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	Other Priority Claims	Unimpaired	Deemed to Accept
2	Other Secured Claims	Unimpaired	Deemed to Accept
3	Secured Tax Claims	Unimpaired	Deemed to Accept

<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
4	Prepetition Term Loan Credit Facility Claims	Impaired	Entitled to Vote
5	Subordinated Notes Claims	Impaired	Entitled to Vote
6	General Unsecured Claims	Impaired	Entitled to Vote
7	Junior Convertible Notes Claims	Impaired	Deemed to Reject
8	Equity Interests	Impaired	Deemed to Reject

B. *Classification and Treatment of Claims and Equity Interests*

1. Class 1 – Other Priority Claims

- (a) *Classification:* Class 1 consists of the Other Priority Claims against the Debtor.
- (b) *Treatment:* The legal, equitable and contractual rights of the Holders of Class 1 Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 1 Claim is an Allowed Class 1 Claim on the Effective Date or (ii) the date on which such Class 1 Claim becomes an Allowed Class 1 Claim, each Holder of an Allowed Class 1 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 1 Claim, at the election of the Debtor or Reorganized Debtor: (A) Cash equal to the amount of such Allowed Class 1 Claim; (B) such other less favorable treatment as to which the Debtor or Reorganized Debtor and the Holder of such Allowed Class 1 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; provided, however, that Class 1 Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court.
- (c) *Voting:* Class 1 is an Unimpaired Class, and the Holders of Class 1 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 1 Claims are not entitled to vote to accept or reject this Plan.



2. Class 2 – Other Secured Claims

- (a) *Classification:* Class 2 consists of the Other Secured Claims against the Debtor.
- (b) *Treatment:* The legal, equitable and contractual rights of the Holders of Class 2 Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 2 Claim is an Allowed Class 2 Claim on the Effective Date or (ii) the date on which such Class 2 Claim becomes an Allowed Class 2 Claim, each Holder of an Allowed Class 2 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 2 Claim, at the election of the Debtor or Reorganized Debtor: (A) Cash equal to the amount of such Allowed Class 2 Claim; (B) such other less favorable treatment as to which the Debtor or Reorganized Debtor and the Holder of such Allowed Class 2 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; provided, however, that Class 2 Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court. Each Holder of an Allowed Other Secured Claim shall retain the Liens securing its Allowed Other Secured Claim as of the Effective Date until full and final payment of such Allowed Other Secured Claim is made as provided herein. On the full payment or other satisfaction of such obligations, the Liens securing such Allowed Other Secured Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.
- (c) *Voting:* Class 2 is an Unimpaired Class, and the Holders of Class 2 Claims are conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Class 2 Claims are not entitled to vote to accept or reject this Plan.

3. Class 3—Secured Tax Claims

- (a) *Classification:* Class 3 consists of the Secured Tax Claims against the Debtor.
- (b) *Treatment:* The legal, equitable and contractual rights of the Holders of Class 3 Claims are unaltered by this Plan. Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 3 Claim is an Allowed Class 3 Claim as of the Effective Date or (ii) the date on which such Class 3 Claim becomes

an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim due and payable on or prior to the Effective Date shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtor or Reorganized Debtor: (a) Cash in an amount equal to the amount of such Allowed Class 3 Claim; (b) such other less favorable treatment as agreed to in writing by the Debtor or Reorganized Debtor, as applicable, and such Holder; provided, however, that such parties may further agree for the payment of such Allowed Class 3 Claim at a later date; or (c) pursuant to and in accordance with sections 1129(a)(9)(C) and (D) of the Bankruptcy Code, Cash in an aggregate amount of such Allowed Class 3 Claim payable in regular installment payments over a period ending not more than five years after the Petition Date, plus simple interest at the rate required by applicable non-bankruptcy law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to in writing by a particular taxing authority and the Debtor or Reorganized Debtor, as applicable, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, further, that Class 3 Claims incurred by the Debtor in the ordinary course of business may be paid in the ordinary course of business in accordance with such applicable terms and conditions relating thereto in the discretion of the Debtor or Reorganized Debtor without further notice to or order of the Bankruptcy Court. Each Holder of an Allowed Class 3 Claim shall retain the Liens securing its Allowed Class 3 Claim as of the Effective Date until full and final payment of such Allowed Class 3 Claim is made as provided herein. On the full payment or other satisfaction of such obligations, the Liens securing such Allowed Class 3 Claim shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any installment payments to be made under clause (c) above shall be made in equal quarterly Cash payments beginning on the first Subsequent Distribution Date following the Effective Date, and continuing on each Subsequent Distribution Date thereafter until payment in full of the applicable Allowed Secured Tax Claim.

- (c) *Voting:* Class 3 is an Unimpaired Class, and the Holders of Class 3 Claims shall be conclusively deemed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 3 Claims are not entitled to vote to accept or reject this Plan.

4. Class 4 – Prepetition Term Loan Credit Facility Claims

- (a) *Classification:* Class 4 consists of the Prepetition Term Loan Credit Facility Claims against the Debtor.

- (b) *Allowance:* On the Effective Date, the Prepetition Term Loan Credit Facility Claims shall be deemed Allowed in an aggregate amount equal to \$103,152,385, plus reasonable fees and expenses and accrued postpetition interest (calculated at the rate provided for in the Term Loan Exit Facility Term Sheet).
- (c) *Treatment:* On the Effective Date, the Prepetition Term Loan Credit Agreement and all "Loan Documents" as defined therein shall be replaced in their entirety by the Term Loan Exit Facility Credit Agreement and all "Loan Documents" as defined therein. On the Effective Date, the Distribution Agent shall receive for and on behalf of each and every Holder of an Allowed Prepetition Term Loan Credit Facility Claim, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, (i) the Prepetition Term Loan Payment Amount; and (ii) the notes issued in connection with the Term Loan Exit Facility, which the Distribution Agent shall promptly distribute Pro Rata to or for the benefit of Holders of Allowed Prepetition Term Loan Credit Facility Claims. Upon the Distribution Agent's receipt of the foregoing, the Prepetition Term Loan Credit Agreement and all "Loan Documents" as defined therein, and all Liens securing such Allowed Prepetition Term Loan Credit Facility Claims, shall be deemed released, terminated and extinguished, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. The Prepetition Term Loan Agent and the Prepetition Term Loan Lenders shall promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor.
- (d) *Voting:* Class 4 is Impaired, and Holders of Class 4 Claims are entitled to vote to accept or reject this Plan.

5. Class 5 – Subordinated Notes Claims

- (a) *Classification:* Class 5 consists of the Subordinated Notes Claims against the Debtor.
- (b) *Allowance:* On the Effective Date, the Subordinated Notes Claims shall be deemed Allowed in an aggregate amount equal to \$161,636,231.
- (c) *Treatment:* On the Effective Date, the Distribution Agent shall receive for and on behalf of each and every Holder of an Allowed Subordinated Notes Claim who executes and delivers to Holdings a counterpart signature to the Holdings LLC Agreement, in full satisfaction, settlement, discharge and release of, and in exchange for, such Claim, one hundred percent (100%) of the New Stock, which shall be subject to dilution as a result of the Rights Offering and, after giving effect to the Restructuring

Transactions, the Equity Incentive Program. The number of shares of New Stock to be issued pursuant to this sub-paragraph (c) shall be equal to the excess of the Aggregate Effective Date New Stock Issuance over the aggregate number of Rights Offering Shares. The Distribution Agent shall promptly distribute the New Stock on a Pro Rata basis to the Holders of Allowed Subordinated Notes Claims.

- (d) *Voting:* Class 5 is Impaired, and Holders of Class 5 Claims are entitled to vote to accept or reject this Plan.

6. Class 6 – General Unsecured Claims

- (a) *Classification:* Class 6 consists of the General Unsecured Claims against the Debtor.
- (b) *Treatment:* Subject to Article VIII hereof, on, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 6 Claim is Allowed on the Effective Date or (ii) the date on which such Class 6 Claim becomes Allowed, each Holder of an Allowed Class 6 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 6 Claim, at the election of the Debtor or Reorganized Debtor: (A) its Pro Rata share of the General Unsecured Claims Cash Amount or (B) such other less favorable treatment as to which the Debtor or Reorganized Debtor and the Holder of such Allowed Class 6 Claim shall have agreed upon in writing.
- (c) *Voting:* Class 6 is Impaired, and Holders of Class 6 Claims are entitled to vote to accept or reject this Plan.

7. Class 7 – Junior Convertible Notes Claims

- (a) *Classification:* Class 7 consists of the Junior Convertible Notes Claims against the Debtor.
- (b) *Treatment:* On the Effective Date, all Class 7 Junior Convertible Notes Claims shall be deemed canceled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and the Holders of such Junior Convertible Notes Claims shall not receive any distribution or retain any property on account of such Junior Convertible Notes Claims. The treatment of the Junior Convertible Notes Claims under this Plan is in accordance with and gives effect to the provisions of Section 510(a) of the Bankruptcy Code.
- (c) *Voting:* Class 7 is an Impaired Class, and the Holders of Class 7 Claims will be conclusively deemed to have rejected this Plan. Therefore, Holders of Class 7 Claims will not be entitled to vote to accept or reject this Plan.

8. Class 8 – Equity Interests

- (a) *Classification:* Class 8 consists of the Equity Interests in the Debtor.
- (b) *Treatment:* On the Effective Date, all Class 8 Equity Interests shall be deemed canceled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and the Holders of such Equity Interests shall not receive any distribution or retain any property on account of such Equity Interests.
- (c) *Voting:* Class 8 is an Impaired Class, and the Holders of Class 8 Equity Interests will be conclusively deemed to have rejected this Plan. Therefore, Holders of Class 8 Claims will not be entitled to vote to accept or reject this Plan.

C. *Special Provision Governing Unimpaired Claims*

Except as otherwise provided herein, nothing under this Plan shall affect the Debtor's rights in respect of any Unimpaired Claims, including, without limitation, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. *Discharge of Claims*

Except as otherwise provided herein and effective as of the Effective Date: (i) the rights afforded herein and the treatment of all Claims and Equity Interests shall be in exchange for and in complete satisfaction, settlement, 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 Debtor or any of its assets, property, or Estate; (ii) this Plan shall bind all Holders of Claims and Equity Interests, notwithstanding whether any such Holders abstained from voting to accept or reject this Plan or voted to reject this Plan; (iii) all Claims and Equity Interests shall be satisfied, discharged, and released in full, and the Debtor's liability with respect thereto shall be extinguished completely, including any liability of the kind specified under section 502(g) of the Bankruptcy Code; and (iv) all Entities shall be precluded from asserting against the Debtor, the Debtor's Estate, the Reorganized Debtor, each of their successors and assigns, and each of 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.

**ARTICLE IV.**

**ACCEPTANCE OR REJECTION OF THE PLAN**

A. *Presumed Acceptance of Plan*

Classes 1, 2, and 3 are Unimpaired under this Plan, and are, therefore, presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code.

*B. Voting Classes*

Each Holder of an Allowed Claim as of the applicable Voting Record Date in each of the Voting Classes (Classes 4, 5 and 6) shall be entitled to vote to accept or reject this Plan.

*C. Acceptance by Impaired Classes of Claims*

Pursuant to section 1126(c) of the Bankruptcy Code and except as otherwise provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted this Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept this Plan.

*D. Presumed Rejection of Plan*

Classes 7 and 8 are Impaired and Holders of Class 7 Junior Convertible Notes Claims and Class 8 Equity Interests shall receive no distribution under this Plan on account of their Junior Convertible Notes Claims or Equity Interests and are, therefore, presumed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code.

*E. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code*

The Debtor requests confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to any Impaired Class that does not accept this Plan pursuant to section 1126 of the Bankruptcy Code. The Debtor reserves the right to modify this Plan or any Exhibit or Plan Schedule in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

**ARTICLE V.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

*A. General Settlement of Claims*

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 this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and Equity Interests and controversies resolved pursuant to this Plan.

*B. Restructuring Transactions*

On the Effective Date and without limiting any rights and remedies of the Debtor or Reorganized Debtor under this Plan or applicable law, the Reorganized Debtor shall enter into the Restructuring Transactions as follows:

1. The First Contribution. Immediately following the issuance of New Stock pursuant to Article III.B.5(c) hereof and the Rights Offering (including the issuance of any Remaining Rights Offering Shares pursuant to the Backstop Rights Purchase Agreement), each

holder of any shares of New Stock shall, automatically and without any further action on the part of any Person or order of the Bankruptcy Court, be deemed to contribute (the "First Contribution") each such share of New Stock issued to such holder pursuant to this Plan to a Delaware limited liability company to be organized to hold, indirectly through Intermediate Holdings (as defined below), 100% of the equity securities of the Debtor as of the Effective Date ("Holdings"), in exchange for the issuance by Holdings to each such holder of (x) a number of class A preferred units of Holdings (the "Class A Preferred Units") equal to the product obtained by multiplying (A) the aggregate number of Class A Preferred Units to be issued and outstanding by Holdings as of the Effective Date (after giving effect to the restructuring contemplated by this Plan, including the Rights Offering and the transactions contemplated by the Backstop Rights Purchase Agreement) times (B) the quotient obtained by dividing the number of shares of New Stock contributed to Holdings by such holder in the First Contribution, by the aggregate number of shares of New Stock contributed to Holdings in the First Contribution (such quotient, with respect to each such holder, the "Contribution Percentage"), and (y) a number of class A common units of Holdings (the "Class A Common Units") equal to the product obtained by multiplying (A) the aggregate number of Class A Common Units to be issued and outstanding by Holdings as of the Effective Date (after giving effect to the restructuring contemplated by this Plan, including the Rights Offering and the transactions contemplated by the Backstop Rights Purchase Agreement) times (B) such holder's Contribution Percentage; it being understood, for the avoidance of doubt, that the ratio of Class A Preferred Units to Class A Common Units shall be the same with respect to each such holder. The Class A Preferred Units and Class A Common Units of Holdings issued pursuant to the First Contribution are herein referred to as the "Post-Effective Date Equity Interests." In connection with the receipt by any Person of New Stock on the Effective Date pursuant to this Plan, subject to the Restructuring Transactions, and in connection with the issuance by Holdings to any Person of the Post-Effective Date Equity Interests on the Effective Date, and in each case as a condition thereto, such Person shall execute and deliver to Holdings a joinder to the Holdings LLC Agreement.

2. The Second Contribution. Immediately following the First Contribution, Holdings shall, automatically and without any further action on the part of any Person or order of the Bankruptcy Court, be deemed to contribute (the "Second Contribution") each such share of New Stock contributed to Holdings pursuant to the First Contribution to a Delaware corporation to be organized to hold 100% of the equity securities of the Debtor as of the Effective Date ("Intermediate Holdings"), in exchange for the issuance by Intermediate Holdings to Holdings of 100% of the common stock, par value \$0.01 per share, of Intermediate Holdings ("Intermediate Holdings Common Stock"), to be issued and outstanding as of the Effective Date.

C. *Corporate Existence*

The Debtor shall continue to exist after the Effective Date as a separate corporate entity, with all the powers of a corporation pursuant to the applicable law in the State of Delaware and pursuant to the Amended Organizational Documents.

D. *Vesting of Assets in the Reorganized Debtor*

Except as otherwise provided in this Plan or the Confirmation Order, on or after the Effective Date, all property and assets of the Estate (including, without limitation, Causes of

Action and, unless otherwise waived pursuant to an order of the Bankruptcy Court, Avoidance Actions) and any property and assets acquired by the Debtor pursuant hereto shall vest in the Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances. Except as may be provided herein, on and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire or dispose of property and compromise or settle any Claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly imposed by this Plan and the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor shall pay the charges that it incurs after the Effective Date for Professionals' fees, disbursements, expenses or related support services (including reasonable fees relating to the preparation of Professional fee applications) in the ordinary course of business and without application or notice to, or order of, the Bankruptcy Court.

*E. Exit Facilities and Sources of Cash for Plan Distributions*

On the Effective Date, the Reorganized Debtor shall be authorized to execute and deliver the Revolver Exit Facility Credit Agreement and the Term Loan Exit Facility Credit Agreement, as well as execute, deliver, file, record and issue any notes, documents (including UCC financing statements), or agreements in connection therewith, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than expressly required by the Revolver Exit Facility Credit Agreement or Term Loan Exit Facility Credit Agreement). Except as otherwise provided in this Plan or the Confirmation Order, all Cash necessary for the Reorganized Debtor to make payments required pursuant to this Plan will be obtained from the Reorganized Debtor's Cash balances, including Cash from operations, the proceeds of the Rights Offering and the proceeds of the Revolver Exit Facility. Cash payments to be made pursuant to this Plan will be made by the Reorganized Debtor.

*F. New Stock*

On the Effective Date, the Reorganized Debtor shall issue New Stock to Holders of Allowed Subordinated Notes Claims pursuant to the terms set forth herein. The New Stock shall be subject to dilution by the Rights Offering. The aggregate number of shares of New Stock to be issued on the Effective Date (after giving effect to all of the transactions contemplated by the Plan, including the Rights Offering) shall be 1,000,000 shares (the "Aggregate Effective Date New Stock Issuance"). After giving effect to the Restructuring Transactions, the holders of New Stock shall become the holders of the Post-Effective Date Equity Interests, which shall be subject to dilution by any equity issued in connection with the Equity Incentive Program. The Reorganized Debtor shall not be obligated to list the New Stock on a national securities exchange, nor shall Holdings be obligated to list the Post-Effective Date Equity Interests on a national securities exchange.

*G. Securityholders Agreement; Registration Agreement*

On the Effective Date, Holdings shall be authorized and directed to enter into and consummate the transactions contemplated by the Securityholders Agreement, the Registration Agreement and such documents, and any agreement or document entered into in connection



therewith, shall become effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by the Securityholders Agreement or the Registration Agreement). Except for Holdings, entry into the Securityholders Agreement and the Registration Agreement is voluntary and no Holder of Subordinated Notes Claims will be required, pursuant to this Plan, to enter into such agreements; provided, however, that any Person who, pursuant to Article V.J. hereof or otherwise with the consent of Holdings, enters into the Registration Agreement shall also, as a condition thereto, enter into the Securityholders Agreement.

H. *Rights Offering*

1. Issuance of Rights.

Each Rights Offering Participant will receive Subscription Rights to subscribe for its Pro Rata Share of the Rights Offering Shares for an aggregate purchase price equal to the applicable Subscription Payment Amount. In accordance with the Backstop Rights Purchase Agreement, the Backstop Parties have committed to purchase all Remaining Rights Offering Shares. The Rights Offering Shares, including the Remaining Rights Offering Shares, will be issued to the Rights Offering Participants and the Backstop Parties, as applicable, for an aggregate purchase price equal to the Rights Offering Amount.

2. Subscription Period.

The Rights Offering shall commence on the Subscription Commencement Date and shall expire on the Subscription Deadline. Each Rights Offering Participant that intends or desires to participate in the Rights Offering must affirmatively elect to exercise its Subscription Rights, and provide written notice thereof to the Entities specified in the Subscription Form, on or prior to the Subscription Deadline in accordance with the terms of this Plan and the Subscription Form. On the Subscription Deadline, all Remaining Rights Offering Shares shall be allocated to, and purchased by, the Backstop Parties in accordance with the terms and conditions of the Backstop Rights Purchase Agreement.

3. Exercise of Subscription Rights and Payment of Subscription Payment Amount.

On the Subscription Commencement Date, the Debtor or other applicable Distribution Agent will mail the Subscription Form to each Rights Offering Participant known as of the Rights Offering Record Date, together with appropriate instructions for the proper completion, due execution, and timely delivery of the Subscription Form, as well as instructions for the payment of the eventual Subscription Payment Amount for that portion of the Subscription Rights sought to be exercised by such Person. The Debtor may adopt, with the prior written consent of the Ad Hoc Noteholders Committee, such additional detailed procedures consistent with the provisions of this Plan to more efficiently administer the exercise of the Subscription Rights.

In order to exercise the Subscription Rights, each Rights Offering Participant must return a duly completed Subscription Form (making a binding and irrevocable commitment to participate in the Rights Offering) to the Debtor or other Entity specified in the Subscription Form so that such form is actually received by the Debtor or such other Entity on or before the Subscription Deadline. If the Debtor or such other Entity for any reason does not receive from a given holder of Subscription Rights a duly completed Subscription Form on or prior to the Subscription Deadline, then such holder shall be deemed to have forever and irrevocably relinquished and waived its right to participate in the Rights Offering. On the Subscription Notification Date, the Debtor will notify each Rights Offering Purchaser of its respective allocated portion of Rights Offering Shares, and in the case of the Backstop Parties, the Debtor will notify each Backstop Party on or before the third (3<sup>rd</sup>) Business Day after the Subscription Deadline of its portion of the Remaining Rights Offering Shares that such Backstop Party is obligated to purchase pursuant to the Backstop Rights Purchase Agreement. Each Rights Offering Purchaser (other than the Backstop Parties, whose payments will be received by the Debtor on the Effective Date in accordance with the Backstop Rights Purchase Agreement) must tender its Subscription Payment Amount to the Debtor so that it is actually received on or prior to the Subscription Payment Date. In the event the Debtor receives any payments for the exercise of Subscription Rights prior to the Effective Date, such payments shall be held in a separate account until the Effective Date. In the event the conditions to the Effective Date are not met or waived, such payments shall be returned, without accrual or payment of any interest thereon, to the applicable Rights Offering Purchaser, without reduction, offset or counter-claim.

4. Number of Rights Offering Shares.

The number of Rights Offering Shares to be sold pursuant to the Rights Offering shall be determined by dividing the Rights Offering Amount by the Subscription Price. The "Subscription Price" means the quotient obtained by dividing the Post-Money Equity Value by the aggregate number of shares of New Stock issued and outstanding on the Effective Date (after giving effect to all of the transactions contemplated by the Plan, including the Rights Offering).

5. No Transfer; Detachment Restrictions; No Revocation.

The Subscription Rights are not Transferable or detachable. Any such Transfer or detachment, or attempted Transfer or detachment, will be null and void and the Debtor will not treat any purported transferee of the Subscription Rights separate from the Subordinated Notes Claims as the holder of any Subscription Rights. Once a Rights Offering Participant has exercised any of its Subscription Rights by properly executing and delivering a Subscription Form to the Debtor or other Entity specified in the Subscription Form, such exercise may only be revoked, rescinded or annulled in the sole discretion of the Debtor or Reorganized Debtor.

6. Distribution of Rights Offering Shares.

On, or as soon as reasonably practicable after, the Effective Date, the Reorganized Debtor or other applicable Distribution Agent shall distribute the Rights Offering Shares purchased by each Rights Offering Purchaser, which shares shall be subject to the Restructuring Transactions.

7. Validity of Exercise of Subscription Rights.

All questions concerning the timeliness, validity, form, and eligibility of any exercise, or purported exercise, of Subscription Rights shall be determined by the Debtor or Reorganized Debtor. The Debtor or Reorganized Debtor, in its discretion reasonably exercised in good faith, may waive any defect or irregularity, or permit a defect or irregularity to be corrected within such times as they may determine, or reject the purported exercise of any Subscription Rights. Subscription Forms shall be deemed not to have been received or accepted until all irregularities have been waived or cured within such time as the Debtor or Reorganized Debtor determines in its discretion reasonably exercised in good faith. The Debtor or Reorganized Debtor will use commercially reasonable efforts to give written notice to any Rights Offering Participant regarding any defect or irregularity in connection with any purported exercise of Subscription Rights by such Person and may permit such defect or irregularity to be cured within such time as they may determine in good faith to be appropriate; provided, however, that neither the Debtor and Reorganized Debtor nor any of its Related Persons shall incur any liability for giving, or failing to give, such notification and opportunity to cure.

8. Rights Offering Proceeds.

The proceeds of the Rights Offering will constitute a portion of the Net Exit Proceeds, which will be used to fund Cash payments required to be made under this Plan in accordance with the Payment Waterfall.

*I. Equity Incentive Program*

As soon as practical after the Effective Date, Holdings will adopt and implement a post-Effective Date director and officer equity incentive program providing for the issuance from time to time, as approved by the board of managers of Holdings, of Post-Effective Date Equity Interests representing, in the aggregate, up to ten percent (10%) of the common equity interests of Holdings, on a fully-diluted basis, as of the Effective Date.

*J. Issuance of New Securities and Related Documentation*

On the Effective Date, each of the Reorganized Debtor, Intermediate Holdings and Holdings is authorized to and shall issue, as applicable, the New Stock, the Intermediate Holdings Common Stock and Post-Effective Date Equity Interests and any and all other securities, notes, stock, instruments, certificates, and other documents or agreements required to be issued, executed or delivered pursuant to this Plan (collectively with the Subscription Rights, the "New Securities and Documents"), in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. The issuance of the New Securities and Documents and the distribution thereof under this Plan, and distribution and exercise of the Subscription Rights, shall be exempt from registration under applicable securities laws pursuant to section 1145(a) of the Bankruptcy Code, Section 4(2) of the Securities Act and/or other applicable exemptions. Without limiting the effect of section 1145 of the Bankruptcy Code, all documents, agreements, and instruments entered into and delivered on or as of the Effective Date contemplated by or in furtherance of this Plan, including, without limitation, the Revolver Exit

Facility Credit Agreement, the Term Loan Exit Facility Credit Agreement, the Registration Agreement, the Securityholders Agreement, and any other agreement or document related to or entered into in connection with any of the foregoing, shall become, and the Backstop Rights Purchase Agreement shall remain, effective and binding in accordance with their respective terms and conditions upon the parties thereto, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity (other than as expressly required by such applicable agreement).

Upon the Effective Date, after giving effect to the transactions contemplated hereby, the authorized capital stock or other equity securities of the Reorganized Debtor shall be that number of shares of New Stock as may be designated in the Amended Organizational Documents. Without limiting the effect of section 1145 of the Bankruptcy Code, on the Effective Date, Holdings will enter into the Registration Agreement with each Person (a) who by virtue of the issuance by Holdings to such Person on the Effective Date of the Post-Effective Date Equity Interests and/or its relationship with Holdings could reasonably be deemed to be an "underwriter" or "affiliate" (as such terms are used within the meaning of applicable securities laws) of Holdings, (b) who requests in writing that Holdings execute such agreement, and (c) who enters into the Holdings LLC Agreement and the Securityholders Agreement. In connection with the distribution of Post-Effective Date Equity Interests to current or former employees of the Debtor, Holdings may take whatever actions are necessary to comply with applicable federal, state, local and international tax withholding obligations, including withholding from distributions a portion of the Post-Effective Date Equity Interests and selling such securities to satisfy tax withholding obligations including, without limitation, income, social security and Medicare taxes.

*K. Release of Liens, Claims and Equity Interests*

Except as otherwise provided herein or in any contract, instrument, release or other agreement or document entered into or delivered in connection with this Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to Article VII hereof, all Liens, Claims, Equity Interests, mortgages, deeds of trust, or other security interests against the property of the Estate shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity. Any Entity holding such Liens or interests shall, pursuant to section 1142 of the Bankruptcy Code, promptly execute and deliver to the Reorganized Debtor such instruments of termination, release, satisfaction and/or assignment (in recordable form) as may be reasonably requested by the Reorganized Debtor.

*L. Certificate of Incorporation and Bylaws*

The certificates or articles of incorporation and by-laws of the Debtor shall be amended or succeeded, as necessary, to satisfy the provisions of this Plan and the Bankruptcy Code, and shall (i) include, among other things, pursuant to section 1123(a)(6) of the Bankruptcy Code, a provision prohibiting the issuance of non-voting equity securities, but only to the extent required by section 1123(a)(6) of the Bankruptcy Code; (ii) authorize the issuance of New Stock in an

amount not less than the amount necessary to permit the distributions thereof required or contemplated by this Plan; (iii) to the extent necessary or appropriate, include restrictions on the Transfer of New Stock; and (iv) to the extent necessary or appropriate, include such provisions as may be needed to effectuate and consummate this Plan and the transactions contemplated herein. After the Effective Date, the Reorganized Debtor may amend and restate its certificate or articles of incorporation and by-laws, and other applicable organizational documents, as permitted by applicable law. The Amended Organizational Documents shall provide the Reorganized Debtor with the authority to issue shares of New Stock sufficient for the issuance of the shares pursuant to this Plan, inclusive of the Rights Offering Shares, prior to giving effect to the Restructuring Transactions.

*M. Directors and Officers of the Reorganized Debtor*

The New Board shall initially consist of up to four (4) directors, who shall consist of the Chief Executive Officer of the Reorganized Debtor and up to three (3) directors to be designated by OCM Principal Opportunities Fund IV Delaware, L.P., and, which directors shall be identified in the Plan Supplement as Plan Schedule 3. Any directors elected pursuant to this section shall be subject to approval of the Bankruptcy Court pursuant to section 1129(a)(5) of the Bankruptcy Code. As of the Effective Date, the initial officers of the Reorganized Debtor shall be the officers of the Debtor existing immediately prior to the Effective Date. Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose, at or prior to the Confirmation Hearing, the identity and affiliations of any Person proposed to serve on the initial board of directors of the Reorganized Debtor, and, to the extent such Person is an insider other than by virtue of being a director, the nature of any compensation for such Person. Each such director and officer shall serve from and after the Effective Date pursuant to applicable law and the terms of the Amended Organizational Documents and the other constituent and organizational documents of the Reorganized Debtor. The existing board of directors of the Debtor will be deemed to have resigned on and as of the Effective Date, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Entity.

*N. Corporate Action*

Each of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, may take any and all actions to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate and implement the provisions of this Plan, including, without limitation, the distribution of the securities to be issued pursuant hereto in the name of and on behalf of the Reorganized Debtor, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable or by any other Person (except for those expressly required pursuant hereto).

Prior to, on or after the Effective Date (as appropriate), all matters provided for pursuant to this Plan that would otherwise require approval of the stockholders, directors or members of the Debtor (as of prior to the Effective Date) shall be deemed to have been so approved and shall

be in effect prior to, on or after the Effective Date (as appropriate) pursuant to applicable law and without any requirement of further action by the stockholders, directors, managers or partners of the Debtor, or the need for any approvals, authorizations, actions or consents of any Person.

All matters provided for in this Plan involving the legal or corporate structure of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, and any legal or corporate action required by the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, in connection with this Plan, shall be deemed to have occurred and shall be in full force and effect in all respects, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by the security holders, officers or directors of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, or by any other Person. On the Effective Date, the appropriate officers of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, are authorized to issue, execute, and deliver, and consummate the transactions contemplated by, the contracts, agreements, documents, guarantees, pledges, consents, securities, certificates, resolutions and instruments contemplated by or described in this Plan in the name of and on behalf of the Debtor, the Reorganized Debtor, Intermediate Holdings and Holdings, as applicable, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person. The secretary and any assistant secretary of the Debtor, the Reorganized Debtor, Intermediate Holdings or Holdings, as applicable, shall be authorized to certify or attest to any of the foregoing actions.

*O. Cancellation of Notes, Certificates and Instruments*

On the Effective Date, except to the extent otherwise provided herein, all notes, stock, instruments, certificates, agreements and other documents evidencing the DIP Facility Claims, Prepetition Revolving Credit Agreement Claims, Prepetition Term Loan Credit Facility Claims, Subordinated Notes Claims, the Junior Convertible Notes Claims and the Equity Interests shall be canceled, and the obligations of the Debtor thereunder or in any way related thereto shall be fully released, terminated, extinguished and discharged, in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or any requirement of further action, vote or other approval or authorization by any Person.

On the Effective Date, except to the extent otherwise provided herein, the Indenture and Junior Convertible Notes Indenture shall each be deemed to be canceled, as permitted by section 1123(a)(5)(F) of the Bankruptcy Code, and the obligations of the Debtor thereunder shall be fully released, terminated, extinguished and discharged. The Indenture shall continue in effect solely for the purposes of: (1) allowing Holders of the Subordinated Notes Claims to receive distributions under this Plan; and (2) allowing and preserving the rights of the Indenture Trustee to (a) make distributions in satisfaction of Allowed Subordinated Notes Claims, (b) exercise its charging liens against any such distributions, and (c) seek compensation and reimbursement for any fees and expenses incurred in making such distributions. Upon completion of all such distributions, the Subordinated Notes and the Indenture shall terminate completely. From and after the Effective Date, the Indenture Trustee shall have no duties or obligations under the Indenture other than to make distributions. As of the Effective Date, the Subordinate Notes shall

be surrendered to the Indenture Trustee in accordance with the terms of the Indenture. All surrendered and canceled Subordinated Notes held by the Indenture Trustee shall be disposed of in accordance with the applicable terms and conditions of the Indenture.

*P. Distributions from General Unsecured Claims Cash Amount*

For the purposes of determining distributions to be made from the General Unsecured Claims Cash Amount, each Holder of an Allowed General Unsecured Claim will receive its Pro Rata share of the General Unsecured Claims Cash Amount, subject to the procedures set forth in Article VIII hereof, from the General Unsecured Claims Cash Escrow.

## ARTICLE VI.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

*A. Assumption and Rejection of Executory Contracts and Unexpired Leases*

On the Effective Date, all Executory Contracts and Unexpired Leases of the Debtor will be deemed assumed in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, except for those Executory Contracts (including, without limitation, employment agreements) and Unexpired Leases that:

- (i) have been rejected by order of the Bankruptcy Court;
- (ii) are the subject of a motion to reject pending on the Effective Date;
- (iii) are identified on Plan Schedule 4 hereto or in the Plan Supplement (in either case which Exhibit may be amended by the Debtor to add or remove Executory Contracts and Unexpired Leases by filing with the Bankruptcy Court an amended Exhibit and serving it on the affected contract parties at least ten (10) days prior to the Voting Deadline); or
- (iv) are rejected pursuant to the terms of this Plan.

Without amending or altering any prior order of the Bankruptcy Court approving the assumption or rejection of any Executory Contract or Unexpired Lease, entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions and rejections pursuant to sections 365(a) and 1123 of the Bankruptcy Code. To the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to this Plan (including, without limitation, any "change of control" provision) restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the Reorganized Debtor's assumption of such Executory Contract or Unexpired Lease, then such provision shall be deemed modified such that the transactions contemplated by this Plan shall not entitle the non-debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Each Executory Contract and Unexpired Lease assumed pursuant to this Article VI shall revert in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of this Plan, any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable law.

*B. Assignment of Executory Contracts or Unexpired Leases*

In the event of an assignment of an Executory Contract or Unexpired Lease, at least twenty days prior to the Confirmation Hearing, the Debtor shall serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption and assignment, which will: (a) list the applicable cure amount, if any; (b) identify the party to which the Executory Contract or Unexpired Lease will be assigned; (c) describe the procedures for filing objections thereto; and (d) explain the process by which related disputes will be resolved by the Bankruptcy Court; additionally, the Debtor shall file with the Bankruptcy Court a list of such Executory Contracts and Unexpired Leases to be assigned and the proposed cure amounts. Any applicable cure amounts shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount in Cash on the Effective Date or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assignment or any related cure amount must be filed, served and actually received by the Debtor at least five days prior to the Confirmation Hearing. Any counterparty to an Executory Contract and Unexpired Lease that fails to object timely to the proposed assignment or cure amount will be deemed to have consented to such assignment of its Executory Contract or Unexpired Lease. The Confirmation Order shall constitute an order of the Bankruptcy Court approving any proposed assignments of Executory Contracts or Unexpired Leases pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

In the event of a dispute regarding (a) the amount of any cure payment, (b) the ability of any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assigned or (c) any other matter pertaining to assignment, the applicable cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assignment. If an objection to assignment or cure amount is sustained by the Bankruptcy Court, the Reorganized Debtor in its sole option, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming and assigning it.

*C. Rejection of Executory Contracts or Unexpired Leases*

All Executory Contracts and Unexpired Leases listed on Plan Schedule 4 shall be deemed rejected as of the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving the rejections described in this Article VI pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

*D. Claims on Account of the Rejection of Executory Contracts or Unexpired Leases*

All Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, pursuant to this Plan or the Confirmation Order, if any, must be filed with the Bankruptcy Court within thirty (30) days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection.



Any Entity that is required to file a Proof of Claim arising from the rejection of an Executory Contract or an Unexpired Lease that fails to timely do so shall be forever barred, estopped and enjoined from asserting such Claim, and such Claim shall not be enforceable, against the Debtor, the Reorganized Debtor or the Estate, and the Debtor, the Reorganized Debtor and their Estate and property shall be forever discharged from any and all indebtedness and liability with respect to such Claim unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in Article X.F hereof.

*E. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases*

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to this Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. At least twenty (20) days prior to the Confirmation Hearing, the Debtor shall file and serve upon counterparties to such Executory Contracts and Unexpired Leases, a notice of the proposed assumption, which will: (1) list the applicable cure amount, if any; and (2) describe the procedures for filing objections thereto.

Any objection by a counterparty to an Executory Contract or Unexpired Lease to a proposed assumption or related cure amount must be filed, served and actually received by the Debtor at least five (5) days prior to the Confirmation Hearing. Any counterparty to an Executory Contract and Unexpired Lease that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such matters and will be deemed to have forever released and waived any objection to the proposed assumption and cure amount. In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the 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 (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption. If an objection to Cure is sustained by the Bankruptcy Court, the Debtor or Reorganized Debtor, as applicable, in its sole option, may elect to reject such Executory Contract or Unexpired Lease in lieu of assuming it:

*F. Assumption of Director and Officer Insurance Policies*

The Debtor, and upon the Effective Date, the Reorganized Debtor, shall assume all of the D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code. Unless previously effectuated by separate order entered by the Bankruptcy Court, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtor's foregoing assumption of each of the D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained herein, confirmation of this 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 shall be deemed and treated as an Executory Contract that has been assumed by the Debtor hereunder as to which no Proof of Claim need be Filed. Notwithstanding anything to the contrary contained herein, confirmation

of this Plan shall not impair or otherwise modify any rights of the Reorganized Debtor under the D&O Liability Insurance Policies.

*G. Indemnification Provisions*

Except as otherwise provided herein, all indemnification provisions currently in place (whether in the by-laws, certificate of incorporation, board resolutions, contracts, or otherwise) for the directors, officers and employees of the Debtor who served in such capacity as of the Petition Date with respect to or based upon any act or omission taken or omitted in such capacities, for or on behalf of the Debtor, will be Reinstated (or assumed, as the case may be), and shall survive effectiveness of this Plan; provided, however, that no indemnification provisions for any Non-Released Party shall survive the Effective Date.

*H. Compensation and Benefit Programs*

Except as otherwise provided in this Plan, all employment and severance policies, and all compensation and benefit plans, policies, and programs of the Debtor applicable to its employees, retirees, and non-employee directors and the employees and retirees of its subsidiaries, including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, life, and accidental death and dismemberment insurance plans, are treated as Executory Contracts under this Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. Any payment obligations under any assumed employment contracts and benefit plans that have been or purport to have been accelerated as a result of the commencement of this Chapter 11 Case or the consummation of any transactions contemplated by this Plan shall be Reinstated and such acceleration shall be rescinded and deemed not to have occurred.

The Debtor established and maintained a pension plan for certain of its employees known as the Dayton Superior Corporation Master Pension Plan (the "Pension Plan"). The Pension Benefit Guaranty Corporation ("PBGC"), a United States Government corporation, guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV of ERISA. Under this Plan, the Pension Plan will not be terminated, and the Reorganized Debtor will assume and continue to maintain the Pension Plan in accordance with applicable law. Nothing in this Plan will be construed as discharging, releasing, or relieving the Debtor, or its successors, including the Reorganized Debtor, or any party, in any capacity, from any liability for minimum funding under 26 U.S.C. §§ 412 and 430 and 29 U.S.C. §§ 1082 and 1083 or liability under 29 U.S.C. §§ 1362 and 1307 with respect to the Pension Plan or the PBGC. The PBGC and the Pension Plan will not be enjoined or precluded from seeking to enforce such liability as a result of any provision of this Plan or the Confirmation Order.

*I. Workers' Compensation Benefits*

Except as otherwise provided in this Plan, as of the Effective Date, the Debtor and the Reorganized Debtor shall continue to honor their obligations under: (i) all applicable workers' compensation laws in states in which the Reorganized Debtor operates; and (ii) the Debtor's written contracts, agreements, agreements of indemnity, self-insurer workers' compensation bonds, and any other policies, programs, and plans regarding or relating to workers'

compensation and workers' compensation insurance. All such contracts and agreements are treated as Executory Contracts under this Plan and on the Effective Date will be assumed pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code. Notwithstanding anything to the contrary contained herein, confirmation of this Plan shall not impair or otherwise modify any rights of the Reorganized Debtor under any such contracts, agreements, policies, programs or plans regarding or relating to workers' compensation or workers' compensation insurance.

## ARTICLE VII.

### PROVISIONS GOVERNING DISTRIBUTIONS

#### A. *Distributions for Claims Allowed as of the Effective Date*

Except as otherwise provided in the "Treatment" sections in Article III hereof or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Initial Distribution Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Distributions on account of Disputed Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Article VIII hereof.

#### B. *No Postpetition Interest on Claims*

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy law (including, without limitation, as required pursuant to section 506(b) or section 511 of the Bankruptcy Code), postpetition interest shall not accrue or be paid on any Claims, and no Holder of a Claim (other than a Holder of a Secured Tax Claim, DIP Facility Claim or a Prepetition Term Loan Credit Facility Claim with respect to such applicable Claim) shall be entitled to interest accruing on or after the Petition Date on any Claim.

#### C. *Distributions by Reorganized Debtor or Other Applicable Distribution Agent*

Other than as specifically set forth below, the Reorganized Debtor or other applicable Distribution Agent shall make all distributions required to be distributed under this Plan. Distributions on account of the DIP Facility Claims, Prepetition Term Loan Credit Facility Claims and Subordinated Notes Claims shall be made to the DIP Agent, the Prepetition Term Loan Agent and the Indenture Trustee, respectively. The Reorganized Debtor may employ or contract with other entities to assist in or make the distributions required by this Plan.

#### D. *Delivery and Distributions and Undeliverable or Unclaimed Distributions*

##### 1. Record Date for Distributions

On the Distribution Record Date, the Claims Register shall be closed. Accordingly, the Reorganized Debtor or other applicable Distribution Agent will have no obligation to recognize

the Transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes herein to recognize and distribute securities, property, notices and other documents only to those Holders of Allowed Claims who are Holders of such Claims, or participants therein, as of the close of business on the Distribution Record Date. The Reorganized Debtor or other applicable Distribution Agent shall be entitled to recognize and deal for all purposes under this Plan with only those record holders stated on the Claims Register, or their books and records, as of the close of business on the Distribution Record Date. For purposes of Subordinated Notes Claims, the record Holder thereof as of the Distribution Record Date shall be the Indenture Trustee.

## 2. Delivery of Distributions in General

Except as otherwise provided herein, the Debtor, the Reorganized Debtor or other applicable Distribution Agent, as applicable, shall make distributions to Holders of Allowed Claims, or in care of their authorized agents, as appropriate, at the address for each such Holder or agent as indicated on the Debtor's books and records as of the date of any such distribution; *provided, however*, that the manner of such distributions shall be determined in the sole discretion of the Debtor or the Reorganized Debtor, as applicable; and *provided further*, that the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder.

All distributions to Holders of Subordinated Notes Claims shall be governed by the Indenture and shall be deemed completed when made to the Indenture Trustee. The Indenture Trustee may effect any distribution to Holders of Subordinated Notes Claims through the book-entry transfer facilities of The Depository Trust Company, who shall distribute the same to its participants in accordance with their respective holdings of Subordinated Notes as of the Distribution Record Date.

## 3. Minimum Distributions

Notwithstanding anything herein to the contrary, no Distribution Agent shall be required to make distributions or payments of less than \$25.00 (whether in Cash or otherwise) or to make partial distributions or payments of fractions of dollars. Whenever any payment or distribution of a fraction of a dollar or share of New Stock under this Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar or share of New Stock (up or down), with half dollars and half shares of New Stock or less being rounded down.

No Distribution Agent shall have any obligation to make a distribution on account of an Allowed Claim if: (a) the aggregate amount of all distributions authorized to be made on the Subsequent Distribution Date in question is or has an economic value less than \$25,000, unless such distribution is a final distribution; or (b) the amount to be distributed to the specific Holder of an Allowed Claim on such Subsequent Distribution Date does not constitute a final distribution to such Holder and is or has an economic value less than \$25.00, which shall be treated as an undeliverable distribution under Article VII.D.4 below.

#### 4. Undeliverable Distributions

##### (a) Holding of Certain Undeliverable Distributions

If the distribution to any Holder of an Allowed Claim is returned to the Distribution Agent as undeliverable or is otherwise unclaimed, no further distributions shall be made to such Holder unless and until the Distribution Agent is notified in writing of such Holder's then current address, at which time all currently due missed distributions shall be made to such Holder on the next Subsequent Distribution Date. Undeliverable distributions shall remain in the possession of the Reorganized Debtor, subject to Article VII.D.4(b) hereof, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends or other accruals of any kind on account of their distribution being undeliverable.

##### (b) Failure to Claim Undeliverable Distributions

Any Holder of an Allowed Claim (or any successor or assignee or other Person or Entity claiming by, through, or on behalf of, such Holder) that does not assert a right pursuant to this Plan for an undeliverable or unclaimed distribution within one (1) year after the later of the Effective Date or the date such distribution is due shall be deemed to have forfeited its rights for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such rights for an undeliverable or unclaimed distribution against the Debtor or its Estate, the Reorganized Debtor or its property. In such cases, any Cash for distribution on account of such rights for undeliverable or unclaimed distributions shall become the property of the Estates free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary. Any Cash, New Stock and/or other New Securities and Documents or other property held for distribution on account of such Claim shall be canceled and of no further force or effect. Nothing contained in this Plan shall require the Debtor, Reorganized Debtor, or any Distribution Agent to attempt to locate any Holder of an Allowed Claim.

##### (c) Failure to Present Checks

Checks issued by the Distribution Agent on account of Allowed Claims shall be null and void if not negotiated within 180 days after the issuance of such check. In an effort to ensure that all Holders of Allowed Claims receive their allocated distributions, no later than 180 days after the issuance of such checks, the Reorganized Debtor shall File with the Bankruptcy Court a list of the Holders of any un-negotiated checks. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtor for as long as the Chapter 11 Case stays open. Requests for reissuance of any check shall be made directly to the Distribution Agent by the Holder of the relevant Allowed Claim with respect to which such check originally was issued. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 365 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and be discharged and forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtor or its property. In such cases, any Cash held for payment on account of such Claims shall be property of the Reorganized Debtor, free of any Claims of such Holder with

respect thereto. Nothing contained herein shall require the Reorganized Debtor to attempt to locate any Holder of an Allowed Claim.

*E. Compliance with Tax Requirements/Allocations*

In connection with this Plan and all distributions hereunder, the Reorganized Debtor or other applicable Distribution Agent shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtor or other applicable Distribution Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements. All persons holding Claims shall be required to provide any information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of this Plan to the contrary, each Holder of an Allowed Claim shall have the 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. Any Cash, New Stock, New Securities and Documents and/or other consideration or property to be distributed pursuant to this Plan shall, pending the implementation of such arrangements, be treated as an undeliverable distribution pursuant to Article VII.D.4 of this Plan.

*F. Allocation of Plan Distributions Between Principal and Interest*

To the extent that any Allowed Claim entitled to a distribution under this Plan is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, to the extent permitted by applicable law, be allocated for income tax purposes to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

*G. Means of Cash Payment*

Payments of Cash made pursuant to this Plan shall be in U.S. dollars and shall be made, at the option and in the sole discretion of the Reorganized Debtor, by (a) checks drawn on, or (b) wire transfer from, a domestic bank selected by the Reorganized Debtor. Cash payments to foreign creditors may be made, at the option of the Reorganized Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction.

*H. Timing and Calculation of Amounts to Be Distributed*

On the Initial Distribution Date (or if a Claim is not an Allowed Claim on the Effective Date, on the Subsequent Distribution Date occurring after such Claim becomes an Allowed Claim, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim against the Debtor shall receive the full amount of the distributions that this Plan provides for Allowed Claims in the applicable Class. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in the applicable class treatment or in Article VIII hereof. Except as otherwise provided herein, Holders of Claims shall not be entitled to interest, dividends or accruals on the distributions

provided for herein, regardless of whether such distributions are delivered on or at any time after the Effective Date.

*I. Setoffs*

Without altering or limiting any of the rights and remedies of the Debtor and Reorganized Debtor under section 502(d) of the Bankruptcy Code, all of which rights and remedies are hereby reserved, the Debtor and the Reorganized Debtor may, but shall not be required to, withhold (but not setoff except as set forth below) from the distributions called for hereunder on account of any Allowed Claim an amount equal to any claims, Causes of Action and Litigation Claims of any nature that the Debtor or the Reorganized Debtor may hold against the Holder of any such Allowed Claim. In the event that any such claims, Causes of Action or Litigation Claims are adjudicated by Final Order or otherwise resolved against the applicable Holder, the Debtor and Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim), the amount of such adjudicated or resolved claims, Causes of Action or Litigation Claims. Neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such claims, Causes of Action or Litigation Claims. Notwithstanding anything to the contrary contained herein, the Debtor and the Reorganized Debtor shall not offset any amounts against Allowed Subordinated Notes Claims.

*J. Surrender of Cancelled Instruments or Securities*

As a condition precedent to receiving any distribution pursuant to this Plan on account of an Allowed Claim evidenced by the instruments, securities, notes, or other documentation canceled pursuant to Article V.O hereto, the Holder of such Claim shall tender the applicable instruments, securities, notes or other documentation evidencing such Claim to the Reorganized Debtor or other applicable Distribution Agent unless waived in writing by the Debtor or the Reorganized Debtor, as applicable.

Any Holder of a Claim that is required, but that fails, to surrender or is deemed to have failed to surrender the applicable note or security required to be tendered hereunder within one (1) year after the Effective Date shall have its Claim and its distribution pursuant to this Plan on account of such Claim discharged and shall be forever barred from asserting any such Claim against the Reorganized Debtor or its property. In such cases, any Cash, New Stock and/or other New Securities and Documents or other property held for distribution on account of such Claim shall be canceled and of no further force or effect.

*K. Lost, Stolen, Mutilated or Destroyed Securities*

In addition to any requirements under any applicable agreement and applicable law, any Holder of a Claim evidenced by a security or note that has been lost, stolen, mutilated, or destroyed shall, in lieu of surrendering such security or note to the extent required by this Plan, deliver to the Reorganized Debtor and other applicable Distribution Agent: (x) evidence reasonably satisfactory to the Reorganized Debtor and other applicable Distribution Agent of

such loss, theft, mutilation, or destruction; and (y) such security or indemnity as may be required by the Reorganized Debtor and other applicable Distribution Agent to hold such party harmless from any damages, liabilities, or costs incurred in treating such individual as a Holder of an Allowed Claim. Upon compliance with this Article VII.K as determined by the Debtor or Reorganized Debtor by a Holder of a Claim evidenced by a security or note, such Holder shall, for all purposes under this Plan, be deemed to have surrendered such security or note to the Reorganized Debtor and other applicable Distribution Agent.

## ARTICLE VIII.

### PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

#### A. *Resolution of Disputed Claims*

##### 1. Allowance of Claims

After the Effective Date, the Reorganized Debtor shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim, except with respect to any Claim deemed Allowed under this Plan. Except as expressly provided in this Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including, without limitation, the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under this Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including, without limitation, the Confirmation Order, in the Chapter 11 Case allowing such Claim.

##### 2. Prosecution of Objections to Claims

After the Confirmation Date but before the Effective Date, the Debtor, and after the Effective Date, the Reorganized Debtor, shall have the exclusive authority to File objections to Claims and settle, compromise, withdraw or litigate to judgment objections to any and all Claims, regardless of whether such Claims are in an Unimpaired Class or otherwise; provided, however, this provision shall not apply to Professional Fee Claims. From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtor shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order or approval of the Bankruptcy Court.

##### 3. Claims Estimation

After the Confirmation Date but before the Effective Date, the Debtor, and after the Effective Date, the Reorganized Debtor may, at any time, request that the Bankruptcy Court estimate (a) any Disputed Claim pursuant to applicable law and (b) any contingent or unliquidated Claim pursuant to applicable law, including, without limitation, section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any Disputed Claim, contingent Claim or unliquidated Claim, including during the litigation concerning any objection to any Claim or during the pendency of any appeal



relating to any such objection. All of the aforementioned Claims and objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court. The rights and objections of all parties are reserved in connection with any such estimation proceeding.

4. Deadline to File Objections to Claims

Any objections to Claims shall be Filed no later than the Claims Objection Bar Date. Moreover, notwithstanding the expiration of the Claims Objection Bar Date, the Debtor or Reorganized Debtor shall continue to have the right to amend any claims objections and to file and prosecute supplemental objections and counterclaims to a Disputed Claim until such Disputed Claim is Allowed.

B. *No Distributions Pending Allowance*

Notwithstanding any other provision of this Plan to the contrary, no payments or distributions of any kind or nature shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim has become an Allowed Claim.

C. *Distributions on Account of Disputed Claims Once They Are Allowed and Additional Distributions on Account of Previously Allowed Claims*

On each Subsequent Distribution Date (or such earlier date as determined by the Reorganized Debtor in its sole discretion), the Reorganized Debtor or other applicable Distribution Agent will make distributions (a) on account of any Disputed Claim that has become an Allowed Claim during the preceding calendar quarter, and (b) on account of previously Allowed Claims of property that would have been distributed to the Holders of such Claim on the dates distributions previously were made to Holders of Allowed Claims in such Class had the Disputed Claims that have become Allowed Claims or disallowed by Final Order of the Bankruptcy Court been Allowed or disallowed, as applicable, on such dates. Such distributions will be made pursuant to the applicable provisions of Article III of this Plan.

D. *Reserve for Disputed General Unsecured Claims*

Prior to making any distributions of Cash to Holders of Allowed General Unsecured Claims from the General Unsecured Claims Cash Escrow, the Reorganized Debtor or other applicable Distribution Agent shall establish appropriate reserves for Disputed General Unsecured Claims by withholding from any such distributions an amount equal to one hundred percent (100%) of distributions to which Holders of Disputed General Unsecured Claims would be entitled to under this Plan as of such date as if such Disputed General Unsecured Claims were Allowed in full in the amount asserted by the Holder thereof in its respective timely filed Proof of Claim; provided, however, that the Debtor and the Reorganized Debtor shall have the right to file a motion seeking to estimate such amounts. The Reorganized Debtor or other applicable Distribution Agent shall also establish appropriate reserves for Disputed Claims in other Classes as it determines necessary and appropriate.

**ARTICLE IX.**

**CONDITIONS PRECEDENT TO CONFIRMATION  
AND CONSUMMATION OF THE PLAN**

*A. Conditions Precedent to Confirmation*

It shall be a condition to confirmation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof:

1. The Bankruptcy Court shall have entered a Final Order in form and in substance satisfactory to the Debtor and the Ad Hoc Noteholders Committee approving the Disclosure Statement with respect to this Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

2. This Plan and all schedules, documents, supplements and exhibits to this Plan shall have been filed in form and substance acceptable to the Debtor and the Ad Hoc Noteholders Committee.

3. The proposed Confirmation Order shall be in form and substance acceptable to the Debtor and the Ad Hoc Noteholders Committee.

4. The board of directors of the Reorganized Debtor shall have been selected.

*B. Conditions Precedent to Consummation*

It shall be a condition to Consummation of this Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.C hereof.

1. The Confirmation Order shall have been entered and become a Final Order in a form and in substance satisfactory to the Debtor and the Ad Hoc Noteholders Committee and no stay of the Confirmation Order shall have been entered. The Confirmation Order shall provide that, among other things, the Debtor or the Reorganized Debtor, as appropriate, is authorized and directed to take all actions necessary or appropriate to consummate this Plan, including, without limitation, entering into, implementing and consummating the contracts, instruments, releases, leases, indentures and other agreements or documents created in connection with or described in this Plan.

2. The Bankruptcy Court shall have entered one or more Final Orders (which may include the Confirmation Order) authorizing the assumption and rejection of Executory Contracts and Unexpired Leases by the Debtor as contemplated in this Plan and the Plan Supplement.

3. All documents and agreements necessary to implement this Plan, including, without limitation, the Revolver Exit Facility, the Term Loan Exit Facility and the Backstop Rights Purchase Agreement, in each case in form and substance acceptable to the Debtor and the

Ad Hoc Noteholders Committee, shall have (a) been tendered for delivery, and (b) been effected or executed by all Entities party thereto. All conditions precedent all to such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents or agreements.

4. All consents, actions, documents, certificates and agreements necessary to implement this Plan shall have been effected or executed and delivered to the required parties and, to the extent required, Filed with the applicable governmental units in accordance with applicable laws.

5. The Debtor shall have received the Rights Offering Amount, in Cash, net of any fees or expenses authorized by Order of the Bankruptcy Court to be paid from the Rights Offering Amount.

6. The Confirmation Date shall have occurred.

*C. Waiver of Conditions*

The conditions to confirmation of this Plan and to Consummation of this Plan set forth in this Article IX may be waived by the Debtor with the consent of the Ad Hoc Noteholders Committee (not to be unreasonably withheld) without notice, leave or order of the Bankruptcy Court or any formal action other than proceeding to confirm or consummate this Plan. The failure to satisfy or waive a condition to Consummation may be asserted by the Debtor or the Reorganized Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied. The failure of the Debtor or Reorganized Debtor to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each right shall be deemed an ongoing right that may be asserted at any time.

*D. Effect of Non Occurrence of Conditions to Consummation*

If the Consummation of this Plan does not occur, this Plan shall be null and void in all respects and nothing contained in this Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against or Equity Interests in the Debtor; (2) prejudice in any manner the rights of the Debtor, any Holders or any other Entity; (3) constitute an Allowance of any Claim or Equity Interest; or (4) constitute an admission, acknowledgment, offer or undertaking by the Debtor, any Holders or any other Entity in any respect.

## ARTICLE X.

### RELEASE, INJUNCTION AND RELATED PROVISIONS

*A. General*

Notwithstanding anything contained herein to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective distributions and treatments hereunder, takes into account the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, section 510 of the

Bankruptcy Code or otherwise. Pursuant to the terms contained in this Plan, among other things, the subordination provisions contained in the Indenture is hereby eliminated and each holder of a Subordinated Notes Claim shall receive and be entitled to retain the property as set forth in this Plan. As of the Effective Date, any and all contractual, legal and equitable subordination rights, whether arising under general principles of equitable subordination, section 510 of the Bankruptcy Code or otherwise, relating to the allowance, classification and treatment of all Allowed Claims and their respective distributions and treatments hereunder are settled, compromised, terminated and released pursuant hereto; provided, however, that nothing contained herein shall preclude any Person or Entity from exercising their rights pursuant to and consistent with the terms of this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan.

In accordance with the provisions of this Plan, including Article VIII hereof, and pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date (1) the Reorganized Debtor may, in its sole and absolute discretion, compromise and settle Claims against it and (2) the Reorganized Debtor may, in its respective sole and absolute discretion, compromise and settle Causes of Action against other Entities.

B. *Release*

**RELEASE BY THE DEBTOR.** EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE DEBTOR AND REORGANIZED DEBTOR, IN THEIR INDIVIDUAL CAPACITY AND AS DEBTOR-IN-POSSESSION, ~~AND THE HOLDERS OF CLAIMS OR EQUITY INTERESTS, AND EACH OF THEIR RESPECTIVE RELATED PERSONS~~ (COLLECTIVELY, THE "**DEBTOR RELEASING PARTIES**") WILL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER PROVIDED A FULL DISCHARGE, WAIVER AND RELEASE TO THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER RELEASED, WAIVED AND DISCHARGED BY THE **DEBTOR RELEASING PARTIES**) AND THEIR RESPECTIVE PROPERTIES FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LITIGATION CLAIMS AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY IN WHOLE OR IN PART TO THE DEBTOR, THE CHAPTER 11 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR THE SOLICITATION OF VOTES ON THIS PLAN THAT SUCH **DEBTOR RELEASING PARTY** WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR THAT ANY HOLDER OF A CLAIM OR EQUITY INTEREST OR OTHER ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT FOR OR ON BEHALF OF THE DEBTOR, ITS ESTATE OR THE REORGANIZED DEBTOR (WHETHER

DIRECTLY OR DERIVATIVELY) AGAINST ANY OF THE RELEASED PARTIES; PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE SHALL NOT OPERATE TO WAIVE OR RELEASE (I) ANY CAUSES OF ACTION EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN OR THE PLAN SUPPLEMENT; (II) ANY CAUSES OF ACTION ARISING FROM GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT AS DETERMINED BY FINAL ORDER OF THE BANKRUPTCY COURT OR ANY OTHER COURT OF COMPETENT JURISDICTION; AND/OR (III) THE RIGHTS OF SUCH DEBTOR RELEASING PARTY TO ENFORCE THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, INDENTURES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO FINAL ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL BE EFFECTIVE AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR ORDER OF THE BANKRUPTCY COURT. ACT OR ACTION UNDER APPLICABLE LAW, REGULATION, ORDER, OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR APPROVAL OF ANY PERSON AND THE CONFIRMATION ORDER WILL PERMANENTLY ENJOIN THE COMMENCEMENT OR PROSECUTION BY ANY PERSON OR ENTITY, WHETHER DIRECTLY, DERIVATIVELY OR OTHERWISE, OF ANY CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, OR LIABILITIES RELEASED PURSUANT TO THIS RELEASE.

RELEASE BY THIRD PARTIES. EFFECTIVE AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION PROVIDED BY EACH OF THE RELEASED PARTIES, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, AND WITHOUT LIMITING THE SCOPE OF THE RELEASE PROVIDED BY THE DEBTOR ABOVE, EACH HOLDER OF A CLAIM THAT HAS AFFIRMATIVELY VOTED TO ACCEPT THE PLAN (COLLECTIVELY, THE "NON-DEBTOR RELEASING PARTIES" AND TOGETHER WITH THE DEBTOR RELEASING PARTIES, THE "RELEASING PARTIES") WILL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER PROVIDED A FULL DISCHARGE, WAIVER AND RELEASE TO THE RELEASED PARTIES (AND EACH SUCH RELEASED PARTY SO RELEASED SHALL BE DEEMED FOREVER RELEASED, WAIVED AND DISCHARGED BY THE NON-DEBTOR RELEASING PARTIES) AND THEIR RESPECTIVE PROPERTIES FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LITIGATION CLAIMS AND ANY OTHER DEBTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, ACTIONS, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING AS OF THE EFFECTIVE DATE OR THEREAFTER ARISING, IN LAW, AT EQUITY, WHETHER FOR TORT, CONTRACT, OR OTHERWISE, BASED IN WHOLE OR IN PART UPON ANY ACT OR OMISSION, TRANSACTION, OR OTHER OCCURRENCE OR CIRCUMSTANCES EXISTING OR TAKING PLACE PRIOR TO OR ON THE EFFECTIVE DATE ARISING FROM OR RELATED IN ANY WAY IN WHOLE OR IN PART TO THE DEBTOR, THE CHAPTER 11 CASE, THE DISCLOSURE STATEMENT, THIS PLAN OR THE SOLICITATION OF VOTES ON THIS PLAN THAT SUCH NON-DEBTOR RELEASING PARTY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT

(WHETHER INDIVIDUALLY OR COLLECTIVELY) AGAINST ANY OF THE RELEASED PARTIES; PROVIDED, HOWEVER, THAT THE FOREGOING PROVISIONS OF THIS RELEASE SHALL NOT OPERATE TO WAIVE OR RELEASE (I) ANY CAUSES OF ACTION EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN OR THE PLAN SUPPLEMENT; (II) ANY CAUSES OF ACTION ARISING FROM GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT AS DETERMINED BY FINAL ORDER OF THE BANKRUPTCY COURT OR ANY OTHER COURT OF COMPETENT JURISDICTION; AND/OR (III) THE RIGHTS OF SUCH NON-DEBTOR RELEASING PARTY TO ENFORCE THIS PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, INDENTURES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED UNDER OR IN CONNECTION WITH THIS PLAN OR ASSUMED PURSUANT TO THIS PLAN OR ASSUMED PURSUANT TO FINAL ORDER OF THE BANKRUPTCY COURT. THE FOREGOING RELEASE SHALL BE EFFECTIVE AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR ORDER OF THE BANKRUPTCY COURT, ACT OR ACTION UNDER APPLICABLE LAW, REGULATION, ORDER, OR RULE OR THE VOTE, CONSENT, AUTHORIZATION OR APPROVAL OF ANY PERSON AND THE CONFIRMATION ORDER WILL PERMANENTLY ENJOIN THE COMMENCEMENT OR PROSECUTION BY ANY PERSON OR ENTITY, WHETHER DIRECTLY, DERIVATIVELY OR OTHERWISE, OF ANY CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION, OR LIABILITIES RELEASED PURSUANT TO THIS RELEASE.

*C. Discharge of Claims*

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by this Plan or the Confirmation Order, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and Equity Interests of any kind or nature whatsoever against the Debtor or any of its assets or properties, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by this Plan or the Confirmation Order, upon the Effective Date, the Debtor and its Estate shall be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code.

*D. Exculpation*

The Exculpated Parties shall neither have nor incur any liability to any Entity for any claims or Causes of Action arising on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the Consummation of this Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in

contemplation of the restructuring of the Debtor, the approval of the Disclosure Statement or confirmation or Consummation of this Plan; provided, however, that the foregoing provisions shall have no effect on the liability of any Entity that results from any such act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence, fraud or willful misconduct; provided, further, that each Exculpated Party shall be entitled to rely upon the advice of counsel concerning its duties pursuant to, or in connection with, the above referenced documents, actions or inactions; provided, further, however that the foregoing provisions shall not apply to any acts, omissions, Claims, Causes of Action or other obligations expressly set forth in and preserved by this Plan or the Plan Supplement.

E. Preservation of Rights of Action

1. Maintenance of Causes of Action

Except as otherwise provided in this Article X or elsewhere in this Plan or the Confirmation Order, after the Effective Date, the Reorganized Debtor shall retain all rights to commence, pursue, litigate or settle, as appropriate, any and all Causes of Action and Litigation Claims, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Case. The Reorganized Debtor, as the successors in interest to the Debtor and the Estate, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of the Litigation Claims without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Unless a Cause of Action or Litigation Claim against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, relinquished, released, compromised or settled in this Plan or any Final Order (including, without limitation, the Confirmation Order), the Debtor expressly reserves such Cause of Action or Litigation Claim for later adjudication by the Debtor or the Reorganized Debtor (including, without limitation, Causes of Action and Litigation Claims not specifically identified or of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Litigation Claims upon or after the confirmation of this Plan or Consummation of this Plan based on the Disclosure Statement, this Plan or the Confirmation Order, except where such Causes of Action or Litigation Claims have been expressly released in this Plan (including, without limitation, and for the avoidance of doubt, the Release contained in Article X.B hereof) or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtor and the Reorganized Debtor expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant or an interested party, against any Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

*F. Injunction*

EXCEPT AS OTHERWISE PROVIDED IN THIS PLAN, FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY SUIT, ACTION OR OTHER PROCEEDING, OR CREATING, PERFECTING OR ENFORCING ANY LIEN OF ANY KIND, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, EQUITY INTEREST, OR REMEDY RELEASED OR TO BE RELEASED, EXCULPATED OR TO BE EXCULPATED, OR DISCHARGED OR TO BE DISCHARGED PURSUANT TO THIS PLAN OR THE CONFIRMATION ORDER. BY ACCEPTING DISTRIBUTIONS PURSUANT TO THIS PLAN, EACH HOLDER OF AN ALLOWED CLAIM WILL BE DEEMED TO HAVE SPECIFICALLY CONSENTED TO THIS INJUNCTION. ALL INJUNCTIONS OR STAYS PROVIDED FOR IN THE CHAPTER 11 CASE UNDER SECTION 105 OR 362 OF THE BANKRUPTCY CODE, OR OTHERWISE, AND IN EXISTENCE ON THE CONFIRMATION DATE, SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL THE EFFECTIVE DATE.

*G. Binding Nature Of Plan*

ON THE EFFECTIVE DATE, AND EFFECTIVE AS OF THE EFFECTIVE DATE, THIS PLAN SHALL BIND, AND SHALL BE DEEMED BINDING UPON, ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR, AND SUCH HOLDER'S RESPECTIVE SUCCESSORS AND ASSIGNS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING WHETHER OR NOT SUCH HOLDER (I) WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THIS PLAN, (II) HAS FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASE OR (III) FAILED TO VOTE TO ACCEPT OR REJECT THIS PLAN OR AFFIRMATIVELY VOTED TO REJECT THIS PLAN.

**ARTICLE XI.**

**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, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor and this Plan as legally permissible, including, without limitation, jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any Claim;

2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or this Plan, for periods ending on or



before the Confirmation Date; *provided, however*, that, from and after the Effective Date, the Reorganized Debtor shall pay Professionals in the ordinary course of business for any work performed after the Effective Date and such payment shall not be subject to the approval of the Bankruptcy Court;

3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor or Reorganized Debtor may be liable and to adjudicate and, if necessary, liquidate, any Claims arising therefrom, including, without limitation, those matters related to any amendment to this Plan after the Effective Date to add Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed;

4. resolve any issues related to any matters adjudicated in the Chapter 11 Case;

5. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;

6. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Reorganized Debtor after the Effective Date, *provided* that the Reorganized Debtor shall reserve the right to commence actions in all appropriate forums and jurisdictions;

7. enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all other contracts, instruments, releases, indentures and other agreements or documents adopted in connection with this Plan, the Plan Supplement or the Disclosure Statement;

8. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of this Plan or any Entity's obligations incurred in connection with this Plan; *provided, however* that any dispute arising under or in connection with the Revolver Exit Facility or the Term Loan Exit Facility shall be dealt with in accordance with the provisions of the applicable document;

9. hear and determine all Causes of Action that are pending as of the Effective Date or that may be commenced in the future;

10. issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of this Plan, except as otherwise provided in this Plan;

11. enforce the terms and condition of this Plan and the Confirmation Order;

12. resolve any cases, controversies, suits or disputes with respect to the Release, the Exculpation, the Indemnification and other provisions contained in Article X hereof and enter

such orders or take such others actions as may be necessary or appropriate to implement or enforce all such releases, injunctions and other provisions;

13. hear and determine the Litigation Claims by or on behalf of the Debtor or Reorganized Debtor;

14. enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

15. resolve any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document adopted in connection with this Plan or the Disclosure Statement; *provided, however*, that any dispute arising under or in connection with the Revolver Exit Facility or the Term Loan Exit Facility shall be dealt with in accordance with the provisions of the applicable document; and

16. enter an order concluding or closing the Chapter 11 Case.

## ARTICLE XII.

### MISCELLANEOUS PROVISIONS

#### A. *Dissolution of the Committee*

After the Effective Date, the Committee shall dissolve automatically and its members shall be released and discharged from all rights, duties and responsibilities arising from, or related to, the Chapter 11 Case.

#### B. *Payment of Statutory Fees*

All outstanding fees payable pursuant to section 1930 of title 28, United States Code shall be paid on the Effective Date. All such fees payable after the Effective Date shall be paid prior to the closing of the Chapter 11 Case when due or as soon thereafter as practicable.

#### C. *Payment of Fees and Expenses of Indenture Trustee*

On the Effective Date or as soon as reasonably practicable thereafter (and, thereafter, upon request by the Indenture Trustee with respect to fees and expenses of the Indenture Trustee relating to post-Effective Date service under this Plan), the Reorganized Debtor shall pay in full in Cash all outstanding reasonable and documented fees and expenses of the Indenture Trustee and its counsel.

#### D. *Modification of Plan*

Effective as of the date hereof and subject to the limitations and rights contained in this Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan prior to the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtor or the Reorganized Debtor, as

applicable, may, upon order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan. A Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

*E. Revocation of Plan*

The Debtor reserves the right to revoke or withdraw this Plan prior to the Confirmation Date and to File subsequent chapter 11 plans. If the Debtor revokes or withdraws this Plan, or if confirmation of this Plan or Consummation of this Plan does not occur, then: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by this Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3) nothing contained in this Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other Entity.

*F. Successors and Assigns*

This Plan shall be binding upon and inure to the benefit of the Debtor, and its respective successors and assigns, including, without limitation, the Reorganized Debtor. The rights, benefits, and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of such Person or Entity.

*G. Reservation of Rights*

Except as expressly set forth herein, this Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order and this Plan is Consummated. Neither the filing of this Plan, any statement or provision contained herein, nor the taking of any action by the Debtor or any other Entity with respect to this Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

*H. Further Assurances*

The Debtor or the Reorganized Debtor, as applicable, all Holders of Claims receiving distributions hereunder and all other Entities 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 this Plan or the Confirmation Order. On or before the Effective Date, the Debtor shall File with the Bankruptcy Court all agreements and

other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

*I. Severability*

If, prior to the Confirmation Date, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court will 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 will then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this 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 will constitute a judicial determination and will provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

*J. Service of Documents*

All notices, requests, and demands to or upon the Debtor or the Reorganized Debtor to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Dayton Superior Corporation  
Attn: Eric R. Zimmerman & Edward J. Puisis  
7777 Washington Village Drive, Suite 130  
Dayton, Ohio 45459  
Fax: 937-428-9115

**with copies to:**

Latham & Watkins LLP  
885 Third Avenue  
New York, New York 10022  
Attn: Keith A. Simon  
Fax: 212-751-4864

*K. Exemption from Certain Transfer Taxes Pursuant to Section 1146(a) of the Bankruptcy Code*

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant hereto shall not be subject to any Stamp or Similar Tax or governmental assessment in the United States, and the Confirmation Order shall direct the appropriate federal, state or local governmental officials or agents to forgo the collection of any such Stamp or Similar Tax or governmental assessment and to accept for filing and recordation instruments or other documents

pursuant to such transfers of property without the payment of any such Stamp or Similar Tax or governmental assessment. Such exemption specifically applies, without limitation, to (i) all actions, agreements and documents necessary to evidence and implement the provisions of and the distributions to be made under this Plan, including the Revolver Exit Facility and the Term Loan Exit Facility, (ii) the issuance of New Stock (both under this Plan and pursuant to the Rights Offering) and (iii) the maintenance or creation of security or any Lien as contemplated by the Revolver Exit Facility and the Term Loan Exit Facility.

*L. Governing Law*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law is applicable, or to the extent that an exhibit or schedule to this Plan provides otherwise, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of Delaware, without giving effect to the principles of conflicts of law of such jurisdiction.

*M. Tax Reporting and Compliance*

The Reorganized Debtor is hereby authorized, on behalf of the Debtor, to request an expedited determination under section 505(b) of the Bankruptcy Code of the tax liability of the Debtor for all taxable periods ending after the Petition Date through, and including, the Effective Date.

*N. Schedules*

All exhibits and schedules to this Plan, including the Exhibits and Plan Schedules, are incorporated and are a part of this Plan as if set forth in full herein.

*O. No Strict Construction*

This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, the Debtor, the Backstop Parties, the Ad Hoc Noteholders Committee and the Committee and their respective professionals. Each of the foregoing was represented by counsel of its choice who either (a) participated in the formulation and documentation of, or (b) was afforded the opportunity to review and provide comments on, this Plan, the Disclosure Statement, Exhibits and Plan Schedules, and the agreements and documents ancillary or related thereto. Accordingly, unless explicitly indicated otherwise, the general rule of contract construction known as "contra proferentem" or other rule of strict construction shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, Exhibits and Plan Schedules, and the documents ancillary and related thereto.

*P. Conflicts*

In the event that a provision of the Disclosure Statement conflicts with a provision of this Plan, the terms of this Plan shall govern and control to the extent of such conflict.

Dated: ~~August 25~~, October 14, 2009

Respectfully submitted,

DAYTON SUPERIOR CORPORATION

By: /s/ Edward J. Puisis

Title: Executive Vice President and Chief  
Financial Officer

**Exhibit 3**

**[Notice of Confirmed Plan]**

NY\1571079.6RLF1-3446216-1

**TRADEMARK**  
**REEL: 004084 FRAME: 0889**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
DAYTON SUPERIOR CORPORATION,	)	
a Delaware corporation, <sup>5</sup>	)	Case No. 09-11351 (BLS)
	)	
Debtor.	)	

**NOTICE OF ENTRY OF ORDER (I) CONFIRMING THE FIRST AMENDED PLAN OF REORGANIZATION FOR DAYTON SUPERIOR CORPORATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE AND (II) ESTABLISHING DEADLINE FOR THE FILING OF ADMINISTRATIVE CLAIMS AGAINST THE DEBTOR**

**TO ALL CREDITORS, EQUITY INTEREST HOLDERS, AND OTHER PARTIES-IN-INTEREST:**

**Confirmation of Plan of Reorganization**

PLEASE TAKE NOTICE that on April 19, 2009 (the "**Petition Date**"), the above captioned debtor and debtor-in-possession (the "**Debtor**") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Case**") with the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

PLEASE TAKE FURTHER NOTICE that an order (the "**Confirmation Order**") confirming The First Amended Plan of Reorganization for Dayton Superior Corporation under Chapter 11 of the Bankruptcy Code, dated October [ ], 2009 (as amended, modified or supplemented, the "**Plan**") was entered by the Bankruptcy Court on October [ ], 2009. Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the Plan and the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that a copy of the Plan and the Confirmation Order may be obtained by contacting the Debtor's Claims Agent, in writing, at Kurtzman Carson Consultants LLC ("**KCC**"), 2335 Alaska Avenue, El Segundo, California, 90245. The Plan and Confirmation Order are also available free of charge on the Debtor's restructuring website located at <http://kccllc.net/DaytonSuperior>. The Plan and the Confirmation Order can also be viewed on the Court's website at [www.deb.uscourts.gov](http://www.deb.uscourts.gov). You may also contact the Debtor's claims agent, KCC, at 1-888-381-9100 or by email at [KCC\\_Dayton@kccllc.com](mailto:KCC_Dayton@kccllc.com).

<sup>5</sup> The last four digits of the Debtor's federal tax identification number are: EIN: XX-XXX6346. The Debtor's mailing address is 7777 Washington Village Dr., Suite 130, Dayton, Ohio 45459.



**PLEASE TAKE FURTHER NOTICE** that the Plan and the Confirmation Order, and their respective terms and provisions, are binding on the Debtor, the Reorganized Debtor, any entity acquiring or receiving property or a distribution under the Plan, and any present or former holder of a Claim against or Equity Interest in the Debtor and their respective successors, assigns, and parties-in-interest, including all Governmental Units, whether or not the applicable Claim or Equity Interest of such holder is impaired under the Plan and whether or not such holder or entity voted to accept or reject the Plan (or abstained from voting on the Plan).

**Deadline For Filing Administrative Claims**

**PLEASE TAKE FURTHER NOTICE** that **December [15], 2009**, at 5:00 p.m. (prevailing Pacific time) (the "**Administrative Claims Bar Date**") was established by the Bankruptcy Court as the deadline by which holders of Administrative Claims must file proofs of administrative claim against the Debtor. For your convenience, enclosed with this notice is a proof of administrative claim form (the "**Proof of Administrative Claim Form**"). The Proof of Administrative Claim Form is also available free of charge on KCC's website at <http://kccllc.net/DaytonSuperior>.

**PLEASE TAKE FURTHER NOTICE** that holders of the following Administrative Claims are not required to file a Proof of Administrative Claim on or before the Administrative Claims Bar Date solely with respect to such Administrative Claim: (i) an Administrative Claim against the Debtor for which a signed proof of administrative claim has already been properly filed with the Clerk of the Bankruptcy Court for the District of Delaware or KCC in a form substantially similar to the Proof of Administrative Claim Form; (ii) an Administrative Claim that has been previously allowed, and/or paid in full by the Debtor, in accordance with the Bankruptcy Code or an order of the Bankruptcy Court and (iii) an Administrative Claim for post-petition fees and expenses incurred by any professional allowable under sections 330, 331, and 503(b) of the Bankruptcy Code (collectively, the "**Excluded Administrative Claims**").

**PLEASE TAKE FURTHER NOTICE** that all holders of Administrative Claims (other than Excluded Administrative Claims) must submit (by overnight mail, courier service, hand delivery, regular mail or in person) an original, written Proof of Administrative Claim Form so as to be **actually received** by KCC, by no later than 5:00 p.m. (Prevailing Pacific time) on or before the Administrative Claims Bar Date (December [15], 2009) at the following address:

Dayton Superior Claims Processing  
c/o Kurtzman Carson Consultants LLC  
2335 Alaska Avenue  
El Segundo, CA 90245

**PLEASE TAKE FURTHER NOTICE** that Proofs of Administrative Claims will be deemed timely filed only if **actually received** by KCC on or before the Administrative Claims Bar Date. Proofs of Administrative Claims may not be delivered by facsimile, telecopy, or electronic mail transmission. Any facsimile, telecopy, or electronic mail submissions will not be accepted and will not be deemed filed until a proof of administrative claim is submitted to KCC by overnight mail, courier service, hand delivery, regular mail or in person.

**PLEASE TAKE FURTHER NOTICE** that parties wishing to receive acknowledgment that their Proofs of Administrative Claim Form were received by KCC must submit (i) a copy of

the Proof of Administrative Claim Form and (ii) a self-addressed, stamped envelope (in addition to the original Proof of Administrative Claim Form sent to KCC).

**PLEASE TAKE FURTHER NOTICE** that to be valid, your Proof of Administrative Claim Form **MUST** (i) be signed by the applicable holder of the Administrative Claim; (ii) be written in the English language; (iii) be denominated in lawful currency of the United States; and (iv) be submitted with copies of any supporting documentation or an explanation of why any such documentation is not available.

**PLEASE TAKE FURTHER NOTICE** that any holder of an Administrative Claim who is required, but fails, to file a proof of administrative claim with KCC on or before the Administrative Claims Bar Date shall be forever barred, estopped and enjoined from asserting such Administrative Claim against the Debtor or the Reorganized Debtor (or filing a proof of administrative claim with respect thereto), and the Debtor's and the Reorganized Debtor's property shall be forever discharged from any and all indebtedness or liability with respect to such Administrative Claim.

**ALL PLEADINGS FILED WITH, AND ORDERS GRANTED BY, THE BANKRUPTCY COURT ARE AVAILABLE FOR INSPECTION ON THE BANKRUPTCY COURT'S INTERNET SITE AT [WWW.DEB.USCOURTS.GOV](http://WWW.DEB.USCOURTS.GOV) AND AT NO COST FROM THE REORGANIZED DEBTOR'S RESTRUCTURING WEBSITE: [HTTP://KCCLLC.NET/DAYTONSUPERIOR](http://KCCLLC.NET/DAYTONSUPERIOR).**

Dated: October [ ], 2009  
Wilmington, Delaware

BY THE ORDER OF THE COURT  
THE HONORABLE BRENDAN L. SHANNON

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