Court File No. CV-18-597987-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ROCKPORT BLOCKER, LLC, THE ROCKPORT GROUP HOLDINGS, LLC, TRG 1-P HOLDINGS, LLC, TRG INTERMEDIATE HOLDINGS, LLC, TRG CLASS D, LLC, THE ROCKPORT GROUP, LLC, THE ROCKPORT COMPANY, LLC, DRYDOCK FOOTWEAR, LLC, DD MANAGEMENT SERVICES LLC AND ROCKPORT CANADA ULC (THE "DEBTORS")

APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

BRIEF OF AUTHORITIES OF THE APPLICANT, ROCKPORT BLOCKER, LLC

(Volume 1 of 2)

(Re: Motion Returnable December 21, 2018)

December 19, 2018

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In the Matter of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended

In the Matter of Babcock & Wilcox Canada Ltd.

Farley J.

Heard: February 25, 2000
Judgment: February 25, 2000
Docket: 00-CL-3667

Counsel: *Derrick Tay*, for Babcock & Wilcox Canada Ltd.
Paul Macdonald, for Citibank North America Inc., Lenders under the Post-Petition Credit Agreement.

Subject: Corporate and Commercial; Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.1 General principles
XIX.1.c Application of Act
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Headnote

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — Stay of proceedings

Solvent corporation applied for interim order under s. 18.6 of Companies' Creditors Arrangement Act for stay of actions and enforcements against corporation in respect of asbestos tort claims — Application granted — Application was to be reviewed in light of doctrine of comity, inherent jurisdiction, and aspect of liberal interpretation of Act generally — Proceedings commenced by corporation's parent corporation in United States and other United States related corporations for protection under c. 11 of United States Bankruptcy Code in connection with mass asbestos tort claims constituted foreign proceeding for purposes of s. 18.6 of Act — Insolvency of debtor in foreign proceeding was not condition precedent for proceeding to be foreign proceeding under definition of s. 18.6 of Act — Corporation was entitled to avail itself of provisions of s. 18.6 of Act — Relief requested was not of nature contrary to provisions of Act — Recourse may be had to s. 18.6 of Act in case of solvent debtor — Chapter 11 proceedings in United States were intended to resolve mass asbestos-related tort claims that seriously threatened long-term viability of corporation's parent — Corporation was significant participant in overall international operation and interdependence existed between corporation and its parent as to facilities and services — Bankruptcy Code, 11 U.S.C. 1982, c. 11 — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, s. 18.6.

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APPLICATION by solvent corporation for interim order under s. 18.6 of *Companies' Creditors Arrangement Act.*

Farley J.:

1 I have had the opportunity to reflect on this matter which involves an aspect of the recent amendments to the insolvency legislation of Canada, which amendments have not yet been otherwise dealt with as to their substance. The applicant, Babcock & Wilcox Canada Ltd. ("BW Canada"), a solvent company, has applied for an interim order under s. 18.6 of the *Companies' Creditors Arrangement Act* ("CCAA"):

> (a) that the proceedings commenced by BW Canada's parent U.S. corporation and certain other U.S. related corporations (collectively "BWUS") for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with mass asbestos claims before the U.S. Bankruptcy Court be recognized as a "foreign proceeding" for the purposes of s. 18.6;
>
> (b) that BW Canada be declared a company which is entitled to avail itself of the provisions of s. 18.6;
>
> (c) that there be a stay against suits and enforcements until May 1, 2000 (or such later date as the Court may order) as to asbestos related proceedings against BW Canada, its property and its directors;
>
> (d) that BW Canada be authorized to guarantee the obligations of its parent to the DIP Lender (debtor in possession lender) and grant security therefor in favour of the DIP Lender; and
>
> (e) and for other ancillary relief.

2 In Chapter 11 proceedings under the U.S. Bankruptcy Code, the U.S. Bankruptcy Court in New Orleans issued a temporary restraining order on February 22, 2000 wherein it was noted that BW Canada may be subject to actions in Canada similar to the U.S. asbestos claims. U.S. Bankruptcy Court Judge Brown's temporary restraining order was directed against certain named U.S. resident plaintiffs in the asbestos litigation:

> . . . and towards all plaintiffs and potential plaintiffs in Other Derivative Actions, that they are hereby restrained further prosecuting Pending Actions or further prosecuting or commencing Other Derivative Actions against Non-Debtor Affiliates, until the Court decides whether to grant the Debtors' request for a preliminary injunction.

Judge Brown further requested the aid and assistance of the Canadian courts in carrying out the U.S. Bankruptcy Court's orders. The "Non-Debtor Affiliates" would include BW Canada.

3 Under the 1994 amendments to the U.S. Bankruptcy Code, the concept of the establishment of a trust sufficient to meet the court determined liability for a mass torts situations was introduced. I am advised that after many years of successfully resolving the overwhelming majority of claims against it on an individual basis by settlement on terms BWUS considered reasonable, BWUS has determined, as a result of a spike in claims with escalating demands when it was expecting a decrease in claims, that it is appropriate to resort to the mass tort trust concept. Hence its application earlier this week to Judge Brown with a view to eventually working out a global process, including incorporating any Canadian claims. This would be done in conjunction with its joint pool of insurance which covers both BWUS and BW Canada. Chapter 11 proceedings do not require an applicant thereunder to be insolvent; thus BWUS was able to make an application with a view towards the 1994 amendments (including s. 524(g)). This subsection would permit the U.S.

Bankruptcy Court on confirmation of a plan of reorganization under Chapter 11 with a view towards rehabilitation in the sense of avoiding insolvency in a mass torts situation to:

> . . . enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claims or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust.

4 In 1997, ss. 267-275 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("BIA") and s. 18.6 of the CCAA were enacted to address the rising number of international insolvencies ("1997 Amendments"). The 1997 Amendments were introduced after a lengthy consultation process with the insolvency profession and others. Previous to the 1997 Amendments, Canadian courts essentially would rely on the evolving common law principles of comity which permitted the Canadian court to recognize and enforce in Canada the judicial acts of other jurisdictions.

5 La Forest J in *Morguard Investments Ltd. v. De Savoye* (1990), 76 D.L.R. (4th) 256 (S.C.C.), at p. 269 described the principle of comity as:

> "Comity" in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protections of its laws . . .

6 In *ATL Industries Inc. v. Han Eol Ind. Co.* (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]), at pp. 302-3 I noted the following:

> Allow me to start off by stating that I agree with the analysis of MacPherson J. in *Arrowmaster Inc. v. Unique Forming Ltd.* (1993), 17 O.R. (3d) 407 (Gen. Div.) when in discussing *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077, 76 D.L.R. (4th) 256, 52 B.C.L.R. (2d) 160, 122 N.R. 81, [1991] 2 W.W.R. 217, 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, he states at p.411:
>
> > The leading case dealing with the enforcement of "foreign" judgments is the decision of the Supreme Court of Canada in *Morguard Investments, supra*. The question in that case was whether, and the circumstances in which, the judgment of an Alberta court could be enforced in British Columbia. A unanimous court, speaking through La Forest J., held in favour of enforceability and, in so doing, discussed in some detail the doctrinal principles governing inter-jurisdictional enforcement of orders. I think it fair to say that the overarching theme of La Forest J.'s reasons is the necessity and desirability, in a mobile global society, for governments and courts to respect the orders made by courts in foreign jurisdictions with comparable legal systems, including substantive laws and rules of procedure. He expressed this theme in these words, at p. 1095:
> >
> > > Modern states, however, cannot live in splendid isolation and do give effect to judgments given in other countries in certain circumstances. Thus a judgment *in rem*, such as a decree of divorce granted by the courts of one state to persons domiciled there, will be recognized by the courts of other states. In certain circumstances, as well, our courts will enforce personal judgments given in other states. Thus, we saw, our courts will enforce an action for breach of contract given by the courts of another country if the defendant was present there at the time of the action or has agreed to the foreign court's exercise of jurisdiction. *This, it was thought, was in conformity with the requirements of comity, the informing principle of private international law, which has been stated to be the deference and respect due by other states to the actions of a state legitimately taken within its territory. Since the state where the judgment was given has power over the litigants, the judgments of its courts should be respected.* (emphasis added in original)
> >
> *Morguard Investments* was, as stated earlier, a case dealing with the enforcement of a court order across provincial boundaries. However, the historical analysis in La Forest J.'s judgment, of both the United Kingdom and Canadian jurisprudence, and the doctrinal principles enunciated by the court are equally applicable, in my

> view, in a situation where the judgment has been rendered by a court in a foreign jurisdiction. This should not be an absolute rule - there will be some foreign court orders that should not be enforced in Ontario, perhaps because the substantive law in the foreign country is so different from Ontario's or perhaps because the legal process that generates the foreign order diverges radically from Ontario's process. (my emphasis added)

Certainly the substantive and procedural aspects of the U.S. Bankruptcy Code including its 1994 amendments are not so different and do not radically diverge from our system.

7 After reviewing La Forest J.'s definition of comity, I went on to observe at p. 316:

> As was discussed by J.G. Castel, *Canadian Conflicts of Laws*, 3rd ed. (Toronto: Butterworths, 1994) at p. 270, there is a presumption of validity attaching to a foreign judgment unless and until it is established to be invalid. It would seem that the same type of evidence would be required to impeach a foreign judgment as a domestic one: fraud practiced on the court or tribunal: see *Sun Alliance Insurance Co. v. Thompson* (1981), 56 N.S.R. (2d) 619, 117 A.P.R. 619 (T.D.), Sopinka, supra, at p. 992.

La Forest J. went on to observe in *Morguard* at pp. 269-70:

> In a word, the rules of private international law are grounded in the need in modern times to facilitate the flow of wealth, skills and people across state lines in a fair and orderly manner.
>
> . . . . .
>
> Accommodating the flow of wealth, skills and people across state lines has now become imperative. Under these circumstances, our approach to the recognition and enforcement of foreign judgments would appear ripe for reappraisal.

See also *Hunt v. T & N plc* (1993), 109 D.L.R. (4th) 16 (S.C.C.), at p. 39.

8 While *Morguard* was an interprovincial case, there is no doubt that the principles in that case are equally applicable to international matters in the view of MacPherson J. and myself in *Arrowmaster* (1993), 17 O.R. (3d) 407 (Ont. Gen. Div.), and *ATL* respectively. Indeed the analysis by La Forest J. was on an international plane. As a country whose well-being is so heavily founded on international trade and investment, Canada of necessity is very conscious of the desirability of invoking comity in appropriate cases.

9 In the context of cross-border insolvencies, Canadian and U.S. Courts have made efforts to complement, coordinate and where appropriate accommodate the proceedings of the other. Examples of this would include *Olympia & York Developments Ltd.*, *Ever fresh Beverages Inc.* and *Loewen Group Inc. v. Continental Insurance Co. of Canada* (1997), 48 C.C.L.I. (2d) 119 (B.C. S.C.). Other examples involve the situation where a multi-jurisdictional proceeding is specifically connected to one jurisdiction with that jurisdiction's court being allowed to exercise principal control over the insolvency process: see *Roberts v. Picture Butte Municipal Hospital* (1998), 23 C.P.C. (4th) 300 (Alta. Q.B.), at pp. 5-7 [[1998] A.J. No. 817]; *Microbiz Corp. v. Classic Software Systems Inc.* (1996), 45 C.B.R. (3d) 40 (Ont. Gen. Div.), at p. 4; *Tradewell Inc. v. American Sensors Electronics, Inc.*, 1997 WL 423075 (S.D.N.Y. 1997).

10 In *Roberts*, Forsythe J. at pp. 5-7 noted that steps within the proceedings themselves are also subject to the dictates of comity in recognizing and enforcing a U.S. Bankruptcy Court stay in the *Dow Corning* litigation [*Taylor v. Dow Corning Australia Pty. Ltd.* (December 19, 1997), Doc. 8438/95 (Australia Vic. Sup. Ct.)] as to a debtor in Canada so as to promote greater efficiency, certainty and consistency in connection with the debtor's restructuring efforts. Foreign claimants were provided for in the U.S. corporation's plan. Forsyth J. stated:

> Comity and cooperation are increasingly important in the bankruptcy context. *As internationalization increases, more parties have assets and carry on activities in several jurisdictions. Without some coordination there would be multiple proceedings, inconsistent judgments and general uncertainty.*

> . . . *I find that common sense dictates that these matters would be best dealt with by one court, and in the interest of promoting international comity it seems the forum for this case is in the U.S. Bankruptcy Court.* Thus, in either case, whether there has been an attornment or not, I conclude it is appropriate for me to exercise my discretion and apply the principles of comity and grant the Defendant's stay application. I reach this conclusion based on all the circumstances, including the clear wording of the U.S. Bankruptcy Code provision, the similar philosophies and procedures in Canada and the U.S., the Plaintiff's attornment to the jurisdiction of the U.S. Bankruptcy Court, and the incredible number of claims outstanding . . . (emphasis added)

11 The CCAA as remedial legislation should be given a liberal interpretation to facilitate its objectives. See *Hongkong Bank of Canada v. Chef Ready Foods Ltd.* (1990), 4 C.B.R. (3d) 311 (B.C. C.A.), at p. 320; *Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (Ont. Gen. Div. [Commercial List]).

12 David Tobin, the Director General, Corporate Governance Branch, Department of Industry in testifying before the Standing Committee on Industry regarding Bill C-5, An Act to amend the BIA, the CCAA and the Income Tax Act, stated at 1600:

> Provisions in Bill C-5 attempt to actually codify, which has always been the practice in Canada. They include the Court recognition of foreign representatives; Court authority to make orders to facilitate and coordinate international insolvencies; provisions that would make it clear that foreign representatives are allowed to commence proceedings in Canada, as per Canadian rules - however, they clarify that foreign stays of proceedings are not applicable but a foreign representative can apply to a court for a stay in Canada; and Canadian creditors and assets are protected by the bankruptcy and insolvency rules.

The philosophy of the practice in international matters relating to the CCAA is set forth in *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 20 C.B.R. (3d) 165 (Ont. Gen. Div.), at p. 167 where Blair J. stated:

> The Olympia & York re-organization involves proceedings in three different jurisdictions: Canada, the United States and the United Kingdom. Insolvency disputes with international overtones and involving property and assets in a multiplicity of jurisdictions are becoming increasingly frequent. Often there are differences in legal concepts - sometimes substantive, sometimes procedural - between the jurisdictions. The Courts of the various jurisdictions should seek to cooperate amongst themselves, in my view, in facilitating the trans-border resolution of such disputes as a whole, where that can be done in a fashion consistent with their own fundamental principles of jurisprudence. The interests of international cooperation and comity, and the interests of developing at least some degree of certitude in international business and commerce, call for nothing less.

Blair J. then proceeded to invoke inherent jurisdiction to implement the Protocol between the U.S. Bankruptcy Court and the Ontario Court. See also my endorsement of December 20, 1995, in *Everfresh Beverages Inc.* where I observed: "I would think that this Protocol demonstrates the 'essence of comity' between the Courts of Canada and the United States of America." *Everfresh* was an example of the effective and efficient use of the Cross-Border Insolvency Concordat, adopted by the Council of the International Bar Association on May 31, 1996 (after being adopted by its Section on Business Law Council on September 17, 1995), which Concordat deals with, inter alia, principal administration of a debtor's reorganization and ancillary jurisdiction. See also the UNCITRAL Model Law on Cross-Border Insolvency.

13 Thus it seems to me that this application by BW Canada should be reviewed in light of (i) the doctrine of comity as analyzed in *Morguard, Arrowmaster* and *ATL, supra*, in regard to its international aspects; (ii) inherent jurisdiction; (iii) the aspect of the liberal interpretation of the CCAA generally; and (iv) the assistance and codification of the 1997 Amendments.

"Foreign proceeding" is defined in s. 18.6(1) as:

> In this section,

> "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally; . . .

Certainly a U.S. Chapter 11 proceeding would fit this definition subject to the question of "debtor". It is important to note that the definition of "foreign proceeding" in s. 18.6 of the CCAA contains no specific requirement that the debtor be insolvent. In contrast, the BIA defines a "debtor" in the context of a foreign proceeding (Part XIII of the BIA) as follows:

> s. 267 In this Part,
>
> "debtor" means an *insolvent person* who has property in Canada, a *bankrupt* who has property in Canada or a *person who has the status of a bankrupt* under foreign law in a foreign proceeding and has property in Canada; . . . (emphasis added)

I think it a fair observation that the BIA is a rather defined code which goes into extensive detail. This should be contrasted with the CCAA which is a very short general statute which has been utilized to give flexibility to meet what might be described as the peculiar and unusual situation circumstances. A general categorization (which of course is never completely accurate) is that the BIA may be seen as being used for more run of the mill cases whereas the CCAA may be seen as facilitating the more unique or complicated cases. Certainly the CCAA provides the flexibility to deal with the thornier questions. Thus I do not think it unusual that the draftees of the 1997 Amendments would have it in their minds that the provisions of the CCAA dealing with foreign proceedings should continue to reflect this broader and more flexible approach in keeping with the general provisions of the CCAA, in contrast with the corresponding provisions under the BIA. In particular, it would appear to me to be a reasonably plain reading interpretation of s. 18.6 that recourse may be had to s. 18.6 of the CCAA in the case of a solvent debtor. Thus I would conclude that the aspect of insolvency is not a condition precedent vis-a-vis the "debtor" in the foreign proceedings (here the Chapter 11 proceedings) for the proceedings in Louisiana to be a foreign proceeding under the definition of s. 18.6. I therefore declare that those proceedings are to be recognized as a "foreign proceeding" for the purposes of s. 18.6 of the CCAA.

14 It appears to me that my conclusion above is reinforced by an analysis of s. 18.6(2) which deals with concurrent filings by a debtor under the CCAA in Canada and corresponding bankruptcy or insolvency legislation in a foreign jurisdiction. This is not the situation here, but it would be applicable in the *Loewen* case. That subsection deals with the coordination of proceedings as to a "debtor company" initiated pursuant to the CCAA and the foreign legislation.

> s. 18.6(2). The court may, in respect of a *debtor company*, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a coordination of proceedings under the Act with any foreign proceeding. (emphasis added)

15 The definition of "debtor company" is found in the general definition section of the CCAA, namely s. 2 and that definition incorporates the concept of insolvency. Section 18.6(2) refers to a "debtor company" since only a "debtor company" can file under the CCAA to propose a compromise with its unsecured or secured creditors: ss. 3, 4 and 5 CCAA. See also s. 18.6(8) which deals with currency concessions "[w]here a compromise or arrangement is proposed in respect of a debtor company . . . ". I note that "debtor company" is not otherwise referred to in s. 18.6; however "debtor" is referred to in both definitions under s. 18.6(1).

16 However, s. 18.6(4) provides a basis pursuant to which a company such as BW Canada, a solvent corporation, may seek judicial assistance and protection in connection with a foreign proceeding. Unlike s. 18.6(2), s. 18.6(4) does not contemplate a full filing under the CCAA. Rather s. 18.6(4) may be utilized to deal with situations where, notwithstanding that a full filing is not being made under the CCAA, ancillary relief is required in connection with a foreign proceeding.

> s. 18.6(4) Nothing in this section prevents the court, on the application of a foreign representative or *any other interested persons*, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provisions of this Act. (emphasis added)

BW Canada would fit within "any interested person" to bring the subject application to apply the principles of comity and cooperation. It would not appear to me that the relief requested is of a nature contrary to the provisions of the CCAA.

17 Additionally there is s. 18.6(3) whereby once it has been established that there is a foreign proceeding within the meaning of s. 18.6(1) (as I have concluded there is), then this court is given broad powers and wide latitude, all of which is consistent with the general judicial analysis of the CCAA overall, to make any order it thinks appropriate in the circumstances.

> s. 18.6(3) An order of the court under this Section may be made on such terms and conditions as the court considers appropriate in the circumstances.

This subsection reinforces the view expressed previously that the 1997 Amendments contemplated that it would be inappropriate to pigeonhole or otherwise constrain the interpretation of s. 18.6 since it would be not only impracticable but also impossible to contemplate the myriad of circumstances arising under a wide variety of foreign legislation which deal generally and essentially with bankruptcy and insolvency but not exclusively so. Thus, the Court was entrusted to exercise its discretion, but of course in a judicial manner.

18 Even aside from that, I note that the Courts of this country have utilized inherent jurisdiction to fill in any gaps in the legislation and to promote the objectives of the CCAA. Where there is a gap which requires bridging, then the question to be considered is what will be the most practical common sense approach to establishing the connection between the parts of the legislation so as to reach a just and reasonable solution. See *Westar Mining Ltd., Re* (1992), 14 C.B.R. (3d) 88 (B.C. S.C.), at pp. 93-4; *Pacific National Lease Holding Corp. v. Sun Life Trust Co.* (1995), 34 C.B.R. (3d) 4 (B.C. C.A.), at p. 2; *Lehndorff General Partner Ltd.* at p. 30.

19 The Chapter 11 proceedings are intended to resolve the mass asbestos related tort claims which seriously threaten the long term viability of BWUS and its subsidiaries including BW Canada. BW Canada is a significant participant in the overall Babcock & Wilcox international organization. From the record before me it appears reasonably clear that there is an interdependence between BWUS and BW Canada as to facilities and services. In addition there is the fundamental element of financial and business stability. This interdependence has been increased by the financial assistance given by the BW Canada guarantee of BWUS' obligations.

20 To date the overwhelming thrust of the asbestos related litigation has been focussed in the U.S. In contradistinction BW Canada has not in essence been involved in asbestos litigation to date. The 1994 amendments to the U.S. Bankruptcy Code have provided a specific regime which is designed to deal with the mass tort claims (which number in the hundreds of thousands of claims in the U.S.) which appear to be endemic in the U.S. litigation arena involving asbestos related claims as well as other types of mass torts. This Court's assistance however is being sought to stay asbestos related claims against BW Canada with a view to this stay facilitating an environment in which a global solution may be worked out within the context of the Chapter 11 proceedings trust.

21 In my view, s. 18.6(3) and (4) permit BW Canada to apply to this Court for such a stay and other appropriate relief. Relying upon the existing law on the recognition of foreign insolvency orders and proceedings, the principles and practicalities discussed and illustrated in the Cross-Border Insolvency Concordat and the UNCITRAL Model Law on Cross-Border Insolvencies and inherent jurisdiction, all as discussed above, I would think that the following may be of assistance in advancing guidelines as to how s. 18.6 should be applied. I do not intend the factors listed below to be exclusive or exhaustive but merely an initial attempt to provide guidance:

> (a) The recognition of comity and cooperation between the courts of various jurisdictions are to be encouraged.

(b) Respect should be accorded to the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.

(c) All stakeholders are to be treated equitably, and to the extent reasonably possible, common or like stakeholders are to be treated equally, regardless of the jurisdiction in which they reside.

(d) The enterprise is to be permitted to implement a plan so as to reorganize as a global unit, especially where there is an established interdependence on a transnational basis of the enterprise and to the extent reasonably practicable, one jurisdiction should take charge of the principal administration of the enterprise's reorganization, where such principal type approach will facilitate a potential reorganization and which respects the claims of the stakeholders and does not inappropriately detract from the net benefits which may be available from alternative approaches.

(e) The role of the court and the extent of the jurisdiction it exercises will vary on a case by case basis and depend to a significant degree upon the court's nexus to that enterprise; in considering the appropriate level of its involvement, the court would consider:

(i) the location of the debtor's principal operations, undertaking and assets;

(ii) the location of the debtor's stakeholders;

(iii) the development of the law in each jurisdiction to address the specific problems of the debtor and the enterprise;

(iv) the substantive and procedural law which may be applied so that the aspect of undue prejudice may be analyzed;

(v) such other factors as may be appropriate in the instant circumstances.

(f) Where one jurisdiction has an ancillary role,

(i) the court in the ancillary jurisdiction should be provided with information on an ongoing basis and be kept apprised of developments in respect of that debtor's reorganizational efforts in the foreign jurisdiction;

(ii) stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction.

(g) As effective notice as is reasonably practicable in the circumstances should be given to all affected stakeholders, with an opportunity for such stakeholders to come back into the court to review the granted order with a view, if thought desirable, to rescind or vary the granted order or to obtain any other appropriate relief in the circumstances.

22 Taking these factors into consideration, and with the determination that the Chapter 11 proceedings are a "foreign proceeding" within the meaning of s. 18.6 of the CCAA and that it is appropriate to declare that BW Canada is entitled to avail itself of the provisions of s. 18.6, I would also grant the following relief. There is to be a stay against suits and enforcement as requested; the initial time period would appear reasonable in the circumstances to allow BWUS to return to the U.S. Bankruptcy Court. Assuming the injunctive relief is continued there, this will provide some additional time to more fully prepare an initial draft approach with respect to ongoing matters. It should also be recognized that if such future relief is not granted in the U.S. Bankruptcy Court, any interested person could avail themselves of the "comeback" clause in the draft order presented to me and which I find reasonable in the circumstances. It appears

appropriate, in the circumstances that BW Canada guarantee BWUS' obligations as aforesaid and to grant security in respect thereof, recognizing that same is permitted pursuant to the general corporate legislation affecting BW Canada, namely the *Business Corporations Act* (Ontario). I note that there is also a provision for an "Information Officer" who will give quarterly reports to this Court. Notices are to be published in the Globe & Mail (National Edition) and the National Post. In accordance with my suggestion at the hearing, the draft order notice has been revised to note that persons are alerted to the fact that they may become a participant in these Canadian proceedings and further that, if so, they may make representations as to pursuing their remedies regarding asbestos related claims in Canada as opposed to the U.S. As discussed above the draft order also includes an appropriate "comeback" clause. This Court (and I specifically) look forward to working in a cooperative judicial way with the U.S. Bankruptcy Court (and Judge Brown specifically).

23 I am satisfied that it is appropriate in these circumstances to grant an order in the form of the revised draft (a copy of which is attached to these reasons for the easy reference of others who may be interested in this area of s. 18.6 of the CCAA).

24 Order to issue accordingly.

Application granted.

APPENDIX

Court File No. 00-CL-3667

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR. JUSTICE FARLEY — FRIDAY, THE 25{TH} DAY OF FEBRUARY, 2000

IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

INITIAL ORDER

THIS MOTION made by the Applicant Babcock & Wilcox Canada Ltd. for an Order substantially in the form attached to the Application Record herein was heard this day, at 393 University Avenue, Toronto, Ontario.

ON READING the Notice of Application, the Affidavit of Victor J. Manica sworn February 23, 2000 (the "Manica Affidavit"), and on notice to the counsel appearing, and upon being advised that no other person who might be interested in these proceedings was served with the Notice of Application herein.

SERVICE

1. *THIS COURT ORDERS* that the time for service of the Notice of Application and the Affidavit in support of this Application be and it is hereby abridged such that the Application is properly returnable today, and, further, that any requirement for service of the Notice of Application and of the Application Record upon any interested party, other than the parties herein mentioned, is hereby dispensed with.

RECOGNITION OF THE U.S. PROCEEDINGS

2. *THIS COURT ORDERS AND DECLARES* that the proceedings commenced by the Applicant's United States corporate parent and certain other related corporations in the United States for protection under Chapter 11 of the U.S. Bankruptcy Code in connection with asbestos claims before the U.S. Bankruptcy Court (the "U.S. Proceedings") be and

hereby is recognized as a "foreign proceeding" for purposes of Section 18.6 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended, (the "CCAA").

APPLICATION

3. *THIS COURT ORDERS AND DECLARES* that the Applicant is a company which is entitled to relief pursuant to s. 18.6 of the CCAA.

PROTECTION FROM ASBESTOS PROCEEDINGS

4. *THIS COURT ORDERS* that until and including May 1, 2000, or such later date as the Court may order (the "Stay Period"), no suit, action, enforcement process, extra-judicial proceeding or other proceeding relating to, arising out of or in any way connected to damages or loss suffered, directly or indirectly, from asbestos, asbestos contamination or asbestos related diseases ("Asbestos Proceedings") against or in respect of the Applicant, its directors or any property of the Applicant, wheresoever located, and whether held by the Applicant in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise shall be commenced, and any Asbestos Proceedings against or in respect of the Applicant, its directors or the Applicant's Property already commenced be and are hereby stayed and suspended.

5. *THIS COURT ORDERS* that during the Stay Period, the right of any person, firm, corporation, governmental authority or other entity to assert, enforce or exercise any right, option or remedy arising by law, by virtue of any agreement or by any other means, as a result of the making or filing of these proceedings, the U.S. Proceedings or any allegation made in these proceedings or the U.S. Proceedings be and is hereby restrained.

DIP FINANCING

6. *THIS COURT ORDERS* that the Applicant is hereby authorized and empowered to guarantee the obligations of its parent, The Babcock & Wilcox Company, to Citibank, N.A., as Administrative Agent, the Lenders, the Swing Loan Lender, and Issuing Banks (as those terms are defined in the Post-Petition Credit Agreement (the "Credit Agreement")) dated as of February 22, 2000 (collectively, the "DIP Lender"), and to grant security (the "DIP Lender's Security") for such guarantee substantially on the terms and conditions set forth in the Credit Agreement.

7. *THIS COURT ORDERS* that the obligations of the Applicant pursuant to the Credit Agreement, the DIP Lender's Security and all the documents delivered pursuant thereto constitute legal, valid and binding obligations of the Applicant enforceable against it in accordance with the terms thereof, and the payments made and security granted by the Applicant pursuant to such documents do not constitute fraudulent preferences, or other challengeable or reviewable transactions under any applicable law.

8. *THIS COURT ORDERS* that the DIP Lender's Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens or security contained in any existing agreement between the Applicant and any lender and that, notwithstanding any provision to the contrary in such agreements,

> (a) the execution, delivery, perfection or registration of the DIP Lender's Security shall not create or be deemed to constitute a breach by the Applicant of any agreement to which it is a party, and
>
> (b) the DIP Lender shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from the Applicant entering into the Credit Agreement, the DIP Lender's Security or other document delivered pursuant thereto.

REPORT AND EXTENSION OF STAY

9. As part of any application by the Applicant for an extension of the Stay Period:

(a) the Applicant shall appoint Victor J. Manica, or such other senior officer as it deems appropriate from time to time, as an information officer (the "Information Officer");

(b) the Information Officer shall deliver to the Court a report at least once every three months outlining the status of the U.S. Proceeding, the development of any process for dealing with asbestos claims and such other information as the Information Officer believes to be material (the "Information Reports"); and

(c) the Applicant and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfilment of the duties of the Information Officer in carrying out the provisions of this Order and no action or other proceedings shall be commenced against the Applicant or Information Officer as an result of or relating in any way to the appointment of the Information Officer or the fulfilment of the duties of the Information Officer, except with prior leave of this Court and upon further order securing the solicitor and his own client costs of the Information Officer and the Applicant in connection with any such action or proceeding.

SERVICE AND NOTICE

10. *THIS COURT ORDERS* that the Applicant shall, within fifteen (15) business days of the date of entry of this Order, publish a notice of this Order in substantially the form attached as Schedule "A" hereto on two separate days in the Globe & Mail (National Edition) and the National Post.

11. *THIS COURT ORDERS* that the Applicant be at liberty to serve this Order, any other orders in these proceedings, all other proceedings, notices and documents by prepaid ordinary mail, courier, personal delivery or electronic transmission to any interested party at their addresses as last shown on the records of the Applicant and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

MISCELLANEOUS

12. *THIS COURT ORDERS* that notwithstanding anything else contained herein, the Applicant may, by written consent of its counsel of record herein, agree to waive any of the protections provided to it herein.

13. *THIS COURT ORDERS* that the Applicant may, from time to time, apply to this Court for directions in the discharge of its powers and duties hereunder or in respect of the proper execution of this Order.

14. *THIS COURT ORDERS* that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this order or seek other relief upon 10 days' notice to the Applicant and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

15. *THIS COURT ORDERS AND REQUESTS* the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to Section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

Schedule "A"

NOTICE

RE: IN THE MATTER OF S. 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED (the "CCAA")

AND IN THE MATTER OF BABCOCK & WILCOX CANADA LTD.

PLEASE TAKE NOTICE that this notice is being published pursuant to an Order of the Superior Court of Justice of Ontario made February 25, 2000. The corporate parent of Babcock & Wilcox Canada Ltd. and certain other affiliated corporations in the United States have filed for protection in the United States under Chapter 11 of the Bankruptcy Code to seek, as the result of recent, sharp increases in the cost of settling asbestos claims which have seriously threatened the Babcock & Wilcox Enterprise's long term health, protection from mass asbestos claims to which they are or may become subject. Babcock & Wilcox Canada Ltd. itself has not filed under Chapter 11 but has sought and obtained an interim order under Section 18.6 of the CCAA affording it a stay against asbestos claims in Canada. Further application may be made to the Court by Babcock & Wilcox Canada Ltd. to ensure fair and equal access for Canadians with asbestos claims against Babcock & Wilcox Canada Ltd. to the process established in the United States. Representations may also be made by parties who would prefer to pursue their remedies in Canada.

Persons who wish to be a party to the Canadian proceedings or to receive a copy of the order or any further information should contact counsel for Babcock & Wilcox Canada Ltd., Derrick C. Tay at Meighen Demers (Telephone (416) 340-6032 and Fax (416) 977-5239).

DATED this day of, 2000 at Toronto, Canada

Tab 2

2009 CarswellOnt 4232
Ontario Superior Court of Justice [Commercial List]

Lear Canada, Re

2009 CarswellOnt 4232, 179 A.C.W.S. (3d) 45, 55 C.B.R. (5th) 57

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF LEAR CANADA, LEAR CANADA INVESTMENTS LTD., LEAR CORPORATION CANADA LTD. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

APPLICATION UNDER SECTION 18.6 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Pepall J.

Judgment: July 14, 2009
Docket: CV-09-00008269-00CL

Counsel: K. McElcheran, R. Stabile for Applicants
E. Lamek for Proposed Information Officer
A. Cobb for J.P. Morgan Chase Bank, N. A.

Subject: Insolvency

Related Abridgment Classifications

Bankruptcy and insolvency
I Bankruptcy and insolvency jurisdiction
I.2 Jurisdiction of courts
I.2.a Jurisdiction of Bankruptcy Court
I.2.a.iv Territorial jurisdiction
I.2.a.iv.A Foreign bankruptcies

Headnote

Bankruptcy and insolvency --- Bankruptcy and insolvency jurisdiction — Jurisdiction of courts — Jurisdiction of Bankruptcy Court — Territorial jurisdiction — Foreign bankruptcies

Insolvent debtor American company had Canadian subsidiary — Debtor was unable to meet obligations and began restructuring process in United States — Subsidiary and company brought application for recognition of foreign order — Application granted — Stay of proceedings in Canada granted — Subsidiary was entitled to apply for order as interested person under s. 18.6(4) of Companies' Creditors Arrangement Act and as debtor within s. 18.6(1) — While Companies' Creditors Arrangement Act does not define person, Bankruptcy and Insolvency Act extends definition to partnership — Real and substantial connection existed to American proceedings — Canadian operations were inextricably linked with business in foreign jurisdiction — Restructuring process required to occur internationally — Multiplicity of proceedings should be avoided.

Table of Authorities

Cases considered by *Pepall J.*:

Babcock & Wilcox Canada Ltd., Re (2000), 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157, 2000 CarswellOnt 704 (Ont. S.C.J. [Commercial List]) — considered

Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of) (2001), 2001 SCC 90, 2001 CarswellNat 2816, 2001 CarswellNat 2817, [2001] 3 S.C.R. 907, 30 C.B.R. (4th) 6, 280 N.R. 1, 207 D.L.R. (4th) 577 (S.C.C.) — referred to

Magna Entertainment Corp., Re (2009), 2009 CarswellOnt 1267, 51 C.B.R. (5th) 82 (Ont. S.C.J.) — referred to
Matlack Inc., Re (2001), [2001] O.T.C. 382, 26 C.B.R. (4th) 45, 2001 CarswellOnt 1830 (Ont. S.C.J. [Commercial List]) — considered
United Air Lines Inc., Re (2003), 43 C.B.R. (4th) 284, 2003 CarswellOnt 2786 (Ont. S.C.J. [Commercial List]) — referred to

Statutes considered:

Bankruptcy Code, 11 U.S.C.
Generally — referred to

Chapter 11 — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

s. 2 "debtor company" — referred to

s. 18.6 [en. 1997, c. 12, s. 125] — considered

s. 18.6(1) "foreign proceeding" [en. 1997, c. 12, s. 125] — considered

s. 18.6(2) [en. 1997, c. 12, s. 125] — considered

s. 18.6(3) [en. 1997, c. 12, s. 125] — referred to

s. 18.6(4) [en. 1997, c. 12, s. 125] — considered

APPLICATION by subsidiary of debtor and debtor for recognition of foreign order in bankruptcy proceedings.

Pepall J.:

Relief Requested

1 Lear Canada, Lear Canada Investments Inc., Lear Corporation Canada Ltd. (the "Canadian Applicants") and other Applicants listed on Schedule "A" to the notice of motion request:

> 1. an order pursuant to section 18.6 of the CCAA recognizing and declaring that the Chapter 11 proceedings in the U.S. Bankruptcy Court for the Southern District of New York constitute "foreign proceedings";
>
> 2. a stay of proceedings against any of the Applicants or their property; and
>
> 3. an order appointing RSM Richter Inc. as information officer to report to this Court on the status of the U.S proceedings.

Backround Facts

2 Lear Corporation is a corporation organized under the laws of the State of Delaware with headquarters in Southfield, Michigan. Its shares are listed on the New York Stock Exchange. It conducts its operations through approximately 210 facilities in 36 countries and is the ultimate parent company of about 125 directly and indirectly wholly-owned subsidiaries (collectively, "Lear"). Lear Canada Investments Ltd. and Lear Corporation Canada are both wholly-owned indirect subsidiaries of Lear Corporation. They are incorporated pursuant to the laws of Alberta. Lear Canada is a partnership owned 99.9% by Lear Corporation Canada Ltd. and 0.1% by Lear Canada Investments Ltd. and is the only operating entity of Lear in Canada.

3 Lear is a leading global supplier of automotive seating systems, electrical distribution systems, and electronic products. It has established itself as a Tier 1 global supplier of these parts to every major original equipment manufacturer

("OEM"). Lear has world wide manufacturing and production facilities, four of which are in Canada, namely Ajax, Kitchener, St. Thomas, and Whitby, Ontario. A fifth facility in Windsor, Ontario was closed in May of this year. Lear employs approximately 7,200 employees world wide of which 1,720 are employed by the Canadian operations. 1,600 are paid on an hourly basis and 120 are paid salary. 1,600 are members of the CAW and are covered by 5 separate collective bargaining agreements. Lear maintains a qualified defined contribution component of the Canadian salaried pension plan and 8 Canadian qualified defined benefit plans.

4 Lear conducts its North American business on a fully integrated basis. All management functions are based at the corporate headquarters in Southfield, Michigan and all customer relationships are maintained on a North American basis. The U.S. headquarters' operational support for the Canadian locations includes, but is not limited to, primary customer interface and support, product design and engineering, manufacturing and engineering, prototyping, launch support, programme management, purchasing and supplier qualification, testing and validation, and quality assurance. In addition, other support is provided for human resources, finance, information technology and other administrative functions.

5 Lear's Canadian operations are also linked to its U.S. operations through the companies' supply chain. Lear's facilities in Whitby, Ajax, and St. Thomas supply complete seat systems on a just-in-time basis to automotive assembly operations of the U.S. based OEMs, General Motors and Ford in Ontario. Lear's Kitchener facility manufactures seat metal components which are supplied primarily to several Lear assembly locations in the U.S., Canada and Mexico.

6 Lear Corporation, Lear Canada and others entered into a credit agreement with a syndicate of institutions led by J.P. Morgan Chase Bank, N.A. acting as general administrative agent and the Bank of Nova Scotia acting as the Canadian administrative agent. It provides for aggregate commitments of $2.289US billion. Although Lear Canada is a borrower under this senior secured credit facility, it is only liable for borrowings made in Canada and no funds have been advanced in this country.

7 Additionally, Lear Corporation has outstanding approximately $1.29US billion of senior unsecured notes. The Canadian Applicants are not issuers or guarantors of any of them.

8 Over the past several years, Lear has worked on restructuring its business. As part of this initiative, it closed or initiated the closure of 28 manufacturing facilities and 10 administrative/engineering facilities by the end of 2008. This included the Windsor facility for which statutory severance amounts owing to all employees have been paid.

9 Despite its efforts, Lear was faced with turmoil in the automotive industry. Decreased consumer confidence, limited credit availability and decreased demand for new vehicles all led to decreased production. As a result of these conditions, Lear defaulted under its senior secured credit facility in late 2008. In early 2009, Lear engaged in discussions with senior secured facility lenders and unsecured noteholders. It reached an agreement with the majority of them wherein they agreed to support a Chapter 11 plan.

10 On July 7, 2009, Lear filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code and sought "first day" orders in those proceedings in the United States Bankruptcy Court for the Southern District of New York. The Applicants now seek recognition of those proceedings and the orders. Lear expects to emerge from the Chapter 11 proceedings and any associated proceedings in other jurisdictions as a substantially de-leveraged enterprise with competitive going forward operations, and to do so in a timely basis.

Applicable Law

11 Section 18.6 of the CCAA was introduced in 1997 to address the rising number of international insolvencies. Courts have recognized that in the context of cross-border insolvencies, comity is to be encouraged. Efforts are made to complement, coordinate, and where appropriate, accommodate insolvency proceedings commenced in foreign jurisdictions.

12 Section 18.6(1) provides that "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally. It is well recognized that proceedings under Chapter 11 of the U.S. Bankruptcy Code fall within that definition and that, while not identical, the substance and procedures of the U.S. Bankruptcy Code are similar to those found in the Canadian bankruptcy regime: *United Air Lines Inc., Re*[1]

13 *Babcock & Wilcox Canada Ltd., Re*[2] provided an early interpretation of section 18.6, and while not without some controversy[3], the practice in Canadian insolvency proceedings has evolved accordingly. In that case, Farley J. distinguished between section 18.6(2) of the Act, which deals with concurrent filings by a debtor company under the CCAA in Canada and corresponding bankruptcy or insolvency legislation in a foreign jurisdiction, and section 18.6(4) which may deal with ancillary proceedings such as this one. As with section 2 of the Act, section 18.6(2) is in respect of a debtor company whereas section 18.6 (4) permits any interested person to apply for recognition. As such, he held that the applicant before him was not required to meet the Act's definition of "debtor company" which required the company to be insolvent.[4] In addition, he noted that section 18.6(3) provides that an order of the Court under section 18.6 may be made on such terms and conditions as the Court considers appropriate in the circumstances.

14 Applying those legal principles, the Applicants are entitled to apply for an order pursuant to section 18.6 of the CCAA. They are debtors within the definition of section 18.6(1) and interested persons falling within section 18.6(4). In this regard, while the CCAA does not define the term "person", the BIA definition extends to include a partnership. In the absence of a definition in the CCAA, by analogy it is reasonable to interpret the term "person" as including a partnership.

15 I must then consider whether the order requested should be granted. In exercising discretion under section 18.6, it has been repeatedly held that in the context of an insolvency, the Court should consider whether a real and substantial connection exists between a matter and the foreign jurisdiction: *Matlack Inc., Re*[5] and *Magna Entertainment Corp., Re*[6] Where the operations of debtors are most closely connected to a foreign jurisdiction and the Canadian operations are inextricably linked with the business located in that foreign jurisdiction, it is appropriate for the Court in the foreign jurisdiction to exercise principal control over the insolvency process in accordance with the principles of comity and to avoid a multiplicity of proceedings: *Matlack, Re*[7]. As noted in that case, it is in the interests of creditors and stakeholders that a reorganization proceed in a coordinated fashion. This provides for stability and certainty. "The objective of such coordination is to ensure that creditors are treated as equitably and fairly as possible, wherever they are located."[8]

16 I am satisfied that an order recognizing the U.S. proceeding as a foreign proceeding within the meaning of section 18.6(1) should be granted and that a real and substantial connection has been established. The Applicants including Lear Canada are part of an integrated multi-national corporate enterprise with operations in 36 countries, one of which is Canada. Lear conducts its North American business on a fully integrated basis. As mentioned, all management functions are based at the U.S. corporate headquarters and all customer relationships are maintained on a North American basis. As such, the managerial and operational support for the Canadian locations is situate in the United States. In addition, Lear's Canadian operations are linked to the U.S. operations through the Lear's supply chain. As evidence of same, a note to Lear Canada's December 31, 2008 unaudited financial statement states that Lear Corporation provides Lear Canada with "significant operating support, including the negotiation of substantially all of its sales contracts. Such support is significant to the success of the Partnership's future operations and its ability to realize the carrying value of its assets."

17 I am also of the view that it is both necessary and desirable that the restructuring of this international enterprise be coordinated and that a multiplicity of proceedings in two different jurisdictions should be avoided. Granting relief will enable the Applicants to continue to operate in the ordinary course and preserve value and customer relationships. Coordination will also provide stability. The U.S. Court will be the primary court overseeing the restructuring proceedings of Lear. I also note that in its report filed with the Court, the proposed Information Officer, RSM Richter Inc., expressed its support for the relief requested by the Applicants.

18 That said, increasingly with the downturn in the global economy, this Court is entertaining requests for concurrent or ancillary orders relating to multi-group enterprises typically with a significant cross-border element. Frequently, relative to the whole enterprise, the Canadian component is small. From the viewpoint of efficiency and speed, both of which are important features of a restructuring, an applicant may be of the view that the Canadian operations do not merit a CCAA filing other than a section 18.6 request. In addressing whether to grant relief pursuant to section 18.6, the Court should, amongst other things, consider the interests of stakeholders in this country and the impact, if any, that may result from the relief requested. This would include benefits and prejudice such as any juridical advantage that may be compromised.[9] These issues should be addressed by an applicant in its materials. Assuming there are benefits, the existence of prejudice does not necessarily mean that the order will be refused but it is important that these facts at least be considered, and if appropriate, certain protections should be incorporated into the order granted.

19 By way of example, in this case, the Court raised certain issues with the Applicants and they readily and appropriately in my view, filed additional affidavit evidence and included other provisions in the proposed order. The Court was concerned with the treatment that might be afforded Canadian unsecured creditors and particularly employees and trade creditors. Lear Canada had total current assets of approximately $60US million as at May 31, 2009 which included approximately $20US million in cash. Its total assets amounted to approximately $115US million. Total current liabilities as at the same time period amounted to about $75US million. In addition, pension and other post-retirement benefit obligations were stated to amount to about $170US million. There were also intercompany accounts of approximately $190US million in favour of Lear Canada for total liabilities of about $55US million. Counsel for the Applicants advised that significant pre-petition payments had been made to suppliers and that the intention is for Lear Canada to continue to carry on business.

20 In the additional evidence filed, the Applicants indicated that they had not yet sought approval of DIP financing arrangements but that under the proposed arrangement, the Canadian Applicants would not be borrowers or guarantors. In addition, the term sheet agreed to between the Applicants and the senior credit facility lenders provided that the Canadian Applicants had agreed to pay all general unsecured claims in full as they become due. Additionally, the Applicants had obtained an order in the U.S. proceedings authorizing them to pay and honour certain pre-petition claims for wages, salaries, bonuses and other compensation and it is the intention of the Applicants to continue to pay all wages and compensation due and to be due to Canadian employees. The Applicants are up to date on all current and special payments associated with the Canadian pension plans and will continue to make these payments going forward. Provisions reflecting this evidence were incorporated into the Court order.

21 The Canadian Applicants were not to make any advances or transfers of funds except to pay for goods and services in the ordinary course of business and in accordance with existing practices and similarly were not to grant security over or encumber or release their property. They also were to pay current service and special payments with respect to the Canadian pensions. The order further provided that in the event of inconsistencies between it and the terms of the Chapter 11 orders, the provisions of my order were to govern.

22 The order includes a stay of proceedings against the Applicants and their property, a recognition of various orders and an administration charge and a directors' charge. The order also includes the usual come back provision in which any person affected may move to rescind or vary the order on at least 7 days' notice.

23 Where one jurisdiction has an ancillary role, the Court in the ancillary jurisdiction should be provided with information on an on going basis and be kept apprised of developments in respect of the debtors' reorganization efforts in the foreign jurisdiction. In addition, stakeholders in the ancillary jurisdiction should be afforded appropriate access to the proceedings in the principal jurisdiction.[10] In this case, RSM Richter Inc. as Information Officer intends to be a watchdog and monitor developments in the U.S. proceedings and keep this Court informed. This Court supports its request to be added to the service list in the Chapter 11 proceeding and any request for standing before the U.S.

Bankruptcy Court for the Southern District of New York that the Information Officer may make. In this regard, this Court seeks the aid and assistance of that Court.

Application granted.

Footnotes

1 (2003), 43 C.B.R. (4th) 284 (Ont. S.C.J. [Commercial List]), at 285.

2 (2000), 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]).

3 See for example, Professor J.S. Ziegel's article "Corporate Groups and Canada-U.S. Cross-Border Insolvencies: Contrasting Judicial Visions", (2001) 35 C.B.L.J. 459.

4 It should be noted that a voluntary filing under Chapter 11 does not require an applicant to be insolvent and a partnership is eligible to apply for relief as well.

5 (2001), 26 C.B.R. (4th) 45 (Ont. S.C.J. [Commercial List]).

6 (2009), 51 C.B.R. (5th) 82 (Ont. S.C.J.).

7 Supra, note 5 at para. 8.

8 Ibid, at para. 3.

9 See *Holt Cargo Systems Inc. v. ABC Containerline N.V. (Trustees of)*, [2001] 3 S.C.R. 907 (S.C.C.).

10 See *Babcock & Wilcox Canada Ltd., Re*, supra, note 2 at para. 21.

Tab 3

2001 CarswellOnt 1830
Ontario Superior Court of Justice [Commercial List]

Matlack Inc., Re

2001 CarswellOnt 1830, [2001] O.J. No. 6121, [2001] O.T.C. 382, 26 C.B.R. (4th) 45

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, Section 18.6 as Amended

In the Matter of an Application of Matlack, Inc. and the Other Parties Set Out in Schedule "A" Ancillary to Proceedings Under Chapter 11 of the United States Bankruptcy Code

Matlack, Inc. and the Other Parties Set Out in Schedule "A", Applicant

Farley J.

Heard: April 19, 2001
Judgment: April 19, 2001
Docket: 01-CL-4109

Counsel: *E. Bruce Leonard*, *Shahana Kar*, for Applicant, Matlack Inc.

Subject: Insolvency; International; Corporate and Commercial

Related Abridgment Classifications

Bankruptcy and insolvency
I Bankruptcy and insolvency jurisdiction
I.2 Jurisdiction of courts
I.2.a Jurisdiction of Bankruptcy Court
I.2.a.iv Territorial jurisdiction
I.2.a.iv.A Foreign bankruptcies
Bankruptcy and insolvency
XIX Companies' Creditors Arrangement Act
XIX.1 General principles
XIX.1.e Jurisdiction
XIX.1.e.i Court
Business associations
III Specific matters of corporate organization
III.5 Foreign and extra-provincial corporations
III.5.c Carrying on business
III.5.c.i Comity of nations (common law)
III.5.c.i.B Miscellaneous

Headnote

Bankruptcy --- Bankruptcy and insolvency jurisdiction — Jurisdiction of courts — Jurisdiction of bankruptcy court — Territorial jurisdiction — Foreign bankruptcies

Foreign bankrupt was carrier based in Pennsylvania and operated leased facility in Ontario — Bankrupt obtained relief pursuant to Chapter 11 of United States Bankruptcy Code which precluded creditors from commencing or continuing proceedings against bankrupt — Canadian creditor seized and intended to sell bankrupt's assets to satisfy bankrupt's obligations — Bankrupt brought application for order for recognition of proceedings commenced pursuant to Chapter 11 to be recognized as "foreign proceeding" for purpose of Companies' Creditors Arrangement Act, for stay

of proceedings commence by creditor and for ancillary relief — Application granted — Coordinated reorganization of bankrupt was in interest of all creditors as would ensure that all creditors were treated equitably and fairly — Based on principles of comity court had jurisdiction to stay proceedings commenced against bankrupt — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 — Bankruptcy Code, 11 U.S.C. 1982, Chapter 11.

Corporations --- Foreign and extra-provincial corporations — Carrying on business — Comity of nations (common law) — General principles

Foreign bankrupt was carrier based in Pennsylvania and operated leased facility in Ontario — Bankrupt obtained relief pursuant to Chapter 11 of United States Bankruptcy Code which precluded creditors from commencing or continuing proceedings against bankrupt — Canadian creditor seized and intended to sell bankrupt's assets to satisfy bankrupt's obligations — Bankrupt brought application for order for recognition of proceedings commenced pursuant to Chapter 11 to be recognized as "foreign proceeding" for purpose of Companies' Creditors Arrangement Act, for stay of proceedings commence by creditor and for ancillary relief — Application granted — Coordinated reorganization of bankrupt was in interest of all creditors as would ensure that all creditors were treated equitably and fairly — Based on principles of comity court had jurisdiction to stay proceedings commenced against bankrupt — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 — Bankruptcy Code, 11 U.S.C. 1982, Chapter 11.

Corporations --- Arrangements and compromises — Under Companies' Creditors Arrangement Act — Arrangements — Effect of arrangement — Stay of proceedings

Foreign bankrupt was carrier based in Pennsylvania and operated leased facility in Ontario — Bankrupt obtained relief pursuant to Chapter 11 of United States Bankruptcy Code which precluded creditors from commencing or continuing proceedings against bankrupt — Canadian creditor seized and intended to sell bankrupt's assets to satisfy bankrupt's obligations — Bankrupt brought application for order for recognition of proceedings commenced pursuant to Chapter 11 to be recognized as "foreign proceeding" for purpose of Companies' Creditors Arrangement Act, for stay of proceedings commence by creditor and for ancillary relief — Application granted — Coordinated reorganization of bankrupt was in interest of all creditors as would ensure that all creditors were treated equitably and fairly — Based on principles of comity court had jurisdiction to stay proceedings commenced against bankrupt — Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 — Bankruptcy Code, 11 U.S.C. 1982, Chapter 11.

Table of Authorities

Cases considered by *Farley J.*:

Arrowmaster Inc. v. Unique Forming Ltd. (1993), 17 O.R. (3d) 407, 29 C.P.C. (3d) 65 (Ont. Gen. Div.) — considered

ATL Industries Inc. v. Han Eol Ind. Co. (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]) — considered

Babcock & Wilcox Canada Ltd., Re (2000), 5 B.L.R. (3d) 75, 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]) — considered

Borden & Elliot v. Winston Industries Inc. (November 1, 1983), Doc. 352/83 (Ont. H.C.) — considered

Grace Canada Inc., Re (April 4, 2001), Farley J. (Ont. S.C.)

GST Telecommunications Inc., Re (May 18, 2000), Ground J. (Ont. S.C.) — considered

Hunt v. T & N plc (1993), [1994] 1 W.W.R. 129, 21 C.P.C. (3d) 269, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 37 B.C.A.C. 161, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 60 W.A.C. 161, (sub nom. *Hunt v. T&N plc)* [1993] 4 S.C.R. 289, (sub nom. *Hunt v. T&N plc)* 109 D.L.R. (4th) 16, 85 B.C.L.R. (2d) 1, (sub nom. *Hunt v. Lac d'Amiante du Québec Ltée)* 161 N.R. 81 (S.C.C.) — applied

Microbiz Corp. v. Classic Software Systems Inc. (1996), 45 C.B.R. (3d) 40, 1996 CarswellOnt 4988, [1996] O.J. No. 5094 (Ont. Gen. Div.) — considered

Morguard Investments Ltd. v. De Savoye (1990), 46 C.P.C. (2d) 1, 15 R.P.R. (2d) 1, 76 D.L.R. (4th) 256, 122 N.R. 81, [1991] 2 W.W.R. 217, 52 B.C.L.R. (2d) 160, [1990] 3 S.C.R. 1077, 1990 CarswellBC 283, 1990 CarswellBC 767 (S.C.C.) — considered

Roberts v. Picture Butte Municipal Hospital (1998), 64 Alta. L.R. (3d) 218, 23 C.P.C. (4th) 300, 227 A.R. 308, [1999] 4 W.W.R. 443, 1998 CarswellAlta 646, [1998] A.J. No. 817 (Alta. Q.B.) — considered

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982

Chapter 11 — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — considered

s. 18.6 [en. 1997, c. 12, s. 125] — pursuant to

s. 18.6(1) "foreign proceeding" [en. 1997, c. 12, s. 125] — considered

s. 18.6(4) [en. 1997, c. 12, s. 125] — considered

s. 18.6(5) [en. 1997, c. 12, s. 125] — considered

APPLICATION by foreign bankrupt for recognition of proceedings commenced pursuant to Chapter 11 of United States *Bankruptcy Code* to be recognized as "foreign proceeding" for purpose of *Companies' Creditors Arrangement Act*, for stay of proceedings commenced by creditor and for ancillary relief.

Endorsement. ***Farley J.*:**

1 This was an application pursuant to section 18.6 of the *Companies' Creditors Arrangement Act* ("CCAA") for recognition of the proceedings commenced by the applicants in the U.S. Bankruptcy Court for the District of Delaware for relief under Chapter 11 of the United States Bankruptcy Code be recognized as a "foreign proceeding" for the purposes of the CCAA and to have this Court issue a stay of proceedings compatible with the Chapter 11 stay and for ancillary relief. That Order is granted with the usual comeback clause and subject to its expiry being May 11, 2001 unless otherwise extended.

2 The one applicant Matlack, Inc. ("Matlack") is a Pennsylvania corporation which is in the business of transporting chemical products throughout the United States, Mexico and Canada. It has developed a substantial Canadian business over the past 20 years and it currently operates a large leased facility in Ontario from which its Canadian licensed fleet services customers throughout Ontario and Quebec. Matlack's Canadian operations are fully integrated into Matlack's North American enterprise from both an operational and financial standpoint.

3 On March 29, 2001, Matlack and its affiliated applicants filed for relief under Chapter 11 and obtained relief precluding creditors subject to the U.S. Bankruptcy Court from commencing or continuing proceedings against the applicants. It is in the interests of all creditors and stakeholders of Matlack that its reorganization proceed in a coordinated and integrated fashion. The objective of such coordination is to ensure that creditors are treated as equitably and fairly as possible, *wherever they are located.* Harmonization of proceedings in the U.S. and in Canada will create the most stable conditions under which a successful reorganization can be achieved and will allow for judicial supervision of all of Matlack's assets and enterprise throughout the two jurisdictions. I note that a Canadian creditor of Matlack has recently seized some of Matlack's assets and intends to sell same in satisfaction of Matlack's obligations to it. It would seem to me that in the context of the proceedings, such a seizure would be of a preferential nature and thus unfair and prejudicial to the interests of Matlack's creditors generally.

4 Canadian courts have consistently recognized and applied the principles of comity. See *Morguard Investments Ltd. v. DeSavoye* (1990), 76 D.L.R. (4th) 256; *Arrowmaster Inc. v. Unique Forming Ltd.* (1993), 17 O.R. (3d) 407 (Ont. Gen. Div.); *ATL Industries Inc. v. Han Eol Ind. Co.* (1995), 36 C.P.C. (3d) 288 (Ont. Gen. Div. [Commercial List]); *Re Babcock & Wilcox Canada Ltd.* (2000), 18 C.B.R. (4th) 157 (Ont. S.C.J. [Commercial List]), at pp. 160-2.

5 In an increasingly commercially integrated world, countries cannot live in isolation and refuse to recognize foreign judgments and orders. The Court's recognition of a foreign proceeding should depend on whether there is a real and substantial connection between the matter and the jurisdiction. The determination of whether a sufficient connection exists between a jurisdiction and a matter should be based on considerations of order, predictability and fairness rather than on a mechanical analysis of connections between the matter and the jurisdiction. See *Morguard supra*; *Hunt v. T & N plc* (1993), 109 D.L.R. (4th) 16 (S.C.C.).

6 I concur with what Forsyth J. stated in *Roberts v. Picture Butte Municipal Hospital* (1998), [1999] 4 W.W.R. 443, 64 Alta. L.R. (3d) 218, [1998] A.J. No. 817 (Alta. Q.B.), at pp. 5-7 (A.J.):

> Comity and cooperation are increasingly important in the bankruptcy context. *As internationalization increases, more parties have assets and carry on activities in several jurisdictions. Without some coordination, there would be multiple proceedings, inconsistent judgments and general uncertainty.*
>
> *...I find that common sense dictates that these matters would be best dealt with by one Court, and in the interest of promoting international comity it seems the forum for this case is the U.S. Bankruptcy Court.* Thus, in either case, whether there has been attornment or not, I conclude it is appropriate for me to exercise my discretion and apply the principles of comity and grant the Defendant's stay application. I reach this conclusion based on all the circumstances, including the clear wording of the U.S. Bankruptcy Code provision, the similar philosophies and procedures in Canada and the U.S., the Plaintiff's attornment to the jurisdiction of the U.S. Bankruptcy Court, and the incredible number of claims outstanding... (emphasis added)

7 Based on principles of comity, where appropriate this Court has the jurisdiction to stay proceedings commenced against a party that has filed for bankruptcy protection in the U.S. An Ontario Court can accept the jurisdiction of a U.S. Bankruptcy Court over moveable property in Ontario of an American company which has become subject to a Chapter 11 order. See *Roberts*, *supra*; *Borden & Elliot v. Winston Industries Inc.* (November 1, 1983), Doc. 352/83 (Ont. H.C.).

8 Where a cross-border insolvency proceeding is most closely connected to one jurisdiction, it is appropriate for the Court in that jurisdiction to exercise principal control over the insolvency process in light of the principles of comity and in order to avoid a multiplicity of proceedings. See *Microbiz Corp. v. Classic Software Systems Inc.* (1996), [1996] O.J. No. 5094 (Ont. Gen. Div.).

9 Section 18.6(1) of the CCAA provides the following definition:

> "foreign proceeding" means a judicial or administrative proceeding commenced outside Canada in respect of a debtor under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally;

The U.S. Bankruptcy Code's Chapter 11 proceedings would be such a foreign proceeding.

10 As I indicated in *Babcock*, *supra*, at p. 166: "Section 18.6(4) may be utilized to deal with situations where, notwithstanding that a full filing is not being made under the CCAA, ancillary relief is required in connection with a foreign proceeding". Accordingly, it is appropriate for Matlack to be granted ancillary relief in recognizing the Chapter 11 proceedings and in enforcing the stay of proceedings resulting therefrom. In addition this Court can also grant relief pursuant to section 18.6(5). A stay in Canada would promote a stable atmosphere with a view to the reorganization of Matlack and its affiliates while allowing creditors, *wherever situate*, to be treated as equitably as possible. The stay would also assist with respect to claimants in Canada attempting to seize assets so as to get a leg up on the other creditors. See *Babcock*, *supra*, at pp. 165-6. Aside from the *Babcock* case, see also *Re GST Telecommunications Inc.* (May 18, 2000), Ground J. and *Re Grace Canada Inc.* (April 4, 2001), Farley J.

11 It would also seem to me that the relief requested is appropriate and in accordance with the principles set down in the Transnational Insolvency Project of the American Law Institute ("ALI"). This Project involved jurists, practitioners and academics from the NAFTA countries — the U.S., Mexico and Canada — and was completed as to the Restatement of the Law in 2000 after six years of analysis. [1] As a disclaimer, I should note that it was my privilege to tag along on this Project with the other participants who are recognized as outstanding in their fields.

12 The Project continues with the development of implementation and practical aids. Most recently this consists of the *Guidelines Applicable to Court-to-Court Communications on Cross-Border Cases*. I understand that Judge Mary Walrath

is handling the Chapter 11 case. It will be my pleasure to work in coordination with her on this cross-border proceeding. To assist further with the handling of these matters, I would approve the proposed Protocol from the Canadian side, including what I understand may be the first opportunity to incorporate the *Communication Guidelines*, such to be effective if, as and when Judge Walrath is satisfied with same from the U.S. side.

13 A copy of the ALI Guidelines and the Matlack Protocol are annexed to these reasons for the benefit of other counsel involved in anything similar.

14 Order to issue accordingly.

The American Law Institute

TRANSNATIONAL INSOLVENCY PROJECT

PRINCIPLES OF COOPERATION IN TRANSNATIONAL INSOLVENCY CASES AMONG THE MEMBERS OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Submitted by the Council to the Members of The American Law Institute for Discussion at the Seventy-Seventh Annual Meeting on May 15, 16, 17, and 18, 2000

The Executive Office

THE AMERICAN LAW INSTITUTE

4025 Chestnut Street

Philadelphia, Pa. 19104-3099

Amended — February 12, 2001

Appendix 2

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

The Guidelines at this time contemplate application only between Canada and the United States, because of the very different rules governing communications with Principles of Cooperation courts and among courts in Mexico. Nonetheless, a Mexican Court might choose to adopt some or all of these Guidelines for communications by a sindico with foreign administrators or courts.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an authorized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parries in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means in which case Guideline 7 shall apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Courts may consider appropriate.

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate;

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court to made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative or any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submission to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof of exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List which may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application of motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

— UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: MATLACK SYSTEMS, INC., *et al.*, Debtors

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, RSC 1985, c. C-36, SECTION 18.6 AS AMENDED

IN THE MATTER OF AN APPLICATION OF MATLACK, INC. AND THE OTHER PARTIES SET OUT IN SCHEDULE "A" ANCILLARY TO PROCEEDINGS UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

MATLACK, INC. AND THE OTHER PARTIES SET OUT IN SCHEDULE "A" Applicant

Chapter 11

Case No. 01-01114 (MFW)

Jointly Administered

CROSS-BORDER INSOLVENCY PROTOCOL

RE MATLACK, INC. AND AFFILIATES

This Cross-Border Insolvency Protocol (the "Protocol") shall govern the conduct of all parties in interest in a proceeding brought by Matlack, Inc. and certain other parties in the Ontario Superior Court of Justice and a proceeding brought by Matlack Systems, Inc. and certain other parties in the United States Bankruptcy Court for the District of Delaware as Case No. 01-01114.

A. Background

1 Matlack Systems, Inc., a Delaware corporation ("MSI"), is the parent company of a multinational transportation business that operates, through its various affiliates, in the United States, Canada and Mexico.

2 MSI and certain of its affiliates (collectively, the "Matlack Companies") have commenced reorganization cases (collectively, the "U.S. Cases") under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court"). The Matlack Companies are continuing in possession of their respective properties and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the U.S. Bankruptcy Code. An Official Committee of Unsecured Creditors has been appointed in the U.S. Cases (the "Creditor's Committee").

3 One of the Matlack Companies, Matlack, Inc. (for ease of reference, "Matlack Canada"), a United States affiliate of MSI, has assets and carries on business in Canada. The Matlack Companies have commenced proceedings (collectively, the "Canadian Case") under section 18.6 of the *Companies' Creditors Arrangement Act* (the "CCAA") in the Ontario Superior Court of Justice (the "Canadian Court"). The Matlack Companies have sought an Order of the Canadian Court (as initially made under the CCAA and as subsequently amended or modified, the "CCAA Order") under which (a) the U.S. Cases have been determined to be "foreign proceedings" for the purposes of section 18.6 of the CCAA; and (b) a stay

was granted against actions, enforcements, extra-judicial proceedings or other proceeding until and including August 15, 2001 against the Matlack Companies and their property.

4 The Matlack Companies are parties to both the Canadian Case and the U.S. Cases. For convenience, the U.S. Cases and the Canadian Case are referred to herein collectively as the "Insolvency Proceedings" and the U.S. Bankruptcy Court and the Canadian Court are referred to herein collectively as the "Courts".

B. Purpose and Goals

5 While the Insolvency Proceedings are pending in the United States and Canada for the Matlack Companies, the implementation of basic administrative procedures is necessary to coordinate certain activities in the Insolvency Proceedings, to protect the rights of parties thereto, the creditors of the Matlack Companies and to ensure the maintenance of the Courts' independent jurisdiction and comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in both the U.S. Cases and the Canadian Case:

- harmonize and coordinate activities in the Insolvency Proceedings before the U.S. Court and the Canadian Court;
- promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;
- honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada;
- promote international cooperation and respect for comity among the Courts, the parties to the Insolvency Proceedings and the creditors of the Matlack Companies and other parties interested in or affected by the Insolvency Proceedings;
- facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors, creditors and other interested parties, wherever located; and
- implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

C. Comity and Independence of the Courts

6 The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's independent jurisdiction over the subject matter of the U.S. Cases and the Canadian Case, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Matlack Companies nor any creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

7 The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the U.S. Cases. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct and hearing of the Canadian Cases.

8 In accordance with the principles of comity and independence established in Paragraph 6 and 7 above, nothing contained herein shall be construed to:

- increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or "limited notice" basis;
- require the Matlack Companies or any Creditor's Committee or Estate Representatives to take any action or refrain from taking, any action that would result in a breach of any duty imposed on them by any applicable law;

• authorize any action that requires the specific approval of one or both of the Courts under the U.S. Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or

• preclude any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other jurisdiction including, without limitation, the rights of interested parties or affected persons to appeal from the decisions taken by one or both of the Courts.

9 The Matlack Companies, the Creditor's Committee, the Estate Representatives and their respective employees, members, agents and professionals shall respect and comply with the duties imposed upon them by the U.S. Bankruptcy Code, the CCAA, the CCAA Order and any other applicable laws.

D. Cooperation

10 To assist in the efficient administration of the Insolvency Proceedings, the Matlack Companies, the Creditor's Committee and the Estate Representatives shall (a) cooperate with each other in connection with actions taken in both the U.S. Bankruptcy Court and the Canadian Court, and (b) take any other appropriate steps to coordinate the administration of the U.S. Cases and the Canadian Case for the benefit of the Matlack Companies' respective estates and stakeholders.

11 To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Bankruptcy Court and the Canadian Court each shall use its best efforts to coordinate activities with and defer to the judgment of the other Court, where appropriate and feasible. The U.S. Bankruptcy Court and the Canadian Court may communicate with one another in accordance with the Guidelines for Court-to-Court Communication in Cross-Border Cases developed by the American Law Institute and attached as Schedule "1" to this Protocol with respect to any matter relating to the Insolvency Proceedings and may conduct joint hearings with respect to any matter relating to the conduct, administration, determination or disposition of any aspect of the U.S. Cases and the Canadian Case, in circumstances where both Courts consider such joint hearings to be necessary or advisable and, in particular, to facilitate or coordinate with the proper and efficient conduct of the U.S. Cases and the Canadian Case.

12 Notwithstanding the terms of paragraph 11 above, this Protocol recognizes that the U.S. Bankruptcy Court and the Canadian Court are independent Courts and, accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall at all times exercise its independent jurisdiction and authority with respect to (a) matters presented to such Court and (b) the conduct of the parties appearing in such matters.

E. Retention and Compensation of Professionals

13 Except as provided in paragraph 16 below, any estate representatives appointed in the U.S. Cases, including any examiners or trustees appointed in accordance with section 1104 of the U.S. Bankruptcy Code and any Canadian professionals retained by the Estate Representatives (collectively, the "Estate Representatives"), shall be subject to the exclusive jurisdiction of the U.S. Court with respect to (a) the Estate Representatives' tenure in office; (b) the retention and compensation of the Estate Representatives; (c) the Estate Representatives' liability, if any, to any person or entity, including the Matlack Companies and any third parties, in connection with the U.S. Case; and (d) the hearing and determination of any other matters relating to the Estate Representatives arising in the U.S. Cases under the U.S. Bankruptcy Code or other applicable laws of the United States. The Estate Representatives and their U.S. counsel and other U.S. professionals shall not be required to seek approval of their retention in the Canadian Court. Additionally, the Estate Representatives and their U.S. counsel and other U.S. professionals (a) shall be compensated for their services in accordance with the U.S. Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Bankruptcy Court, and (b) shall not be required to seek approval of their compensation in the Canadian Court.

14 Any Canadian professionals retained by or with the approval of the Matlack Companies for purposes of the Canadian Case, including Canadian professionals retained by the Creditor's Committee (collectively, the "Canadian Professionals"), shall be subject to the exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in Canada, and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

15 Any United States professionals retained by the Matlack Companies and any United States professionals retained by the Creditor's Committee (collectively, the "U.S. Professionals") shall be subject to the exclusive jurisdiction of the U.S. Bankruptcy Court. Accordingly, the U.S. Professionals (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Bankruptcy Court under the U.S. Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Bankruptcy Court, and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

F. Rights to Appear and Be Heard

16 The Matlack Companies, their creditors and other interested parties in the Insolvency Proceedings, including the Creditor's Committee and the U.S. Trustee, shall have the right and standing to (a) appear and be heard in either the U.S. Court or the Canadian Court in the Insolvency Proceedings to the same extent as creditors and other interested parties domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum, and (b) file notices of appearance or other processes with the Clerk of the U.S. Bankruptcy Court or the Canadian Court in the Insolvency Proceedings; *provided, however*, that any appearance or filing may subject a creditor or an interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, that appearance by the Creditor's Committee in the Canadian Case shall not form a basis for personal jurisdiction in Canada over the members of the Creditor's Committee. Notwithstanding the foregoing, and in accordance with paragraph 13 above, the Canadian Court shall have jurisdiction over the Estate Representatives and the U.S. Trustee with respect to the particular matters as to which the Estate Representatives or the U.S. Trustee appear before the Canadian Court.

G. Notice

17 Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings and notice of any related hearings or other proceedings mandated by applicable law in connection with the Insolvency Proceedings, or this Protocol shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors, including the Creditor's Committee, and other interested parties in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) above, the U.S. Trustee, the Office of the United States Trustee, and such other parties as may be designated by either of the Courts from time to time.

H. Joint Recognition of Stays of Proceedings Under the U.S. Bankruptcy Code and the CCAA

18 In recognition of the importance of the stay of proceedings and actions against the Matlack Companies and their assets under section 18.6 of the CCAA and the CCAA Order (the "Canadian Stay") on the successful completion of the Insolvency Proceedings for the benefit of the Matlack Companies and their respective estates and stakeholders, to the extent necessary and appropriate, the U.S. Bankruptcy Court shall extend and enforce the Canadian Stay in the United States (to the same extent such stay of proceedings and actions is applicable in Canada) to prevent adverse actions against the assets, rights and holdings of the Matlack Companies. In implementing the terms of this paragraph, the U.S. Bankruptcy Court may consult with the Canadian Court regarding (a) the interpretation and application of the Canadian Stay and any orders of the Canadian Court modifying or granting relief from the Canadian Stay, and (b) the enforcement in the United States of the Canadian Stay.

19 In recognition of the importance of the stay of proceedings and actions against the Matlack Companies and their assets under section 362 of the U.S. Bankruptcy Code (the "U.S. Stay") to the successful completion of the Insolvency Proceedings for the benefit of the Matlack Companies and their respective estates and stakeholders, to the extent necessary and appropriate, the Canadian Court shall extend and enforce the U.S. Stay in Canada (to the same extent such stay of proceedings and action is applicable in the United States) to prevent adverse actions against the assets, rights and holdings, of the Matlack Companies in Canada. In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding (a) the interpretation and application of the U.S. Stay and any order of the U.S. Court modifying or granting relief from the U.S. Stay, and (b) the enforcement in Canada of the U.S. Stay.

20 Nothing contained herein shall affect or limit the Matlack Companies' or other parties' rights to assert the applicability or non-applicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

I. Effectiveness and Modification of Protocol

21 This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

22 This Protocol may not be supplemented, modified, terminated or replaced in any manner except by the U.S. Court and the Canadian Court. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 17 above.

J. Procedure for Resolving Disputes Under the Protocol

23 Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice, in accordance with paragraph 17 above. Where an issue is addressed to only one Court, in rendering a determination in any such dispute, such Court: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to the other Court or (iii) seek a joint hearing of both Courts. Notwithstanding the foregoing, each Court in making a determination shall have regard to the independence, comity or inherent jurisdiction of the other Court established under existing law.

K. Preservation of Rights

24 Neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall prejudice or affect the powers, rights, claims and defences of the Matlack Companies and their estates, the Creditor's Committee, the U.S. Trustee or any of the creditors of the Matlack Companies under applicable law, including the U.S. Bankruptcy Code and the CCAA.

L. Guidelines

25 The Protocol shall adopt by reference the Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") developed by The American Law Institute for the Transnational Insolvency Project, a copy of which are attached hereto as Schedule "1". In the case of any conflict between the terms of this Protocol and the terms of the Guidelines, the terms of this Protocol shall govern.

Application granted.

Footnotes

1 A copy of this material may be obtained from the Executive Office, The American Law Institute, 4025 Chestnut Street, Philadelphia, PA, USA 19104-3099.

End of Document

Tab 4

Court File No. CV-16-11656-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE	)	**TUESDAY THE 21ST**
	)	
MR. JUSTICE HAINEY	)	**DAY OF FEBRUARY, 2017**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

ORDER

THIS MOTION, made by Modular Space Corporation ("**MSC**"), in its capacity as the foreign representative (the "**Foreign Representative**") of the Debtors, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form attached at Tab 3 of the Motion Record was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of David Orlofsky sworn February 16, 2017 and the exhibits thereto (the "**Orlofsky Affidavit**"), the second report of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as the Court-appointed information officer (the "**Information Officer**") dated February 16, 2017 (the "**Second Report**"), the affidavit of Alan J. Hutchens sworn February 15, 2017 and the exhibits thereto (the "**Hutchens Affidavit**"), the affidavit of Adam Slavens sworn February 15, 2017 and the exhibits thereto (the "**Slavens Affidavit**") and on hearing the submissions of counsel for the Foreign Representative, counsel for the Information Officer, counsel for Bank of America, N.A., as Administrative Agent for the lenders under the Debtors' Post-Petition Credit Agreement (collectively, the "**DIP Lender**"), counsel for the Ad

Hoc Group of Noteholders and such other counsel as may be present, and upon reading the affidavit of service of Evita Ferreira sworn February 16, 2017, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

CAPITALIZED TERMS

2. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the Plan (as defined below).

RECOGNITION OF THE CONFIRMATION ORDER

3. **THIS COURT ORDERS** that the order (the "**Confirmation Order**") (i) confirming the Debtors' joint pre-packaged plan of reorganization pursuant to Chapter 11 of the United States Bankruptcy Code originally distributed on or about December 20, 2016 and as filed in revised form with the United States Bankruptcy Court for the District of Delaware on February 3, 2017 (including all amendments, modifications and supplements, the "**Plan**") and (ii) approving the Debtors' disclosure statement in respect of the Plan be and is hereby recognized and declared to be effective and that the Confirmation Order shall be implemented in Canada in accordance with its terms, and all persons subject to the jurisdiction of this Court shall be so bound. The Confirmation Order is attached to this Order as Schedule "**A**".

IMPLEMENTATION OF PLAN

4. **THIS COURT ORDERS** that the Debtors are authorized, directed and permitted to take all such steps and actions, and to do all things necessary or appropriate to implement the Plan and the transactions contemplated thereby in accordance with and subject to the terms of the Plan, and to enter into, execute, deliver, implement and consummate all the steps, transactions and agreements contemplated pursuant to the Plan.

5. **THIS COURT ORDERS AND DECLARES** that on the Effective Date (as defined in the Plan), the terms of the Plan shall be immediately effective and enforceable in Canada and deemed binding upon the Debtors and all claimants and shall be binding on all parties, subject to

the jurisdiction of this Court, with a claim against any of the Debtors and that is a party to or are subject to the settlements, compromises, releases, discharges and injunctions defined in the Plan.

ARTICLES OF REORGANIZATION

6. **THIS COURT ORDERS** that the articles of ModSpace Financial Services Canada, Ltd. ("**ModSpace Canada**") will be amended in accordance with the Plan, as set out in the Articles of Reorganization attached hereto as Schedule "**B**".

7. **THIS COURT ORDERS** that in accordance with this Order and the steps outlined in the Plan, the Registrar of Corporations of the Alberta Corporate Registry is hereby directed to file the Articles of Reorganization that are attached hereto as Schedule B, pursuant to Section 192 of the *Business Corporations Act* (Alberta), which Articles of Reorganization amend and restate Schedule B of the Articles of ModSpace Canada to:

(a) authorize directors, between annual general meetings, to appoint one or more additional directors of ModSpace Canada to serve until the next annual general meeting, but limiting the number of additional directors to an amount that is not in excess of 1/3 of the number of directors who held office at the expiration of the last meeting of ModSpace Canada; and

(b) prohibit ModSpace Canada from issuing any class of non-voting equity securities unless and solely to the extent permitted by section 1123(a)(6) of Chapter 11 of Title 11 of the United States Bankruptcy Code,

as more particularly outlined in Schedule B hereto.

RELEASES AND INJUNCTIONS

8. **THIS COURT ORDERS** that the Plan be and is hereby recognized and shall be immediately effective in Canada in accordance with the Confirmation Order and the Plan on the Effective Date.

APPROVAL OF A&M'S ACTIVITIES AND REPORTS

9. **THIS COURT ORDERS** that the Second Report and the activities of A&M in its capacity as the Information Officer, as described in the Second Report, be and are hereby approved.

APPROVAL OF FEES

10. **THIS COURT ORDERS** that the fees and disbursements of the Information Officer as described in the Second Report and as set out in the Hutchens Affidavit, including the estimated fees and disbursements of the Information Officer up to its date of discharge, be and are hereby approved.

11. **THIS COURT ORDERS** that the fees and disbursements of the Information Officer's legal counsel, Torys LLP ("**Torys**"), as described in the Second Report and as set out in the Slavens Affidavit, including the estimated fees and disbursements of Torys in connection with services to be provided to the Information Officer up to its date of discharge, be and are hereby approved. In the event the fees and disbursements of the Information Officer or its legal counsel Torys exceed the estimate, the Debtors may elect to pay such additional amounts without further application to this Court for approval of such fees and disbursements.

DISCHARGE OF THE COURT-ORDERED CHARGES

12. **THIS COURT ORDERS** that the Administration Charge and the DIP Lender's Charge, as each is defined in and created in the Supplemental Order of Mr. Justice Newbould dated December 27, 2016, be and are hereby fully and finally terminated, discharged and released on the Effective Date.

TERMINATING THE STAY OF PROCEEDINGS AND THE PART IV CCAA PROCEEDINGS

13. **THIS COURT ORDERS** that the stay of proceedings, as provided for in the Initial Recognition Order and the Supplemental Order of Mr. Justice Newbould, both dated December 27, 2016, be and is hereby terminated on the Effective Date.

14. **THIS COURT ORDERS** that the within proceedings under Part IV of the CCAA be and are hereby terminated on the Effective Date.

DISCHARGE OF A&M AS INFORMATION OFFICER

15. **THIS COURT ORDERS** that on the Effective Date, the Information Officer shall be discharged as Information Officer of the Debtors, provided however that notwithstanding its discharge herein (a) the Information Officer shall remain Information Officer for the performance of such incidental duties as may be required to complete the administration of these proceedings, and (b) the Information Officer shall continue to have the benefit of the provisions of all orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of A&M in its capacity as Information Officer.

16. **THIS COURT ORDERS** that, on the Effective Date, A&M is hereby released and discharged from any and all liabilities that A&M now has, or may hereafter have by reason of, or in any way arising out of, the acts and omissions of A&M while acting in its capacity as Information Officer in these proceedings. Without limiting the generality of the forgoing, A&M is hereby forever released and discharged from any and all liabilities relating to matters that were raised, or which could have been raised in these proceedings, save and except for any gross negligence or wilful misconduct on the part of the Information Officer.

INITIAL RECOGNITION ORDER AND SUPPLEMENTAL RECOGNITION ORDER

17. **THIS COURT ORDERS** that except to the extent that the Initial Recognition Order and the Supplemental Recognition Order made in these proceedings on December 27, 2016 (the "**Supplemental Recognition Order**" and, together with the Initial Recognition Order, the "**Recognition Orders**") have been varied by or are inconsistent with this Order or any further Order of this Court, the provisions of the Recognition Orders shall remain in full force and effect until the Effective Date, provided that the protections granted in favour of the Information Officer pursuant to the Recognition Orders shall continue in full force and effect.

AID AND RECOGNITION

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Foreign Representative, the Debtors, the Reorganized Debtors (as defined in the Plan), the Information Officer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Foreign

Representative, the Debtors, the Reorganized Debtors, the Information Officer, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Foreign Representative, the Debtors, the Reorganized Debtors, the Information Officer and their respective agents in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that each of the Foreign Representative, the Debtors, the Reorganized Debtors and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

Hainey J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 21 2017

PER / PAR:

SCHEDULE "A"

CONFIRMATION ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
MODULAR SPACE HOLDINGS, INC., et al.,	Case No. 16-12825 (KJC)
Debtors.[1]	Jointly Administered
	Re: Docket Nos. 17, 18, 224, 226, 227, 228, 229 and 249

ORDER APPROVING DEBTORS' DISCLOSURE STATEMENT FOR, AND CONFIRMING, DEBTORS' JOINT PREPACKAGED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Modular Space Holdings, Inc. and certain of its affiliates, as debtors and debtors in possession in the above-captioned cases (the "Debtors"), having:

a. distributed on or about December 20, 2016 (i) the *Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 17] (as modified, amended or supplemented from time to time, the "Plan"), (ii) the *Disclosure Statement for the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 18] (as modified, amended or supplemented, the "Disclosure Statement"); and (iii) ballots for voting on the Plan to holders of Claims[2] and Equity Interests entitled to vote on the Plan, including holders in Class 5C (Management Agreement Claims), Class 6A (Existing Holdings Equity Interests), Classes 7B through 7G (First Lien Credit Facility Claims) and Classes 8B, 8C, 8D, 8E and 8G (Note Claims) in accordance with the terms of title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of

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[1] The Debtors and the last four digits of their respective United States Tax Identification Number, or similar foreign identification number, as applicable, are as follows: Modular Space Holdings, Inc. (8595); Modular Space Intermediate Holdings, Inc. (1161); Modular Space Corporation (5284); Resun ModSpace, Inc. (0701); ModSpace Government Financial Services, Inc. (8573); ModSpace Financial Services Canada, Ltd. (CRA BN 0001); Resun Chippewa, LLC (6773). The address of the Debtors' corporate headquarters is 1200 Swedesford Road, Berwyn, PA 19312.

[2] All capitalized terms used but not defined herein have the meanings ascribed to them in the Plan, the Disclosure Statement or the Bankruptcy Code, as applicable. The rules of construction set forth in Article I.B. of the Plan shall apply.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules");

b. commenced, on December 21, 2016 (the "Petition Date"), the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code;

c. filed,[3] on the Petition Date, the Plan and Disclosure Statement;

d. filed, on the Petition Date, the *Debtors' Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing, (II) Establishing a Plan and Disclosure Statement Objection Deadline and Related Procedures, (III) Approving Solicitation and Related Procedures, (IV) Approving the Notice Procedures, (V) Approving Notice and Objection Procedures for the Assumption, Assignment and Rejection of Executory Contracts and Unexpired Leases and (VI) Extending the Time and, Upon Confirmation, Waiving the Requirements that Statements and Schedules be Filed and a Creditors' Meeting Be Convened* [Docket No. 19] (the "Scheduling Motion");

e. filed, on the Petition Date, the *Debtors' Motion for an Order Approving Procedures for Rights Offering and Related Forms and Authorizing the Debtors to Conduct the Rights Offering in Connection with the Debtors' Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 20] (the "Rights Offering Procedures Motion");

f. filed, on December 27, 2016, the *Technical Modifications to the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, Dated December 20, 2016* [Docket No. 93] (which is included in the definition of "Plan");

g. filed, on December 27, 2016, the *Notice of (A) Commencement of Prepackaged Chapter 11 Bankruptcy Cases, (B) Combined Hearing on the Disclosure Statement, Confirmation of the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, and Related Matters, (C) Assumption of Executory Contracts and Unexpired Leases and Cure Costs, (D) Objection Deadlines, and (E) Summary of the Plan of Reorganization*, which contained notice of the commencement of the Chapter 11 Cases, the date and time set for the hearing to consider approval of the Disclosure Statement and Confirmation of the Plan (the "Confirmation Hearing") and the deadline for filing objections (the "Objection Deadline") to the Plan and the Disclosure Statement [Docket No. 92] (the "Confirmation Hearing Notice");

[3] Unless otherwise indicated, use of the term "filed" herein also refers to the service of the applicable document filed on the docket in the Chapter 11 Cases, as applicable.

h. published, on December 29, 2016, in the *New York Times (National Edition)*, consistent with the order granting the Scheduling Motion [Docket No. 77] (the "Scheduling Order"), the Confirmation Hearing Notice (the "Confirmation Hearing Publication Notice") as evidenced by the *Affidavit of Publication of the Notice of (A) Commencement of Prepackaged Chapter 11 Bankruptcy Cases, (B) Combined Hearing on the Disclosure Statement, Confirmation of the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, and Related Matters, (C) Assumption of Executory Contracts and Unexpired Leases and Cure Costs, (D) Objection Deadlines and (E) Summary of the Plan of Reorganization in the New York Times* [Docket No. 112] (the "Confirmation Hearing Publication Notice Affidavit");

i. filed, on January 9, 2017, the *Supplemental Notice to Certain Stakeholders Regarding the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 120] (the "Supplemental Notice")

j. filed, on January 11, 2017, the *Affidavit of Service of Robert Terziyan re: 1) Notice of (A) Commencement of Prepackaged Chapter 11 Bankruptcy Cases, (B) Combined Hearing on the Disclosure Statement, Confirmation of Debtors Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, and Related Matters, (C) Assumption of Executory Contracts and Unexpired Leases and Cure Costs, (D) Objection Deadlines, and (E) Summary of the Plan of Reorganization; 2) Notice of Non-Voting Status with Respect to (A) Unimpaired Classes Deemed to Accept the Plan and (B) Unclassified Claims; and 3) Supplemental Notice to Certain Stakeholders Regarding the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 127] (the "Confirmation Hearing Notice Affidavit" and, together with the Confirmation Hearing Notice Publication Affidavit, the "Affidavits");

k. commenced, on January 11, 2017, consistent with the order granting the Rights Offering Procedures Motion [Docket No. 80] (the "Rights Offering Procedures Order"), the Rights Offering, as evidenced by the Rights Offering Affidavit [Docket No. 177] (the "Rights Offering Affidavit");

l. served, on January 18, 2017, consistent with the Rights Offering Procedures Order, the New Shareholder Agreement, as evidenced by the Rights Offering Affidavit;

m. filed, on January 18 and 19, 2017, the Plan Supplement for the *Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket Nos. 169 and 173] (as amended by the Amended Plan Supplement and Second Amended Plan Supplement (each as defined below), the "Plan Supplement," which is included in the definition of "Plan");

n. filed, on January 19, 2017, the *Second Technical Modifications to the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, Dated December 20, 2016* [Docket No. 174] (which is included in the definition of "Plan");

o. filed, on January 24, 2017, the *Debtors' Motion for an Order Under Bankruptcy Code Sections 105, 363, and 364 Authorizing Performance and Continuation of Surety Bond Program* [Docket No. 178] (the "Surety Bond Motion");

p. filed, on January 25, 2017, the *Third Technical Modifications to the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, Dated December 20, 2016* [Docket No. 193] (which is included in the definition of "Plan");

q. filed, on January 30, 2017, the *Declaration of David Hartie of Kurtzman Carson Consultants, LLC Regarding the Mailing, Voting and Tabulation of Ballots Accepting and Rejecting the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 206] (the "Voting Report"), which details the results of the Plan voting and solicitation process;

r. filed, on February 2, 2017, the *Amended Plan Supplement to the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 220] (the "Amended Plan Supplement," which is included in the definition of "Plan");

s. filed, on February 3, 2017, a revised version of the Plan [Docket No. 224];

t. filed, on February 3, 2017, the *Declaration of David Orlofsky in Support of (I) Approval of the Debtors' Disclosure Statement Pursuant to Sections 1125 and 1126(b) of the Bankruptcy Code, and (II) Confirming the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 226] (the "Orlofsky Confirmation Declaration");

u. filed, on February 3, 2017, the *Declaration of W. Craig Burns, CFO and Treasurer of Modular Space Corporation, in Support of (I) Approval of the Debtors' Disclosure Statement Pursuant to Sections 1125 and 1126(b) of the Bankruptcy Code, and (II) Confirming the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 227] (the "Paquin Confirmation Declaration" and, together with the Orlofsky Confirmation Declaration, the "Confirmation Declarations");

v. filed, on February 3, 2017, the *Debtors' Memorandum of Law in Support of Entry of an Order (I) Approving the Debtors' Disclosure Statement Pursuant to Sections 1125 and Section 1126(b) of the Bankruptcy Code, and (II) Confirming the Debtors' Joint Prepackaged Chapter 11 Plan of Reorganization* [Docket No. 228] (the "Confirmation Brief");

w. filed, on February 6, 2017, the *Notice of Adjournment of Hearing to Consider Approval of Disclosure Statement and Confirmation of Plan* [D.I. 239] (the "Adjournment Notice");

x. filed, on February 13, 2017, the *Second Amended Plan Supplement to the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 248] (the "Second Amended Plan Supplement," which is included in the definition of "Plan"); and

y. operated their businesses and managed their properties during the Chapter 11 Cases as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

The Court having:

a. entered, on December 22, 2016, the Scheduling Order;

b. set February 7, 2017 at 1:00 p.m. (prevailing Eastern Time), as the date and time for the Confirmation Hearing, pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128 and 1129 of the Bankruptcy Code, as set forth in the Scheduling Order;

c. reviewed the Plan, the Disclosure Statement, the Confirmation Brief, the Confirmation Declarations, the Voting Report, the Confirmation Hearing Notice, the Affidavits, the ballots and all filed pleadings, exhibits, statements and comments regarding approval of the Disclosure Statement and confirmation of the Plan, including all objections, statements and reservations of rights;

d. held the Confirmation Hearing;

e. heard statements made by counsel in respect of approval of the Disclosure Statement and confirmation of the Plan;

f. considered all oral representations, testimony, documents, filings and other evidence regarding approval of the Disclosure Statement and confirmation of the Plan; and

g. taken judicial notice of all pleadings and other documents filed, all orders entered, and all evidence and arguments presented in the Chapter 11 Cases.

NOW, THEREFORE, it appearing to the Court that notice of the Confirmation Hearing and the opportunity for any party in interest to object to approval of the Disclosure Statement and Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby, and the legal and factual bases set forth in

the documents filed in support of approval of the Disclosure Statement and Confirmation and other evidence presented at the Confirmation Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good cause appearing therefor, the Court makes and issues the following findings of fact and conclusions of law, and orders:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

A. Findings and Conclusions

1. The findings and conclusions set forth herein and in the record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following conclusions of law constitute findings of fact, or vice versa, they are adopted as such.

B. Jurisdiction, Venue and Core Proceeding

2. The Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. The Court has exclusive jurisdiction to determine whether the Disclosure Statement and the Plan comply with the applicable provisions of the Bankruptcy Code and should be approved and confirmed, respectively. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. Approval of the Disclosure Statement, including associated solicitation procedures and Confirmation of the Plan, are core proceedings within the meaning of 28 U.S.C. § 157(b)(2). The Court has subject matter jurisdiction over these matters pursuant to 28 U.S.C. § 1334 and exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed and the Disclosure Statement should be approved.

C. Eligibility for Relief

3. The Debtors were and are entities eligible for relief under the Bankruptcy Code.

D. Commencement and Joint Administration of the Chapter 11 Cases

4. On the Petition Date, each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. In accordance with the *Order Directing Joint Administration of Cases Pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1* [Docket No. 66], the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015. Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. No statutory committee of unsecured creditors or equity security holders has been appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

E. Judicial Notice

5. The Court takes judicial notice of (and deems admitted into evidence for Confirmation) the docket of the Chapter 11 Cases maintained by the clerk of the Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases. Any resolutions of objections to Confirmation or to approval of the Disclosure Statement explained on the record at the Confirmation Hearing are incorporated by reference. All unresolved objections, statements, informal objections and reservations of rights, if any, related to the Plan, the Disclosure Statement, or Confirmation are overruled on the merits.

F. Burden of Proof—Confirmation of the Plan

6. The Debtors, as proponents of the Plan, have met their burden of proving the applicable elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

G. Notice

7. As evidenced by the Confirmation Hearing Notice, the Confirmation Hearing Publication Notice, the Supplemental Notice, the Adjournment Notice and the Affidavits, due, adequate and sufficient notice of the Disclosure Statement, the Plan and the Confirmation Hearing, together with all deadlines for voting to accept or reject the Plan as well as objecting to the Disclosure Statement and the Plan, has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims; (c) counsel to the First Lien Agent; (d) the First Lien Lenders; (e) Counsel to the Trustee; (f) the Noteholders; (g) counsel to the Consenting Interest Holders; (h) all other known creditors; (i) all holders of Existing Holdings Equity Interests; (j) the Internal Revenue Service ("IRS"); (k) the Securities and Exchange Commission; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the parties identified in clauses (a) through (l) collectively, the "Core Notice Parties"). Also, the Confirmation Hearing Publication Notice was published in the *New York Times* in compliance with the Scheduling Order and Bankruptcy Rule 2002(*l*). Such notice was adequate and sufficient pursuant to section 1128 of the Bankruptcy Code, Bankruptcy Rules 2002(b) and 3020 and other applicable law and rules, and no other or further notice is or shall be required.

H. Disclosure Statement

8. The Disclosure Statement contains "adequate information" (as such term is defined in section 1125(a) of the Bankruptcy Code and used in section 1126(b)(2) of the

Bankruptcy Code) with respect to the Debtors, the Plan, and the transactions contemplated therein. The filing of the Disclosure Statement with the clerk of the Court satisfied Bankruptcy Rule 3016(b).

I. Ballots

9. The Classes of Claims and Equity Interests entitled under the Plan to vote to accept or reject the Plan (the "Voting Classes") are set forth below:

Classes	Claim or Equity Interest
5C	Management Agreement Claims
6A	Existing Holdings Equity Interests
7B -7G	First Lien Credit Facility Claims
8B, 8C, 8D, 8E and 8G	Note Claims

10. The Ballots and Master Ballots (as defined in the Scheduling Motion) that the Debtors used to solicit votes to accept or reject the Plan from holders in the Voting Classes adequately addressed the particular needs of the Chapter 11 Cases and were appropriate for holders in the Voting Classes to vote to accept or reject the Plan.

J. Solicitation

11. As described in the Voting Report, the solicitation of votes on the Plan complied with the solicitation procedures set forth in the Scheduling Motion and approved in the Scheduling Order (the "Solicitation Procedures"), was appropriate and satisfactory based upon the circumstances of the Chapter 11 Cases, and was in compliance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and any other applicable rules, laws and regulations, including the registration requirements under the Securities Act (and under any equivalent state securities or "Blue Sky" laws).

12. As described in the Voting Report and the Affidavits, as applicable, prior to the Petition Date, the Plan, the Disclosure Statement and the applicable ballot (collectively, the "Solicitation Materials"), and, following the Petition Date, the Confirmation Hearing Notice, were transmitted and served, including to all holders in the Voting Classes, in compliance with the Bankruptcy Code, including sections 1125 and 1126 thereof, the Bankruptcy Rules, including Bankruptcy Rules 3017 and 3018, the Local Rules, the Scheduling Order and any applicable non-bankruptcy law. Transmission and service of the Solicitation Materials and the Confirmation Hearing Notice were timely, adequate and sufficient. No further notice is required.

13. As set forth in the Voting Report, the Solicitation Materials were distributed to holders in the Voting Classes that held a Claim or an Equity Interest, as applicable, as of December 13, 2016 (the date specified in such documents for the purpose of the solicitation) (the "Voting Record Date"). The establishment and notice of the Voting Record Date were reasonable and sufficient.

14. The period during which the Debtors solicited acceptances or rejections to the Plan was a reasonable and sufficient period of time for holders in the Voting Classes to make an informed decision to accept or reject the Plan.

15. Under section 1126(f) of the Bankruptcy Code, the Debtors were not required to solicit votes from the holders of Claims or Equity Interests, as applicable, in the Unimpaired Classes (defined below), each of which is conclusively presumed to have accepted the Plan.

K. Service of Rights Offering Materials; Notice

16. As evidenced by the Rights Offering Affidavit, the Debtors complied with the service requirements and procedures with respect to distribution of all necessary subscription forms and notices ("Subscription Materials") with respect to the Rights Offering as approved in the Rights Offering Procedures Order.

17. All Subscription Materials were properly served, and Eligible Participants' participation in the Rights Offering was sought in good faith and in compliance with the Rights Offering Procedures Order, the Bankruptcy Code, the Bankruptcy Rules and all other applicable orders, and federal, state and local laws, rules and regulations ("Applicable Laws").

18. The Subscription Materials included a signature page to the New Shareholder Agreement that holders of Note Claims intending to subscribe to Rights Offering Equity Interests in the Rights Offering were required to submit. On January 18, 2017, the Debtors filed a version of the New Shareholder Agreement with the Plan Supplement, and served that version on holders of Note Claims. On February 2, 2017, the Debtors filed the Amended Plan Supplement, which included a revised version of the New Shareholder Agreement (the "February 2 New Shareholder Agreement") reflecting certain technical, non-substantive changes, and served the February 2 New Shareholder Agreement on holders of Note Claims. To the extent holders of Note Claims submitted signature pages prior to their receipt of the February 2 New Shareholder Agreement, such signature pages are deemed to be signatures to the February 2 New Shareholder Agreement and, upon the Effective Date, such holders of Note Claims shall be deemed parties to the February 2 New Shareholder Agreement.

L. Voting

19. As evidenced by the Voting Report, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith and in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Scheduling Order, the Disclosure Statement and any applicable non-bankruptcy law, rule, or regulation.

20. Each of the Debtors and, to the extent applicable, their respective affiliates, agents, directors, members, partners, officers, employees, advisors and attorneys have solicited

votes on the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and all Applicable Laws.

M. Voting Results

21. The Voting Classes are impaired under the Plan and therefore eligible to vote on the Plan. As evidenced by the Voting Report, which is incorporated herein by reference, 100% of voting holders of Class 5C Management Agreement Claims, 100% of voting holders of Class 6A Existing Holdings Equity Interests, 100% of voting holders of Classes 7B through 7G First Lien Credit Facility Claims and 100% of voting holders of Classes 8B, 8C, 8D, 8E and 8G Note Claims voted to accept the Plan.

N. Classes Deemed to Have Accepted the Plan

22. Classes 1A-1G (Other Priority Claims), 2A-2G (Other Secured Claims), 3A-3G (General Unsecured Claims), 4A-4G (Intercompany Claims) and 9B-9G (Equity Interests in Intermediate, Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC) (collectively, the "Unimpaired Classes") are unimpaired under the Plan and holders of such Claims and Equity Interests are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

O. Plan Supplement

23. The Plan Supplement complies with the Bankruptcy Code and the terms of the Plan, and the filing and notice of the Plan Supplement was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and no other or further notice is required. All documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. Subject to the terms of the Plan (including Article XI.F. of the Plan), the Debtors reserve the right to alter, amend, update, or modify the Plan

Supplement. The Voting Parties (as defined in the Scheduling Motion) were provided due, adequate and sufficient notice of the Plan Supplement.

P. Compliance with Bankruptcy Code Requirements—Section 1129(a)(1)

24. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) of the Bankruptcy Code. In addition, the Plan is dated and identifies the Entities submitting it, thereby satisfying Bankruptcy Rule 3016(a).

(i) Proper Classification—Sections 1122 and 1123(a)(1)

25. The Plan satisfies the requirements of sections 1122(a) and 1123(a)(1) of the Bankruptcy Code. Article III of the Plan provides for the separate classification of Claims and Equity Interests into nine Classes with subclasses for each Debtor. Valid business, factual and legal reasons exist for the separate classification of such Classes of Claims and Equity Interests. The classifications reflect no improper purpose and do not unfairly discriminate between, or among, holders of Claims or Equity Interests. Each Class of Claims and Equity Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class.

(ii) Specified Unimpaired Classes—Section 1123(a)(2)

26. The Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Equity Interests, as applicable, in the Unimpaired Classes are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code.

27. Additionally, Article II of the Plan specifies that Allowed Administrative Claims, DIP Facility Claims, Fee Claims, Priority Tax Claims, U.S. Trustee Fees and RSA Claims and Backstop Commitment Agreement Claims will be paid in full in accordance with the terms of the Plan, although these Claims are not classified under the Plan.

(iii) Specified Treatment of Impaired Classes—Section 1123(a)(3)

28. The Plan satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code. Article III of the Plan specifies that Claims and Equity Interests, as applicable, in the Voting Classes are Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code, and describes the treatment of such Classes.

(iv) No Discrimination—Section 1123(a)(4)

29. The Plan satisfies the requirements of section 1123(a)(4) of the Bankruptcy Code. The Plan provides for the same treatment by the Debtors 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.

30. Consummation of the Backstop Commitment Agreement pursuant to the Plan and the provision of consideration in the form of New Common Equity Interests to each of the Backstop Parties does not violate the requirements of the Bankruptcy Code, including section 1123(a)(4). Consideration to each Backstop Party under the Backstop Commitment Agreement is provided in exchange for such Backstop Party's financial commitment to purchase New Common Equity Interests thereunder, including by backstopping the Debtors' Rights Offering. Holders of Claims or Equity Interests in the same class as the Claims or Equity Interests of one or more Backstop Parties receive the same treatment under the Plan as the Claims or Equity Interests of each Backstop Party in their capacity as Holders of such Claims or Equity Interests.

(v) Adequate Means for Plan Implementation—Section 1123(a)(5)

31. The Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code. The provisions in the Plan, Plan Supplement and the exhibits and attachments to the Plan and the Disclosure Statement, provide, in detail, adequate and proper means for the Plan's implementation, including, without limitation: (a) the issuance of New Common Equity

Interests; (b) authorizing the Debtors and/or the Reorganized Debtors to take all actions necessary to effectuate the Plan; (c) the Reinstatement of certain Claims; (d) equitization of the Notes; (e) the vesting of Estate assets in the Reorganized Debtors; (f) the cancellation of certain existing agreements and instruments; (h) the preservation and vesting of certain Causes of Action in the Reorganized Debtors; (i) the appointment of the directors to the New Board of each of the Reorganized Debtors; and (j) entry into the Exit Credit Facility Documents.

(vi) Voting Power of Equity Securities—Section 1123(a)(6)

32. The Plan satisfies the requirements of section 1123(a)(6) of the Bankruptcy Code. It prohibits the issuance of non-voting Equity Securities as required by such section. The New Corporate Governance Documents, as filed with the Plan Supplement, contain this prohibition.

(vii) Directors and Officers—Section 1123(a)(7)

33. The Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code. Article V.B. of the Plan contains provisions regarding the manner of selection of the Reorganized Debtors' directors and officers that are consistent with the interests of all holders of Claims and Equity Interests and public policy. The identity and affiliations of any person proposed to serve as a director or officer of the Reorganized Debtors has been disclosed in the Plan Supplement.

(viii) Impairment / Unimpairment of Classes—Section 1123(b)(1)

34. The Plan is consistent with section 1123(b)(1) of the Bankruptcy Code. Article III of the Plan impairs or leaves unimpaired each Class of Claims and Equity Interests.

(ix) Assumption and Rejection—Section 1123(b)(2)

35. The Plan is consistent with section 1123(b)(2) of the Bankruptcy Code. Article IX of the Plan provides for the assumption, assumption and assignment, or rejection of

the Debtors' Executory Contracts and Unexpired Leases not previously assumed, assumed and assigned, or rejected during the Chapter 11 Cases under section 365 of the Bankruptcy Code.

(x) Settlement, Releases, Exculpation, Injunction and Preservation of Claims and Causes of Action—Section 1123(b)(3)

36. The Plan is consistent with section 1123(b)(3) of the Bankruptcy Code. In accordance with section 363 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration of the distributions and other benefits provided under the Plan, except as stated otherwise in the Plan, the provisions of the Plan constitute a good-faith compromise of all Claims, Equity Interests and controversies relating to the contractual, subordination and other legal rights that a holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The compromise and settlement of such Claims and Equity Interests embodied in the Plan and reinstatement and unimpairment of other Classes identified in the Plan are in the best interests of the Debtors, the Estates and all holders of Claims and Equity Interests, and are fair, equitable and reasonable.

37. Article VI.I.2. of the Plan describes certain releases granted by the Debtors (the "Debtor Releases"). The Debtors have satisfied the business judgment standard with respect to the propriety of the Debtor Releases. Such releases are a necessary and integral element of the Plan, and are fair, reasonable and in the best interests of the Debtors, the Estates and creditors. Also, the Debtor Releases are: (1) in exchange for the good and valuable consideration provided by the Lender Released Parties and Non-Lender Released Parties; (2) a good-faith settlement and compromise of the Claims released by Article VI.I.2.of the Plan; (3) given, and made, after due notice and opportunity for hearing; and (4) a bar to any of the Debtors asserting any Claim or Cause of Action released by Article VI.I.2. of the Plan.

38. Article VI.I.3. of the Plan describes certain releases granted by certain third parties (the "Third-Party Releases"). The Third-Party Releases provide finality for the Debtors, the Reorganized Debtors, the Lender Released Parties and the Non-Lender Released Parties regarding the parties' respective obligations under the Plan and with respect to the Reorganized Debtors. The Confirmation Hearing Notice sent to holders of Claims and Equity Interests and the Confirmation Hearing Publication Notice published in the *New York Times*, and the ballots sent to all holders of Impaired Claims and Equity Interests entitled to vote on the Plan, in each case, unambiguously referred recipients to the Plan sections containing Third-Party Releases. Such releases are a necessary and integral element of the Plan, and are fair, equitable, reasonable and in the best interests of the Debtors, the Estates and all holders of Claims and Equity Interests. Also, the Third-Party Releases are: (1) in exchange for the good and valuable consideration provided by the Debtors, the Reorganized Debtors, the Estates, the Lender Released Parties and the Non-Lender Released Parties; (2) a good-faith settlement and compromise of the Claims released by Article VI.I. of the Plan; (3) given, and made, after due notice and opportunity for hearing; (4) consensual by holders of Claims and Equity Interests granting Third-Party Releases; and (5) a bar to any Entity granting a release under Article VI.I.3. of the Plan from asserting any Claim or Cause of Action released by Article VI.I.3. of the Plan.

39. The exculpation, described in Article VI.I.6. of the Plan (the "Exculpation"), is appropriate under the Bankruptcy Code and Applicable Laws because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents and is appropriately limited in scope. Without limiting anything in the Exculpation, each Exculpated Party has participated in the Chapter 11 Cases in good faith and is appropriately released and exculpated from any right of action against any Exculpated Party, for any

prepetition or postpetition act taken or omitted to be taken in connection with, related to or arising out of the Chapter 11 Cases or the consideration, formulation, preparation, dissemination, implementation, confirmation or consummation of the Plan, the exhibits to the Plan, the Plan Supplement, the Disclosure Statement, any transaction proposed in connection with the Chapter 11 Cases or any contract, instrument, release, or other agreement or document created or entered into or any other act taken or omitted to be taken, in connection therewith. The Exculpation, including its carve-outs for (a) any First Lien Credit Facility Claims, as assumed by the Reorganized Debtors in accordance with the amended and restated First Lien Credit Agreement pursuant to the terms of the Exit Credit Facility Documents, liabilities or obligations at any time outstanding under the Exit Credit Facility Documents, (b) the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan and (c) fraud, gross negligence or willful misconduct as determined in a Final Order, are entirely consistent with established practice in this jurisdiction and others.

40. The injunction provision set forth in Article VI.I.7. of the Plan is necessary to implement, preserve and enforce the Debtors' discharge, the Debtor Releases, the Third-Party Releases and the Exculpation, and is narrowly tailored to achieve this purpose.

41. Article VI.D. of the Plan appropriately provides that the Reorganized Debtors will retain, and may enforce, all rights to commence and pursue, as appropriate, any and all Causes of Action except for Causes of Action that have been expressly waived, settled, or otherwise released as provided in Article VI.D., whether arising before or after the Petition Date in accordance with section 1123(b) of the Bankruptcy Code. The provisions regarding the

preservation of Causes of Action in the Plan, are appropriate, fair, equitable and reasonable, and are in the best interests of the Debtors, the Estates and holders of Claims and Equity Interests.

42. The full release and discharge of all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates described in Article VI.I.4. of the Plan except (a) with respect to the ABL Liens, (b) with respect to the Liens securing the DIP Facility prior to the payment in full of the DIP Facility, or (c) as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan (the "Lien Release"), is necessary to implement the Plan. The provisions of the Lien Release are appropriate, fair, equitable and reasonable and are in the best interests of the Debtors, the Estates and holders of Claims and Equity Interests.

(xi) Additional Plan Provisions—Section 1123(b)(6)

43. The other discretionary provisions of the Plan are appropriate and consistent with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1123(b)(6) of the Bankruptcy Code.

(xii) Curing Defaults—Section 1123(d)

44. The Plan satisfies section 1123(d)'s requirement that any amounts necessary to cure any defaults have been determined in accordance with the relevant underlying agreement and any applicable nonbankruptcy law.

Q. Debtor Compliance with the Bankruptcy Code—Section 1129(a)(2)

45. The Debtors have complied with the applicable provisions of the Bankruptcy Code and, thus, satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. Specifically, each Debtor:

a. is an eligible debtor under section 109, and a proper proponent of the Plan under section 1121(a), of the Bankruptcy Code;

b. has complied with applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Court; and

c. complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126, the Bankruptcy Rules, the Local Rules, any applicable non-bankruptcy law, rule and regulation, the Scheduling Order and all other applicable law, in transmitting the Solicitation Materials, and related documents and notices, and in soliciting and tabulating the votes on the Plan.

46. Furthermore, the solicitation of acceptances or rejections of the Plan and solicitation of participation in the Rights Offering: (a) complied with the Rights Offering Procedures Order; (b) complied with all Applicable Laws governing the adequacy of disclosure in connection with such solicitation; and (c) occurred only after disclosing "adequate information," as section 1125(a) of the Bankruptcy Code defines that term, to holders of Claims and Equity Interests. The Debtors and each Backstop Party, and their respective affiliates, agents, directors, members, partners, officers, employees, advisors and attorneys, each in their capacities as such, have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code. The Plan, therefore, satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

R. Plan Proposed in Good Faith—Section 1129(a)(3)

47. The Plan satisfies the requirements of section 1129(a)(3) of the Bankruptcy Code. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In so determining, the Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself, the process leading to Confirmation, including the overwhelming support of holders of Claims and Equity Interests for the Plan, and the transactions to be implemented pursuant thereto, including the equitization of the Notes and the issuance of New Common Equity Interests. The Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate purpose of allowing the Debtors to emerge from bankruptcy with a

capital and organizational structure that will allow them to conduct their businesses and satisfy their obligations with sufficient liquidity and capital resources. The Rights Offering to be performed under or in connection with the Plan is an essential element of the Plan, and the terms of the various agreements evidencing such Rights Offering (including the equity purchases of each Backstop Party thereunder) are in the best interests of the Reorganized Debtors, the Debtors, their Estates, creditors and Equity Interest holders and were negotiated and obtained in good faith.

S. Payment for Services or Costs and Expenses—Section 1129(a)(4)

48. Payments made or to be made by the Debtors for services or for costs and expenses in connection with the Chapter 11 Cases prior to confirmation, or in connection with the Plan and incidental to the Chapter 11 Cases, including Allowed Administrative Claims, DIP Facility Claims, U.S. Trustee Fee, RSA Claims and Backstop Commitment Agreement Claims, have been approved by, or are subject to the approval of, this Court as reasonable. After the Effective Date, the Court will retain jurisdiction with respect to applications for allowance of Fee Claims and expenses incurred up to and through the Effective Date. The procedures set forth in the Plan for the Court's review and ultimate determination of the fees and expenses to be paid by the Debtors in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, satisfy the objectives of, and are in compliance with, section 1129(a)(4) of the Bankruptcy Code.

T. Directors, Officers and Insiders—Section 1129(a)(5)

49. The Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code. Article V.B. of the Plan, in conjunction with Exhibit B of the Plan Supplement, and the Confirmation Brief disclose the identity and affiliations of the individuals proposed to serve as the initial directors and officers of the Reorganized Debtors, and the identity

and nature of any compensation for any insider (as section 101 of the Bankruptcy Code defines that term) who will be employed or retained by the Reorganized Debtors. The proposed directors and officers for the Reorganized Debtors are qualified, and the appointments to, or continuance in, such offices by the proposed directors and officers is consistent with the interests of the holders of Claims and Interests and with public policy.

U. No Rate Changes—Section 1129(a)(6)

50. Section 1129(a)(6) of the Bankruptcy Code is not applicable to the Chapter 11 Cases. The Plan proposes no rate change subject to the jurisdiction of any governmental regulatory commission and requires no governmental regulatory approval.

V. Best Interest of Creditors—Section 1129(a)(7)

51. The Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis, attached to the Disclosure Statement, and the other evidence related thereto in support of the Plan that was proffered, or adduced, at, or prior to, or in a declaration, in connection with, the Confirmation Hearing: (a) are reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; (d) provide a reasonable estimate of the liquidation value of the Debtors' Estates upon a conversion to a chapter 7 proceeding; and (e) establish that holders of Allowed Claims and Equity Interests in every Class will recover at least as much under the Plan on account of such Claim or Equity Interest, as of the Effective Date, as such holder would receive if the Debtors were liquidated, on the Effective Date, under chapter 7 of the Bankruptcy Code.

W. Acceptance by Certain Classes—Section 1129(a)(8)

52. The Plan satisfies the requirements of section 1129(a)(8) of the Bankruptcy Code. Each of the Voting Classes voted to accept the Plan. Each of the Unimpaired Classes is deemed to accept the Plan.

X. Treatment of Claims Entitled to Priority Under Section 507(a) of the Bankruptcy Code—Section 1129(a)(9)

53. The treatment of Administrative Claims, DIP Facility Claims, Fee Claims, Priority Tax Claims, U.S. Trustee Fees and RSA Claims and Backstop Commitment Agreement Claims, under Article II of the Plan, and of Other Priority Claims under Article III of the Plan, satisfies the requirements of, and complies in all respects with, section 1129(a)(9) of the Bankruptcy Code.

Y. Acceptance By At Least One Impaired Class—Section 1129(a)(10)

54. The Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code. As evidenced by the Voting Report, the Voting Classes voted to accept the Plan by the requisite numbers and amounts of Claims and Equity Interests, as applicable, determined without including any acceptance of the Plan by any insider (as that term is defined in section 101(31) of the Bankruptcy Code), specified under the Bankruptcy Code.

Z. Feasibility—Section 1129(a)(11)

55. The Plan satisfies the requirements of section 1129(a)(11) of the Bankruptcy Code. The financial projections attached to the Disclosure Statement and the other evidence supporting Confirmation of the Plan proffered or adduced by the Debtors at, or prior to, or in a declaration filed in connection with, the Confirmation Hearing, including but not limited to the Exit Credit Facility in an aggregate amount of approximately $719.5 million consisting of two revolving loans and two term loans, and the approximately $90 million fully backstopped rights

offering the Debtors have secured: (a) are reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented, or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; (d) establish that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Reorganized Debtors or any successor to the Reorganized Debtors under the Plan, except as provided in the Plan; and (e) establish that the Reorganized Debtors will have sufficient funds available to meet their obligations under the Plan.

AA. Payment of Fees—Section 1129(a)(12)

56. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article II.A. of the Plan provides for the payment of all fees payable by the Debtors under 28 U.S.C. § 1930(a).

BB. Continuation of Employee Benefits—Section 1129(a)(13)

57. The Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code. Article V.D. of the Plan provides that from and after the Effective Date, the payment of all retiree benefits, as defined in section 1114 of the Bankruptcy Code, if any, will continue in accordance with applicable law.

CC. Non-Applicability of Certain Sections—Section 1129(a)(14), (15) and (16)

58. Sections 1129(a)(14), 1129(a)(15) and 1129(a)(16) of the Bankruptcy Code do not apply to the Chapter 11 Cases. The Debtors owe no domestic support obligations, are not individuals and are not nonprofit corporations.

DD. Only One Plan—Section 1129(c)

59. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan is the only chapter 11 plan filed in each of the Chapter 11 Cases.

EE. Principal Purpose of the Plan—Section 1129(d)

60. The Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code. 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.

FF. Good Faith—Sections 1125(e) and 1126(e)

61. The Debtors, the Reorganized Debtors, the First Lien Lenders, the First Lien Agent, the DIP Lenders, the DIP Agent, the Consenting Noteholders, the Indenture Trustee and the Consenting Interest Holders (and each of their respective affiliates, agents, directors, officers, employees, advisors, attorneys and all other Professionals), have acted in "good faith" within the meaning of sections 1125(e) and 1126(e) of the Bankruptcy Code in compliance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules in connection with all of their respective activities relating to support of the Plan, including without limitation the execution, delivery and performance of the Restructuring Support Agreement, and solicitation of acceptances of the Plan, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code.

GG. Rights Offering

62. Without limiting, impairing or modifying any previous order of this Court approving or governing the Rights Offering, the Backstop Commitment Agreement, or the rights of each of the Backstop Parties (which orders are hereby reaffirmed and ratified), the proposed terms and conditions of the Rights Offering, Backstop Commitment Agreement and any amendments thereto (subject to the terms thereof), as set forth in the Disclosure Statement, Rights Offering Procedures, the instructions attached to the Rights Offering Procedures, the subscription forms utilized in the Rights Offering, the Backstop Commitment Agreement and any amendments to any of the foregoing, are fair and reasonable. The Rights Offering, including

the Backstop Commitment Agreement (and the registration statement to be filed pursuant thereto), has been an essential element of the Plan, is in the best interests of the Debtors, the Estates and Holders of Claims and Equity Interests, and does not conflict with Applicable Laws. The Debtors and each Backstop Party have acted in good faith and exercised reasonable business judgment in connection with the Rights Offering and the Backstop Commitment Agreement.

HH. Administration of Unimpaired or Reinstated Claims

63. The Plan provides that certain Claims will be Unimpaired or Reinstated without requiring holders of such Claims (the "Unimpaired or Reinstated Claims") to file Proofs of Claim in the Chapter 11 Cases. Notwithstanding this treatment, certain Proofs of Claim were filed in respect of Unimpaired or Reinstated Claims. Such Proofs of Claim are not necessary to preserve the rights of holders of Unimpaired or Reinstated Claims to assert the liability alleged in the Proofs of Claim against the Reorganized Debtors on and after the Effective Date. Providing the Reorganized Debtors with the ability to direct their claims agent, Kurtzman Carson Consultants, LLC (the "Claims Agent"), to mark Proofs of Claim filed in respect of Unimpaired or Reinstated Claims as "Unimpaired" or "Reinstated" on their register of claims is necessary to effectuate the treatment provided for such Claims in the Plan, does not affect the rights of the holders of such Claims nor the rights of the Debtors, Reorganized Debtors, or other parties-in-interest, and facilitates the effective administration of the Debtors' estates, which would be impeded but for the authorization granted herein.

II. Satisfaction of Confirmation Requirements

64. Based on the foregoing, the Plan satisfies the requirements for Confirmation set forth in section 1129 of the Bankruptcy Code.

JJ. Implementation

65. All documents necessary to implement the Plan and all other relevant and necessary documents have been negotiated in good faith and at arm's-length and shall, upon completion of documentation and execution, be valid, binding and enforceable agreements and shall not be in conflict with any federal or state law. The Debtors have exercised reasonable business judgment in determining to enter into all such documents and agreements and have provided sufficient and adequate notice of such documents and agreements to parties in interest. The Debtors and Reorganized Debtors, as applicable, are authorized, without further notice to, or action, order or approval of this Court or any other Person, to execute and deliver all agreements, documents (including all Exit Credit Facility Documents), instruments and certificates relating to such documents and agreements and to perform their obligations thereunder, including, without limitation, to pay all fees, costs and expenses thereunder in accordance with the Plan. The terms and conditions of such documents and agreements (and in the case of the Exit Credit Facility Documents, the terms and conditions set forth in the Exit Commitment Letter and Exit Credit Facility Term Sheet) are reaffirmed or approved, as applicable, and shall, upon completion of documentation and execution, be valid, binding and enforceable and shall not conflict with any Applicable Laws.

KK. Disclosure of Facts

66. The Debtors have disclosed all material facts regarding the Plan, including, without limitation, with respect to the equitization of the Notes, the Rights Offering and Backstop Commitment Agreement, the issuance of the New Common Equity Interests, the Exit Credit Facility and the assumption and incurrence of debt thereunder, securities registration exemptions for the New Common Equity Interests, the adoption, execution and delivery of all other material contracts, leases, instruments, releases, indentures, supplemental indentures and

other agreements relating to any of the foregoing and the fact that each applicable Debtor will emerge from its Chapter 11 Case as a validly existing corporation, limited liability company, partnership, or other form, as applicable, with separate assets, liabilities and obligations.

LL. Good Faith

67. The Debtors, the Lender Released Parties, the Non-Lender Released Parties, the Lender Releasing Parties and the Non-Lender Releasing Parties have been and will be acting in good faith if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions and transfers contemplated thereby, and (b) take the actions authorized and directed by this Confirmation Order to implement the restructuring transactions.

MM. Authorization and Issuance of Securities

68. The issuance of the New Warrants, New Common Equity Interests (including New Common Equity Interests issued upon exercise of the New Warrants), the Old Equity Plan Consideration, the Rights Offering Equity Interests, the Non-Rights Offering Equity Interests, and the Commitment Premium Equity Interests and any other security to be issued under the Plan, including, without limitation, pursuant to the Backstop Commitment Agreement, and the New Management Incentive Plan is hereby approved and authorized.

NN. Executory Contracts and Unexpired Leases; Adequate Assurance

69. The Debtors have exercised reasonable business judgment in determining to assume each of their Executory Contracts and Unexpired Leases as set forth in Article IX of the Plan or otherwise, and in this Confirmation Order. Each assumption of an Executory Contact or Unexpired Lease pursuant to this Confirmation Order, in accordance with Article IX of the Plan or otherwise, shall be legal, valid and binding upon the applicable Debtor or Reorganized Debtor and all non-Debtor Persons party to such Executory Contract or Unexpired Lease, all to the same extent as if such assumption had been authorized and effectuated pursuant to a separate order of

this Court that was entered pursuant to section 365 of the Bankruptcy Code prior to the Effective Date.

70. The assumption of Executory Contracts and Unexpired Leases pursuant to this Confirmation Order and in accordance with Article IX of the Plan is integral to the Plan and is in the best interests of the Debtors and their estates, creditors, holders of Equity Interests and other parties in interest.

71. The Debtors have provided adequate assurance of future performance for each of the assumed Executory Contracts and Unexpired Leases that are being assumed by the Reorganized Debtors, as applicable, pursuant to the Plan. The Debtors have cured or provided adequate assurance that the Reorganized Debtors will cure defaults (if any) under or relating to each of the Executory Contracts and Unexpired Leases that are being assumed by the Reorganized Debtors, as applicable, pursuant to the Plan. Except as specifically provided herein, the Cure Claim with respect to assumed contracts, as set forth in Article IX of the Plan, are the sole amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults and losses. By the payment of the Cure Claim, where applicable, the Debtors shall have cured and/or provided adequate assurance of cure of any monetary default existing as of the Effective Date and provided for compensation or adequate assurance of compensation to any party for actual pecuniary loss to such party resulting from a default under such assumed contracts and leases. The Plan, therefore, satisfies the requirements of section 365 of the Bankruptcy Code.

OO. Conditions to Confirmation; Effective Date

72. The conditions to confirmation of the Plan set forth in Article VI.A. have been satisfied.

73. Each of the conditions precedent to the Effective Date, as set forth in Article X.A. of the Plan, has been or is reasonably likely to be satisfied or waived in accordance with the Plan.

PP. Trustee

74. The Trustee diligently, fully, and in good faith discharged its duties and obligations pursuant to the Indenture and otherwise conducted itself with respect to all matters in any way relating to the Notes with the same degree of care and skill that a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

QQ. Retention of Jurisdiction

75. This Court may properly retain jurisdiction over all matters arising out of or related to the Chapter 11 Cases, the Debtors, the Reorganized Debtors and the Plan after the Effective Date, to the fullest extent permitted by law, in accordance with Article VIII. of the Plan.

ORDER

IT IS ORDERED, ADJUDGED, DECREED AND DETERMINED THAT:

1. **The Disclosure Statement.** The Disclosure Statement is approved in all respects.

2. **Ballots.** The Ballots and Master Ballots (as defined in the Scheduling Motion) are approved in all respects.

3. **Solicitation.** The forms of Ballots (as defined in the Scheduling Motion) and the solicitation of votes on the Plan complied with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code and all other applicable rules, laws and regulations, and was appropriate and satisfactory and is approved in all respects.

4. **Notice of the Confirmation Hearing.** Notice of the Confirmation Hearing was appropriate and satisfactory and is approved in all respects.

5. **Confirmation of the Plan.** The Plan is approved in its entirety and CONFIRMED under section 1129 of the Bankruptcy Code. The terms of the Plan, including the Plan Supplement, the proposed terms and conditions of the Exit Credit Facility Documents (including the Exit Credit Facility Security Documents), as set forth in the definitive documentation to be entered into substantially on the terms and conditions set forth in the Exit Commitment Letter and Exit Credit Facility Term Sheet, as filed with the Plan Supplement, the Rights Offering Procedures, Backstop Commitment Agreement and all other related, relevant and necessary documents and agreements are incorporated by reference into and are an integral part of this Confirmation Order.

6. **Record Closed.** The record of the Confirmation Hearing is closed.

7. **Plan Modifications.** Subsequent to filing the Plan on December 21, 2016, the Debtors made certain technical modifications to the Plan [Docket Nos. 93, 174 and 193] (the "Technical Modifications"). The Technical Modifications comply with the requirements under the Restructuring Support Agreement and do not materially adversely affect the treatment of any Claim against or Equity Interest in any of the Debtors under the Plan. After giving effect to the Technical Modifications, the Plan continues to meet the requirements of sections 1122 and 1123 of the Bankruptcy Code. The filing with the Court of the Technical Modifications, and the service of the Technical Modifications on the parties served with the Plan and Disclosure Statement, including the Voting Parties, constitute due and sufficient notice thereof. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Bankruptcy Rule 3019, the Technical Modifications do not require additional disclosure under section 1125 of the

Bankruptcy Code or resolicitation of votes under section 1126 of the Bankruptcy Code, nor do they require that holders of Claims or Equity Interests be afforded an opportunity to change previously cast votes on the Plan.

8. **Deemed Acceptance of the Plan as Modified.** In accordance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019, all holders of Claims and Equity Interests who voted to accept the Plan or who are conclusively presumed to accept the Plan are deemed to have accepted the Plan as modified by the Technical Modifications. No holder of a Claim or Equity Interest shall be permitted to change its vote as a consequence of the Technical Modifications.

9. **No Action Required.** Under the provisions of the Delaware General Corporation Law, including section 303 thereof, and the comparable provisions of the Delaware Limited Liability Company Act, and section 1142(b) of the Bankruptcy Code, no action of the respective directors, stockholders, managers, or members of the Debtors is required to authorize the Debtors to enter into, execute, deliver, file, adopt, amend, restate, consummate, or effectuate, as the case may be, the Plan and any contract, instrument, or other document to be executed, delivered, adopted, or amended in connection with the implementation of the Plan.

10. **Binding Effect.** Upon the entry of this Confirmation Order and subject to the occurrence of the Effective Date, the terms of the Plan, including all agreements, instruments and other documents filed in connection with the Plan, are immediately effective and enforceable and deemed binding on the Debtors, the Reorganized Debtors, and any and all holders of Claims or Equity Interests (regardless of whether such holders of Claims or Equity Interests have or are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the

Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. Notwithstanding the foregoing or any other provision herein, if there is any direct conflict between the Plan, the Plan Supplement and all exhibits and addenda thereto (including the terms of the Plan, the Plan Supplement, all exhibits and addenda thereto, incorporated by reference herein), and the terms of this Confirmation Order, the terms of this Confirmation Order shall control.

11. The payments, obligations and benefits of any entity named or referred to in the Plan shall be binding upon and inure to the benefit of such entity's heirs, executors, administrators, successors or assigns, including, with respect to the Debtors, the Reorganized Debtors, any successor to the Debtors or the Reorganized Debtors or any Estate representative appointed or selected pursuant to section 1123 of the Bankruptcy Code, including any trustee subsequently appointed in any of the Chapter 11 Cases or in any superseding chapter 7 case.

12. **Corporate Existence; Vesting of Assets in the Reorganized Debtors.** Except as otherwise provided in the Plan, this Confirmation Order, or in any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors under the Plan (all of which transfers are approved) will vest in each respective Reorganized Debtor, free and clear of all Liens (other than the ABL Liens or Liens securing Claims that are Reinstated pursuant to the Plan), Claims (other than the First Lien Credit Facility Claims as amended, restated and assumed by the Reorganized Debtors in accordance with the amended and restated First Lien Credit Agreement pursuant to the terms of the Exit Credit Facility Documents), charges, or other encumbrances and each Reorganized Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, or other form, as the case may be,

with all the powers of a corporation, limited liability company, or other form, pursuant to the Applicable Laws in the jurisdiction in which each applicable Reorganized Debtor is incorporated or formed and pursuant to the respective certificate of incorporation or bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation or bylaws (or other formation documents) are amended by or in accordance with this Plan, their terms and Applicable Law. On and after the Effective Date, except as otherwise provided in the Plan, the Reorganized Debtors may operate their businesses and may use, acquire, or dispose of property and compromise or settle any Claims, Equity Interests, or Causes of Action without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

13. **Effectiveness of All Actions.** All actions authorized to be taken under the Plan or this Confirmation Order are effective on, prior to or after the Effective Date, as applicable, under this Confirmation Order, without further application to, or order of the Court, or further action by the respective officers, directors, members or stockholders of the Debtors or the Reorganized Debtors and with the effect that such actions had been taken by unanimous action of such officers, directors, members, or stockholders.

14. **Additional or Further Restructuring Transactions.** The Debtors or Reorganized Debtors, as applicable, are authorized, subject to compliance with the Exit Credit Facility Documents and with (i) the prior written consent of the Majority Noteholders in their sole discretion and (ii) the prior written consent of the DIP Agent and, subject to the CIH Consent Limitation, the Consenting Interest Holders, which consent shall not be unreasonably withheld, conditioned or delayed, may cause any of the Debtors or the Reorganized Debtors to engage in additional corporate restructuring transactions necessary or appropriate for the

purposes of implementing the Plan or reducing pre- or post-Effective Date liabilities for the Debtors, Reorganized Debtors or their successors, as set forth in Article IV.I. of the Plan.

15. **Issuance of Securities.** On the Effective Date, Reorganized Holdings is authorized to and shall issue and distribute, or cause to be distributed, the New Common Equity Interests and New Warrants. The issuance and distribution of the New Warrants and the New Common Equity Interests (including the Old Equity Plan Consideration, the MIP Equity Compensation, the Rights Offering Equity Interests, the Non-Rights Offering Equity Interests, the Commitment Premium Equity Interests and the New Common Equity Interests issued upon exercise of the New Warrants) are authorized, as of the Effective Date, without further notice to or order of the Court, any further corporate action, or any further act or action under the Applicable Laws, or the vote, consent, authorization or approval of any Person. The issuance of the New Warrants and the New Common Equity Interests (including the Old Equity Plan Consideration, the MIP Equity Compensation, the Rights Offering Equity Interests, the Non-Rights Offering Equity Interests, the Commitment Premium Equity Interests and the New Common Equity Interests issued upon exercise of the New Warrants) are duly authorized, validly issued and, in the case of any equity securities, fully paid and non-assessable.

16. **Cancellation of Notes, Instruments, Certificates and Other Documents.** On the Effective Date, except as otherwise specifically provided for in the Plan, the obligations of the Debtors under the Restructuring Support Agreement, the Existing Management Incentive Plans, the Senior Secured Note Documents, the DIP Documents, the Management Agreement and any other certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Equity Interest

(except (i) the First Lien Loan Documents as amended, restated and assumed pursuant to the Exit Credit Facility Documents, (ii) the Exit Credit Facility Documents, (iii) the Equity Interests in Intermediate, Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd., and Resun Chippewa, LLC and (iv) such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan), shall be terminated and cancelled as to the Debtors, and the Reorganized Debtors shall not have any continuing obligations thereunder; and the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, by-laws, or certificate or articles of incorporation or similar documents governing the units, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors (except (i) the First Lien Loan Documents as amended, restated and assumed pursuant to the Exit Credit Facility Documents, (ii) the Exit Credit Facility Documents, and (iii) such agreements, certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan or assumed by the Debtors) shall be released and discharged; provided, however, that, notwithstanding the occurrence of the Confirmation Date or the Effective Date, any such indenture or agreement that governs the rights of the holder of a Claim shall continue in effect solely for purposes of allowing holders of such Claims to receive distributions under the Plan as provided herein, allowing the First Lien Agent and the Trustee to make distributions under the Plan as provided herein, and deduct therefrom such reasonable compensation, fees, and expenses due thereunder or incurred in making such distributions, to the extent not paid by the Debtors and authorized under such agreement, and allowing the First Lien Agent and the

Trustee to seek compensation and/or reimbursement of fees and expenses as and to the extent required by, and in accordance with, the terms of the Plan. For the avoidance of doubt, nothing in this section shall result in any obligation, liability, or expense of the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any additional obligation, expense, or liability of the Debtors or the Reorganized Debtors. On and after the Effective Date, all duties and responsibilities of the First Lien Agent and the Trustee shall be discharged except to the extent required to effectuate the Plan. Notwithstanding anything in this paragraph to the contrary, the DIP Credit Agreement shall continue in effect solely as to provisions relating to obligations among lenders and between agent and lenders and for the purpose of allowing the DIP Agent to receive distributions from the Debtors under the Plan and to make further distributions to the holders of DIP Facility Claims on account of such Claims.

17. **Distributions.** All distributions under the Plan shall be made in accordance with the terms and conditions set forth in the Plan.

18. **Preparation, Delivery and Execution of Additional Documents by Third Parties.** All holders of Claims and Equity Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time and as requested by the Debtors or Reorganized Debtors, take any reasonable actions as may be necessary or advisable to effectuate the provisions and intent of the Plan and this Confirmation Order.

19. **Treatment in Full Satisfaction.** The treatment of Claims and Equity Interests set forth in the Plan is in full and complete satisfaction of the legal, contractual and equitable rights that each Person holding a Claim or Equity Interest may have against the Debtors, the

Estates or their respective property, except as expressly provided in the Plan or this Confirmation Order.

20. **Treatment of Multiple Claims.** To the extent that a Claim is Allowed against the Estate of more than one Debtor, there shall be only a single recovery on account of such Allowed Claim. The aggregate recovery under the Plan on account of a Claim for which more than one Debtor is also liable, whether on account of a theory of primary or secondary liability, by reason of a guarantee agreement, indemnity agreement, joint and several liability or otherwise, shall not exceed 100% (exclusive of any post-petition interest paid pursuant to Plan) of the amount of the Allowed Claim.

21. **Preservation of Causes of Action.** Pursuant to Article VI.D. of the Plan, unless any Causes of Action against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, as set forth in the Plan. The Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. For the avoidance of doubt, the Debtors' failure to list any Causes of Action in the Disclosure Statement, the Plan, the Plan Supplement, or otherwise in no way limits the rights of the Reorganized Debtors as set forth above.

22. **Subordination.** Except as otherwise expressly provided in the Plan, this Confirmation Order, and any other order of the Court: (a) the classification and manner of satisfying all Claims and Equity Interests under the Plan takes into consideration all

subordination rights, whether arising by contract or under general principles of equitable subordination, section 510 of the Bankruptcy Code, or otherwise; (b) all subordination rights that a holder of a Claim or Equity Interest may have with respect to any distribution to be made under the Plan shall be discharged and terminated and all actions related to the enforcement of such subordination rights shall be enjoined permanently; and (c) the distributions under the Plan to the holders of Allowed Claims and Equity Interests will not be subject to payment of a beneficiary of such subordination rights, or to levy, garnishment, attachment or other legal process by a beneficiary of such terminated subordination rights.

23. **Release of Liens.** Except as otherwise expressly provided in the Plan, this Confirmation Order, or in any contract, instrument, release or other agreement, or document created pursuant to the Plan, and excluding (i) the ABL Liens, (ii) prior to payment in full of the DIP Facility, the Liens securing the DIP Facility, (iii) any Liens held by the Surety Bond Providers (as defined in the Surety Bond Motion) and (iv) the Liens securing any Claim that is Reinstated pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, and other security interests against any property of any Debtor's Estate shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and each of its successors and assigns. All mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates granted by the Debtors pursuant to the documents effectuating the First Lien Credit Facility shall not be released or discharged, and shall continue to secure the obligations of the Reorganized Debtors under the Exit Credit Facility Documents.

24. **Surety Bonds.** Notwithstanding anything else in the Plan or this Order to the contrary, the obligations of any of the Debtors to, among other things, indemnify Chubb Limited, or its affiliates, including (i) ACE European Group Limited, (ii) ACE INA Insurance Company, (iii) Insurance Company of North America, (iv) Pacific Employers Insurance Company, (v) Westchester Fire Insurance Company, (vi) Indemnity Insurance Company of North America, (vii) ACE American Insurance Company, and (viii) ACE Property and Casualty Insurance Company (collectively, the "Surety") pursuant to the indemnity agreement previously executed by Holdings, the new indemnity agreement executed by Modular Space Corporation, or common law ("Indemnity Obligations"), shall remain in full force and effect. Any Lien and/or Claim of the Surety on any collateral shall not be released pursuant to the Plan or this Order, and the rights of setoff and/or recoupment with respect to obligations which relate to a bond issued by the Surety will be unaffected. The Surety's subrogation rights shall also remain in full force and effect. Furthermore, any third party releases provided for in the Plan or this Order shall not apply to any claim(s) or potential claim(s) of the Surety, or any party to whose claims the Surety may become subrogated. The Surety expressly reserves the right to seek collateral and/or additional indemnity from the Reorganized Debtors and/or their affiliates after the Effective Date of the Plan and in accordance with the terms of any applicable agreement, right or law.

25. **Entry into the Exit Credit Facility Documents.** The proposed terms and conditions of the Exit Credit Facility Agreement and the other Exit Credit Facility Documents (including the Exit Credit Facility Security Documents), as set forth in the definitive documentation to be entered into substantially on the terms and conditions set forth in the Exit Commitment Letter and Exit Credit Facility Term Sheet, are fair and reasonable and approved

in all respects. The obligations of the applicable Reorganized Debtors under the Exit Credit Facility Documents, including all related mortgages and security agreements (or amendments to existing mortgages and security agreements), will, upon execution, constitute legal, valid, binding and authorized obligations of each of the Debtors or Reorganized Debtors, as applicable, enforceable in accordance with their terms and not in contravention of any state or federal law. On and as a condition to the occurrence of the Effective Date, each Debtor and Reorganized Debtor is authorized to (i) cause Full Payment (as such term is defined in the DIP Credit Agreement) to be made of all of the DIP Facility Claims, (ii) execute, deliver and perform all of its obligations under each Exit Credit Facility Document, including, without limitation, the Exit Credit Facility Agreement, the Security Documents, and all other instruments, waivers, consents, reaffirmations and perfection documents referred to in or required under the terms of the Exit Credit Facility Documents, and further including the payment of all fees, indemnities and expenses as provided in the Exit Commitment Letter, the accompanying Fee Letter and the Exit Credit Facility Documents, provided, however, that none of the Exit Credit Facility Documents shall constitute or operate as a novation or accord and satisfaction with respect to any of the First Lien Loan Documents or First Lien Credit Facility Claims (as amended, restated and assumed by the Reorganized Debtors in accordance with the Exit Credit Facility Documents), (iii) satisfy all conditions precedent to the effectiveness of the Exit Credit Facility Agreement and the making of credit extensions thereunder, (iv) incur, pay and discharge all liabilities, obligations and duties under each of the Exit Credit Facility Documents, and (v) grant to the Exit Agent (for its benefit and for the benefit of the Exit Lenders and the other secured parties under any of the Exit Credit Facility Documents) Liens upon any or all of such Reorganized Debtor's real and personal property (now existing or

hereafter created, acquired or arising and wherever located), as and to the extent provided in the Exit Credit Facility Documents, to secure all liabilities and obligations at any time outstanding under any of the Exit Credit Facility Documents. Notwithstanding anything to the contrary in sections 552 or 1141 of the Bankruptcy Code or otherwise, (x) the First Lien Credit Facility Claims (as amended, restated and assumed by the Reorganized Debtors in accordance with the Exit Credit Facility Documents) shall not be discharged, satisfied or released or otherwise affected in whole or in part, and each of the First Lien Credit Facility Claims (as amended, restated and assumed by the Reorganized Debtors in accordance with the Exit Credit Facility Documents) shall continue in effect and remain outstanding from and after the Effective Date as and to the extent provided in, and until paid in accordance with, the Exit Credit Facility Documents; (y) none of the ABL Liens shall be deemed to have been waived, released, satisfied, subordinated or discharged; and (z) in addition to any new Liens granted to the Exit Agent as authorized by clause (v) above, all of the ABL Liens shall continue in full force and effect as valid, perfected and first priority Liens with respect to, and shall continue to encumber all of, the Collateral, whether such Collateral existed on the Petition Date or was created or acquired or arose thereafter (including, without limitation, at any time after the Effective Date).

26. On the Effective Date, without any further action by the Court or the directors, officers or stockholders of any of the Reorganized Debtors, each Reorganized Debtor, as applicable, will be and is authorized to enter into the Exit Credit Facility Agreement and each of the other Exit Credit Facility Documents to which such Reorganized Debtor is contemplated to be a party on the Effective Date.

27. As of the Effective Date, without any further action by the Court or the directors, officers or stockholders of any of the Reorganized Debtors, the Liens and security interests

granted or continued pursuant to the Exit Credit Facility Documents will constitute legal, valid and enforceable Liens and security interests in the collateral (as defined in the Exit Credit Facility Documents and any other documents to be executed and delivered pursuant thereto) and such Liens and security interests constitute legal, valid and binding obligations of the Reorganized Debtors. The holders of Liens under the Exit Credit Facility Documents are authorized, but not required, to file with the appropriate authorities financing statements and other documents (the "Perfection Documents") in order to evidence and provide notice of such Liens. As of the Effective Date (i) such Perfection Documents, if any, will be valid, binding and in full force and Effect, (ii) all Liens granted or continued pursuant to the Exit Credit Facility Documents will be deemed perfected regardless of whether or not the Perfection Documents have been filed, and (iii) the Liens granted or continued under or in connection with the Exit Credit Facility Agreement will be deemed to be and become Liens granted by and obligations of the Reorganized Debtors.

28. In addition, on the Effective Date, without any further action by the Court or the directors, officers or stockholders of any of the Reorganized Debtors, each applicable Reorganized Debtor will be and is authorized to: (a) execute, deliver, file and record any other contracts, instruments, agreements, guaranties or other documents executed or delivered in connection with the Exit Credit Facility Documents; (b) perform all of its obligations under the Exit Credit Facility Documents; and (c) take all such other actions as any of the responsible officers of such Reorganized Debtor may determine are necessary, appropriate or desirable in connection with the consummation of the transactions contemplated by the Exit Credit Facility Documents.

29. The guarantees, mortgages, pledges, Liens and other security interests granted or continued pursuant to the Exit Credit Facility Documents have been and are granted in good faith for legitimate business purposes, reasonably equivalent value and as an inducement to the holders of the First Lien Credit Facility Claims to agree to the treatment of such Claims under the Plan and will be deemed not to constitute a fraudulent conveyance or fraudulent transfer, will not otherwise be subject to avoidance, recharacterization or subordination (including equitable subordination), and the priorities of such Liens and security interests will be as set forth in the Exit Credit Facility Documents. Notwithstanding the entry of this Confirmation Order, from the Confirmation Date through the Effective Date, all of the claims, Liens, interests, rights, priorities, protections and remedies afforded to the DIP Agent and DIP Lenders in the Final DIP Order shall remain in full force and effect, and shall constitute, and continue to constitute, the legal, valid, binding and enforceable obligations of the Debtors, which shall not be impaired, prejudiced or modified in any way at any time prior to the Effective Date. On the Effective Date, the DIP Agent and DIP Lenders shall release any and all cash collateral securing letters of credit to the Debtors held by the DIP Agent and DIP Lenders, such cash collateral to be applied as provided under the Exit Credit Facility Documents. Additionally, on the Effective Date, the DIP Agent and DIP Lenders shall be released from any and all liability, responsibility, and/or obligation to hold, reserve for, or otherwise fund or ensure the funding of the Carve-Out (as defined in the Final DIP Order) or any other expenses included within the Carve-Out and from any obligation, responsibility or liability to Debtors, any of the Professionals (as defined in the Final DIP Order) or any other third party to pay, fund or otherwise satisfy the fees and expenses of such Professionals; provided, however, that nothing herein shall relieve the Reorganized Debtors from their obligation to pay the professional fees approved and allowed by

the Bankruptcy Court or otherwise required to be paid pursuant to Article VI.F of the Plan and to fund the professional fee escrow account as set forth in Article II.C.3 of the Plan.

30. Notwithstanding anything to the contrary in this Confirmation Order or Article VIII of the Plan, after the Effective Date, any disputes arising under the Exit Credit Facility Documents will be governed by the jurisdictional provisions therein.

31. **Debtors' Obligations Under the Backstop Commitment Agreement.** Notwithstanding anything to the contrary in the Plan or this Confirmation Order, (i) the Debtors' obligations under the Backstop Commitment Agreement, including their indemnification obligations to the Backstop Parties, shall remain unaffected and shall remain in full force and effect following the Effective Date and (ii) any such obligations, including such indemnification obligations, shall not be discharged under the Plan.

32. **Compromise of Controversies.** In consideration for the distributions and other benefits, including releases, provided under the Plan, the provisions of the Plan constitute a good faith compromise and settlement of all Claims, Equity Interests and controversies resolved under the Plan and the entry of this Confirmation Order constitutes approval of such compromise and settlement under Bankruptcy Rule 9019.

33. **Assumption or Rejection of Contracts and Leases.** On the Effective Date, each Debtor shall be deemed to have assumed, each Executory Contract and Unexpired Lease to which it is a party, pursuant to section 365 of the Bankruptcy Code and in accordance with the terms and conditions of the Plan. Except as otherwise provided in this Confirmation Order, any and all objections or reservations of rights in connection with the assumption of an Executory Contract or Unexpired Lease under the Plan, if any, are overruled on their merits. Entry of this Confirmation Order constitutes an order approving the assumption of executory contracts or

Account provided for in this Court's *Final Order Pursuant to Bankruptcy Code Sections 105(a) and 366 (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections by Utility Companies, and (III) Prohibiting Utility Companies from Altering, Refusing or Discontinuing Service* [D.I. 151].

39. **Release, Exculpation, Discharge and Injunction Provisions.** The release, exculpation, discharge, injunction and related provisions set forth in the Plan are approved and authorized in their entirety, and such provisions are effective and binding on all Persons and Entities to the extent provided therein.

40. **Indemnification Obligations.** On and after the Effective Date, and except as prohibited by applicable law, the Reorganized Debtors shall assume or reinstate, as applicable, all indemnification obligations in place as of the Effective Date (whether in by-laws, certificates of incorporation, or similar constituent documents, by statutory law or by written agreement, policies or procedures of the Debtors (collectively, the "Indemnification Agreements")) for the directors, officers, employees, or agents of the Debtors who served or were employed by the Debtors on or after the Petition Date. To the extent that any indemnifiable claims arise under the Indemnification Agreements, the Indemnified Individuals shall first claim against any D&O or E&O insurance that is available to satisfy such claims, and shall seek recovery under the Indemnification Agreements only to the extent such insurance is insufficient or unavailable to cover such claims in full.

41. **Compliance with Tax Requirements.** Each holder of an Allowed Claim or Equity Interest that is to receive a distribution under the Plan shall be liable for any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution and any amounts deducted or withheld from any

distribution under the Plan shall be treated as if distributed to such holder of an Allowed Claim or Equity Interest in connection with the Plan. Any party making any distribution under the Plan has the right, but not the obligation, to not make a distribution until such holder has made arrangements satisfactory to such issuing or distributing party for payment of any such tax obligations. The Debtors or Reorganized Debtors, as applicable, and any disbursing agent, warrant agent, or transfer agent are authorized to take any and all actions that may be necessary or appropriate to comply with applicable withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. Except as otherwise provided in the Plan, the aggregate consideration paid to holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (as determined for federal income tax purposes), and, thereafter, to the accrued, but unpaid interest, if any (but solely to the extent that interest is an allowable portion of such Allowed Claim).

42. **Administration of Unimpaired or Reinstated Claims.** On and after the Effective Date, the Reorganized Debtors shall have the sole authority to compromise, settle, or resolve any Claims without notice to or approval by the Bankruptcy Court or any other party and to file, litigate, compromise, settle, otherwise resolve or withdraw any objections to all Claims. For the avoidance of doubt, the Reorganized Debtors shall have the sole authority to direct the Claims Agent to mark any Proof of Claim filed in respect of an Unimpaired or Reinstated Claim as "Unimpaired" or "Reinstated," respectively, on their register of claims; provided, however, that such designation shall not affect, impair or diminish (i) the non-

bankruptcy rights of the holder of such Claim to assert the liability alleged in the Unimpaired or Reinstated Proof of Claim against the Reorganized Debtors in a non-bankruptcy forum of competent jurisdiction, provided that the non-bankruptcy rights of the Debtors, Reorganized Debtors or any interested party to object to or defend against any such assertion of liability on any and all grounds shall be preserved, or (ii) the validity or operation of Articles III.G or VI.K of the Plan.

43. **Resolution of the Texas Taxing Authorities' Objection.** Any lien held by Bexar County, Dallas County, Irving ISD, Jefferson County, Atascosa County, Cotulla ISD, El Paso, Fort Bend Co WCID #02, Fort Bend County, Harris County, La Salle County, Nueces County, Victoria County, Wilson CAD and Wilson County (each a "Texas Taxing Authority") pursuant to Sections 32.01 and Section 32.05(b) of the Texas Property Tax Code that secures an Allowed Claim against any Debtor shall be retained with the same validity, extent and priority by the applicable Texas Taxing Authority until such Allowed Claim is satisfied in full. If any provision of the Bankruptcy Code requires the payment of interest on an Allowed Claim or Administrative Claim of a Texas Taxing Authority, or the payment of interest to enable a Texas Taxing Authority to receive the present value of the allowed amount of an Allowed Claim, the rate of interest shall be determined in accordance with section 511 of the Bankruptcy Code. It is not necessary that any Texas Taxing Authority file any Proof of Claim on account of the 2017 taxes. The administrative expense taxes are not discharged by entry of the confirmation order and liens for 2017 taxes shall be retained with the same validity, extent and priority until such time as all taxes, and any accrued penalties and interest, are paid.

44. **Resolution of the Texas Comptroller Objection.** Notwithstanding any provision to the contrary in the Plan Documents, nothing shall affect the rights of the Texas

Comptroller of Public Accounts (the "Texas Comptroller") to assert setoff and recoupment and such rights are expressly preserved, provided that the rights of the Debtors, Reorganized Debtors or any interested party to object to assertion of such setoff or recoupment rights shall be preserved and nothing provided in the Plan or this Confirmation Order shall prohibit the Texas Comptroller and its agents from proceeding with any audits of the Debtors or Reorganized Debtors in accordance with the Texas Tax Code. Any Claims held by the Texas Comptroller shall be afforded the same treatment as is provided to general unsecured claims in Article VI.K. of the Plan.

45. **Resolution of LDR Objection.** Nothing shall affect the rights of the Louisiana Department of Revenue (the "LDR") to assert setoff and recoupment and such rights are expressly preserved, provided that the rights of the Debtors, Reorganized Debtors or any interested party to object to assertion of such setoff or recoupment rights shall be preserved. Notwithstanding anything in the Plan to the contrary, the Bankruptcy Court shall not retain jurisdiction with respect to the LDR's pre-petition claim(s) except for (i) resolving the amount of any tax claim arising prior to confirmation, and (ii) enforcing any discharge and injunction provision of the Plan.

46. **Resolution of Travis County Objection.** Any lien held by Travis County, Travis County Healthcare District dba Central Health, City of Austin, Austin Community College, Travis County ESD #2 and Pflugerville Independent School District (together, "Travis County"), pursuant to Sections 32.01 and Section 32.05(b) of the Texas Property Tax Code that secures an Allowed Claim against any Debtor, shall be retained with the same validity, extent and priority by Travis County until such Allowed Claim is satisfied in full. If any provision of the Bankruptcy Code requires the payment of interest on an Allowed Claim or Administrative

Claim of Travis County, or the payment of interest to enable Travis County to receive the present value of the allowed amount of an Allowed Claim, the rate of interest shall be determined in accordance with section 511 of the Bankruptcy Code. It is not necessary that Travis County file any Proof of Claim on account of the 2017 taxes.

47. **Exemption from Securities Laws.** Pursuant to section 1125(e) of the Bankruptcy Code, neither the Debtors nor the Reorganized Debtors shall be liable for violation of any otherwise Applicable Law, rule, or regulation governing solicitation of acceptance of a plan of reorganization or the offer, issuance, sale, or purchase of securities on account of the Debtors' distribution of Subscription Rights and the transmittal of the Solicitation Materials and all materials necessary to the Rights Offering as set forth herein, their solicitation of acceptances of the Plan and participation in the Rights Offering, and the Reorganized Debtors' issuance and distribution of any securities under the Plan.

48. The Rights Offering Equity Interests (other than the Unsubscribed Equity Interests purchased by the Backstop Parties pursuant to the Backstop Commitment) and the Non-Rights Offering Equity Interests were offered and shall be issued, distributed and sold in exchange for the Notes Claims, in reliance on the exemption from registration under the Securities Act provided by section 1145 of the Bankruptcy Code. At the time of issuance, the Rights Offering Equity Interests (other than the Unsubscribed Equity Interests purchased by the Backstop Parties pursuant to the Backstop Commitment) and the Non-Rights Offering Equity Interests shall not be subject to any Securities Act transfer restrictions, except for any such Rights Offering Equity Interests or Non-Rights Offering Equity Interests issued to a person who is deemed to be an "underwriter" within the meaning of section 1145 of the Bankruptcy Code.

49. The offering, issuance, distribution and sale of the Commitment Premium Equity Interests and the Unsubscribed Equity Interests purchased by the Backstop Parties pursuant to the Backstop Commitment will be exempt from the registration requirements of the Securities Act pursuant to section 4(a)(2) of the Securities Act and/or other available exemptions from registration under the Securities Act and state securities laws, as applicable, including Regulation D under the Securities Act. Such New Common Equity Interests will be "restricted securities" within the meaning of Rule 144 of the Securities Act.

50. The New Warrants shall be offered, issued, distributed and sold in exchange for the Existing Holdings Equity Interests, in reliance on the exemption from registration under the Securities Act provided by section 1145 of the Bankruptcy Code. At the time of the issuance, the New Warrants shall not be subject to any Securities Act transfer restrictions, except for any such New Warrants issued to a person who is deemed to be an "underwriter" within the meaning of section 1145 of the Bankruptcy Code.

51. The New Common Equity Interests issued upon exercise of any New Warrants shall be exempt from registration under the Securities Act in reliance on, in the case of (x) physical settlement of the New Warrants, Section 4(a)(2) of the Securities Act and/or other available exemptions from registration under the Securities Act and state securities laws, as applicable, including Regulation D under the Securities Act, and in the case of (y) net share settlement of the New Warrants, Section 3(a)(9) of the Securities Act and/or other available exemptions from registration under the Securities Act and state securities laws, as applicable. New Common Equity Interests issued upon physical settlement of the New Warrants shall be "restricted securities" within the meaning of Rule 144 of the Securities Act. New Common Equity Interests issued upon net share settlement of the New Warrants shall not be "restricted

securities" within the meaning of Rule 144 of the Securities Act, except for New Common Equity Interests issued upon the exercise of New Warrants that were issued to a person who is deemed to be an "underwriter" within the meaning of section 1145 of the Bankruptcy Code.

52. The offering, sale, issuance and distribution of the New Common Equity Interests and New Warrants, in each case as contemplated by the Plan shall, to the extent such offering, sale, issuance or distribution is made pursuant to section 1145 of the Bankruptcy Code, be exempt from the registration requirements of Section 5 of the Securities Act and any other applicable law requiring registration or qualification prior to the offering, issuance, distribution, or sale of securities under section 1145 of the Bankruptcy Code, except with respect to any person who is deemed to be an "underwriter" within the meaning of section 1145 of the Bankruptcy Code, in which case the New Equity Interests and New Warrants shall be exempt from registration pursuant to the exemptions referenced in paragraphs 48 and 50 of this Confirmation Order.

53. The Debtors and Reorganized Debtors are authorized and directed to take actions to preserve the foregoing exemptions in accordance with the terms of the New Shareholder Agreement, the Plan or otherwise as the Debtors and Reorganized Debtors determine is appropriate and necessary.

54. **Exemption from Transfer and Intangibles Taxes.** Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of notes, equity securities, instruments or documents under or in connection with the Plan, the assignment or surrender of any lease or sublease, the creation of any mortgage, deed of trust, Lien, pledge or other security interest or the making, assignment or the delivery of any lease, sublease, deed or any other instrument of transfer under, in furtherance of, or in connection with the Plan, Exit Credit

Facility, Exit Credit Facility Documents or Backstop Commitment Agreement, including any deeds, bills of sale, assignments, mortgages, deeds of trust or similar documents executed in connection with any assets subject to the Plan, shall not be subject to any stamp, real estate transfer, intangibles, mortgage recording, sales, use or other similar tax nor any Uniform Commercial Code filing or recording fee or similar or other governmental assessment, pursuant to section 1146(a) of the Bankruptcy Code. All appropriate state or local government officials or agents shall forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

55. **Documents, Mortgages and Instruments.** Each federal, state, commonwealth, local, foreign, or other governmental agency is authorized to accept any and all documents, mortgages and instruments necessary or appropriate to effectuate, implement, or consummate the Plan, and this Confirmation Order.

56. **Continued Effect of Stays and Injunction.** Unless otherwise provided in the Plan or this Confirmation Order, any injunction or stay arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code or otherwise that is in existence on the Confirmation Date shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay.

57. **Officers and Boards of Directors of Reorganized Debtors.** The initial board of directors of the Reorganized Debtors shall consist of the persons identified in Exhibit B to the Plan Supplement. On the Effective Date and effective as of the Effective Date, the new directors of the Reorganized Debtors shall be deemed appointed, without the need for any further notice to or action, order or approval of this Court, other act or action under Applicable

Laws. In accordance with Article V.B. of the Plan, existing officers of each of the Debtors and the Reorganized Debtors Subsidiaries as of the Petition Date shall remain in their current capacities as officers.

58. **Ownership and Control.** The consummation of the Plan and the transactions contemplated thereby shall not constitute a change of ownership or change in control, as such terms are used in any statute, regulation, contract, indenture or agreement (including any employment, severance, termination or insurance agreements) in effect on the Effective Date and to which any of the Debtors is a party under any Applicable Law of any Governmental Unit.

59. **Separate Plans.** The Plan is a separate Plan for each of the Debtors. Accordingly, the provisions of the Plan, including without limitation the definitions and distributions to creditors and equity interest holders, shall apply to the respective assets of, Claims against, and Equity Interests in, each of the Debtor's separate Estate.

60. **Nonseverability of Plan Provisions Upon Confirmation.** Each provision of the Plan is: (a) valid and enforceable in accordance with its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (c) nonseverable and mutually dependent.

61. **Post-Confirmation Modifications.** Without need for further order or authorization of the Court, the Debtors and the Reorganized Debtors, as applicable, are authorized and empowered to make any and all modifications to any and all documents that are necessary to effectuate the Plan that do not materially modify the terms of such documents and are consistent with the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications

set forth in the Plan, the Debtors and the Reorganized Debtors expressly reserve their respective rights to revoke or withdraw, or to alter, amend, or modify materially the Plan with respect to such Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or this Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article X.F. of the Plan. Any modifications to the Plan shall be subject to the Restructuring Support Agreement so long as such agreement shall remain effective.

62. **Applicable Non-Bankruptcy Law.** The provisions of this Confirmation Order, the Plan and related documents, or any amendments or modifications thereto, shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

63. **Waiver of Filings.** Any requirement under section 521 of the Bankruptcy Code or Bankruptcy Rule 1007 obligating the Debtors to file any list, schedule, or statement with the Court or the Office of the U.S. Trustee is permanently waived as to any such list, schedule, or statement not filed as of the Confirmation Date.

64. **Governmental Approvals Not Required.** This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, or regulations of any state or other governmental authority with respect to the dissemination, implementation or consummation of the Plan and the Disclosure Statement, any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in, or contemplated by, the Plan and the Disclosure Statement.

65. **Notices of Confirmation and Effective Date.** The Reorganized Debtors shall serve notice of entry of this Confirmation Order, substantially in the form attached hereto as Exhibit B (the "Confirmation Order Notice") in accordance with Bankruptcy Rules 2002 and 3020(c) on all holders of Claims and Equity Interests and the Core Notice Parties within 10 Business Days after the date of entry of this Confirmation Order. As soon as reasonably practicable after the Effective Date, the Reorganized Debtors shall file notice of the Effective Date and shall serve a copy of the same on the above-referenced parties. The notice of the Effective Date may be included in the Confirmation Order Notice. Notwithstanding the above, no notice of Confirmation or Effectiveness or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed 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 Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity's new address. The above-referenced notices are adequate under the particular circumstances of the Chapter 11 Cases and no other or further notice is necessary.

66. **Failure of Effectiveness.** In the event that the Effective Date does not occur on or before sixty (60) days after the Confirmation Date, upon notification submitted by the Debtors to the Court (which notice the Debtors shall submit at the request of the Majority Noteholders or the DIP Agent): (i) the Confirmation Order may be vacated, (ii) no distributions under the Plan shall be made; (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; and (iv) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained in

the Plan shall constitute or be deemed a waiver, release, or discharge of any Claims or Equity Interests by or against the Debtors or any other Person or Entity or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors unless extended by Court order.

67. **Termination of the Restructuring Support Agreement.** On the Effective Date, the Restructuring Support Agreement will terminate in accordance with Section 9(a) thereof.

68. **Substantial Consummation.** On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

69. **Waiver of Stay.** For good cause shown, the stay of this Confirmation Order provided by any Bankruptcy Rule is waived, and this Confirmation Order shall be effective and enforceable immediately upon its entry by the Court.

70. **References to and Omissions of Plan Provisions.** References to articles, sections, and provisions of the Plan are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan. The failure to specifically include or to refer to any particular article, section, or provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan be confirmed in its entirety and incorporated herein by this reference.

71. **Headings.** Headings utilized herein are for convenience and reference only, and do not constitute a part of the Plan or this Confirmation Order for any other purpose.

72. **Effect of Conflict.** This Confirmation Order supersedes any Court order issued prior to the Confirmation Date that may be inconsistent with this Confirmation Order. If there

is any direct inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order govern and control.

73. **IRS Provision.** Notwithstanding any provision to the contrary in the Plan, this Confirmation Order, and any implementing Plan documents, nothing shall: (1) affect the ability of the IRS to pursue any non-debtors to the extent allowed by non-bankruptcy law for any liabilities that may be related to any federal tax liabilities owed by the Debtors or the Debtors' Estates; (2) affect the rights of the IRS to assert setoff and recoupment and such rights are expressly preserved; (3) discharge any claim of the IRS described in Bankruptcy Code section 1141(d)(6); (4) require the IRS to allocate Plan distributions first to principal and then to interest; or (5) require the IRS to file an administrative claim in order to receive payment for any liability described in Bankruptcy Code sections 503(b)(1)(B) and 503(b)(1)(C). Any IRS administrative expense claims shall accrue interest and penalties as provided by non-bankruptcy law until paid in full. The Court shall retain non-exclusive jurisdiction regarding Priority Tax Claims to the extent permissible under applicable federal law.

74. **Resolution of United States' Objection.** Nothing in the Plan, this Order or the related Plan documents discharges or releases the Debtors, the Reorganized Debtors or any non-Debtor from any Claim, liability or cause of action of the United States or impairs the ability of the United States to pursue any Claim, liability or cause of action against any Debtor, Reorganized Debtor or non-Debtor. Contracts, leases, covenants, agreements or other interests with the federal government shall be paid, treated, determined and administered in the ordinary course of business as if the Debtors' Chapter 11 Cases were never filed and the Debtors and Reorganized Debtors shall comply with all applicable non-bankruptcy law. All Claims, liabilities, or causes of action of or to the United States shall survive the Chapter 11 Cases as if

the Chapter 11 Cases had not been commenced and be determined in the ordinary course of business, including in the manner and by the administrative or judicial tribunals in which such rights or Claims would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced. Without limiting the foregoing, for the avoidance of doubt: (1) the United States shall not be required to file any proofs of claim in the Debtors' Chapter 11 Cases in order to be paid on account of any Claim, liability or cause of action; (2) nothing shall affect or impair the exercise of the United States' police and regulatory powers against the Debtors and/or the Reorganized Debtors; (3) nothing shall be interpreted to set cure amounts or to require the United States to novate or otherwise consent to the transfer of any federal interests and (4) nothing shall affect or impair the United States' rights to assert setoff and recoupment against the Debtors and/or the Reorganized Debtors and such rights are expressly preserved.

75. **Final Order.** This Confirmation Order is a Final Order and the period in which an appeal must be filed shall commence upon the entry hereof. All interim orders entered by the Court in the Chapter 11 Cases that are in effect are deemed final by operation of this Final Order.

76. **Authorization to Consummate.** The Debtors are authorized to consummate the Plan at any time after entry of the Confirmation Order, subject to satisfaction or waiver of the conditions precedent to effectiveness in accordance with Article X.A. of the Plan.

77. **Aid and Assistance.** This Court requests the aid and recognition of any court, tribunal or administrative body having jurisdiction in the United States or in Canada to give effect to this Order and to assist the Debtors and Reorganized Debtors in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and provide such assistance to the Debtors and Reorganized

Debtors as may be necessary or desirable to give effect to this Order or to assist the Debtors and Reorganized Debtors in carrying out the terms of this Order. In particular, this Court requests the assistance of the Ontario Superior Court of Justice (Commercial List) and the Registrar of Corporations of the Alberta Corporate Registry to give effect to this Order and the Articles of Reorganization to be filed with the Alberta Corporate Registry to implement the changes to the charter of ModSpace Financial Services Canada, Ltd. contemplated by the Plan.

78. **Retention of Jurisdiction.** The Court may properly, and upon the Effective Date shall, to the full extent set forth in the Plan, retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases, including the matters set forth in Article VIII of the Plan and section 1142 of the Bankruptcy Code.

Dated: February 15, 2017
Wilmington, Delaware

The Honorable Kevin J. Carey
United States Bankruptcy Judge

EXHIBIT A

The Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
MODULAR SPACE HOLDINGS, INC., et al.,	Case No. 16-12825 (KJC)
Debtors.[1]	Jointly Administered

DEBTORS' JOINT PREPACKAGED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

NO CHAPTER 11 CASE HAS BEEN COMMENCED AT THIS TIME. THE SOLICITATION MATERIALS ACCOMPANYING THIS PREPACKAGED PLAN OF REORGANIZATION HAVE NOT BEEN APPROVED BY THE COURT. FOLLOWING THE COMMENCEMENT OF THE CHAPTER 11 CASE, THE DEBTORS EXPECT PROMPTLY TO SEEK ENTRY OF AN ORDER SCHEDULING A COMBINED HEARING ON THE ADEQUACY OF THE DISCLOSURE STATEMENT AND SOLICITATION PROCEDURES AND CONFIRMATION OF THE PLAN.

CLEARY GOTTLIEB STEEN & HAMILTON LLP
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Counsel to the Debtors and Debtors in Possession

Dated: February 3, 2017

[1] The Debtors and the last four digits of their respective United States Tax Identification Number, or similar foreign identification number, as applicable, are as follows: Modular Space Holdings, Inc. (8595); Modular Space Intermediate Holdings, Inc. (1161); Modular Space Corporation (5284); Resun ModSpace, Inc. (0701); ModSpace Government Financial Services, Inc. (8573); ModSpace Financial Services Canada, Ltd. (CRA BN 0001); Resun Chippewa, LLC (6773). The address of the Debtors' corporate headquarters is 1200 Swedesford Road, Berwyn, PA 19312.

Docket No. 224
Filed 2/3/17

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INTRODUCTION

Modular Space Holdings, Inc. and certain of its affiliates, the Debtors and Debtors in Possession in the above-captioned cases, propose this joint prepackaged plan of reorganization under section 1121(a) of chapter 11 of title 11 of the United States Code.

Claims against, and Equity Interests in, the Debtors will be treated as set forth herein. Reference is made to the Disclosure Statement accompanying the Plan, including the exhibits thereto, for a discussion of the Debtors' history, business, results of operations, and projections for future operations and risk factors, together with a summary and analysis of the Plan.

THE PLAN SHOULD BE CONSIDERED ONLY IN CONJUNCTION WITH THE DISCLOSURE STATEMENT AND RELATED MATERIALS TRANSMITTED HEREWITH. THE DISCLOSURE STATEMENT IS INTENDED TO PROVIDE YOU WITH INFORMATION YOU NEED TO MAKE AN INFORMED JUDGMENT WHETHER TO ACCEPT OR REJECT THE PLAN.

ARTICLE I.
DEFINITIONS AND CONSTRUCTION OF TERMS

A. Definitions.

Unless otherwise defined herein, the following terms shall have the respective meanings set forth below:

1. *ABL Liens*: means all Liens, security interests, setoff rights, and encumbrances at any time now or hereafter existing, or granted by any Debtor (or, after the Effective Date, any Reorganized Debtor) or any other Person to secure any of the First Lien Credit Facility Claims or any indebtedness, liability or obligation under or in connection with the Exit Credit Facility Documents.

2. *Ad Hoc Noteholder Group*: means the group of Consenting Noteholders represented by Dechert LLP, as legal counsel. Whenever in the Plan the consent or agreement of the Ad Hoc Noteholder Group is required in respect of any matter, any representation or confirmation by Dechert LLP that the Ad Hoc Noteholder Group has given its consent or agreement to such matter, and that the Noteholders signing any document required to be signed by the Ad Hoc Noteholder Group constitute the Ad Hoc Noteholder Group, shall be binding and conclusive.

3. *Administrative Claim*: means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under sections 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, including, but not limited to, (i) any actual and necessary costs and expenses of preserving the Estates, (ii) any actual and necessary costs and expenses of operating the Debtors' business, (iii) any indebtedness or obligations assumed by the Debtors in connection with the conduct of its businesses, (iv) all compensation and reimbursement of expenses of Professionals to the extent awarded by the Court under sections 330, 331 or 503 of the

Bankruptcy Code, (v) any fees or charges assessed against the Estates under section 1930 of title 28 of the United States Code, and (vi) any Claim for goods delivered to the Debtors within twenty (20) days prior to the Petition Date and entitled to administrative priority pursuant to section 503(b)(9) of the Bankruptcy Code.

4. *Affiliate*: means, with respect to any specified Person or Entity, any other Person or Entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person or Entity. For the purposes of this definition, "control" when used with respect to any Person or Entity means the power to direct the management and policies of such Person or Entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

5. *Allowed*: means, (i) with respect to any Claim, other than a General Unsecured Claim against Holdings or Intermediate, (a) following the Claims Objection Deadline, any Claim as to which no objection or request for estimation has been filed prior to the Claims Objection Deadline, (b) a Claim that has been expressly allowed by Final Order, (c) a Claim as to which the Debtors or the Reorganized Debtors agree to the amount and/or priority thereof in writing, (d) a Claim that is expressly allowed pursuant to the terms of the Plan, or (e) a Claim that is listed in the Schedules (to the extent the Debtors file Schedules in the Chapter 11 Case) as liquidated, non-contingent, and undisputed; (ii) with respect to any General Unsecured Claim against Holdings or Intermediate, that (a) a Proof of Claim was timely filed before the Bar Date, (b) such claim is not Disputed and (c) an objection has not been interposed and such Claim has been allowed, in whole or in part, by a Final Order and/or by the agreement of the holder of such Claim, on the one hand, and the Debtors, on the other; provided, however, that any Claims allowed solely for the purpose of voting to accept or reject this Plan pursuant to an order of the Court shall not be considered "Allowed" hereunder; and (iii) with respect to any Equity Interest, such Equity Interest is reflected as outstanding in the stock transfer ledger or similar register of the Debtors on the Record Date and is not subject to any objection or challenge. If a Claim or Equity Interest is Allowed only in part, any provisions hereunder with respect to Allowed Claims or Allowed Equity Interests are applicable solely to the Allowed portion of such Claim or Equity Interest.

6. *Alternative Transaction*: means any of the transactions described in Article X.C. of the Plan.

7. *Backstop Commitment*: means the commitment of the Backstop Parties to purchase Unsubscribed Equity Interests in accordance with the terms, and subject to the conditions, set forth in the Backstop Commitment Agreement.

8. *Backstop Commitment Agreement*: means that certain Stock Purchase and Backstop Agreement, dated December 28, 2016 by and among the Backstop Parties, Modular Space Corporation, and Holdings (on behalf of themselves and the other Debtors) (as amended, modified and/or supplemented from time to time in accordance with the terms therein).

9. *Backstop Commitment Agreement Claim*: means a Claim for fees (other than the Commitment Premium Equity Interests) and expenses, contribution or indemnification obligations under the Backstop Commitment Agreement.

10. *Backstop Parties*: means the members of the Ad Hoc Noteholder Group, certain other Noteholders, and/or certain of their respective affiliates, in each case, who are signatories to the Backstop Commitment Agreement (and any Person to whom any Backstop Commitment is transferred in accordance with the terms, and subject to the conditions, set forth in the Backstop Commitment Agreement or who otherwise becomes a party to the Backstop Commitment Agreement in accordance with the terms, and subject to the conditions, set forth therein).

11. *Ballots*: means each of the ballots distributed with the Disclosure Statement to each holder of an Impaired Claim that is entitled to vote to accept or reject the Plan.

12. *Bankruptcy Code*: means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect with respect to the Chapter 11 Cases.

13. *Bankruptcy Rules*: means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, and local rules of the Court, as the context may require, as in effect with respect to the Chapter 11 Cases.

14. *Bar Date*: means the deadline for filing General Unsecured Claims against Holdings or Intermediate as established by the Bar Date Order.

15. *Bar Date Order*: means the order of the Court setting the Bar Date and Government Bar Date.

16. *Business Day*: means any day on which commercial banks are open for business, and not authorized to close, in New York, New York, except any day designated as a legal holiday by Bankruptcy Rule 9006(a).

17. *Calera Equity Interests*: means (a) 2,179,531 shares of Holdings Common Stock held by Calera VI, LLC, (b) 2,989,241 shares of Holdings Class A Common Stock held by Calera VI, LLC, (c) 3,760,860 shares of Holdings Class A Common Stock held by Calera XI, LLC, (d) 449,101 shares of Holdings Common Stock held by Calera Capital Offshore Partners II, LP, (e) 615,896 shares of Holdings Class A Common Stock, held by Calera Capital Offshore Partners II, LP, and (f) 12,077,787 shares of Holdings Class A Common Stock held by Calera Capital Partners III, LP.

18. *Capped First Lien Lender Fees and Expenses*: means any Claims for reimbursement of professional fees and expenses incurred by any First Lien Lender, whether prior to or after the Petition Date, but only to the extent payment thereof is allowed under either of the DIP Orders.

19. *Cash*: means legal tender of the United States of America.

20. *Causes of Action*: means any and all claims, causes of actions, cross-claims, counterclaims, third-party claims, indemnity claims, reimbursement claims, contribution claims, defenses, demands, rights, actions, debts, damages, judgments, remedies, Liens, indemnities, guarantees, suits, obligations, liabilities, accounts, offsets, recoupments, powers, privileges, licenses, and franchises of any kind or character whatsoever, known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, disputed or undisputed, foreseen or unforeseen, direct or indirect, choate or inchoate, whether arising before, on, or after the Petition Date, including through the Effective Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. For the avoidance of doubt, the term "Causes of Action" shall include: (i) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law or in equity; (ii) the right to object to Claims; (iii) all claims pursuant to sections 362, 510, 542, 543, 544 through 550, 552 or 553 of the Bankruptcy Code; (iv) all claims and defenses, including fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code; and (v) any state law fraudulent transfer claims.

21. *Chapter 11 Cases*: means the chapter 11 cases commenced by the Debtors.

22. *CIH Consent Limitation* means, to the extent any provision of the Plan requires (i) that any document (including any modifications or amendments thereto or any waivers thereunder) be acceptable, reasonably acceptable, or satisfactory to the Consenting Interest Holders or (ii) the Consenting Interest Holders' consent to, agreement to, negotiation of, or determination of any document (including any modifications or amendments thereto or any waivers thereunder) or issue, such requirement shall be limited and qualified to the extent such document or issue: (a) affects the distribution to, or disproportionately and adversely affects, any Consenting Interest Holder and/or other holders of Existing Holdings Equity Interests, including any adverse impact on the Old Equity Plan Consideration and/or Consenting Interest Holder Releases or (b) relates to a transaction between any Debtor and any Noteholder or Affiliate thereof on terms that adversely impact the Consenting Equity Interest Holders' legal and/or economic rights and/or interests in the Old Equity Plan Consideration and/or the Consenting Interest Holder Releases.

23. *Claim*: means a "claim" against the Debtors, as such term is defined in section 101(5) of the Bankruptcy Code.

24. *Claims Objection Deadline*: means the first Business Day that is the later of (i) one-hundred eighty (180) days after the Effective Date, (ii) ninety (90) days from the date by which a holder of a Claim is required to file a Proof of Claim pursuant to an order of the Court, or (iii) such other later date the Court may establish upon a motion by the Debtors or the Reorganized Debtors, which motion may be approved without a hearing and without notice to any party.

25. *Class*: means a group of Claims or Equity Interests classified under the Plan.

26. *Collateral*: means any property, or interest in property, of the Estates (or, after the Effective Date, any of the Reorganized Debtors) subject to a Lien to secure the payment or performance of a Claim, which Lien has not been avoided or is not subject to avoidance under the Bankruptcy Code or is otherwise invalid under the Bankruptcy Code or applicable law.

27. *Commitment Premium Equity Interests*: means 915,875 New Common Equity Interests to be issued to and allocated among the Backstop Parties in accordance with the Backstop Commitment Agreement pursuant to and as consideration for the obligations under the Backstop Commitment Agreement, subject to dilution by the MIP Equity Compensation, the FID Compensation, the exercise of New Warrants or the issuance of additional New Common Equity Interests or other equity securities after the Effective Date.

28. *Confirmation*: means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

29. *Confirmation Date*: means the date of Confirmation.

30. *Confirmation Hearing*: means the hearing held by the Court pursuant to Bankruptcy Rule 3020(b)(2) and section 1128 of the Bankruptcy Code, including any adjournments thereof, at which the Court will consider confirmation of the Plan.

31. *Confirmation Order*: means the order entered by the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

32. *Consenting Interest Holders*: means the holders of the Calera Equity Interests and any additional holders of Existing Holdings Equity Interests that are or become signatories to the Restructuring Support Agreement.

33. *Consenting Interest Holder Releases*: means the releases of the Consenting Interest Holders set forth in Article VI hereof.

34. *Consenting Noteholders*: means those Noteholders that are or become signatories to the Restructuring Support Agreement.

35. *Court*: means (i) the United States Bankruptcy Court for the District of Delaware, (ii) to the extent there is no reference pursuant to section 157 of title 28 of the United States Code, the United States District Court for the District of Delaware, and (iii) any other court having jurisdiction over the Chapter 11 Cases or proceedings arising therein.

36. *Cure Claim*: means a Claim in an amount equal to all unpaid monetary obligations under an Executory Contract or Unexpired Lease assumed by the Debtors pursuant to section 365 of the Bankruptcy Code, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law. Any Cure Claim to which the holder thereof disagrees with the priority and/or amount thereof as determined by the Debtors shall be deemed a Disputed Claim under the Plan.

37. *Cure Notice*: means a notice of a proposed assumption and proposed Cure Claim to be sent to an applicable contract and lease counterparty.

38. *Debtors*: means Holdings, Intermediate, Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd., and Resun Chippewa, LLC.

39. *DIP Agent*: means Bank of America, N.A., or its duly appointed successor, in its capacity as administrative and collateral agent under the DIP Facility.

40. *DIP Credit Agreement*: means that certain Post-Petition Credit Agreement dated as of December 22, 2016, as at any time amended, modified or supplemented in accordance with the terms therein, by and among Modular Space Corporation, the other Debtors, the DIP Guarantors, and the DIP Lenders, approved by the DIP Orders.

41. *DIP Facility*: means the debtor-in-possession financing facility approved by the DIP Orders and established pursuant to the DIP Credit Agreement.

42. *DIP Facility Claims*: means all allowed but unpaid or unsatisfied Claims against each of the Debtors for debts and other Obligations (as defined in the DIP Credit Agreement) outstanding on such date under the DIP Credit Agreement and the other DIP Loan Documents, including, without limitation, all principal, interest (notwithstanding Article VII.B.18 of the Plan) and in respect of letters of credit and all claims for Bank Products (as defined in the DIP Credit Agreement).

43. *DIP Guarantors*: means the guarantors party to the DIP Credit Agreement.

44. *DIP Lenders*: means the Lenders party to (and as defined in) the DIP Credit Agreement.

45. *DIP Loan Documents*: means the "Loan Documents" under (and as defined in) the DIP Credit Agreement.

46. *DIP Orders*: means the Interim DIP Order and the Final DIP Order.

47. *Disbursing Agent*: shall have the meaning ascribed to such term in Article VII.B.9. of the Plan.

48. *Disclosure Statement*: means the Disclosure Statement for the Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code, in furtherance of the Plan, as may be amended, modified, or supplemented from time to time in accordance with the terms of the Plan and the Restructuring Support Agreement.

49. *Disputed*: means, with respect to any Claim or Equity Interest, other than a Claim or Equity Interest that has been Allowed pursuant to the Plan or a Final Order, a Claim or Equity Interest (i) that is listed in the Schedules (to the extent the Debtors file Schedules in the Chapter 11 Cases) as unliquidated, contingent, or disputed, and as to which no request for payment or Proof of Claim or Equity Interest has been filed, (ii) as to which a proper and timely request for payment or Proof of Claim or Equity Interest has been filed, but with respect to which an objection or request for estimation has been filed and has not been withdrawn or determined

by a Final Order, (iii) as to which a request for payment was required to be filed but as to which a request for payment was not properly filed, (iv) that is disputed in accordance with the provisions of the Plan, or (v) that is otherwise disputed by the Debtors or the Reorganized Debtors upon notice to the holder of such Claim or Equity Interest.

50. *DTC*: means the Depository Trust Company.

51. *Effective Date*: means the date which is the first Business Day selected by the Debtors, in consultation with the First Lien Agent and the Consenting Noteholders, and on which (a) all of the conditions to the occurrence of the Effective Date specified in Article X.A have been satisfied or waived in accordance with Article X.B and (b) no stay of the Confirmation Order is in effect.

52. *Eligible Holder*: has the meaning set forth in the Rights Offering Procedures and the corresponding subscription form.

53. *Entity*: means an "entity" as such term is defined in section 101(15) of the Bankruptcy Code.

54. *Equity Interest*: means any "equity security" (as such term is defined in section 101(16) of the Bankruptcy Code) in any Debtor, including any issued or unissued share of common stock, preferred stock, or other instrument evidencing an ownership interest in any Debtor, whether or not transferable, and any option, warrant, or right, contractual or otherwise, to acquire any such interest in any Debtor that existed immediately prior to the Effective Date, and any Claim against the Debtors subordinated pursuant to section 510(b) of the Bankruptcy Code.

55. *Estates*: means, collectively the estates of each of the Debtors created in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

56. *Exchange Act*: means the Securities Exchange Act of 1934, as amended.

57. *Exculpated Parties*: means (a) the Debtors, (b) any official committee appointed in the Chapter 11 Cases and each of its members in their capacity as members of such committee, (c) the Debtors' officers and directors serving in such capacities during the period from the Petition Date up to and including the Effective Date; and (d) the Professionals retained by the Debtors and any official committee in these Chapter 11 Cases, in each case including their successors and post-Effective Date assigns (whether by operation of law or otherwise).

58. *Executory Contract*: means a contract to which the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

59. *Existing Benefits Agreement*: means all employment, retirement, severance, indemnification, and similar or related agreements, arrangements, and policies with the members of the Debtors' management team or directors as of the Petition Date.

60. *Existing Holdings Equity Interests*: means the existing common stock in Holdings.

61. *Existing Management Incentive Plans*: means all contracts, agreements, policies, programs, and plans for incentive compensation for the officers and employees of the Debtors who served in such capacity at any time, in each case as in effect immediately prior to the Effective Date.

62. *Exit Agent*: means Bank of America, N.A., or its duly appointed successor, in its capacity as administrative and collateral agent under the Exit Credit Facility.

63. *Exit Commitment Letter*: means that certain letter agreement dated December 20, 2016, by and among the Debtors and the Exit Lenders, as attached as Exhibit B to the Restructuring Support Agreement.

64. *Exit Credit Facility*: means the senior secured facility in the approximate amount of $719,518,048.63 entered into by certain of the Reorganized Debtors on the terms set forth in the Exit Credit Facility Credit Agreement and the other Exit Credit Facility Documents, as may be amended, modified, or supplemented from time to time in accordance with the terms therein.

65. *Exit Credit Facility Agreement*: means a loan and security agreement providing for the Exit Credit Facility (a substantially final form of which shall be included in the Plan Supplement) to be effective as of the Effective Date, which shall be an amendment and restatement of the First Lien Credit Agreement and incorporating the terms of the Exit Credit Facility Term Sheet (as the same may be modified or amended prior to the Effective Date with the consent of the Debtors, Exit Agent, Exit Lenders, Majority Noteholders and, subject to the CIH Consent Limitation, the Consenting Interest Holders), and which shall otherwise be in form and substance acceptable to the Debtors, Exit Agent, Exit Lenders, Majority Noteholders and, subject to the CIH Consent Limitation, the Consenting Interest Holders.

66. *Exit Credit Facility Documents*: means the Exit Credit Facility Agreement and Exit Credit Facility Security Documents and all loan, credit, and other agreements, instruments or documents relating to or governing the Exit Credit Facility, in each case as the same may be amended, restated, supplemented or otherwise modified from time to time. Any Security Documents that continue in effect to secure the Exit Credit Facility pursuant to the Plan shall constitute Exit Credit Facility Documents.

67. *Exit Credit Facility Security Documents*: means a general security agreement (from the Canadian borrower), a guaranty agreement (by the U.S. obligors of the Canadian obligations), a guaranty agreement (from the parent of Modular Space Corporation), a security agreement (from the parent of Modular Space Corporation), and an equity interest pledge agreement (by Modular Space Corporation relating to equity interests in its affiliates), and other material security agreements, in each case consistent with the Exit Credit Facility Term Sheet and in form and substance acceptable to the Debtors, Exit Agent, Exit Lenders, Majority Noteholders and, subject to the CIH Consent Limitation, the Consenting Interest Holders.

68. *Exit Credit Facility Term Sheet*: means the term sheet, attached as Exhibit A to the Exit Commitment Letter, setting forth the material terms and conditions of the Exit Credit Facility.

69. *Exit Lenders*: means the lenders under the Exit Credit Facility Agreement.

70. *Fee Claim*: means at any given time, and regardless of whether such amounts are billed or unbilled, a Claim for all accrued, contingent, and/or unpaid fees and expenses (including success fees) for legal, financial advisory, accounting, and other services, and reimbursement of expenses by any Professional that the Court has not, as of the Effective Date, denied by Final Order (i) all to the extent that any such fees and expenses have not been previously paid (regardless of whether a fee application has been filed for any such amount) and (ii) after applying the remaining balance of any retainer that has been provided by the Debtors to such Professional; provided, however, that a Fee Claim shall not include RSA Claims, Backstop Agreement Claims or Claims for fees and expenses authorized pursuant to the DIP Orders or Article VI.F of the Plan.

71. *FID Compensation*: means New Common Equity Interests in Reorganized Holdings, Reorganized Intermediate or Newco, as applicable, having a book value in the amount of $50,000.

72. *Final DIP Order*: means the order of the Court authorizing, among other things, on a final basis, the Debtors to enter into the DIP Facility and incur postpetition obligations thereunder and use cash collateral.

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

74. *First Lien Agent*: means Bank of America, N.A., as administrative and collateral agent under the First Lien Credit Agreement.

75. *First Lien Credit Agreement*: means that certain Third Amended and Restated Credit Agreement dated as of June 6, 2011 (as amended, modified, or supplemented from time to time), by and among Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd., Resun Chippewa, LLC, Bank of America, N.A., in its capacity as the First Lien Agent, and the First Lien Lenders.

76. *First Lien Credit Facility*: means the credit facility under the First Lien Credit Agreement.

77. *First Lien Credit Facility Claims*: means, on any date, all Obligations outstanding on such date under (and as defined in) the First Lien Credit Agreement other than legal fees and expenses of the First Lien Lenders that exceed the Capped First Lien Lender Fees and Expenses, and shall include, without limitation, the First Lien Guarantee Claim and all principal, pre-petition and post-petition interest (notwithstanding Article VII.B.18 of the Plan), and in respect of letters of credit.

78. *First Lien Guarantee*: means each guarantee of the First Lien Credit Facility Claims, including, but not limited to, the guarantees, indemnities, and other credit support provided by any of the Debtors pursuant to the First Lien Loan Documents.

79. *First Lien Guarantee Claim*: means a Claim arising from a First Lien Guarantee.

80. *First Lien Lenders*: means the Lenders under (and as defined in) the First Lien Credit Agreement.

81. *First Lien Loan Documents*: means the "Loan Documents," as such term is defined in the First Lien Credit Agreement.

82. *Former Independent Directors*: means the independent directors of Holdings as of the Petition Date.

83. *General Unsecured Claim*: means any Claim that is not Secured or entitled to priority under the Bankruptcy Code or an order of the Court, including any Claim arising from the rejection of an Executory Contract or Unexpired Lease under section 365 of the Bankruptcy Code.

84. *Government Bar Date*: means the deadline for filing Claims against Holdings or Intermediate by a Governmental Unit, as established by the Bar Date Order.

85. *Governmental Unit*: has the meaning set forth in section 101(27) of the Bankruptcy Code.

86. *Guarantee Claims*: means the First Lien Guarantee Claims and the Note Guarantee Claims.

87. *Holdings*: means Modular Space Holdings, Inc.

88. *Impaired*: means, when used with respect to Claims or Equity Interests, Claims or Equity Interests that are "impaired" within the meaning of section 1124 of the Bankruptcy Code.

89. *Indenture*: means that certain Indenture, dated February 25, 2014 (as amended, modified, or supplemented from time to time), by and among Modular Space Corporation, certain Guarantors, and the Trustee.

90. *Insured Claim*: means any Claim or portion of a Claim that is, or may be, insured under any of the Debtors' insurance policies.

91. *Intercompany Claims*: means any Claim held by any Debtor against another Debtor.

92. *Intercompany Equity Interests*: means any Equity Interests held by a Debtor in another Debtor, other than the equity interests in Intermediate.

93. *Intermediate*: means Modular Space Intermediate Holdings, Inc.

94. *Interim DIP Order*: means the order of the Court authorizing, among other things, on an interim basis, the Debtors to enter into the DIP Facility and incur postpetition obligations thereunder and use cash collateral.

95. *Lender Released Parties*: means (a) each of the First Lien Agent, the First Lien Lenders, the DIP Agent, the DIP Lenders, the Exit Agent and the Exit Lenders, (b) each of the foregoing Entity's respective predecessors, successors, assigns, subsidiaries, funds, portfolio companies, management companies, and related Persons or entities who have administered or participated in any aspect of the lending relationship under the First Lien Credit Facility (or who, in the case of Bank of America, N.A., and its related Persons or entities, served as arrangers, underwriters, securities clearing agencies, investment advisors, brokers, counsel, or other professional persons, in each case involved in any capacity in the issuance, marketing, sale or distribution of the Notes) and parties acting in concert with or at the direction of any of the foregoing Persons, and (c) with respect to each of the foregoing Persons, such Person's attorneys, financial advisors, directors, officers, members, shareholders, accountants, investment bankers, consultants, and other professional advisors (in each case, solely in their capacity as such and as relates to one or more of the Debtors).

96. *Lender Releasing Parties*: means (a) each of the First Lien Agent, the First Lien Lenders, the DIP Agent, and the DIP Lenders, (b) each of the foregoing Entity's respective predecessors, successors, assigns, subsidiaries, funds, portfolio companies, management companies, agents, representatives, and related Persons or entities who have administered or participated in any aspect of the lending relationship under the First Lien Credit Facility (or who, in the case of Bank of America, N.A., and its related Persons or entities, served as arrangers, underwriters, securities clearing agencies, investment advisors, brokers, counsel, or other professional persons, in each case involved in any capacity in the issuance, marketing, sale or distribution of the Notes) and parties acting in concert with or at the direction of the foregoing Persons, and (c) with respect to each of the foregoing Persons, such Person's attorneys, financial advisors, directors, officers, members, shareholders, accountants, investment bankers, consultants, and other professional advisors (in each case, solely in their capacity as such and as relates to one or more of the Debtors).

97. *Lien*: has the meaning set forth in section 101(37) of the Bankruptcy Code and includes, but is not limited to, any lien, mortgage, deed of trust, pledge, security interest, or other encumbrance granted by the Debtors pursuant to any of the First Lien Loan Documents or Senior Secured Note Documents.

98. *Majority Noteholders*: means Consenting Noteholders holding a majority of the aggregate principal amount of Notes held by all Consenting Noteholders.

99. *Management Agreement*: means that certain Amended and Restated Management Services Agreement dated as of March 30, 2007, by and among Modular Space Corporation, Calera Capital Advisors, LP and Modular Space Holdings, Inc.

100. *Management Agreement Claims*: means any and all Claims of Calera Capital Advisors, LP pursuant to the Management Agreement, which shall be paid or extinguished in accordance with Article III hereof.

101. *MIP Equity Compensation*: means up to 7.5% of the New Common Equity Interests, on a fully diluted basis, which shall be reserved for issuance in connection with the New Management Incentive Plan in accordance with the New MIP Documents.

102. *New Board*: means the board of directors (or similar governing bodies) of the Reorganized Debtors to be constituted as of the Effective Date pursuant to Article V.B, the identity of which directors shall be disclosed in the Plan Supplement.

103. *Newco*: means a newly-formed holding company that, if formed, will issue the New Common Equity Interests and New Warrants and, on and after the Effective Date, will own 100% of the Equity Interests in Modular Space Corporation.

104. *Newco By-Laws*: means the by-laws of Newco, the form of which shall be included in the Plan Supplement, if formed.

105. *Newco Charter*: means the articles of incorporation of Newco, the form of which shall be included in the Plan Supplement, if formed.

106. *New Common Equity Interests*: means the common equity interests (including, without limitation, the equity interests issuable upon the exercise of the New Warrants) of either Reorganized Holdings, Reorganized Intermediate or Newco, as to be determined prior to the Effective Date, authorized and issued pursuant to the Plan.

107. *New Corporate Governance Documents*: means an amended and restated certificate of incorporation and bylaws of each of the Reorganized Debtors, and, if applicable, the Newco By-Laws and Newco Charter of Newco, or, if such entity is not a corporation, analogous organizational documents, which shall be included in the Plan Supplement, be on terms consistent with the Exit Credit Facility, and shall be in form and substance reasonably acceptable to the Debtors and acceptable to the Majority Noteholders and, subject to the CIH Consent Limitation, the Consenting Interest Holders.

108. *New Management Incentive Plan*: means the equity-based management incentive plan described in Article V.E to be implemented by the Reorganized Debtors, which shall be included in the Plan Supplement.

109. *New MIP Documents*: means the definitive documents governing and effectuating the New Management Incentive Plan, the form of which shall be included in the Plan Supplement.

110. *New Shareholder Agreement*: means a shareholder agreement, including any limited liability company agreement, among holders of the New Common Equity Interests and New Warrants as of the Effective Date, the form of which shall be included in the Plan Supplement, be on terms consistent with the Exit Credit Facility, and shall be in form and substance reasonably acceptable to the Debtors, and acceptable to the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders.

111. *New Warrant Agreement*: means the warrant agreement or warrant agreements that will govern the terms of the New Warrants, the form of which shall be included in the Plan Supplement and shall be in form and substance reasonably acceptable to the Debtors and acceptable to the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders.

112. *New Warrants*: means the Tranche 1 New Warrants and Tranche 2 New Warrants.

113. *Non-Lender Released Parties*: means each of: (a) the Debtors and the Reorganized Debtors; (b) the Consenting Noteholders, (c) the Trustee, (d) the Consenting Interest Holders, (e) each current and former Backstop Party and (f) with respect to each of the foregoing Entities in clauses (a) through (e), such Entity's predecessors, Professionals, successors and assigns, Affiliates, subsidiaries, funds, portfolio companies, management companies, and each of their respective current and former (with respect to the Debtors and Reorganized Debtors, to the extent employed or serving at any time before the Effective Date) directors, officers, members, employees, shareholders, partners, managers, independent contractors, agents, representatives, principals, consultants, financial advisors, attorneys, accountants, investment bankers, and other professional advisors (in each case, solely in their capacity as such and as relates to one or more of the Debtors).

114. *Non-Lender Releasing Parties*: means, subject to Article X.C. of the Plan, each of: (i) (a) the Trustee; (b) the Consenting Noteholders, (c) the Consenting Interest Holders; (d) each current and former Backstop Party; (ii) excluding the Lender Releasing Parties, each holder of Impaired Claims who (a) has voted to accept the Plan or (b) has voted to reject the Plan but has not checked the box on the Ballot indicating that such holder opts out of the releases, and returned it in accordance with the instructions set forth therein; (iii) to the fullest extent permissible under applicable law, but excluding the Lender Releasing Parties, (a) holders of Unimpaired Claims, and (b) each other holder of Equity Interests who (1) has voted to accept the Plan or (2) has voted to reject the Plan but has not checked the box on the Ballot indicating that such holder opts out of the releases, and returned it in accordance with the instructions set forth therein, and (iv) with respect to each of the foregoing Entities in clauses (i), (ii) and (iii), such Entity's predecessors, successors and assigns, agents, representatives, related Persons or entities, who have participated in any aspect of the relationship with the Debtors, parties acting in concert with or at the direction of any of the foregoing Persons, and attorneys financial advisors, directors, officers, employees, members, shareholders, accountants, investment bankers,

consultants, and other professional advisors of any of the foregoing Persons (in each case, solely in their capacity as such and as relates to one or more of the Debtors).

115. *Non-Rights Offering Equity Interests*: means the New Common Equity Interests that are not Rights Offering Equity Interests or Commitment Equity Interests.

116. *Note*: means a 10.25% Senior Secured Second Lien Note due 2019 issued by Modular Space Corporation pursuant to the Indenture.

117. *Note Claims*: means all of the Claims, including Note Guarantee Claims, arising under the Notes and the Senior Secured Note Documents.

118. *Note Guarantee*: means each guarantee of the Note Claims, including, but not limited to, the guarantees, indemnities, and other credit support provided by any of the Debtors pursuant to the Senior Secured Note Documents.

119. *Note Guarantee Claim*: means a Claim arising from a Note Guarantee.

120. *Noteholder*: means a Person or entity that is a beneficial holder of one or more Notes.

121. *Old Equity Plan Consideration*: means 877,001 New Common Equity Interests and the New Warrants.

122. *Other Priority Claim*: means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than (i) an Administrative Claim, or (ii) a Priority Tax Claim.

123. *Other Secured Claim*: means any Claim that is Secured, other than a First Lien Credit Facility Claim or a DIP Facility Claim.

124. *Permitted Restructuring Transaction*: has the meaning ascribed to it in the DIP Credit Agreement.

125. *Person*: means any individual, corporation, partnership, limited liability company, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, Governmental Unit or any political subdivision thereof, or any other Entity.

126. *Petition Date*: means the date on which the Debtors commenced the Chapter 11 Cases.

127. *Plan*: means this *Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code*, together with all addenda, exhibits, schedules, or other attachments, if any, including the Plan Supplement, each of which is incorporated herein by reference, and as may be amended, modified, or supplemented from time to time in accordance with the terms herein and in the Restructuring Support Agreement, as applicable.

128. *Plan Scheduling Motion*: means the motion filed by the Debtors, substantially contemporaneously with the filing of the Chapter 11 Cases, seeking entry of an order (a) scheduling an objection deadline and combined hearing on the Debtors' Disclosure Statement and Plan Confirmation, (b) approving the form and notice of the Confirmation Hearing, (c) establishing procedures for objections to the Disclosure Statement and the Plan, (d) approving Solicitation Procedures and (e) granting related relief.

129. *Plan Supplement*: means the compilation of documents and forms of documents, schedules, and exhibits to the Plan to be filed with the Court no later than the Plan Supplement Filing Date on notice to parties-in-interest, including, but not limited to, the following: (i) the Rejection Schedule; (ii) the New Corporate Governance Documents, (iii) the New MIP Documents; (iv) the New Warrant Agreement; (v) the identity and affiliations of the officers and members of the New Boards of the Reorganized Debtors; (vi) the New Shareholder Agreement, (vii) the Exit Credit Facility Agreement, (viii) the Tranche 1 New Warrants and (ix) the Tranche 2 New Warrants.

130. *Plan Supplement Filing Date*: means the date that is five (5) Business Days before the deadline to object to the confirmation of the Plan.

131. *Priority Claim*: means any Claim that is entitled to priority in right of payment under the Bankruptcy Code.

132. *Priority Tax Claim*: means any Claim that is entitled to priority in right of payment under sections 502(i) and 507(a)(8) of the Bankruptcy Code.

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

134. *Pro Rata*: means, with respect to any Claim or Equity Interest, the proportion that the amount of such Claim or Equity Interest bears to the aggregate amount of all Claims (including Disputed Claims) or Equity Interests in the applicable Class or group of Classes, unless the Plan provides otherwise.

135. *Proof of Claim*: means a proof of claim filed in the Chapter 11 Cases in a manner consistent with the Bar Date Order and/or the Plan.

136. *Qualifying Liquidity Event*: means a merger, sale of equity interests, sale of assets, initial public offering or similar transaction involving one or more of the Reorganized Debtors that (i) except as otherwise agreed to in writing by the Exit Agent, follows or coincides with the payment in full of all remaining obligations and termination of all remaining commitments under the Exit Credit Facility and (ii) by itself or together with one or more other such transactions results in the payment of proceeds to the holders of New Common Equity Interests distributed pursuant to Article III.E.9(c)(i) of the Plan in an aggregate amount equal to the principal amount of the Notes outstanding as of the Effective Date *plus* amounts equal to the

interest that would accrue at the non-default rate provided under the Senior Secured Note Documents if the Notes remained outstanding and unmatured through the date of such transaction.

137. *Record Date*: means, for purposes of making distributions under the Plan, the Confirmation Date.

138. *Reinstated*: means, with respect to a Claim, (a) in accordance with section 1124(1) of the Bankruptcy Code, being treated such that the legal, equitable, and contractual rights to which such Claim entitles its holder are left unaltered, or (b) if applicable under section 1124 of the Bankruptcy Code: (i) having all prepetition and postpetition defaults with respect thereto other than defaults relating to the insolvency or financial condition of the Debtors or its status as Debtors under the Bankruptcy Code cured, (ii) having its maturity date reinstated, (iii) compensating the holder of such Claim for damages incurred as a result of its reasonable reliance on a provision allowing the Claim's acceleration, and (iv) not otherwise altering the legal, equitable and contractual rights to which the Claim entitles the holder thereof.

139. *Rejection Damage Claims*: means Claims for damages arising from the rejection of Executory Contracts or Unexpired Leases. Unless otherwise agreed to in writing by the Debtors, all Rejection Damage Claims shall be deemed Disputed Claims.

140. *Rejection Schedule*: means the schedule of Executory Contracts and Unexpired Leases to be rejected pursuant to the Plan and the effective date of such rejection, which shall be included in the Plan Supplement.

141. *Reorganized Debtors*: means the Debtors (and, in the event of an Alternative Transaction described in Article X.C. of the Plan, Newco and not Holdings if the Plan is withdrawn as to Holdings) or any successor thereto by merger, consolidation, or otherwise, on and after the Effective Date.

142. *Reorganized Holdings*: means Holdings, or any successor thereto by merger, consolidation, or otherwise, on and after the Effective Date.

143. *Reorganized Intermediate*: means Intermediate, or any successor thereto by merger, consolidation, or otherwise, on and after the Effective Date.

144. *Requisite Backstop Parties*: means the Backstop Parties holding at least a majority of the aggregate Backstop Commitments.

145. *Requisite Lenders*: has the meaning ascribed to it in the Restructuring Support Agreement.

146. *Restructuring Support Agreement*: means the agreement, effective as of December 20, 2016, among the Debtors, the First Lien Lenders, the First Lien Agent, the Consenting Noteholders, and the Consenting Interest Holders as may be amended, modified or supplemented by the parties thereto in accordance with the terms of such agreement.

147. *Restructuring Term Sheet*: means that certain term sheet dated November 3, 2016, entered into by an among the Debtors, the Consenting Noteholders and the Consenting Interest Holders, as amended from time to time through and including December 9, 2016.

148. *Rights Offering*: means the rights offering of Subscription Rights to Eligible Holders to purchase 18,317,500 New Common Equity Interests to be issued by Reorganized Holdings, Intermediate Holdings or Newco, as applicable, pursuant to the Plan at the Rights Offering Exercise Price, for an aggregate purchase price of the Rights Offering Amount.

149. *Rights Exercise Price*: means the purchase price for Rights Offering Equity Interests, as set forth in the Rights Offering Procedures and approved by the Court. The Rights Exercise Price for the Rights Offering Equity Interests will be set at $4.91 per New Common Equity Interest.

150. *Rights Offering Amount*: means approximately $90,000,000.

151. *Rights Offering Equity Interests*: means the 18,317,500 New Common Equity Interests issued pursuant to the Rights Offering, including those issued on account of the Backstop Commitment, subject to dilution by the MIP Equity Compensation, the FID Compensation, the exercise of New Warrants, or the issuance of additional New Common Equity Interests or other equity securities after the Effective Date.

152. *Rights Offering Procedures*: means the procedures governing the Rights Offering, which procedures are attached as an exhibit to the Restructuring Support Agreement, and shall be satisfactory to the Debtors and the Requisite Backstop Parties.

153. *RSA Assumption Order*: means an order of the Court (i) authorizing the Debtors to assume the Restructuring Support Agreement, and (ii) authorizing, approving and directing, without limitation, the Debtors' (a) entry into the Backstop Commitment Agreement and performance of their obligations thereunder, (b) payment of the Commitment Premium (as defined in the Backstop Commitment Agreement) and the expense reimbursement obligations provided for in the Backstop Commitment Agreement, and (c) incurrence of the indemnification obligations provided for in the Backstop Commitment Agreement.

154. *RSA Claim*: means a Claim for fees and expenses, contribution or indemnification obligations under the Restructuring Support Agreement.

155. *Schedules*: means, to the extent the Court has not waived the requirement to file the Schedules, the schedules of assets and liabilities, statements of financial affairs, and lists of holders of Claims and Equity Interests, filed with the Court by the Debtors, including any amendments or supplements thereto.

156. *Secured*: means when referring to a Claim: (a) secured by a Lien on property in which the Estates have an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in each 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 (b) otherwise Allowed pursuant to the Plan as a Claim that is Secured.

157. *Securities Act*: means the Securities Act of 1933, as amended.

158. *Security Documents*: means any and all security agreements, deeds of movable and immovable hypothec, pledge agreements, guarantees, mortgages, deeds of trust, deposit account and securities account control agreements, certificates of title, third party waivers and intercreditor agreements, UCC-1 financing statements, and any other agreements, instruments, and documents heretofore, now or hereafter securing or guaranteeing any of the First Lien Credit Facility Claims or the Exit Credit Facility, including, without limitation, all First Lien Loan Documents pursuant to which an ABL Lien has been granted.

159. *Senior Secured Note Documents*: means the "Senior Secured Note Documents," as such term is defined in the Indenture.

160. *Solicitation Procedures*: means the procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

161. *Subscription Rights*: means the non-transferable, non-certificated subscription rights of Eligible Holders to purchase Rights Offering Equity Interests in connection with the Rights Offering on the terms and subject to the conditions set forth in the Plan and the Rights Offering Procedures.

162. *Tranche 1 New Warrants*: means the warrants to purchase 750,000 New Common Equity Interests issuable pursuant to the Plan and the New Warrant Agreement. The Tranche 1 New Warrants shall have the attributes set forth in Exhibit A to the Plan.

163. *Tranche 2 New Warrants*: means the warrants to purchase 500,000 New Common Equity Interests issuable pursuant to the Plan and the New Warrant Agreement. The Tranche 2 Warrants shall have the attributes set forth in Exhibit A to the Plan.

164. *Trustee*: means Wilmington Savings Fund Society, FSB, as successor trustee and successor collateral agent under the Indenture.

165. *Unexpired Lease*: means a lease to which the Debtors are a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

166. *Unimpaired*: means any Class of Claims or Equity Interests that is not Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code.

167. *Unsubscribed Equity Interests*: means Rights Offering Equity Interests that are not timely, duly and validly subscribed and paid for by the holders of Allowed Note Claims in accordance with the Rights Offering Procedures.

168. *U.S. Trustee*: means the United States Trustee for the District of Delaware.

169. *Voting Deadline*: means January 25, 2017 at 11:59 p.m. (prevailing Eastern Time) or such other later date established by the Debtors or the Court, which is the deadline for submitting Ballots to either accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code.

170. *Voting Record Date*: means December 13, 2016.

B. Interpretation, Application of Definitions, and Rules of Construction.

Except as expressly provided herein, each capitalized term used in the Plan shall either have (i) the meaning ascribed to such term in Article I or (ii) if such term is not defined in Article I, but such term is defined in the Bankruptcy Code or Bankruptcy Rules, the meaning ascribed to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be. Meanings of capitalized terms shall be equally applicable to both the singular and plural forms of such terms. The words "herein," "hereof," and "hereunder" and other words of similar import refer to the Plan as a whole (and, for the avoidance of doubt, the Plan Supplement) and not to any particular section or subsection in the Plan unless expressly provided otherwise. The words "includes" and "including" are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. Captions and headings to articles, sections and exhibits are inserted for convenience of reference only, are not a part of the Plan, and shall not be used to interpret the Plan. The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the Plan. Any distributions made on account of any Claim shall only be on account of Allowed Claims notwithstanding the use or not of the word "Allowed" before such Claim.

C. Computation of Time.

Except as otherwise specifically provided in the Plan, in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

ARTICLE II.
ADMINISTRATIVE CLAIMS, PRIORITY TAX, AND OTHER CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Facility Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims, each as described below, have not been classified and thus are excluded from the classes of Claims and Equity Interests set forth in Article III.

A. Administrative Claims.

Each holder of an Allowed Administrative Claim (other than an Administrative Claim that is a Fee Claim, a DIP Facility Claim, U.S. Trustee Fee Claim, RSA Claim or Backstop Commitment Agreement Claim) as of the Effective Date shall receive (i) Cash in an amount equal to the amount of such Allowed Administrative Claim as soon as practicable after the later of (a) the Effective Date, if such Administrative Claim is Allowed as of the Effective Date, (b) forty-five (45) days after the date such Administrative Claim becomes an Allowed Administrative Claim, if such Administrative Claim is Disputed as of, or following, the

Effective Date, or (c) the date such Allowed Administrative Claim becomes due and payable by its terms, or as soon thereafter as is practicable, or (ii) such other treatment as the Debtors and such holder shall have agreed in writing; provided, however, that Allowed Administrative Claims (other than Fee Claims and DIP Facility Claims) that arise in the ordinary course of the Debtors' business shall be paid in the ordinary course of business in accordance with the terms, and subject to the conditions, of any agreements governing, instruments evidencing, or other documents relating to, such transactions.

B. DIP Facility Claims.

1. *Allowance.*

The DIP Facility Claims shall be deemed to have been finally Allowed for all purposes as fully Secured Claims and shall not be subject to any avoidance, reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, disallowance, impairment, objection, or any other challenge under any applicable law or regulation by any Person or Entity.

2. *Full Payment of DIP Facility Claims.*

On the Effective Date, the Debtors shall make Full Payment (as such term is defined in the DIP Credit Agreement) of the then unpaid balance of the DIP Facility Claims from the first advances made under the Exit Credit Facility and/or proceeds of the Rights Offering. Unless and until Full Payment of the DIP Facility Claims has occurred, notwithstanding entry of the Confirmation Order and anything to the contrary in the Plan or the Confirmation Order, (i) none of the DIP Facility Claims shall be discharged, satisfied or released or otherwise affected in whole or in part, and each of the DIP Facility Claims shall remain outstanding, and (ii) none of the Liens securing the DIP Facility shall be deemed to have been waived, released, satisfied, subordinated or discharged.

C. Fee Claims.

1. *Final Fee Applications.*

Except as otherwise provided in the DIP Orders, requests for compensation or reimbursement of Fee Claims shall be filed and served on the Reorganized Debtors, counsel to the Reorganized Debtors, counsel to the Trustee and the Ad Hoc Noteholder Group, the U.S. Trustee, counsel to the First Lien Agent, counsel to the Consenting Interest Holders, any official committee appointed in the Chapter 11 Cases, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order, or other order of the Court, no later than sixty (60) days after the Effective Date, unless otherwise agreed by the Debtors. Except as otherwise provided in the DIP Orders, holders of Fee Claims that are required to file and serve applications for final allowance of their Fee Claims that do not file and serve such applications by the required deadline shall be forever barred from asserting such Claims against the Debtors, Reorganized Debtors, or their respective properties, and such Fee Claims shall be deemed discharged as of the Effective Date. Objections to any Fee Claims must be filed and served on the Reorganized Debtors, counsel to the Reorganized Debtors, counsel to the First Lien Agent, counsel to the Trustee and the Ad Hoc Noteholder Group, any official committee appointed in

the Chapter 11 Cases, and the requesting party no later than forty-five (45) days after the filing of the final applications for compensation or reimbursement (unless otherwise agreed by the party requesting compensation of a Fee Claim).

2. *Post-Effective Date Professional Fees and Expenses*.

The Reorganized Debtors shall pay in Cash the reasonable legal, professional, or other fees and expenses incurred by the Debtors' Professionals on and after the Effective Date, in the ordinary course of business, and without any further notice to or action, order, or approval of the Court. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and Professionals may be employed and paid in the ordinary course of business without any further notice to, or action, order, or approval of, the Court.

3. *Professional Fee Reserve*.

Any professional fees that have been earned or incurred (including all success fees, financing fees, or other fees that have been earned or incurred by investment bankers by professionals for the Debtors or other Persons as a result of confirmation or consummation of the Plan) but remain unpaid as of the Effective Date shall be assumed by the Reorganized Debtors and paid out of a professional fee escrow account, which professional fee escrow account shall be funded from the proceeds of the Exit Credit Facility (subject to satisfaction of all the terms and conditions of the Exit Credit Facility Agreement) on the Effective Date, and which shall only be used for the payment of such fees.

D. Priority Tax Claims.

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive, at the option of the Debtors, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Priority Tax Claim, one of the following treatments: (i) payment in full in Cash as soon as practicable after the Effective Date in the amount of such Allowed Priority Tax Claim, plus statutory interest on any outstanding balance from the Effective Date, calculated at the prevailing rate under applicable nonbankruptcy law for each taxing authority and to the extent provided for by section 511 of the Bankruptcy Code, and in a manner not less favorable than the most favored nonpriority General Unsecured Claim provided for by the Plan (other than cash payments made to a class of creditors pursuant to section 1122(b) of the Bankruptcy Code); (ii) payment in full in Cash, payable in equal Cash installments made on a quarterly basis in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, over a period not to exceed five (5) years following the Petition Date, plus statutory interest on any outstanding balance from the Effective Date, calculated at the prevailing rate under applicable nonbankruptcy law for each taxing authority and to the extent provided for by section 511 of the Bankruptcy Code, and in a manner not less favorable than the most favored nonpriority General Unsecured Claim provided for by the Plan (other than cash payments made to a class of creditors pursuant to section 1122(b) of the Bankruptcy Code); or (iii) such other treatment as may be agreed upon by such holder and the Debtors or otherwise determined upon a Final Order of the Court.

E. U.S. Trustee Fees.

Notwithstanding anything to the contrary contained herein, on the Effective Date, the Debtors shall pay, in full, in Cash, any fees due and owing to the U.S. Trustee at the time of Confirmation. On and after the Effective Date, the Reorganized Debtors shall be responsible for filing required post-confirmation reports and paying quarterly fees due to the U.S. Trustee for the Reorganized Debtors until the entry of a final decree in the Chapter 11 Cases or until the Chapter 11 Cases are converted or dismissed.

F. RSA Claims and Backstop Commitment Agreement Claims.

The Backstop Commitment Agreement Claims and RSA Claims shall constitute Allowed Administrative Expense Claims and shall be paid in Cash on the Effective Date without the need to file a proof of such Claim with the Court and without further order of the Court.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Classification of Claims and Equity Interests.

Except for those Claims addressed in Article II, all Claims and Equity Interests are placed in the Classes set forth below. A Claim or Equity Interest is placed in a particular Class solely to the extent that the Claim or Equity Interest falls within the description of that Class, and the portion of a Claim or Equity Interest which does not fall within such description shall be classified in another Class or Classes to the extent that such portion falls within the description of such other Class or Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan solely to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled before the Effective Date.

B. Record Date.

As of the close of business on the Record Date, the claims register (for Claims) and transfer ledger (for Equity Interests) shall be closed, and there shall be no further changes in the record holders of any Claims or Equity Interests. The Reorganized Debtors shall have no obligation to, but may, in consultation with the First Lien Lenders, recognize any transfer of any Claims or Equity Interests occurring after the Record Date. The Reorganized Debtors shall instead be entitled to recognize and deal for purposes under the Plan with only those record holders stated on the claims register (for Claims) and transfer ledgers (for Equity Interests) as of the close of business on the Record Date.

C. General Unsecured Claims Bar Date.

(a) In accordance with the Bar Date Order and section 502(b)(9) of the Bankruptcy Code, any Person or Entity, other than a holder of a First Lien Credit Facility Claim, a Note Claim, a Management Agreement Claim, an Intercompany Claim or claim in respect of director and officer liability indemnification (subject to Article V.F. of the Plan), that fails to file

a Proof of Claim by the Bar Date or was not otherwise permitted to file a Proof of Claim after the Bar Date by a Final Order of the Court is and shall be barred, estopped and enjoined from asserting any Claim against Holdings and/or Intermediate (i) in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such Person or Entity as undisputed, noncontingent and liquidated; or (ii) of a different nature or a different classification than any Claim identified in the Schedules on behalf of such Person or Entity.

(b) The Debtors and the Reorganized Debtors shall be entitled, for the purposes of distributions, reserves and other similar purposes under this Plan, to treat all Claims filed after the Bar Date as disallowed and expunged unless the holder of such Claim files a motion to have the late Claim deemed timely filed by the Court. The Debtors or the Reorganized Debtors have no obligation to review or respond to any Claims filed after the Bar Date, unless: (x) the filer has obtained an order from the Court authorizing it to file such Claim after the Bar Date; or (y) the Debtors or the Reorganized Debtors have consented to the filing of such Claim in writing.

D. Government Bar Date.

In accordance with the Bar Date Order and section 502(b)(9) of the Bankruptcy Code, any Governmental Unit that fails to file a Proof of Claim by the Government Bar Date or was not otherwise permitted to file a Proof of Claim after the Government Bar Date by a Final Order of the Court is and shall be barred, estopped and enjoined from asserting any Claim against Holdings and/or Intermediate (i) in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such Person or Entity as undisputed, noncontingent and liquidated; or (ii) of a different nature or a different classification than any Claim identified in the Schedules on behalf of such Person or Entity.

E. Summary of Classification and Class Identification.

Below is a chart identifying Classes of Claims and Equity Interests against each of the Debtors, a description of whether each Class is Impaired, and each Class's voting rights with respect to the Plan. Each Class of Claims and Equity Interests has been assigned a number below, from 1 to 9. For the purposes of classifying and treating Claims against and Equity Interests each Debtor, each Debtor has been assigned a letter A through G.

1. *Modular Space Holdings, Inc.*

Class	Claim or Equity Interest	Impairment Status	Voting Rights
1A	Other Priority Claims	Unimpaired	Deemed to Accept
2A	Other Secured Claims	Unimpaired	Deemed to Accept
3A	General Unsecured Claims	Unimpaired	Deemed to Accept
4A	Intercompany Claims	Unimpaired	Deemed to Accept
6A	Existing Holdings Equity Interests	Impaired	Entitled to Vote

2. *Modular Space Intermediate Holdings, Inc.*

Class	Claim or Equity Interest	Impairment Status	Voting Rights
1B	Other Priority Claims	Unimpaired	Deemed to Accept
2B	Other Secured Claims	Unimpaired	Deemed to Accept
3B	General Unsecured Claims	Unimpaired	Deemed to Accept
4B	Intercompany Claims	Unimpaired	Deemed to Accept
7B	First Lien Credit Facility Claims	Impaired	Entitled to Vote
8B	Note Claims	Impaired	Entitled to Vote
9B	Equity Interests	Unimpaired	Deemed to Accept

3. *Modular Space Corporation*

Class	Claim or Equity Interest	Impairment Status	Voting Rights
1C	Other Priority Claims	Unimpaired	Deemed to Accept
2C	Other Secured Claims	Unimpaired	Deemed to Accept
3C	General Unsecured Claims	Unimpaired	Deemed to Accept
4C	Intercompany Claims	Unimpaired	Deemed to Accept
5C	Management Agreement Claims	Impaired	Entitled to Vote
7C	First Lien Credit Facility Claims	Impaired	Entitled to Vote
8C	Note Claims	Impaired	Entitled to Vote
9C	Equity Interests	Unimpaired	Deemed to Accept

4. *Resun ModSpace, Inc.*

Class	Claim or Equity Interest	Impairment Status	Voting Rights
1D	Other Priority Claims	Unimpaired	Deemed to Accept
2D	Other Secured Claims	Unimpaired	Deemed to Accept
3D	General Unsecured Claims	Unimpaired	Deemed to Accept
4D	Intercompany Claims	Unimpaired	Deemed to Accept
7D	First Lien Credit Facility Claims	Impaired	Entitled to Vote
8D	Note Claims	Impaired	Entitled to Vote
9D	Equity Interests	Unimpaired	Deemed to Accept

5. *ModSpace Government Financial Services, Inc.*

Class	Claim or Equity Interest	Impairment Status	Voting Rights
1E	Other Priority Claims	Unimpaired	Deemed to Accept
2E	Other Secured Claims	Unimpaired	Deemed to Accept
3E	General Unsecured Claims	Unimpaired	Deemed to Accept
4E	Intercompany Claims	Unimpaired	Deemed to Accept
7E	First Lien Credit Facility Claims	Impaired	Entitled to Vote
8E	Note Claims	Impaired	Entitled to Vote
9E	Equity Interests	Unimpaired	Deemed to Accept

6. *ModSpace Government Financial Services Canada, Ltd.*

Class	Claim or Equity Interest	Impairment Status	Voting Rights
1F	Other Priority Claims	Unimpaired	Deemed to Accept
2F	Other Secured Claims	Unimpaired	Deemed to Accept
3F	General Unsecured Claims	Unimpaired	Deemed to Accept
4F	Intercompany Claims	Unimpaired	Deemed to Accept
7F	First Lien Credit Facility Claims	Impaired	Entitled to Vote
9F	Equity Interests	Unimpaired	Deemed to Accept

7. *Resun Chippewa, LLC*

Class	Claim or Equity Interest	Impairment Status	Voting Rights
1G	Other Priority Claims	Unimpaired	Deemed to Accept
2G	Other Secured Claims	Unimpaired	Deemed to Accept
3G	General Unsecured Claims	Unimpaired	Deemed to Accept
4G	Intercompany Claims	Unimpaired	Deemed to Accept
7G	First Lien Credit Facility Claims	Impaired	Entitled to Vote
8G	Note Claims	Impaired	Entitled to Vote
9G	Equity Interests	Unimpaired	Deemed to Accept

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied, for the purposes of Confirmation, by acceptance of the Plan by an Impaired Class of Claims against each Debtor; provided, however, that in the event no holder of a Claim or Equity Interest with respect to a specific voting Class timely submits a Ballot indicating acceptance or rejection of the Plan, such Class will be deemed to have accepted the Plan. The Debtors will request that the Court confirm

the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Equity Interests. The Debtors reserve the right to modify the Plan in accordance with Article X.F hereof, including the right to withdraw the Plan at any time before the Effective Date.

F. Treatment of Classified Claims and Equity Interests.

1. Classes 1A through 1G: Other Priority Claims

(a) Classification: Classes 1A through 1G consist of Other Priority Claims.

(b) Treatment: Except to the extent that a holder of an Allowed Other Priority Claim agrees in writing to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed Other Priority Claim, each holder of an Allowed Other Priority Claim shall receive payment in Cash in an amount equal to such Allowed Other Priority Claim as soon as practicable after the later of (i) the Effective Date and (ii) thirty (30) days after the date when such Other Priority Claim becomes an Allowed Other Priority Claim.

(c) Voting: Classes 1A through 1G are Unimpaired by the Plan, and each holder of an Allowed Other Priority Claim in Classes 1A through 1G is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan.

2. Classes 2A through 2G: Other Secured Claims

(a) Classification: Classes 2A through 2G consists of Other Secured Claims.

(b) Treatment: Except to the extent that a holder of an Allowed Other Secured Claim agrees in writing to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed Other Secured Claim, each holder of an Allowed Other Secured Claim shall: (i) have its Allowed Other Secured Claim Reinstated and rendered Unimpaired, (ii) receive Cash in an amount equal to such Allowed Other Secured Claim, including any interest on such Allowed Other Secured Claim, if such interest is required to be paid pursuant to sections 506(b) and/or 1129(a)(9) of the Bankruptcy Code, as soon as practicable after the later of (a) the Effective Date, and (b) thirty (30) days after the date such Other Secured Claim becomes an Allowed Other Secured Claim, or (iii) receive the Collateral securing its Allowed Other Secured Claim as soon as practicable after the later of (a) the Effective Date and (b) thirty (30) days after the date such Other Secured Claim becomes an Allowed Other Secured Claim.

(c) Voting: Classes 2A through 2G are Unimpaired by the Plan, and each holder of an Allowed Other Secured Claims is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. Classes 3A and 3B: General Unsecured Claims against Holdings and Intermediate

(a) Classification: Classes 3A and 3B consist of General Unsecured Claims against Holdings and Intermediate

(b) Treatment: Subject to Article X.C. of the Plan, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed General Unsecured Claim against Holdings and Intermediate, each holder of an Allowed General Unsecured Claim against Holdings and Intermediate shall receive, up to the amount of its Allowed General Unsecured Claim, Cash as soon as practicable after the later of (a) the Effective Date, and (b) thirty (30) days after the date such General Unsecured Claim becomes an Allowed General Unsecured Claim, and only to the extent such holder's Allowed General Unsecured Claim was not previously paid, pursuant to an order of the Court or otherwise, or will be paid on the Effective Date by another Debtor.

(c) Voting: Classes 3A and 3B are Unimpaired by the Plan, and each holder of a General Unsecured Claim against Holdings and Intermediate is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of General Unsecured Claims are not entitled to vote to accept or reject the Plan.

4. Classes 3C through 3G: General Unsecured Claims against Modular Space Corporation, Resun ModSpace, Inc., ModSpace Governmental Financial Services, Inc., ModSpace Government Financial Services Canada, Ltd. and Resun Chippewa, LLC

(a) Classification: Classes 3C through 3G consist of General Unsecured Claims against Modular Space Corporation, Resun ModSpace, Inc., ModSpace Governmental Financial Services, Inc., ModSpace Government Financial Services Canada, Ltd. and Resun Chippewa, LLC

(b) Treatment: In full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed General Unsecured Claim, on the Effective Date, each holder of an Allowed General Unsecured Claim shall, at the discretion of the Debtors, and only to the extent such holder's Allowed General Unsecured Claim was not previously paid, pursuant to an order of the Court or otherwise: (i) have its Allowed General Unsecured Claim Reinstated as an obligation of the Reorganized Debtors, and be paid in accordance with the ordinary course terms, (ii) receive such other treatment as may be agreed between such holder and the Reorganized Debtors, or (iii) receive such other treatment that will render it Unimpaired pursuant to section 1124 of the Bankruptcy Code.

(c) Voting: Classes 3C through 3G are Unimpaired by the Plan, and each holder of a General Unsecured Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of General Unsecured Claims are not entitled to vote to accept or reject the Plan.

5. Classes 4A through 4G: Intercompany Claims

(a) Classification: Classes 4A through 4G consist of Intercompany Claims.

(b) Treatment: On the Effective Date, each Intercompany Claim shall be Reinstated, adjusted or extinguished in the discretion of the Debtors with the written consent of the Majority Consenting Noteholders. On and after the Effective Date, to the extent permitted by the Exit Credit Facility Documents, the Reorganized Debtors will be permitted to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Reorganized Debtors to satisfy their obligations under the Plan.

(c) Voting: Classes 4A through 4G are Unimpaired. As Debtors or Affiliates of the Debtors, each holder of an Intercompany Claim is conclusively presumed to accept the Plan and is not entitled to vote to accept or reject the Plan.

6. Class 5C: Management Agreement Claims

(a) Classification: Class 5C consists of the Management Agreement Claims.

(b) Allowance and Subordination: The Management Agreement Claims shall be Allowed on the Effective Date for all purposes in an aggregate amount of $1,100,000, and shall be subordinated in all respects to the Allowed General Unsecured Claims and the Allowed Note Claims.

(c) Treatment: Subject to Article X.C of the Plan, in the event of a Qualifying Liquidity Event, the holders of Allowed Management Agreement Claims shall receive, in full and final satisfaction, settlement, release, and discharge of, and in exchange for such Allowed Management Agreement Claims, cash or other property remaining from the proceeds of a Qualifying Liquidity Event after (a) payment in full of all General Unsecured Claims required to be paid under the Plan and (b) payments to the holders of New Common Equity Interests distributed pursuant to Article III.E.9(c)(i) of the Plan in an aggregate amount equal to the principal amount of the Notes outstanding as of the Effective Date *plus* amounts equal to the interest that would accrue at the non-default rate provided under the Senior Secured Note Documents if the Notes remained outstanding and unmatured through the date of such transaction. If no Qualifying Liquidity Event occurs within five (5) years after the Effective Date, the Management Agreement Claims shall be extinguished on that date.

(d) Voting: Class 5C is Impaired. Therefore, holders of Allowed Management Agreement Claims are entitled to vote to accept or reject the Plan.

7. Class 6A: Existing Holdings Equity Interests

(a) Classification: Class 6A consists of Existing Holdings Equity Interests.

(b) Allowance: Existing Holdings Equity Interests, including, without limitation, Calera Equity Interests in an amount set forth in the definition of Calera Equity Interests, shall be Allowed on the Effective Date for all purposes and shall not be subject to any avoidance, reductions, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, objection or any other challenges under any applicable law or regulation by any Person or Entity.

(c) Treatment: Subject to Article X.C. of the Plan, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, each Allowed Existing Holdings Equity Interest, each holder of an Allowed Existing Holdings Equity Interest shall receive its Pro Rata share of the Old Equity Plan Consideration, subject to dilution by reason of the issuance of MIP Equity Compensation, the FID Compensation, the issuance of additional New Common Equity Interests or other equity securities on or after the Effective Date, in the case of the New Common Equity Interests, the exercise of the New Warrants and, in the case of the Tranche 1 New Warrants, the exercise of the Tranche 2 New Warrants. For the avoidance of doubt, notwithstanding anything to the contrary in the Plan or otherwise, any dilution of the percentage ownership of New Common Equity Interests to be received by the holders of Allowed Note Claims or as Old Equity Plan Consideration under the Plan, whether such dilution occurs by reason of the issuance of MIP Equity Compensation, the FID Compensation, the exercise of any New Warrants, the issuance of additional New Common Equity Interests or other equity securities, or otherwise, on or after the Effective Date shall be applied on a *pro rata* basis to all holders of New Common Equity Interests.

(d) Voting: Class 6A is Impaired. Therefore, holders of Existing Holdings Equity Interests are entitled to vote to accept or reject the Plan.

8. Classes 7B though 7G: First Lien Credit Facility Claims

(a) Classification: Classes 7B through 7G consist of First Lien Credit Facility Claims.

(b) Allowance: All First Lien Credit Facility Claims shall be Allowed on the Effective Date for all purposes as fully Secured Claims and shall not be subject to any avoidance, reduction, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaim, cross-claim, defense, disallowance, impairment, objection or any other challenge under any applicable law or regulation by any Person or Entity.

(c) Treatment; Amendment, Restatement and Assumption; No Novation: On the Effective Date, to the extent the First Lien Credit Facility Claims were not previously paid pursuant to an order of the Court or otherwise, such First Lien Credit Facility Claims shall be assumed[2] by the Reorganized Debtors in accordance with the Fourth Amended

[2] When used in reference to the First Lien Credit Facility or the DIP Facility, the term "assumed" in the Plan shall not mean assumed in the sense that such term is used in section 365 of the Bankruptcy Code; rather, it shall refer to the assumption of debt with the express consent of the Exit Agent and the Exit Lenders.

and Restated Credit Agreement pursuant to the terms of the Exit Credit Facility Documents all as provided and with the effects set forth in Article IV.D.2 of the Plan. Nothing herein is intended to modify, waive or supersede any provision in the Exit Credit Facility Documents.

(d) Voting: Classes 7B through 7G are Impaired. Therefore, holders of First Lien Credit Facility Claims are entitled to vote to accept or reject the Plan.

9. Classes 8B, 8C, 8D, 8E and 8G: Note Claims

(a) Classification: Classes 8B, 8C, 8D, 8E and 8G consist of Note Claims.

(b) Allowance: Note Claims shall be Allowed on the Effective Date for all purposes in an amount of no less than $410,379,408.35 (which amount includes accrued and unpaid interest as of the Petition Date), *plus* accrued but unpaid interest from the Petition Date through the Effective Date to the extent legally permissible under the Bankruptcy Code, and shall not be subject to any avoidance, reductions, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, objection or any other challenges under any applicable law or regulation by any Person or Entity.

(c) Treatment: Except to the extent that a holder of an Allowed Note Claim agrees in writing to such other treatment, and the Debtors, the Ad Hoc Noteholder Group, and the First Lien Lenders, each in their sole discretion, agree in writing to such other treatment, in full and final satisfaction, settlement, release, and discharge of, and in exchange for, all of the Note Claims, on the Effective Date, each holder of an Allowed Note Claim shall receive its Pro Rata share of:

(i) 9,122,999 New Common Equity Interests (distributed in accordance with Article IV.G. of the Plan), subject to dilution by reason of the issuance of MIP Equity Compensation, the FID Compensation, the exercise of any New Warrants, or the issuance of additional New Common Equity Interests or other equity securities on or after the Effective Date; and

(ii) The Subscription Rights; provided, however, that only Eligible Holders shall be entitled to participate in the Rights Offering.

(d) Voting: Classes 8B, 8C, 8D, 8E and 8G are Impaired. Therefore, holders of Allowed Note Claims are entitled to vote to accept or reject the Plan.

10. Classes 9B through 9G: Equity Interests in Intermediate, Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC

(a) Classification: Classes 9B through 9G consist of Equity Interests in Intermediate, Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government

Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC, respectively.

(b) Treatment: On the Effective Date, each Equity Interest in Intermediate, Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd., and Resun Chippewa, LLC shall be Reinstated.

(c) Voting: Classes 9B through 9G are Unimpaired by the Plan, and each holder of an Allowed Equity Interest in Classes 9B through 9G is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Allowed Equity Interest in Classes 9B through 9G are not entitled to vote to accept or reject the Plan.

G. Special Provision Regarding Unimpaired and Reinstated Claims.

Except as otherwise specifically provided in the Plan, nothing herein shall be deemed to affect, diminish, or impair the Debtors' or the Reorganized Debtors' rights and defenses, both legal and equitable, with respect to any Reinstated Claim or Unimpaired Claim, including, but not limited to, legal and equitable defenses to setoffs or recoupment against Reinstated Claims or Unimpaired Claims. Except as otherwise specifically provided in the Plan, nothing herein shall be deemed to be a waiver or relinquishment of any Claim, Cause of Action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Petition Date against, or with respect to, any Claim left Unimpaired by the Plan. Except as otherwise specifically provided in the Plan, the Reorganized Debtors shall have, retain, reserve, and be entitled to assert, all such Claims, Causes of Action, rights of setoff, and other legal or equitable defenses which they had immediately prior to the Petition Date fully as if the Chapter 11 Cases had not been commenced, and all of the Debtors' legal and equitable rights with respect to any Reinstated Claim or Claim left Unimpaired by the Plan may be asserted by the Reorganized Debtors after the Confirmation Date and the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN

A. Operations Between the Confirmation Date and Effective Date.

During the period from the Confirmation Date through and until the Effective Date, the Debtors may continue to operate their businesses as debtors in possession, subject to all applicable orders of the Court and any limitations set forth in the Restructuring Support Agreement.

B. General Settlement of Claims and Interests.

As discussed in the Disclosure Statement, the provisions of the Plan shall, upon consummation, constitute a good faith compromise and settlement, pursuant to Bankruptcy Rule 9019 and section 1123 of the Bankruptcy Code, among the Debtors, the First Lien Agent, the First Lien Lenders, the Consenting Noteholders, and the Consenting Interest Holders of all

disputes among the parties, including those, if any, arising from, or related to, (i) the First Lien Credit Facility Claims, (ii) the Note Claims, (iii) the total enterprise value of the Debtors' estate and the Reorganized Debtors for allocation purposes under the Plan, (iv) the treatment and distribution to holders of Equity Interests, and (v) the Existing Management Incentive Plans. In the event that, for any reason, the Confirmation Order is not entered or the Effective Date does not occur, the Debtors, the First Lien Agent, the First Lien Lenders, the DIP Agent, the DIP Lenders, the Consenting Noteholders, and the Consenting Interest Holders reserve all of their respective rights with respect to any and all disputes resolved and settled under the Plan. The entry of the Confirmation Order shall constitute the Court's approval of each of the compromises and settlements embodied in the Plan, and the Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtors, its estate, creditors, and other parties-in-interest, and are fair, equitable, and within the range of reasonableness. The Plan and the Confirmation Order shall have res judicata, collateral estoppel, and estoppel (judicial, equitable, or otherwise) effect with respect to all matters provided for, or resolved pursuant to, the Plan and/or the Confirmation Order, including, without limitation, the release, injunction, exculpation, discharge, and compromise provisions contained in the Plan and/or the Confirmation Order. The provisions of the Plan, including, without limitation, its release, injunction, exculpation and compromise provisions, are mutually dependent and non-severable.

C. **Subordination of Claims.**

The allowance, classification and treatment of all Allowed Claims and Equity Interests and the respective Distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto. However, the Debtors (with the written consent of the Requisite Lenders, the Majority Noteholders and, solely with respect to the Existing Holdings Equity Interests and Management Agreement Claims, the Consenting Interest Holders) reserve the right to reclassify any Allowed Claim or Equity Interest in accordance with any contractual, legal or equitable subordination relating thereto, unless otherwise provided in a settlement agreement concerning such Allowed Claim.

D. **Exit Credit Facility.**

1. *Authorization*. Contemporaneously with or at any time after the Effective Date, each Reorganized Debtor is authorized to (i) execute and deliver any and all of the Exit Credit Facility Agreement, the other Exit Credit Facility Documents, and all Security Documents, instruments, waivers, consents, reaffirmations and other documents referred to therein or requested by the Exit Agent to give effect to the terms thereof, (ii) satisfy all conditions precedent to the effectiveness of the Exit Credit Facility Agreement and the making of the initial advances thereunder, (iii) incur any and all liabilities, obligations and duties provided in any of the Exit Credit Facility Documents, and (iv) grant to the Exit Agent Liens upon any or all of such Reorganized Debtor's real and personal property (now existing or hereafter created, acquired or arising and wherever located) to secure such Reorganized Debtor's liabilities and obligations under the Exit Credit Facility. The Exit Credit Facility Agreement, the other Exit Credit Facility Documents and any amendments or modifications

thereto may be executed and delivered on behalf of each Reorganized Debtor by any officer, director, or agent of such Reorganized Debtor, who by signing shall be deemed to represent himself or herself to be duly authorized and empowered to execute such Exit Credit Facility Document or amendment for and on behalf of such Reorganized Debtor. The Exit Agent and the Exit Lenders shall be authorized to rely upon any such Person's execution and delivery of any of the Exit Credit Facility Documents and any amendments thereto as having done so with all requisite power and authority to do so, and the execution and delivery of any of the Exit Credit Facility Documents or any amendments thereto by any such Person on behalf of such Reorganized Debtor shall be conclusively presumed to have been duly authorized by all necessary corporate, limited liability company, or other entity action (as applicable) of such Reorganized Debtor. Upon execution and delivery thereof, each Exit Credit Facility Document and any amendments thereto shall constitute valid and binding obligations of each Reorganized Debtor who executed and delivered it, enforceable against each Reorganized Debtor in accordance with its terms for all purposes. No obligation, payment, transfer or grant of security under any of the Exit Credit Facility Documents shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law (including, without limitation, under sections 502(d), 544, 547, 548, 549 or 550 of the Bankruptcy Code or under any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim. Each Reorganized Debtor is authorized and directed to do and perform all acts; to make, execute and deliver all Exit Credit Facility Documents; and to pay all fees, costs and expenses, in each case as may be necessary or, at the request of the Exit Agent, desirable to give effect to any of the terms and conditions of the Exit Credit Facility Documents and any amendments thereto, to validate the perfection of the Liens that are assumed, granted or deemed to have been granted thereunder, or as may otherwise be required or contemplated by such Exit Credit Facility Documents and any amendments thereto.

2. *Amendment and Restatement; No Novation*. The Exit Credit Facility Documents, as in effect as of the Effective Date, and any amendments, modifications or restatements thereof, shall constitute an amendment and restatement of the First Lien Credit Facility and are not intended to constitute, and shall not constitute, a novation, accord and satisfaction, discharge or payment in full of any First Lien Loan Documents or First Lien Credit Facility Claims, which shall remain outstanding and shall be governed by and paid in accordance with the Exit Credit Facility Documents from and after the Effective Date. Notwithstanding anything to the contrary in the Plan or the Confirmation Order, (i) none of the First Lien Credit Facility Claims shall be discharged, satisfied or released or otherwise affected in whole or in part, and each of the First Lien Credit Facility Claims shall remain outstanding from and after the Effective Date, except as expressly provided in the Exit Credit Facility Documents and (ii) none of the ABL Liens shall be deemed to have been waived, released, satisfied, subordinated or discharged and all of the ABL Liens shall continue in effect as duly perfected Liens with respect to all Collateral as described in the Exit Credit Facility Documents and with the priority specified in the Exit Credit Facility Documents. To maintain such perfection and priority from and after the Effective Date, the Exit Agent shall not be required to take any additional steps, including, without limitation, under any applicable state certificate of title statute or regulation, except as may be necessary to continue financing statements filed in accordance with the Uniform Commercial Code as adopted in any applicable state; provided,

however, that the Exit Agent shall be authorized to take such actions and make such filings in any jurisdiction that the Exit Agent, in its discretion, may deem appropriate to perfect and continue the perfection of its Liens upon the Collateral securing the Exit Credit Facility. In addition to any granting of new Liens by the Reorganized Debtors under or pursuant to the Exit Credit Facility Documents, to the extent that any Security Document executed or delivered in connection with the First Lien Credit Facility is not amended, amended and restated or expressly terminated in writing by the ABL Agent in connection with the closing or administration of the Exit Credit Facility, such Security Document shall continue to remain in full force and effect (unaffected by the Plan) and operate to secure all of the liabilities and obligations of the Reorganized Debtors under and pursuant to the Exit Credit Facility. Notwithstanding anything to the contrary in the Plan, each reference to the First Lien Loan Documents, as the same are amended, restated and assumed pursuant to the Exit Credit Facility Documents, shall mean such documents and all rights, remedies, powers, and privileges thereunder, but excluding, on any date, any liabilities or obligations in excess of the First Lien Credit Facility Claims on such date.

3. *No Automatic Stay or Post-Closing Restrictions on Administration of Exit Credit Facility*. From and after the occurrence of the Effective Date and the closing of the Exit Credit Facility, and notwithstanding anything to the contrary in the Plan or the Confirmation Order, (i) neither the automatic stay imposed by section 362 of the Bankruptcy Code nor any injunction or exculpation contained in the Plan or the Confirmation Order shall apply to, limit or restrict any of the Claims, rights, remedies, power, privileges or Liens in favor of the Exit Agent or any Exit Lender under or pursuant to any of the Exit Credit Facility Documents, and (ii) the Reorganized Debtors, the Exit Agent and the Exit Lenders shall be entitled to amend, modify, adjust and administer the Exit Credit Facility in accordance with the terms and conditions of the Exit Credit Facility Documents as if none of the Chapter 11 Cases was pending. Nothing in the Plan shall be deemed or construed to require the consent of any Person to any amendment, modification, or waiver of any provision of any of the Exit Credit Facility Documents except to the extent such Person's consent is required under the terms of the Exit Credit Facility Documents.

E. Voting of Claims.

Each holder of an Allowed Claim as of the Voting Deadline in an Impaired Class of Claims that is not (a) deemed to have rejected the Plan or (b) conclusively presumed to have accepted the Plan, and that held such Claim as of the Voting Record Date, shall be entitled to vote to accept or reject the Plan. The instructions for completion of the Ballots are set forth in the instructions accompanying each Ballot. Approval for the Solicitation Procedures will be sought in the Plan Scheduling Motion and are described in the Disclosure Statement.

F. Nonconsensual Confirmation.

The Debtors intend to request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any impaired Class that has not accepted or is deemed to have rejected the Plan pursuant to section 1126 of the Bankruptcy Code.

G. Issuance of New Common Equity Interests and New Warrants.

Reorganized Holdings, Reorganized Intermediate or Newco, as applicable, shall, among other things, authorize a minimum of 32,429,122 New Common Equity Interests, $0.01 par value per unit. New Common Equity Interests (which, to the extent issued with respect to Note Claims, shall be issued to MSC (through any intermediate holding companies), and MSC shall then exchange such New Common Equity Interests for such Note Claims) shall be issued on or prior to the Effective Date and distributed as soon as practicable thereafter in accordance with the Plan. The number of New Common Equity Interests to be distributed as set forth in the Plan, and the number of New Common Equity Interests issuable upon exercise of New Warrants, are subject to adjustment by the Debtors in a manner that does not alter the respective percentages of the outstanding New Common Equity Interests allocated to any Class or holder of a Claim or Equity Interest, except for immaterial changes resulting from the treatment of fractional Equity Interests; provided, however, that the New Common Equity Interests, as of the Effective Date, shall be subject to dilution as set forth in Article III hereof.

The New Warrants will be issued by Reorganized Holdings, Reorganized Intermediate or Newco, as applicable, pursuant to the terms of the New Warrant Agreement. Each New Warrant will be exercisable for one (1) share of New Common Equity Interests. The New Warrants shall be subject to dilution as set forth in Article III hereof.

All of the New Common Equity Interests, issuable in accordance with the Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable. The issuance pursuant to the Plan of the New Common Equity Interests, including Equity Interests pursuant to the New Management Incentive Plan, and the New Warrants by Reorganized Holdings, Reorganized Intermediate or Newco, as applicable, is authorized without the need for any further corporate action and without any further action by any holder of a Claim or Equity Interest.

The New Common Equity Interests and the New Warrants will be issued in either book-entry form or physical certificate and will be transferable through a transfer agent. The New Common Equity Interests and the New Warrants are not expected to be deposited with or traded through DTC or its nominee. Holders of the New Common Equity Interests, including shares of New Common Equity Interests issuable upon exercise of the Warrants, will have to become parties to the New Shareholder Agreement which will contain certain restrictions on transfer, including transfers to competitors of the Reorganized Entity. The form of New Shareholder Agreement will be filed together with the Plan Supplement. In order to receive the New Common Equity Interests, Noteholders will have to execute the New Shareholder Agreement.

H. Rights Offering.

1. *Purpose*. The proceeds of the sale of the Rights Offering Equity Interests shall be used to provide on the Effective Date an aggregate of approximately $90 million in equity capital to the Reorganized Debtors, which shall be used to (i) pay down certain outstanding obligations under the First Lien Credit Facility and the DIP Facility, (ii) pay fees and expenses under the Exit Credit Facility, (iii) provide the Reorganized Debtors with liquidity to

fund payments required under the Plan and (iv) for ordinary course operations and general corporate purposes.

2. *Subscription Rights*. In accordance with the Rights Offering Procedures, each Eligible Holder shall receive the Pro Rata share of Subscription Rights necessary to allow such Eligible Holder to purchase up to its respective share of Rights Offering Equity Interests, should such Eligible Holder choose to exercise such Subscription Rights, pursuant to the terms set forth in the Plan and in the Rights Offering Procedures. Each Subscription Right shall represent the right to acquire one Rights Offering Equity Interest for the Rights Exercise Price. The total number of Rights Offering Equity Interests to be issued in connection with the Rights Offering (not including the Commitment Premium Equity Interests) will be 18,317,500.

3. *Backstop Commitment*. Subject to the terms, conditions and limitations as more fully set forth in the Backstop Commitment Agreement, and as further described below:

(1) In the event that Eligible Holders have not validly subscribed to purchase Rights Offering Equity Interests representing the entire Rights Offering Amount, each Backstop Party has agreed to purchase its Backstop Commitment Percentage of Unsubscribed Common Equity Interests (as such terms are defined in the Backstop Commitment Agreement);

(2) In the event that one (or more) of the Backstop Parties fails to purchase such Unsubscribed Common Equity Interests (each such Backstop Party, a "Defaulting Backstop Party"), then the other Backstop Parties (the "Non-Defaulting Backstop Parties") shall be required to purchase their respective Adjusted Commitment Percentage (as such term is defined in the Backstop Agreement) of such Unsubscribed Equity Interests(the "Backstop Obligation"); provided that no Backstop Party shall be required to (i) make an investment under the Backstop Commitment Agreement in excess of its Total Investor Commitment Amount (as set forth in Appendix 1 of the Backstop Commitment Agreement); or (ii) purchase such Unsubscribed Common Equity Interests unless, as a result of such purchases by the Non-Defaulting Backstop Parties, the total proceeds to be paid to Reorganized Holdings, Reorganized Intermediate, or Newco, as applicable, as of the closing from the Rights Offering and the purchase of Unsubscribed Common Equity Interests under the Backstop Commitment Agreement shall equal at least the aggregate amount of all the Total Investor Commitment Amounts (the "Minimum Proceeds Condition");

(3) In the event that one (or more) of the Non-Defaulting Backstop Investors defaults on its Backstop Obligations and the Minimum Proceeds Condition is not met, then the remaining Non-Defaulting Backstop Investors may elect, but are not obligated, to purchase any or all remaining Unsubscribed Common Equity Interests. If such Non-Defaulting Backstop Investors do not so elect, Holdings shall be entitled to arrange for one or more third party investors, acceptable to the Backstop Parties, to purchase any remaining Unsubscribed Common Equity Interests, as more fully described in the Backstop Commitment Agreement.

(4) Notwithstanding anything to the contrary in the Plan or the Confirmation Order, (i) the Debtors' obligations under the Backstop Commitment Agreement shall remain unaffected and shall survive following the Effective Date in accordance with the terms thereof, (ii) any such obligations shall not be discharged under the Plan and (iii) none of the Reorganized Debtors shall terminate any such obligations.

4. *Commitment Premium*. In consideration for the obligations described in Article IV.H.3. of the Plan, on the Effective Date, Reorganized Holdings, Intermediate Holdings or Newco, as applicable, shall issue to the Backstop Parties, other than any Defaulting Backstop Party, the Commitment Premium Equity Interests (without payment of any additional consideration therefor) pursuant to the terms, and subject to the conditions set forth in, the Backstop Commitment Agreement.

5. *Exemption from Registration*. The offering of the New Common Equity Interests and Subscription Rights under Article III of the Plan shall be exempt from the registration requirements of the Securities Act pursuant to section 4(a)(2) of the Securities Act. The issuance and distribution of the Rights Offering Equity Interests (other than the Unsubscribed Equity Shares purchased by the Backstop Parties pursuant to the Backstop Commitment) and Non-Rights Offering Equity Interests under Article III of the Plan, and the New Common Equity Interests issuable upon exercise of the New Warrants shall be exempt from the registration requirements of section 5 of the Securities Act and any other applicable law requiring registration of an offer or sale of securities under section 1145(a) of the Bankruptcy Code, except with respect to any Person that is deemed an "underwriter" under section 1145(b) of the Bankruptcy Code, in which case the New Common Equity Interests and the New Warrants shall be issued pursuant to another available exemption from registration under the Securities Act. The issuance and distribution of the Commitment Premium Equity Interests and the Unsubscribed Equity Shares purchased by the Backstop Parties pursuant to the Backstop Commitment shall be exempt from the registration requirements of the Securities Act pursuant to section 4(a)(2) of the Securities Act. The FID Compensation and the MIP Equity Compensation will be issued pursuant to an available exemption from registration under the Securities Act.

The New Common Equity Interests distributed or issued under the Plan to Persons who may be deemed underwriters under section 1145(b) of the Bankruptcy Code or which are otherwise restricted securities will, be issued in book-entry form and included in a ledger identified as "restricted" and indicating in such ledger that transfer may be restricted under federal and state securities laws.

I. Additional or Further Restructuring Transactions.

In addition to, or instead of the foregoing transactions, the Debtors or the Reorganized Debtors, subject to compliance with the Exit Credit Facility Documents and with (i) the prior written consent of the Majority Noteholders in their sole discretion and (ii) the prior written consent of the DIP Agent and, subject to the CIH Consent Limitation, the Consenting Interest Holders, which consent shall not be unreasonably withheld, conditioned or delayed, may cause any of the Debtors or the Reorganized Debtors to engage in additional corporate restructuring transactions necessary or appropriate for the purposes of implementing the Plan or reducing pre- or post-Effective Date liabilities for the Debtors, Reorganized Debtors or their

successors, including, without limitation, converting corporate entities into limited liability companies, forming new entities within the corporate organizational structure of the Debtors or Reorganized Debtors, cancelling the existing equity at another of the Debtor entities and issuing new equity therefrom, consolidating, reorganizing, restructuring, merging, dissolving, liquidating or transferring assets between or among the Debtors and the Reorganized Debtors. The actions to effect these transactions may include (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, reorganization, transfer, disposition, conversion, liquidation, or dissolution containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable state law and such other terms to which the applicable Persons may agree; (b) on terms consistent with the terms of the Plan and having such other terms to which the applicable Persons may agree, the execution and delivery of appropriate instruments of transfer, conversion, assignment, assumption, or delegation of any asset, property, right, liability, duty, or obligation; (c) pursuant to applicable state law, the filing of appropriate certificates or articles of merger, consolidation, conversion, dissolution, or change in corporate form; and (d) the taking of all other actions consistent with the terms of the Plan that the applicable Persons determine to be necessary or appropriate, including (i) making filings or recordings that may be required by applicable state law in connection with such transactions and (ii) any appropriate positions on one or more tax returns.

J. **Continued Corporate Existence and Vesting of Assets.**

Except as otherwise provided herein: (i) each Debtor, will, as a Reorganized Debtor, continue to exist after the Effective Date as a separate legal entity, with all of the powers of such a legal entity under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger, dissolution or otherwise) under applicable law; and (ii) on the Effective Date, all property of the Debtors' Estates, and any property acquired by the Debtors or the Reorganized Debtors under the Plan, will vest in such Reorganized Debtors free and clear of all Claims, Liens, charges, other encumbrances, Equity Interests, and other interests, except for the ABL Liens, First Lien Credit Facility Claims, as assumed by the Reorganized Debtors in accordance with the amended and restated First Lien Credit Agreement pursuant to the terms of the Exit Credit Facility Documents, and other Liens and Claims effectuated or granted by the Reorganized Debtors pursuant to the Plan (including in connection with the Exit Credit Facility).

On and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and compromise or settle any claims without supervision or approval by the Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject only to those restrictions expressly imposed by the Plan, the Confirmation Order, the Exit Credit Facility Documents, and the other documents and instruments executed and delivered in connection therewith, including the documents, exhibits, instruments, and other materials constituting the Plan Supplement. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur from and after the Effective Date for Fee Claims, disbursements, expenses, or related support services (including fees relating to the preparation of Professional fee applications) without application to, or the approval of, the Court.

K. Intercompany Equity Interests.

Subject to Article X.C. of the Plan, the Intercompany Equity Interests shall be retained and the legal, equitable, and contractual rights to which the holder of such Allowed Intercompany Equity Interests is entitled shall remain unaltered.

ARTICLE V.
PROVISIONS REGARDING CORPORATE GOVERNANCE OF THE REORGANIZED DEBTORS

A. Organizational Documents.

The New Corporate Governance Documents will be filed on or immediately before the Effective Date with the applicable authority in the applicable jurisdictions of incorporation in accordance with the corporate laws of the applicable jurisdictions of incorporation or as soon thereafter as is practicable, and will be deemed to have been adopted and will become effective on the Effective Date.

B. Appointment of Officers and Directors.

As of the Effective Date, the term of the current members of the board of directors of the Debtors shall expire without further action by any Person. The New Boards of each of the Reorganized Debtors will be set at a number of directors determined by the Consenting Noteholders. The initial directors of the New Boards shall consist of Mr. Charles Paquin, as the Chief Executive Officer of each of the Reorganized Debtors, and such other individuals selected by the Consenting Noteholders, in their sole discretion. The identities of the initial directors of the New Boards shall be disclosed in the Plan Supplement.

The existing officers of each of the Debtors and the Reorganized Debtors Subsidiaries as of the Petition Date shall remain in their current capacities as officers.

C. Powers of Officers.

Subject to approval of the New Boards (except as provided in Article IV.D.3 of the Plan in respect of the Exit Credit Facility Documents), the officers of each of the Debtors and the Reorganized Debtors, as the case may be, shall have the power to enter into or execute any documents or agreements that they deem reasonable and appropriate to effectuate the terms of the Plan.

D. Existing Benefits Agreements, and Retiree Benefits.

Except as such benefits may be otherwise terminated by the Debtors in a manner permissible under applicable law, all Existing Benefits Agreements shall be deemed assumed as of the Effective Date. Notwithstanding anything to the contrary contained herein, pursuant to section 1129(a)(13) of the Bankruptcy Code, on and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

E. New Management Incentive Plan.

On the Effective Date, the New Boards shall be authorized to implement the New Management Incentive Plan, which shall supersede the Existing Management Incentive Plans in their entirety and shall provide for the distribution, and the reservation for future issuance, as applicable, of the MIP Equity Compensation to the Reorganized Debtors' senior management and certain other employees.

On the Effective Date, the Existing Management Incentive Plans will be deemed to have been terminated, cancelled, and of no further force and effect, and the participants thereunder shall have no further rights thereunder. To the extent that any Existing Management Incentive Plan is an executory contract, each such Existing Management Incentive Plan shall be deemed rejected as of the Effective Date.

F. Indemnification of Directors, Officers, and Employees.

Notwithstanding any other provisions of the Plan, from and after the Effective Date, indemnification obligations owed by the Debtors or the Reorganized Debtors to directors, officers, employees, or agents of the Debtors who served or were employed by the Debtors on or after the Petition Date (the "Indemnified Individuals"), to the extent provided in the articles or certificates of incorporation, by-laws or similar constituent documents, by statutory law or by written agreement, policies or procedures of the Debtors (collectively, the "Indemnification Agreements"), will be deemed to be, and treated as though they are, executory contracts that are assumed pursuant to the Plan and section 365 of the Bankruptcy Code. All such indemnification obligations shall survive confirmation of the Plan, remain unaffected thereby, and not be discharged, irrespective of whether indemnification, defense, reimbursement or limitation is owed in connection with an event occurring before, on, or after the Petition Date; *provided however*, that to the extent that any indemnifiable claims arise under the Indemnification Agreements, the Indemnified Individuals shall first claim against any D&O or E&O insurance that is available to satisfy such claims, and shall seek recovery under the Indemnification Agreements only to the extent such insurance is insufficient or unavailable to cover such claims in full.

To the extent that such "tail" coverage has not already been acquired and paid for by the Debtors, the Debtors shall purchase "tail" coverage for its D&O and E&O insurance for current and former directors and officers on terms reasonably acceptable to the Debtors subject to the consent of the Trustee (which consent shall not be unreasonably withheld, conditioned or delayed).

ARTICLE VI.
CONFIRMATION OF THE PLAN

A. Conditions to Confirmation.

The following are conditions to the entry of the Confirmation Order, unless such conditions, or any of them, have been satisfied or duly waived in accordance with Article VI.B:

1. The Court shall have approved the Disclosure Statement, which shall be in form and substance reasonably acceptable to the Debtors, the Requisite Lenders, the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders;

2. The Confirmation Order shall be in form and substance reasonably acceptable to the Debtors, the Requisite Lenders, the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders;

3. The Plan (which, for purposes of this Article VI.A.3 shall exclude the Plan Supplement), shall be in form and substance mutually acceptable to the Debtors, the Requisite Lenders, the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders;

4. The Plan Supplement shall be in form and substance reasonably acceptable to the Debtors, the Requisite Lenders, the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders; and

5. The Restructuring Support Agreement shall not have been terminated in accordance with the terms thereof.

B. Waiver of Conditions Precedent to Confirmation.

The Debtors, with the written consent of the Requisite Lenders, the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders (which consent shall not be unreasonably withheld, conditioned or delayed), may waive the conditions set forth in Article VI.A above at any time without leave or order of the Court and without any formal action.

C. Discharge of the Debtors.

Pursuant to section 1141(d) of the Bankruptcy Code, and except (i) with respect to the First Lien Credit Facility Claims, as assumed by the Reorganized Debtors in accordance with the amended and restated First Lien Credit Agreement pursuant to the terms of the Exit Credit Facility Documents, and ABL Liens, all of which (a) shall survive, (b) shall not be discharged or released and (c) shall remain enforceable against the Debtors and the Reorganized Debtors solely in accordance with the terms of the Exit Credit Facility Documents and the Plan, and (ii) as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to or contemplated by the Plan (including, without limitation, pursuant to the Exit Credit Facility Documents): (a) the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release of all Claims, Equity Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Equity Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Equity Interests in, the Debtors, the Reorganized Debtors or any of their assets, properties or Estates, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, Equity Interests and Causes of Action, including, without limitation, demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or noncontingent liability on account of

representations or warranties issued on or before the Effective Date, and any and all rights, claims and interests arising under the Indenture before the Effective Date; (b) the Plan shall bind all holders of Claims and Equity Interests, notwithstanding whether any such holders failed to vote to accept or reject the Plan or voted to reject the Plan; (c) all Claims and Equity Interests shall be satisfied, discharged and released in full, and the Debtors' liability with respect thereto, shall be extinguished completely, including debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim or Equity Interest based upon such debt, right, or Equity Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest based upon such debt, right or Equity Interest is Allowed; (iii) a Cause of Action relating to such Claim or Equity Interest is pending; or (iv) the holder of such a Claim or Equity Interest has accepted the Plan or is entitled to receive a distribution under the Plan; and (d) all Entities shall be precluded from ever asserting against the Debtors, the Debtors' Estates, the Reorganized Debtors, their successors and assigns, and their assets and properties any Claims and 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. Any default by the Debtors with respect to any Claim or Equity Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests, excluding the First Lien Credit Facility Claims, as assumed by the Reorganized Debtors in accordance with the amended and restated First Lien Credit Agreement pursuant to the terms of the Exit Credit Facility Documents, and ABL Liens, subject to the Effective Date occurring.

D. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, and except as expressly provided herein (including Article VI.I and J), the Reorganized Debtors shall retain all Causes of Action and nothing contained in the Plan, the Plan Supplement, or the Confirmation Order shall be deemed a waiver or relinquishment of any such claim, Cause of Action, right of setoff, or other legal or equitable defense of the Debtors that is not specifically waived or relinquished by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert, all such claims, Causes of Action, rights of setoff, and other legal or equitable defenses that the Debtors had immediately before the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any claim that is not specifically waived or relinquished by the Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced. Except as otherwise provided in the Plan with respect to Claims that are deemed to be or are treated as Allowed or to be fully paid on or about the Effective Date and except for Claims and Causes of Action released pursuant to Article VI.I, no Person may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against such Person. The Debtors or the Reorganized Debtors, as applicable, expressly reserve all rights to prosecute any and all Causes of Action against any Person, in accordance with and except as otherwise expressly provided in the Plan. Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Court order, the Reorganized Debtors expressly reserve

all rights to prosecute any and all Causes of Action against any Person, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation Date or Effective Date.

Except as otherwise provided in the Plan or the Confirmation Order, the Debtors or the Reorganized Debtors, as applicable, reserve and shall retain all Causes of Action notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Person shall vest in the Reorganized Debtors. The applicable Debtor or Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. From and after the Effective Date, the Debtors or the Reorganized Debtors, as applicable, shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any Cause of Action and to decline to do any of the foregoing without further notice to or action, order, or approval of the Court. The Reorganized Debtors are deemed representatives of the Estates for the purpose of prosecuting any Claim or Cause of Action and any objections to Claims pursuant to 11 U.S.C. § 1123(b)(3)(B).

E. Votes Solicited in Good Faith.

The Debtors have, and upon entry of the Confirmation Order shall be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and the Debtors, the Backstop Parties, the DIP Agent, the DIP Lenders, the First Lien Lenders, the First Lien Agent, the Consenting Noteholders, the Indenture Trustee, and the Consenting Interest Holders (and each of their respective affiliates, agents, directors, officers, employees, advisors, attorneys and all other Professionals), participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer, issuance, sale, solicitation, and/or purchase of the securities offered and sold under the Plan and therefore have not been, and on account of such offer and issuance will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or the offer or issuance of the securities offered and distributed under the Plan.

F. First Lien Agent and Consenting Parties' Fees and Expenses.

On the Effective Date, the Reorganized Debtors shall pay, in full and in Cash, the balance of any invoiced and unpaid reasonable fees, expenses, costs, and other charges of the First Lien Agent and the First Lien Lenders (including the fees and expenses of Parker Hudson Rainer & Dobbs LLP (and fees and expenses of any First Lien Lender authorized to be paid pursuant to either of the DIP Orders), Norton Rose Fulbright LLP, and Ashby & Geddes LLP, as well as Conway MacKenzie, Inc., as a professional engaged by Parker Hudson Rainer & Dobbs LLP), the Trustee and the Ad Hoc Noteholder Group (including the fees and expenses of Dechert LLP, Richards, Layton & Finger, P.A., Bennett Jones LLP and Moelis &

Company) in each case as and to the extent such fees, expenses and costs are authorized to be paid pursuant to the DIP Orders or the Restructuring Support Agreement.

On the Effective Date, the Reorganized Debtors shall pay, in full and in Cash, the balance of any invoiced unpaid reasonable fees, expenses, costs, and other charges of the Consenting Interest Holders' professional advisors (including the fees and expenses of Morris, Nichols, Arsht & Tunnel and Gordian Group, LLC), in each case as and to the extent such fees, expenses and costs are authorized to be paid pursuant to either of the DIP Orders or the Restructuring Support Agreement, provided, however, that the Reorganized Debtors' obligation to pay the fees and expenses of the Consenting Interest Holders' professional advisors shall not exceed $600,000 in the aggregate for fees and expenses incurred on or after November 3, 2016, and the Reorganized Debtors shall not be responsible for payment of any success or transaction fees to Gordian Group, LLC. For the avoidance of doubt, upon request of Calera in order to facilitate Calera's payment to Gordian Group, LLC, of any success or transaction fees that have been or may be incurred by Calera, the Reorganized Debtors shall reasonably cooperate with the issuance or transfer to Gordian Group, LLC of certain of the New Common Equity Interests and New Warrants to which Calera would otherwise be entitled under the Plan as an Existing Equity Interest Holder.

G. Cancellation of Certain Indebtedness, Agreements, and Existing Securities.

On the Effective Date, except as otherwise specifically provided for in the Plan, the obligations of the Debtors under the Restructuring Support Agreement, the Existing Management Incentive Plans, the Senior Secured Note Documents, the DIP Documents, the Management Agreement and any other certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Equity Interest (except (i) the First Lien Loan Documents as amended, restated and assumed pursuant to the Exit Credit Facility Documents, (ii) the Exit Credit Facility Documents, (iii) the Equity Interests in Intermediate, Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd., and Resun Chippewa, LLC and (iv) such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan), shall be terminated and cancelled as to the Debtors, and the Reorganized Debtors shall not have any continuing obligations thereunder; and the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, by-laws, or certificate or articles of incorporation or similar documents governing the units, certificates, notes, bonds, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors (except (i) the First Lien Loan Documents as amended, restated and assumed pursuant to the Exit Credit Facility Documents, (ii) the Exit Credit Facility Documents, and (iii) such agreements, certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors that are specifically reinstated pursuant to the Plan or assumed by the Debtors) shall be released and discharged; provided, however, that, notwithstanding the occurrence of the Confirmation Date or the Effective Date, any such indenture or agreement that governs the rights of the holder of a Claim shall continue in effect solely for purposes of allowing holders of such Claims to receive distributions under the Plan as provided herein, allowing the First Lien Agent and the Trustee to make distributions

under the Plan as provided herein, and deduct therefrom such reasonable compensation, fees, and expenses due thereunder or incurred in making such distributions, to the extent not paid by the Debtors and authorized under such agreement, and allowing the First Lien Agent and the Trustee to seek compensation and/or reimbursement of fees and expenses in accordance with the terms of the Plan. For the avoidance of doubt, nothing in this section shall result in any obligation, liability, or expense of the Debtors or the Reorganized Debtors pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any additional obligation, expense, or liability of the Debtors or the Reorganized Debtors. On and after the Effective Date, all duties and responsibilities of the First Lien Agent and the Trustee shall be discharged except to the extent required to effectuate the Plan. Notwithstanding anything in this paragraph to the contrary, the DIP Credit Agreement shall continue in effect solely as to provisions relating to obligations among lenders and between agent and lenders for the purpose of allowing the DIP Agent to receive distributions from the Debtors under the Plan and to make further distributions to the holders of DIP Facility Claims on account of such Claims.

H. Claims Incurred After the Effective Date.

Claims incurred by the Reorganized Debtors after the Effective Date may be paid by the Reorganized Debtors in the ordinary course of business and without application for or granting of Court approval, subject to any agreements with the holders of such Claims and applicable law.

I. Releases, Exculpations, and Injunctions of Released Parties.

1. ***Injunction against Interference with the Plan.***

Upon the entry of the Confirmation Order, all holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan; provided, however, that the foregoing shall not be construed to prohibit the Exit Agent or any Exit Lender from exercising any right, remedy, power or privilege under any of the Exit Credit Facility Documents after the Effective Date, provided further, however, that the foregoing shall not be construed to prohibit the DIP Agent or any DIP Lender from exercising any right, remedy, power or privilege under any of the DIP Loan Documents prior to the Effective Date.

2. ***Releases by the Debtors.***

On the Effective Date, and notwithstanding any other provisions of the Plan, the Debtors and the Reorganized Debtors, on behalf of themselves and each of their Estates, shall be deemed to have unconditionally released each of the Non-Lender Released Parties and each of the Lender Released Parties from, and covenanted not to sue or otherwise seek recovery from any Non-Lender Released Party or Lender Released Party on account of, any and all claims, demands, obligations, suits, judgments, damages, rights, Causes of Action (including, without limitation, all claims or causes of action arising under or incorporated in chapter 5 of the Bankruptcy Code), and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, equity or otherwise,

sounding in contract, tort, or otherwise, or assertable by or on behalf of or derivative from any Debtor or its Estate, based in whole or in part upon actions taken by any Non-Lender Released Party or Lender Released Party solely in its capacity described herein or any omission, transaction, agreement, event, or other occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the Debtors' restructuring, the Chapter 11 Cases, the purchase or sale (or rescission of the purchase or sale) of any security of any Debtor, any Reorganized Debtor, the First Lien Credit Facility, the DIP Facility, the Management Agreement, the Disclosure Statement, the Restructuring Term Sheet, the Restructuring Support Agreement, the Plan Supplement or any of the documents included therein, the Plan, or any related agreements, instruments, or other documents; provided, however, that (a) no individual shall be released from any act or omission that constitutes gross negligence, willful misconduct, or fraud as determined by a Final Order; provided further, however, that an individual shall not be deemed to have committed willful misconduct if such individual reasonably relied on the advice of professional advisors in connection with a specific act or failure to act, (b) other than with respect to the First Lien Credit Facility and Exit Credit Facility, the Reorganized Debtors shall not relinquish or waive the right to assert any of the foregoing as a legal or equitable defense or right of set-off or recoupment against any Claims of any such Persons asserted against the Debtors, and (c) the foregoing release shall not apply to obligations arising under or in connection with the Exit Credit Facility.

In the case of the First Lien Agent, First Lien Lenders, DIP Agent, DIP Lenders, Trustee, and Noteholders, the foregoing release and covenant shall be in addition to the stipulations, releases and exculpations set forth in the DIP Orders.

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

3. ***Releases by the Non-Lender Releasing Parties and the Lender Releasing Parties***

On the Effective Date, subject to Article X.C. of the Plan but notwithstanding any other provisions of the Plan, (i) each Lender Releasing Party and each Non-Lender Releasing Party will be deemed to have (A) forever released each of the Lender Released Parties and each of the Non-Lender Released Parties and (B) covenanted with each of the Lender Released Parties and each of the Non-Lender Released Parties not to sue or otherwise seek recovery from any such Lender Released Party and/or Non-Lender Released Party, in each case on account of any Claim, including any Claim or Cause of Action arising under or incorporated in chapter 5 of the Bankruptcy Code or based upon tort, breach of contract, breach of the Indenture, breach of the First Lien Credit Agreement (or the First Lien Credit

Facility thereunder), breach of any of the DIP Loan Documents, violations of federal or state securities laws or otherwise, or any other legal or equitable theory, arising in whole or in part from any act, occurrence, or failure to act from the beginning of time through the Effective Date in any way related to the Debtors, or their respective businesses and affairs and (ii) each Lender Releasing Party and Non-Lender Releasing Party will be deemed to have (A) forever released each of the Lender Released Parties and each of the Non-Lender Released Parties and (B) covenanted with each of the Lender Released Parties and each of the Non-Lender Released Parties, in each case not to assert against any such Lender Released Party or Non-Lender Released Party any Claim, obligation, right, Cause of Action, or liability that any holder of a Claim may be entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction, or occurrence from the beginning of time through the Effective Date in any way relating to the Debtors, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors, the Reorganized Debtors, the transactions or events giving rise to, any Equity Interest, the Management Agreement, the Debtors' restructuring, the Chapter 11 Cases, the Restructuring Term Sheet, the Restructuring Support Agreement, the Plan, the Disclosure Statement, the Plan Supplement or any of the documents included therein, the First Lien Credit Agreement (and the First Lien Credit Facility thereunder), the DIP Loan Documents (and the DIP Facility thereunder), the Indenture, or any agreements, instruments, or other documents relating to any of the foregoing, or the preparation and negotiation of the Exit Credit Facility or the Exit Credit Facility Term Sheet; provided, however, the foregoing release and covenant not to sue shall not be construed to prohibit a party in interest from seeking to enforce the terms of the Plan and also shall not apply to or release any Person from (i) any Claim or obligation arising under the Plan or any Claim that is Reinstated under the Plan, (ii) any claim or obligation arising under any of the Exit Credit Facility Documents, the New Corporate Governance Documents, the New MIP Documents, the New Warrant Agreement, the New Shareholder Agreement, or the New Warrants, (iii) the First Lien Loan Documents and the First Lien Credit Facility Claims and the ABL Liens, in each case as amended, restated and assumed pursuant to the Exit Credit Facility Documents (including, without limitation, the provisions of the First Lien Loan Documents that survive payment in full of the First Lien Facility Claims, including, without limitation, indemnity claims) (iv) any Claim or Cause of Action that the First Lien Agent, any First Lien Lender, DIP Agent, any DIP Lender, Exit Agent or any Exit Lender may have against any Person for an obligation that constitutes Collateral (including, without limitation, any account obligor) or who has physically damaged, converted or insured any Collateral, (v) any Claim against any Debtor arising out of the provision of any Bank Product (as such term is defined in the DIP Credit Agreement or the First Lien Credit Agreement), (vi) contractual obligations of (a) any First Lien Lender to the First Lien Agent or the First Lien Agent to any First Lien Lender or (b) any DIP Lender to the DIP Agent or the DIP Agent to any DIP Lender, (vii) any Cause of Action under an Executory Contract or Unexpired Lease being assumed or assumed and assigned pursuant to the Plan unless otherwise specified in the Plan or a Court Order or (viii) any act or omission that constitutes gross negligence, willful misconduct, or fraud as determined by a Final Order, provided further, however, that an individual shall not be deemed to have committed willful misconduct if such individual reasonably relied on the advice of professional advisors in connection with a specific act or failure to act.

In the case of the First Lien Agent, First Lien Lenders, DIP Agent, DIP Lenders, Trustee, and Noteholders, the foregoing release and covenant shall be in addition to the stipulations, releases, and exculpations set forth in the DIP Orders.

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

4. *Release of Liens.*

Except as otherwise expressly provided in the Plan, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, and excluding the ABL Liens and, prior to payment in full of the DIP Facility, the Liens securing the DIP Facility, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, and other security interests against any property of any Debtor's Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, and other security interests shall revert to the Reorganized Debtors and each of its successors and assigns.

5. *Reimbursement or Contribution.*

Except as provided in Article V.F, if the Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the Effective Date, such Claim shall be forever disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Effective Date (a) such Claim has been adjudicated as noncontingent or (b) the relevant holder of a Claim has filed a noncontingent Proof of Claim on account of such Claim and a Final Order has been entered determining such Claim as no longer contingent.

6. *Exculpation.*

From and after the Effective Date, the Exculpated Parties will neither have nor incur any liability to any entity, and no holder of a Claim or Equity Interest, no other party in interest and none of their respective Representatives, shall have any right of action against any Exculpated Party, for any prepetition or postpetition act taken or omitted to be taken in connection with, related to or arising out of the Chapter 11 Cases or the consideration, formulation, preparation, dissemination, implementation, confirmation or consummation of

the Plan, the exhibits to the Plan, the Plan Supplement, the Disclosure Statement, any transaction proposed in connection with the Chapter 11 Cases or any contract, instrument, release, or other agreement or document created or entered into or any other act taken or omitted to be taken, in connection therewith; provided, however, that the foregoing provisions will have no effect on: (a) any First Lien Credit Facility Claims, as assumed by the Reorganized Debtors in accordance with the amended and restated First Lien Credit Agreement pursuant to the terms of the Exit Credit Facility Documents, liabilities or obligations at any time outstanding under the Exit Credit Facility Documents, (b) the liability of any Exculpated Party that would otherwise result from the failure to perform or pay any obligation or liability under the Plan or any contract, instrument, release or other agreement or document to be entered into or delivered in connection with the Plan, or (c) the liability of any Exculpated Party that would otherwise result from any such act or omission to the extent that such act or omission is determined in a Final Order to have constituted fraud, gross negligence or willful misconduct; provided further, however, that an Exculpated Party shall not be deemed to have committed willful misconduct if such Exculpated Party reasonably relied on the advice of professional advisors in connection with a specific act or failure to act.

The Exculpated Parties, the DIP Agent, the DIP Lenders, the First Lien Lenders, the First Lien Agent, the Consenting Noteholders, the Indenture Trustee, and the Consenting Interest Holders have, and upon Confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of acceptances and rejections of the Plan and the making of distributions pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violation of any applicable, law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

7. *Injunction.*

Except as otherwise expressly provided in the Plan or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against or Equity Interests in the Debtors or the Debtors' Estates are, with respect to any such Claims or Equity Interests, permanently enjoined after the Confirmation Date from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtors, the Reorganized Debtors, the Debtors' Estates or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any pre-judgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtors, the Reorganized Debtors, or the Debtors' Estates or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtors, the Reorganized Debtors, or the Debtors' Estates or any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing

Persons; (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan to the full extent permitted by applicable law; and (v) 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; provided, however, that no injunction contained in the Plan shall (i) preclude such Persons from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of the Plan, (ii) have any effect whatsoever upon any of the claims, Liens, rights and remedies of the Exit Agent or any of the Exit Lenders under or pursuant to the Exit Credit Facility, including without limitation the ABL Liens, or (iii) have any effect whatsoever upon any of the claims, Liens, rights and remedies of the DIP Agent or any of the DIP Lenders under the DIP Facility prior to the Effective Date.

8. ***Protection Against Discriminatory Treatment.***

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

J. Preservation of Insurance.

The Debtors' discharge and release from all claims, including all Claims and Guarantee Claims, as provided herein, shall not, except as necessary to be consistent with the Plan, diminish or impair the enforceability of any insurance policy that may provide coverage for claims, including Claims and Guarantee Claims, against the Debtors, the Reorganized Debtors, their current and former directors and officers, or any other Person or Entity.

K. Unimpaired Claims.

Notwithstanding anything to the contrary in the Plan or Plan Supplement or in the Confirmation Order, until a Claim in Classes 1A-G, 2A-G or 3C-G (including a Cure Claim) of the Plan that arises prior to the Effective Date has been (x) paid in full in accordance with applicable law, or on terms agreed to between the holder of such Claim and the Debtor or Reorganized Debtor, or in accordance with the terms and conditions of the particular transaction giving rise to such Claim or (y) otherwise satisfied or disposed of as determined by a court of competent jurisdiction: (a) the provisions of Articles VI.C., VI.I.2, VI.I.3 and VI.I.7 of the Plan shall not apply or take effect with respect to such Claim, (b) such Claim shall not be deemed settled, satisfied, resolved, released, discharged, or enjoined by any provision of the Plan or the Plan Supplement, and (c) the property of each of the Debtors' Estates that vests in the applicable Reorganized Debtor pursuant to Article IV.J. of the Plan shall remain subject to such Claims to the same extent as if the Chapter 11 Cases had not been commenced. Holders of Claims falling under Classes 1A-G, 2A-G or 3C-G of the Plan shall not be required to file a Proof of Claim with the Court. Holders of Claims falling under Classes 1A-G, 2A-G or 3C-G shall not be subject to any claims resolution process in Court in connection with their Claims, and shall retain all their

rights under applicable non-bankruptcy law to pursue their Classes 1A-G, 2A-G or 3C-G Claims against the Debtors or Reorganized Debtors in any forum with jurisdiction over the parties. The Debtors and Reorganized Debtors shall retain all defenses, counterclaims, rights to setoff, and rights to recoupment as to Claims falling under Classes 1A-G, 2A-G or 3C-G of the Plan. If the Debtors or the Reorganized Debtors dispute any Claim falling under Classes 1A-G, 2A-G or 3C-G of the Plan, such dispute shall be determined, resolved or adjudicated in the manner as if the Chapter 11 Cases had not been commenced. Notwithstanding the foregoing, any holder of a Claim who files a Proof of Claim shall be subject to the Article VII.A. of the Plan unless and until such holder withdraws such Proof of Claim, and nothing herein limits the retained jurisdiction of the Court under Article VIII of the Plan.

ARTICLE VII.
DISTRIBUTIONS UNDER THE PLAN

A. Procedures for Treating Disputed Claims.

1. *Filing Proofs of Claim.* Other than as provided in the Bar Date Order or with respect to Rejection Damage Claims, holders of Claims need not file proofs of Claim with the Court. In the event that a holder of a Claim elects to file a Proof of Claim with the Court, it will be deemed to have consented to the exclusive jurisdiction of the Court for all purposes with respect to the determination, liquidation, allowance, or disallowance of such Claim.

2. *Disputed Claims.* If the Debtors dispute any Claim as to which no Proof of Claim has been filed, such dispute shall be determined, resolved, or adjudicated, as the case may be, in a manner as if the Chapter 11 Cases had not been commenced, provided, however, that the Reorganized Debtors may elect, at their sole option, to object under section 502 of the Bankruptcy Code to any Claim or Proof of Claim filed by or on behalf of a holder of a Claim.

3. *Objections to Claims.* Except insofar as a Claim is Allowed under the Plan, each of the Debtors, the Reorganized Debtors, and any other party in interest shall be entitled to object to Claims as provided herein. Any objections to Claims shall be filed and served by the Claims Objection Deadline.

B. Allowed Claims and Equity Interests.

1. *Delivery of Distributions in General.* Except as otherwise provided herein, distributions under the Plan shall be made by the Reorganized Debtors (or their agents or designees) to the holders of Allowed Claims and Allowed Equity Interests in all Classes for which a distribution is provided in the Plan at the addresses set forth on the Schedules (if filed) or in the Debtors' books and records, as applicable, unless such addresses are superseded by proofs of Claim or Equity Interests or transfers of Claim filed pursuant to Bankruptcy Rule 3001 by the Record Date (or at the last known addresses of such holders if the Debtors or the Reorganized Debtors have been notified in writing of a change of address).

2. *Delivery of Distributions to First Lien Credit Facility Claims.* The First Lien Agent shall be deemed to be the holder of all First Lien Credit Facility Claims for purposes of distributions to be made under the Plan, if any, and all distributions on account of the First Lien Credit Facility Claims, if any, shall be made to the First Lien Agent. As soon as

practicable following compliance with the requirements set forth in Article VII of the Plan, the First Lien Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the holders of First Lien Credit Facility Claims in accordance with the terms of the First Lien Credit Agreement and the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the First Lien Agent shall not have any liability to any Person with respect to distributions made or directed to be made by the First Lien Agent.

3. *Delivery of Distributions on DIP Facility Claims*. The DIP Agent shall be deemed to be the holder of all DIP Facility Claims for purposes of distributions to be made under the Plan, if any, and all distributions on account of such DIP Facility Claims, if any, shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VII of the Plan, the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the holders of DIP Facility Claims in accordance with the terms of the DIP Loan Documents, subject to any modifications to such distributions in accordance with the terms of the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the DIP Agent shall not have any liability to any Person with respect to distributions made or directed to be made by the DIP Agent.

4. *Delivery of Distributions on Note Claims*. The Trustee shall be deemed to be the holder of all Note Claims for purposes of distributions to be made under the Plan, and all distributions on account of such Note Claims shall be made to the Trustee. As soon as practicable following compliance with the requirements set forth in Article VII of the Plan, the Trustee shall arrange to deliver or direct the delivery of such distributions to or on behalf of the holders of Note Claims in accordance with the terms of the Senior Secured Note Documents, subject to any modifications to such distributions in accordance with the terms of the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the Trustee shall not have any liability to any Person with respect to distributions made or directed to be made by the Trustee.

5. *Delivery of Commitment Premium Equity Interests*. On the Effective Date, Reorganized Holdings, Reorganized Intermediate or Newco, as applicable (or such entity's agent or designee), shall deliver the Commitment Premium Equity Interests to the Backstop Parties, other than any Defaulting Backstop Parties, in accordance with the Backstop Commitment Agreement.

6. *Distribution of Cash*. Any payment of Cash by the Reorganized Debtors pursuant to the Plan shall be made at the option and in the sole discretion of the Reorganized Debtors by (i) a check drawn on, or (ii) wire transfer from, a domestic bank selected by the Reorganized Debtors.

7. *Unclaimed Distributions of Cash*. Any distribution of Cash under the Plan that is unclaimed after six (6) months after it has been delivered (or attempted to be delivered) shall, pursuant to section 347(b) of the Bankruptcy Code, become the property of the Reorganized Debtors notwithstanding any state or other escheat or similar laws to the contrary, and the entitlement by the holder of such unclaimed Allowed Claim or Allowed Equity Interest

to such distribution or any subsequent distribution on account of such Allowed Claim or Allowed Equity Interest shall be extinguished and forever barred.

8. *Distributions of Old Equity Plan Consideration*. Subject to Article X.C of the Plan, on the Effective Date, Reorganized Holdings (or its agent or designee) shall distribute the Old Equity Plan Consideration to the holders of Existing Holdings Equity Interests. If the Plan has been modified in accordance with Article X.C. of the Plan, Reorganized Intermediate or Newco, as applicable (or such entity's agent or designee), shall distribute the consideration for the Noteholder Plan Settlement to holders of Existing Holdings Equity Interests as provided in Article X.C.2 of the Plan.

9. *Powers of Disbursing Agent*. The Reorganized Debtors, the First Lien Agent or the Trustee, as applicable pursuant to Article VI.B.1 through 8 hereof (in such capacity, the "Disbursing Agent"), shall be empowered to: (i) effectuate all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan; (ii) make all applicable distributions or payments contemplated hereby; (iii) employ professionals to represent it with respect to its responsibilities; and (iv) exercise such other powers as may be vested in the Disbursing Agent by order of the Court (including any order issued after the Effective Date), pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

10. *Expenses Incurred on or After the Effective Date*. Except as otherwise ordered by the Court, and subject to the written agreement of the Reorganized Debtors, with the consent of the Requisite Backstop Parties, the amount of any reasonable and documented fees and expenses incurred by a Disbursing Agent on or after the Effective Date (including, without limitation, taxes) and any reasonable compensation and expense reimbursements (including, without limitation, reasonable attorney and other professional fees and expenses) of such Disbursing Agent shall be paid in Cash by the Reorganized Debtors and will not be deducted from Plan Distributions made to holders of Allowed Claims by the applicable Disbursing Agent. The foregoing fees and expenses shall be paid in the ordinary course, upon presentation of invoices to the Reorganized Debtors and the Backstop Parties and without the need for approval by the Court. In the event that the applicable Disbursing Agent, the Reorganized Debtors and the Backstop Parties are unable to resolve a dispute with respect to the payment of the applicable Disbursing Agent's fees, costs and expenses, the applicable Disbursing Agent may elect to submit any such dispute to the Court for resolution.

11. *Bond*. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Court and, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be paid by the Reorganized Debtors. Furthermore, any Disbursing Agent required to give a bond shall notify the Court and the U.S. Trustee in writing before terminating any such bond that is obtained.

12. *Cooperation with Disbursing Agent*. The Reorganized Debtors shall use all commercially reasonable efforts to provide the Disbursing Agent with the amount of Claims and the identity and addresses of holders of Claims, in each case, as set forth in the Debtors' and/or Reorganized Debtors' books and records. The Reorganized Debtors will cooperate in

good faith with the Disbursing Agent to comply with the reporting and withholding requirements outlined in Article XI.E. hereof.

13. *Unclaimed Distributions of New Common Equity Interests and New Warrants.* Any distribution of New Common Equity Interests and New Warrants under the Plan that is unclaimed after six (6) months after it has been delivered (or attempted to be delivered) shall be retained by the Reorganized Debtors, notwithstanding any state or other escheat or similar laws to the contrary, and the entitlement by the holder of such Allowed Claim or Allowed Equity Interest to such distribution or any subsequent distribution on account of such Allowed Claim or Allowed Equity Interest shall be extinguished and forever barred.

14. *Saturdays, Sundays, or Legal Holidays.* If any payment, distribution or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed as of the required date.

15. *Withholding and Reporting Requirements.* In connection with the Plan and all distributions under the Plan, the Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any U.S. federal, state or local taxing authority or foreign taxing authority and all distributions under the Plan shall be subject to any such withholding and reporting requirements. The Reorganized Debtors 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 Allowed Claims or Equity Interests shall be required to provide any information necessary to effectuate information reporting and the withholding of such taxes. Notwithstanding any other provision of the Plan to the contrary, (a) each holder of an Allowed Claim or Equity Interest shall be liable for any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such distribution, (b) any amounts deducted or withheld from any distribution pursuant to the Plan by the Reorganized Debtors in respect of any tax shall be treated as if distributed to such holder of an Allowed Claim or Equity Interest in connection with the Plan, and (c) at the discretion of the Reorganized Debtors, no distribution shall be made to or on behalf of a holder of an Allowed Claim or Equity Interest pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtors for the payment and satisfaction of such tax obligations. Any Cash, New Common Equity Interests, New Warrants and/or other consideration or property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an unclaimed distribution pursuant to Article VII(b)(7) and (13) of the Plan.

16. *Fractional New Common Equity Interests and New Warrants and De Minimis Distributions.* Notwithstanding any other provision in the Plan to the contrary, no fractional New Common Equity Interests or fractional New Warrants shall be issued or distributed pursuant to the Plan. Whenever any distribution of a fraction of New Common Equity Interests or a fractional New Warrant would otherwise be required under the Plan, the actual distribution made shall reflect a rounding of such fraction to the nearest whole Equity Interest or warrant (up or down), with half interests or warrants or less being rounded down and fractions in excess of a half of a share or warrant being rounded up. No consideration will be provided in lieu of fractional Equity Interests that are rounded down. Fractional New Common Equity Interests or New Warrants, as applicable, that are not distributed in accordance with this

Article VII.B.10 shall be cancelled. The Reorganized Debtors shall not be required to, but may in its sole and absolute discretion, make any payment on account of any Claim or Equity Interest in the event that the costs of making such payment exceeds the amount of such payment.

17. *Special Rules for Distributions to Holders of Disputed Claims and Disputed Equity Interests*. Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the relevant parties, no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Disputed Equity Interest until all such disputes in connection with such Disputed Claim or Disputed Equity Interest, respectively, have been resolved by settlement or Final Order. In the event that there are Disputed Claims or Disputed Equity Interests requiring adjudication and resolution, the Reorganized Debtors shall establish appropriate reserves for potential payment of such Claims or Equity Interests.

18. *Interest on Claims and Equity Interests*. Except as specifically provided for in the Plan, no Claims or Equity Interests, Allowed or otherwise (including Administrative Claims), shall be entitled, under any circumstances, to receive any interest on a Claim or Equity Interests.

19. Former Independent Director Compensation. On the Effective Date, the Reorganized Debtors will issue to each of the Former Independent Directors the FID Compensation.

C. Allocation of Consideration.

The aggregate consideration to be distributed to the holders of Allowed Claims in each Class under the Plan, shall be treated as first satisfying an amount equal to the principal amount of the Allowed Claim (as determined for federal income tax purposes) for such holders, and any remaining consideration as satisfying accrued, but unpaid interest (but solely to the extent that interest is an allowable portion of such Allowed Claim).

D. Estimation.

Before or after the Effective Date, the Debtors or the Reorganized Debtors, as applicable, may (but are not required to), at any time, request that the Court estimate (i) any Disputed Claim or Disputed Equity Interest pursuant to section 502(c) of the Bankruptcy Code or (ii) any contingent or unliquidated Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether the Debtors or the Reorganized Debtors have previously objected to such Claim or Equity Interest or whether the Court has ruled on any such objection. The Court will retain jurisdiction to estimate any Claim or Equity Interest at any time, including during proceedings concerning any objection to such Claim or Equity Interest. In the event that the Court estimates any Claim or Equity Interest, such estimated amount shall constitute either the Allowed amount of such Claim or Equity Interest or a maximum limitation on such Claim or Equity Interest for all purposes under the Plan (including for purposes of distributions), as determined by the Court. If the estimated amount constitutes the maximum limitation on such Claim or Equity Interest, the Debtors or the Reorganized Debtors, as the case may be, may elect to pursue supplemental proceedings to object to any ultimate allowance of

such Claim or Equity Interest. All of the aforementioned objection, estimation, and resolution procedures are cumulative and not necessarily exclusive of one another.

E. Insured Claims.

Subject to Article V.F, as to Claims relating to indemnification obligations for Indemnified Individuals, if any portion of an Allowed Claim is an Insured Claim, no distributions under the Plan shall be made on account of such Allowed Claim until the holder of such Allowed Claim has exhausted all remedies with respect to any applicable insurance policies. To the extent that the Debtors' insurers agree to satisfy a Claim in whole or in part, then immediately upon such agreement, the portion of such Claim so satisfied may be expunged without an objection to such Claim having to be filed and without any further notice to or action, order or approval of the Court.

ARTICLE VIII.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction:

(i) to resolve any matters related to (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which the Debtors or the Reorganized Debtors are party or with respect to which the Debtors or the Reorganized Debtors may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (b) the Reorganized Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article IX, any Executory Contracts or Unexpired Leases to the Rejection Schedule or otherwise; and (c) any dispute regarding whether a contract or lease is or was executory or expired;

(ii) to determine, adjudicate, or decide any other applications, adversary proceedings, contested matters, and any other matters pending on the Effective Date;

(iii) to ensure that distributions to holders of Allowed Claims and Equity Interests are accomplished as provided herein;

(iv) to resolve disputes as to the ownership of any Claim or Equity Interest;

(v) to allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Equity Interests;

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

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

(viii) to consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Court, including the Confirmation Order;

(ix) to hear and determine all applications for compensation and reimbursement of expenses of professionals under sections 330, 331, and 503(b) of the Bankruptcy Code;

(x) to hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan;

(xi) to hear and determine any issue for which the Plan requires a Final Order of the Court;

(xii) to hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(xiii) to hear and determine disputes arising in connection with compensation and reimbursement of expenses of professionals for services rendered during the period commencing on the Petition Date through and including the Effective Date;

(xiv) to hear and determine any Causes of Action preserved under the Plan;

(xv) to hear and determine any matter regarding the existence, nature, and scope of the Debtors' discharge;

(xvi) to hear and determine any matter, case, controversy, suit, dispute, or Cause of Action (i) regarding the existence, nature, and scope of the discharge, releases, injunctions, and exculpation provided under the Plan, and (ii) enter such orders as may be necessary or appropriate to implement such discharge, releases, injunctions, exculpations, and other provisions;

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

(xviii) to issue injunctions, 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 the Plan;

(xix) to adjudicate any and all disputes arising from or relating to distributions under the Plan;

(xx) to enforce all orders previously entered by the Court; and

(xxi) to hear any other matter not inconsistent with the Bankruptcy Code.

For the avoidance of doubt, the Court shall not retain exclusive jurisdiction with respect to the following documents entered into by the Reorganized Debtors or any transaction or dispute consummated or arising thereunder: (i) the Exit Credit Facility Documents, (ii) the New Warrant Agreement, and (iii) the Management Incentive Plan, provided, however, that the choice of law provisions in such documents shall govern disputes arising under such documents.

ARTICLE IX.
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption of Executory Contracts and Unexpired Leases.

Except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously assumed, assumed and assigned, or rejected shall be deemed automatically assumed pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date (including, without limitation, the Master Lease (as defined in the Restructuring Support Agreement)), unless any such executory contract or unexpired lease: (i) is expressly identified on the Rejection Schedule; (ii) has been previously rejected by the Debtors by Final Order or has been rejected by the Debtors by order of the Court as of the Effective Date, which order becomes a Final Order after the Effective Date; (iii) is the subject of a motion to reject pending as of the Effective Date; or (iv) is otherwise rejected pursuant to the terms herein.

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

The Confirmation Order will constitute an order of the Court approving such assumptions pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date or as otherwise set forth in the Plan Supplement.

B. Cure Claims.

The proposed Cure Claim for any executory contract or unexpired lease that is assumed or assumed and assigned pursuant to the Plan shall be zero dollars unless otherwise indicated on a Cure Notice. No later than the Plan Supplement Filing Date, to the extent not previously filed with the Court and served on affected counterparties, the Debtors shall provide for Cure Notices to be sent to applicable contract and lease counterparties, together with

procedures for objecting thereto and resolution of disputes by the Court. Any objection by a contract or lease counterparty to a proposed assumption or related Cure Claim must be filed, served, and actually received by the Debtors by the date on which objections to Confirmation are due (or such other date as may be provided in the applicable Cure Notice). Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Claim will be deemed to have assented to such assumption or Cure Claim.

At the election of the Debtors (with the consent of the Ad Hoc Noteholder Group) or the Reorganized Debtors, as applicable, any monetary defaults under each Executory Contract and Unexpired Lease to be assumed under the Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code in one of the following ways: (i) payment of the Cure Claim in Cash on or as soon as reasonably practicable following the occurrence of (A) thirty (30) days after the determination of the Cure Claim, and (B) the Effective Date or such other date as may be set by the Court; or (ii) on such other terms as agreed to by the Debtors or the Reorganized Debtors and the non-Debtor counterparty to such Executory Contract or Unexpired Lease. In the event of a dispute pertaining to assumption or assignment, the Cure Claim 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.

The only adequate assurance of future performance shall be the promise of the Reorganized Debtors to perform all obligations under any executory contract or unexpired lease under the Plan.

Any Cure Claim shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure Claim; provided, however, that nothing in the Plan shall prevent the Reorganized Debtors from paying any Cure Claim despite the failure of the relevant counterparty to file such request for payment of such Cure Claim. The Reorganized Debtors also may settle any Cure Claim without any further notice to or action, order, or approval of the Court.

ASSUMPTION OF ANY EXECUTORY CONTRACT OR UNEXPIRED LEASE PURSUANT TO THE PLAN OR OTHERWISE SHALL RESULT IN THE FULL RELEASE AND SATISFACTION OF ANY CLAIMS, OBLIGATIONS OR DEFAULTS, WHETHER MONETARY OR NONMONETARY, INCLUDING DEFAULTS OF PROVISIONS RESTRICTING THE CHANGE IN CONTROL OR OWNERSHIP INTEREST COMPOSITION, FAILURE TO COMPLY WITH OBLIGATIONS ARISING FROM PROVISIONS RESTRICTING THE CHANGE IN CONTROL OR OWNERSHIP INTEREST COMPOSITION OR OTHER BANKRUPTCY-RELATED DEFAULTS, ARISING UNDER ANY ASSUMED EXECUTORY CONTRACT OR UNEXPIRED LEASE AT ANY TIME BEFORE THE DATE THE DEBTORS OR THE REORGANIZED DEBTORS ASSUME SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE. ANY PROOFS OF CLAIM FILED WITH RESPECT TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE THAT HAS BEEN ASSUMED SHALL BE DEEMED DISALLOWED AND EXPUNGED, WITHOUT FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE COURT.

Obligations arising under insurance policies assumed by the Debtors before the Effective Date shall be adequately protected in accordance with any order authorizing such assumption.

C. Reservation of Rights.

Neither the exclusion nor inclusion of any contract or lease in the Plan Supplement, as applicable, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any of the Reorganized Debtors have any liability thereunder. In the event a written objection is filed with the Court as to whether a contract or lease is executory or unexpired, the right of the Debtors or the Reorganized Debtors to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days after the entry of a Final Order by the Court determining that the contract or lease is executory or unexpired, in which case the deemed assumptions and rejections provided for in the Plan shall not apply to such contract or lease.

D. Rejection of Executory Contracts and Unexpired Leases.

1. *Rejection Schedule.* The Debtors will file the Rejection Schedule, if any, with the Court no later than five (5) Business Days before the deadline to object to confirmation of the Plan. The Rejection Schedule will include (a) the name of the non-Debtor counterparty, (b) the legal description of the contract or lease to be rejected, and (c) the proposed effective date of rejection (if not the Effective Date). The Debtors will serve the Rejection Schedule upon each non-Debtor counterparty listed thereon, which will describe the procedures by which such parties may object to the proposed rejection of their respective Executory Contract or Unexpired Lease and explain how such disputes will be resolved by the Court if the parties are not able to resolve a dispute consensually.

The Confirmation Order will constitute an order of the Court approving such rejections pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date or as otherwise set forth in the Plan Supplement.

2. *Rejection Damage Claims.* If the rejection by the Debtors, pursuant to the Plan or otherwise, of an Executory Contract or Unexpired Lease gives rise to a Rejection Damage Claim, a Proof of Claim must be filed with the Court within (i) if the Executory Contract or Unexpired Lease is listed on the Rejection Schedule, thirty (30) days after the date of service of the Rejection Schedule on the non-Debtor counterparty to such Executory Contract or Unexpired Lease, or (ii) if the Executory Contract or Unexpired Lease is not listed on the Rejection Schedule, thirty (30) days after the date of entry of an order of the Court approving such rejection. For the avoidance of doubt, all Allowed Rejection Damage Claims shall be treated as General Unsecured Claims.

3. ***REQUIREMENT TO FILE A PROOF OF CLAIM FOR REJECTION DAMAGE CLAIMS.*** **ANY REJECTION DAMAGE CLAIMS THAT ARE NOT TIMELY FILED SHALL BE DISALLOWED AUTOMATICALLY, FOREVER BARRED FROM ASSERTION, AND SHALL NOT BE ENFORCEABLE AGAINST ANY REORGANIZED DEBTORS WITHOUT THE NEED FOR ANY OBJECTION BY THE REORGANIZED**

DEBTORS OR FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE COURT, AND ANY REJECTION DAMAGE CLAIM SHALL BE DEEMED FULLY SATISFIED, RELEASED AND DISCHARGED, NOTWITHSTANDING ANYTHING IN THE SCHEDULES OR A PROOF OF CLAIM TO THE CONTRARY.

4. *Pre-existing Payment and Other Obligations*. Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors or Reorganized Debtors, as applicable, under such contract or lease. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide: (a) payment to the contracting Debtors or Reorganized Debtors, as applicable, of outstanding and future amounts owing thereto under or in connection with rejected Executory Contracts or Unexpired Leases or (b) warranties or continued maintenance obligations on goods previously purchased by the contracting Debtors or Reorganized Debtors, as applicable, from counterparties to rejected Executory Contracts.

E. Assignment.

Any Executory Contract or Unexpired Lease to be held by the Debtors or the Reorganized Debtors and assumed under the Plan or otherwise in the Chapter 11 Cases, if not expressly assigned to a third party previously in the Chapter 11 Cases, will be deemed assigned to the Reorganized Debtors pursuant to section 365 of the Bankruptcy Code. If an objection to a proposed assumption, assumption and assignment, or Cure Claim is not resolved in favor of the Debtors before the Effective Date, the applicable Executory Contract or Unexpired Lease may be designated by the Debtors or the Reorganized Debtors for rejection within five (5) Business Days of the entry of the order of the Court resolving the matter against the Debtors. Such rejection shall be deemed effective as of the Effective Date.

F. Insurance Policies.

Notwithstanding anything in the Plan to the contrary, all of the Debtors' insurance policies and any agreements, documents or instruments relating thereto, are treated as and deemed to be Executory Contracts under the Plan. On the Effective Date, the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments related thereto.

G. Post-Petition Contracts and Leases.

All contracts, agreements, and leases that were entered into by the Debtors or assumed by the Debtors after the Petition Date shall be deemed assigned by that Debtor to the Reorganized Debtors on the Effective Date.

ARTICLE X.
EFFECTIVENESS OF THE PLAN

A. Conditions Precedent to Effectiveness.

The Plan shall not become effective unless and until the Confirmation Date has occurred and the following conditions have been satisfied in full or waived in accordance with Article X.B:

1. the Court shall have entered the Confirmation Order in form and substance reasonably acceptable to the Requisite Lenders, the Majority Noteholders and, subject to the CIH Consent Limitation, the Consenting Interest Holders;

2. the Confirmation Order shall have become a Final Order;

3. each of the documents contained in the Plan Supplement shall be in form and substance reasonably acceptable to the Debtors, the Requisite Lenders, the Majority Noteholders and, subject to the CIH Consent Limitation, the Consenting Interest Holders, in each case to the extent set forth in the Restructuring Support Agreement or herein;

4. (i) all conditions precedent to: (a) the consummation of the transactions contemplated in the New Shareholder Agreement, Rights Offering Procedures and New Warrant Agreement shall have been waived or satisfied in accordance with the terms thereof, (b) issuance of the New Common Equity Interests and (c) discharge and extinguishment of the Note Claims shall have been waived or satisfied, and (ii) the closing of the transactions contemplated by such agreements shall have occurred (or occurs simultaneously with the occurrence of the Effective Date) and all of the Note Claims shall have been (or are simultaneously with the occurrence of the Effective Date) discharged and extinguished as a result of such transactions;

5. all actions, documents, certificates, and agreements necessary to implement the 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;

6. all authorizations, consents, and regulatory approvals required (if any) for the Plan's effectiveness shall have been obtained;

7. the Reorganized Debtors shall have executed and delivered the Exit Credit Facility Agreement and all applicable Exit Credit Facility Documents, and all conditions precedent to effectiveness of the Exit Credit Facility and the making of the initial advances thereunder shall have been satisfied or waived in accordance with their terms;

8. the Debtors or the Reorganized Debtors have made (or make simultaneously with the occurrence of the Effective Date) Full Payment (as such term is defined in the DIP Credit Agreement) of all DIP Facility Claims;

9. all documents and agreements necessary to implement the Plan shall have (a) been tendered for delivery, and (b) been effected or executed by all Persons party thereto, or

will be deemed executed and delivered by virtue of the effectiveness of the Plan as expressly set forth herein, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms of such documents and agreements;

10. the Restructuring Support Agreement shall not have been terminated in accordance with the terms thereof, and such Restructuring Support Agreement shall be in full force and effect;

11. the Backstop Commitment Agreement shall not have been terminated and shall be in full force and effect; and

12. all fees and expenses required to be paid pursuant to Article VI.F. shall have been paid or all steps necessary (including the reservation of adequate funds) to pay all such fees and expenses on the Effective Date shall have occurred.

B. Waiver of Conditions Precedent to Effectiveness.

The Debtors, with the express consent of the Requisite Lenders, the Majority Noteholders, the Exit Agent, and, subject to the CIH Consent Limitation, the Consenting Interest Holders (which consent shall not be unreasonably withheld, conditioned, or delayed), may waive the conditions set forth in Article X.A above at any time without leave of or order of the Court and without any formal action.

C. Alternative Transaction.

1. Within two (2) Business Days of the Debtors' receipt of notice of the existence of any General Unsecured Claims against Holdings or Intermediate filed before the Bar Date other than Claims (i) relating to obligations to be assumed by or assumed and assigned to any Debtor other than Holdings or Intermediate, (ii) that are properly asserted against Debtors other than Holdings or Intermediate (regardless of whether such claims may also be properly asserted against Holdings or Intermediate), (iii) that are in respect of an existing surety obligation, or (iv) asserted under the Restructuring Support Agreement, including, without limitation, Claims for payment or reimbursement of professional fees and expenses reimbursable under the Restructuring Support Agreement and the Plan (the "Holdings Unsecured Claims"), the Debtors shall notify the Consenting Noteholders and Consenting Interest Holders of such Holdings Unsecured Claims in writing. If, by the date that is five (5) days before the date of the Confirmation Hearing, (i) such Holdings Unsecured Claims have not been expunged, disallowed, extinguished, withdrawn or otherwise disposed of either by order of the Court or otherwise (including, without limitation, the complete and final satisfaction of the Holdings Unsecured Claims by the Consenting Interest Holders, in their sole discretion), or (ii) the Majority Noteholders have not agreed that such Holdings Unsecured Claims are facially without merit as against Holdings or Intermediate (which agreement shall not be unreasonably withheld, conditioned or delayed), the Majority Noteholders, may, after providing notice to the Consenting Interest Holders, direct the Debtors in writing to (i) (a) withdraw the Plan with respect to Holdings, and/or (b) modify the Plan in a manner consistent with the Permitted Restructuring Transactions or such other transactions as agreed to by the signatories to the Restructuring Support Agreement to provide that the holders of General Unsecured Claims against

Intermediate shall receive no distribution under the Plan, and/or, (ii) subject to the consent of the First Lien Agent and the Consenting Interest Holders, which consent shall not be unreasonably withheld, conditioned or delayed, (a) change the entity forms of Holdings and/or Intermediate from corporations to LLCs, and/or (b) form Newco to (x) receive equity in reorganized Modular Space Corporation under the Plan and (y) assume the First Lien Guarantees previously provided by Intermediate, it being understood that all such actions must be in furtherance of restructuring transactions otherwise consistent with the terms set forth in the Plan and in the Restructuring Support Agreement. No later than three (3) days prior to the Confirmation Hearing, the Debtors shall file appropriate pleadings with the Court to effectuate such direction. If any of the foregoing transactions is not a Permitted Restructuring Transaction, then the Debtors may not implement any such transaction on or before the Effective Date without the prior written consent of the DIP Agent, which consent shall not be unreasonably withheld, conditioned or delayed.

2. Pursuant to Bankruptcy Rule 9019, in the event of a modification of the Plan in accordance with the terms of this provision, each holder of an Existing Holdings Equity Interest shall be entitled to elect to receive from the Plan distribution to the Noteholders, in exchange for granting a release in the form of the releases contained in Article VI.I. of the Plan, and in the case of Calera Capital Advisors, LP, its Management Agreement Claims, its Pro Rata share of 877,001 New Common Equity Interests and the New Warrants to be deducted from each Noteholder's share of the distribution on a Pro Rata basis (the "Noteholder Plan Settlement"). Pursuant to the Noteholder Plan Settlement, if applicable, Calera Capital Advisors, LP shall not be entitled to any additional distribution on account of its Management Agreement Claims or its Existing Holdings Equity Interests, and holders of Existing Holdings Equity Interests shall not recover anything on account of their Existing Holdings Equity Interests other than as pursuant to the Noteholder Plan Settlement or as contemplated by Section 3(a)(iv) of the Restructuring Support Agreement. The procedures for implementing the Noteholder Plan Settlement shall be described in the Confirmation Order and shall be reasonably acceptable to the Debtors, the Consenting Noteholders and the Consenting Interest Holders.

3. In the event of a modification of the Plan in accordance with the terms of this provision, all other provisions of the Plan, including, but not limited to, the terms governing treatment of and distributions on Claims and Equity Interests (except as to the General Unsecured Claims against Holdings and Intermediate, Existing Holdings Equity Interests and Management Agreement Claims as described herein), shall remain unaltered and in full force and effect.

D. Effect of Failure of Conditions.

In the event that the Effective Date does not occur on or before sixty (60) days after the Confirmation Date, upon notification submitted by the Debtors to the Court (which notice the Debtors shall submit at the request of the Majority Noteholders or the DIP Agent): (i) the Confirmation Order may be vacated, (ii) no distributions under the Plan shall be made; (iii) the Debtors and all holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred; and (iv) the Debtors' obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained in the Plan shall constitute or be deemed a waiver, release, or discharge of any Claims or Equity Interests by or against the Debtors or any other

Person or Entity or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors unless extended by Court order.

E. Vacatur of Confirmation Order.

If a Final Order denying confirmation of the Plan is entered, or if the Confirmation Order is vacated, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (i) constitute a waiver, release, or discharge of any Claims or Equity Interests; (ii) prejudice in any manner the rights of the holder of any Claim or Equity Interest; (iii) prejudice in any manner any right, remedy, or claim of the Debtors; or (iv) be deemed an admission against interest by the Debtors.

F. Modification of the Plan.

Subject to the limitations contained in the Plan, and subject to the terms of the Restructuring Support Agreement, (i) the Debtors reserve the right, with the prior written consent of the Requisite Lenders, the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code, and (ii) after entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be, may, with the prior written consent of the Requisite Lenders, the Exit Agent, the Exit Lenders, the Majority Noteholders, and, subject to the CIH Consent Limitation, the Consenting Interest Holders, and upon order of the Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code. Notwithstanding the foregoing, the Confirmation Order shall authorize the Debtors or the Reorganized Debtors, as the case may be, to make appropriate technical adjustments, remedy any defect or omission, or reconcile any inconsistencies in the Plan, the documents included in the Plan Supplement, any and all exhibits to the Plan, and/or the Confirmation Order, as may be necessary to carry out the purposes and effects of the Plan, provided, however, that such action does not materially and adversely affect the treatment of holders of Allowed Claims or Equity Interests pursuant to the Plan.

G. Revocation, Withdrawal, or Non-Consummation.

1. *Right to Revoke or Withdraw.* The Debtors reserve the right to revoke or withdraw the Plan at any time before the Effective Date; provided, however, that this provision shall have no impact on the rights of the First Lien Lenders, the Consenting Noteholders, or the Consenting Interest Holders as set forth in the Restructuring Support Agreement, in respect of any such revocation or withdrawal.

2. *Effect of Withdrawal, Revocation, or Non-Consummation.* If the Debtors revoke or withdraw the Plan prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, the Plan, any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), the assumption or rejection of Executory Contracts, Unexpired Leases or benefit plans effected by the Plan, any release, exculpation, or indemnification provided for in the Plan, and any document or agreement executed pursuant to the Plan shall be

null and void. In such event, nothing contained herein, and no acts taken in preparation for consummation of the Plan shall be deemed to constitute a waiver or release of any Claims by or against or Equity Interests in the Debtors or any other Person or Entity, to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors, or to constitute an admission of any sort by the Debtors or any other Person or Entity.

H. Reservation of Rights

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

ARTICLE XI.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all holders of Claims or Equity Interests (irrespective of whether such Claims or Equity Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtors parties to Executory Contracts and Unexpired Leases with the Debtors. The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

B. Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), the laws of the State of Delaware (without reference to the conflicts of laws provisions thereof that would require or permit the application of the law of another jurisdiction) shall govern the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan, unless otherwise specified and except with respect to the Exit Credit Facility Documents, whose governing law shall be as stated therein.

C. Filing or Execution of Additional Documents.

On or before the Effective Date or as soon thereafter as is practicable, the Debtors or the Reorganized Debtors shall (on terms materially consistent with the Plan) file with the Court or execute, as appropriate, such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, which shall be in form and substance reasonably acceptable to the Debtors, the Requisite Lenders, the

Majority Noteholders and, subject to the CIH Consent Limitation, the Consenting Interest Holders.

D. Term of Injunctions or Stays.

All injunctions or stays provided for in the Chapter 11 Cases 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.

E. Exemption From Transfer Taxes.

Pursuant to, and to the fullest extent permitted by, section 1146(a) of the Bankruptcy Code, all transfers of property pursuant hereto, including (i) the issuance, transfer, or exchange under the Plan of New Common Equity Interests, the New Warrants, the MIP Equity Compensation, and the assumption and granting of Liens by the Reorganized Debtors in favor of the Exit Agent for the benefit of the Exit Lenders, (ii) the making or assignment of any lease or sublease, or (iii) the making or delivery of any other instrument whatsoever, in furtherance of or in connection with the Plan, shall not be subject to any stamp, conveyance, mortgage, sales or use, real estate transfer, recording, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment.

F. Plan Supplement.

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. The Debtors will not serve paper or CD-ROM copies of the Plan Supplement; however, parties may obtain a copy of the Plan Supplement from the Solicitation Agent by: (1) calling the Debtors' restructuring hotline at one of the telephone numbers set forth in the Disclosure Statement; (2) visiting the Debtors' restructuring website, http://www.kccllc.net/modspace; and/or (3) writing to ModSpace Ballot Processing, c/o Kurtzman Carson Consultants, 2335 Alaska Avenue, El Segundo, CA 90245. Unless otherwise ordered by the Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control. The Debtors reserve the right, in accordance with the terms hereof, to modify, amend, supplement, restate, or withdraw any part of the Plan Supplement after it is filed and shall promptly make such changes available online at www.kccllc.net/modspace.

G. Notices.

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

1. To the Debtors: (a) (i) if by mail to: Modular Space Holdings, Inc., 1200 Swedesford Rd., Berwyn, PA 19312, Attention: Craig Burns or (ii) if by email to: craig.burns@modspace.com, and (b) (i) if by mail to: Cleary Gottlieb Steen & Hamilton LLP, One Liberty Plaza, New York, NY 10006, Attention: James L. Bromley, Esq., Jane VanLare, Esq. and Kara A. Hailey, Esq., or (ii) if by email to: jbromley@cgsh.com, jvanlare@cgsh.com, and khailey@cgsh.com; and (c) (i) if by mail to: Young Conaway Stargatt & Taylor LLP, Rodney Square, 100 North King Street, Wilmington, DE 19801, attention: Pauline K. Morgan, Esq. and Joel A. Waite, Esq., or (ii) if by email to: pmorgan@ycst.com and jwaite@ycst.com.

2. To the First Lien Agent: (a) (i) if by mail to: Parker Hudson Rainer & Dobbs LLP, 303 Peachtree Street, N.E., Suite 3600, Atlanta, GA 30308, Attention: C. Edward Dobbs, Esq., and James S. Rankin, Jr., Esq., or (ii) if by e-mail to: edobbs@phrd.com, jrankin@phrd.com and (b) (i) if by mail to: Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899, Attention: William Bowden, Esq., and (ii) if by email to: WBowden@ashby-geddes.com.

3. To the Trustee and/or the Ad Hoc Group (including the Backstop Parties that are members of the Ad Hoc Group): (a) (i) if by mail to: Dechert LLP, 1095 Avenue of the Americas, New York, NY 10036, Attention: Michael J. Sage, Esq. and Brian E. Greer, Esq., or (ii) if by e-mail to: michael.sage@dechert.com and brian.greer@dechert.com, and (b) (i) if by mail to: Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attention: Daniel J. DeFranceschi, Esq., or (ii) if by email to: defranceschi@rlf.com.

4. To the Consenting Interest Holders: (a) (i) if by mail to: Calera Capital Advisors, LP, 580 California Street, 22nd Floor, San Francisco, CA 94104, Attention: General Counsel or (ii) if by email to: kbaker@caleracapital.com, and (b) (i) if by mail to: Morris, Nichols, Arsht & Tunnel LLP, 1201 N. Market St 16th Floor, Wilmington, DE 19801, Attention: Robert J. Dehney, Esq. and Gregory W. Werkheiser, Esq., or (ii) if by e-mail to: rdehney@mnat, and gwerkheiser@mnat.com.

H. Conflicts.

The terms of the Plan shall govern in the event of any inconsistency between the Plan and the Disclosure Statement. In the event of any inconsistency with the Plan and the Confirmation Order, the Confirmation Order shall govern with respect to such inconsistency. For the avoidance of doubt, the Exit Credit Facility Documents shall govern the terms and conditions for lending under such documents after the Effective Date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Dated: February 3, 2017

Respectfully Submitted,

MODULAR SPACE HOLDINGS, INC. (for itself and all other Debtors)

By: */s/ Charles Paquin*
Name: Charles Paquin
Title: President and Chief Executive Officer

CLEARY GOTTLIEB STEEN & HAMILTON LLP
James L. Bromley (admitted *pro hac vice*)
Jane VanLare (admitted *pro hac vice*)
Kara A. Hailey (admitted *pro hac vice*)
One Liberty Plaza
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Telephone: (212) 225-2197
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- and -

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Pauline K. Morgan (No. 3650)
Joel A. Waite (No. 2925)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Counsel to the Debtors and Debtors in Possession

EXHIBIT A
TERMS OF NEW WARRANTS

Warrants Term Sheet

	Tranche 1 Warrants
Number of Warrants	▪ 750,000 shares (2.46% of total shares - diluted through all Warrants exercised, excluding dilution from the MIP)
Strike Price	▪ $20.87 per share ($610mm equity value)
Maturity	▪ 7 year maturity, with American-style exercise
Dilution	▪ Subject to dilution for the Tranche 2 New Warrants, the issuance of MIP Equity Compensation or the issuance of additional New Common Stock or other equity securities on or after the Effective Date
Black Scholes	▪ No Black Scholes Protection
Exercise	▪ Cashless exercise option by holder
Transferability	▪ Transferable
Voting Rights	▪ Non-voting

	Tranche 2 Warrants
Number of Warrants	▪ 500,000 shares (1.64% of total shares - diluted through all Warrants exercised, excluding dilution from the MIP)
Strike Price	▪ $24.29 per share ($710mm equity value)
Maturity	▪ 7 year maturity, with American-style exercise
Dilution	▪ Subject to dilution for the issuance of MIP Equity Compensation or the issuance of additional New Common Stock or other equity securities on or after the Effective Date
Black Scholes	▪ No Black Scholes Protection
Exercise	▪ Cashless exercise option by holder
Transferability	▪ Transferable
Voting Rights	▪ Non-voting

EXHIBIT B

Proposed Confirmation Order Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
MODULAR SPACE HOLDINGS, INC., et al.,	Case No. 16-12825 (KJC)
Debtors.[1]	Jointly Administered
	Re: Docket No. __

NOTICE OF ENTRY OF ORDER APPROVING DEBTORS' DISCLOSURE STATEMENT FOR AND CONFIRMING DEBTORS' JOINT PREPACKAGED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that on February 15, 2017, the Honorable Kevin J. Carey, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered the *Order Approving Debtors' Disclosure Statement For, and Confirming, Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. ___] (the "Confirmation Order") approving the Disclosure Statement [Docket No. 18] and confirming the Plan (as defined below) of the above-captioned debtors in possession (the "Debtors"). Unless otherwise defined in this notice, capitalized terms used herein shall have the meanings ascribed to them in the *Debtors' Joint Prepackaged Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 224] (as modified, and including all supplements, the "Plan").

PLEASE TAKE FURTHER NOTICE that the Confirmation Order and the Plan are available for inspection. If you would like to obtain a copy of the Confirmation Order or the Plan, you may contact KCC, the notice, claims, and solicitations agent retained by the Debtors in these Chapter 11 Cases, by: (a) calling 866-967-0495 (U.S.) or 310-751-2695 (international); (b) visiting the Debtors' restructuring website at: http://www.kccllc.net/modspace; or (c) writing to ModSpace Ballot Processing, c/o Kurtzman Carson Consultants, 2335 Alaska Avenue, El Segundo, CA 90245. You may also obtain copies of any pleadings filed in these Chapter 11 Cases for a fee via PACER at: www.deb.uscourts.gov.

[1] The Debtors and the last four digits of their respective United States Tax Identification Number, or similar foreign identification number, as applicable, are as follows: Modular Space Holdings, Inc. (8595); Modular Space Intermediate Holdings, Inc. (1161); Modular Space Corporation (5284); Resun ModSpace, Inc. (0701); ModSpace Government Financial Services, Inc. (8573); ModSpace Financial Services Canada, Ltd. (CRA BN 0001); Resun Chippewa, LLC (6773). The address of the Debtors' corporate headquarters is 1200 Swedesford Road, Berwyn, PA 19312.

PLEASE TAKE FURTHER NOTICE that the Bankruptcy Court has approved the discharge, release, exculpation, injunction and related provisions in Article VI of the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan and its provisions are binding on the Debtors, the Reorganized Debtors and any holder of a Claim or an Equity Interest and such holder's respective successors and assigns, whether or not the Claim or the Equity Interest of such holder is Impaired under the Plan, and whether or not such holder or Entity voted to accept the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan and the Confirmation Order contain other provisions that may affect your rights. You are encouraged to review the Plan and the Confirmation Order in their entirety.

Dated: _____, 2017,
Wilmington, Delaware

CLEARY GOTTLIEB STEEN & HAMILTON LLP

James L. Bromley (admitted *pro hac vice*)
Jane VanLare (admitted *pro hac vice*)
Kara A. Hailey (admitted *pro hac vice*)
One Liberty Plaza
New York, New York 10006
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- and -

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/

Pauline K. Morgan (No. 3650)
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Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Counsel for the Debtors

SCHEDULE "B"

ARTICLES OF REORGANIZATION

Articles of Reorganization
Business Corporations Act
Section 192

1. **Name of Corporation**	2. **Corporate Access Number**
MODSPACE FINANCIAL SERVICES CANADA, LTD.	2012945263

3. In Accordance with the Order for Reorganization, the Articles of the Corporation are amended as follows:

In accordance with the Order of the Court of..... dated ....., a certified copy of which is attached hereto as Schedule "A", approving the reorganization of the corporation pursuant to Section 192 of the *Business Corporations Act* (Alberta), the Articles of the Corporation are amended by adding the following provision to "Schedule "B", Other Rules or Provisions" of the Corporation:

Notwithstanding any other provisions of the Corporation's articles or by-laws to the contrary, the Corporation shall not issue any class of non-voting equity securities unless and solely to the extent permitted by section 1123(a)(6) of Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") as in effect on the date of filing these Articles of Reorganization with the Registrar appointed under section 263 of the *Business Corporations Act* (Alberta); provided, however, that this sentence (i) will have no further force and effect beyond that required under section 1123(a)(6) of the Bankruptcy Code; (ii) will have such force and effect, if any, only for so long as section 1123(a)(6) of the Bankruptcy Code is in effect and applicable to the Corporation; and (iii) in all events may be amended or eliminated in accordance with applicable law from time to time in effect.

as shown on Schedule "B" attached hereto.

Name of Person Authorizing	Signature
Title	Date

This information is being collected for the purposes of corporate registry records in accordance with the Business Corporations Act. Questions about the collection of this information can be directed to the Freedom of Information and Protection of Privacy Coordinator for Alberta Registries, Box 3140, Edmonton, Alberta T5J 4L4, (780) 427-7013.

REG 3040 (Rev. 2003/05)

Feb. 21, 2017

Court File No.: CV-16-11656-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF MODULAR SPACE INTERMEDIATE HOLDINGS, INC., MODULAR SPACE CORPORATION, RESUN MODSPACE, INC., MODSPACE GOVERNMENT FINANCIAL SERVICES, INC., MODSPACE FINANCIAL SERVICES CANADA, LTD., RESUN CHIPPEWA, LLC AND MODULAR SPACE HOLDINGS, INC. (THE "DEBTORS")

APPLICATION OF MODULAR SPACE CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

February 21, 2017
I am satisfied that this Motion should be granted on the terms of the attached order
Hainey J.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD
(Returnable February 21, 2017)
Volume 1 of 2

BORDEN LADNER GERVAIS LLP
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Lawyers for Modular Space Holdings, Inc., Modular Space Intermediate Holdings, Inc., Modular Space Corporation, Resun ModSpace, Inc., ModSpace Government Financial Services, Inc., ModSpace Financial Services Canada, Ltd. and Resun Chippewa, LLC

Tab 5

Court File No.: CV-10-8944-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE JUSTICE MORAWETZ	)))	FRIDAY, THE 17th DAY OF FEBRUARY, 2012

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICATION OF TERRESTAR NETWORKS INC. UNDER SECTION 46 AND FOLLOWING OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

RECOGNITION ORDER
(February 17, 2012)

THIS MOTION, made by TerreStar Networks Inc. ("TSNI") in its capacity as the foreign representative (the "Foreign Representative") of TSNI, TerreStar National Services, Inc., TerreStar License Inc., 0887729 B.C. Ltd. ("088 B.C."), TerreStar Networks Holdings (Canada) Inc. ("TerreStar Holdings") and TerreStar Networks (Canada) Inc. ("TerreStar Canada") (collectively, the "Debtors") pursuant to section 49(1) of the *Companies Creditors' Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"), for an Order, substantially in the form attached to the Foreign Representative's notice of motion dated February 10, 2012 (the "Notice of Motion"), recognizing, implementing and giving full force and effect in Canada to the Confirmed Plan and the Confirmation Order (as those terms are defined herein) granted by the United States Bankruptcy Court for the Southern District of New York (the "U.S. Bankruptcy Court") in the chapter 11 cases commenced by the Debtors, lead case number 10-15446 (SHL), was heard this day at Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Douglas Brandon sworn on February 10, 2012, the Affidavit of Jarvis Hétu sworn on February 16, 2012, the twelfth report of Deloitte & Touche Inc., in its capacity as Court-appointed Information Officer, dated February 14, 2012 (the "Twelfth Report") including the affidavit of Paul Casey sworn on February 13, 2012 (the "Casey Affidavit") and the affidavit of Karma P. Dolkar sworn on February 14, 2012 (the "Dolkar

Affidavit") and on hearing submissions of counsel for the Foreign Representative, counsel for the Information Officer, those other parties present, and no one appearing for any other person on the service list, although served as appears from the Affidavit of Service of Jarvis Hétu sworn February 10, 2012 and the Affidavit of Service of Laura Taylor sworn on February 16, 2012, filed.

DEFINITIONS

1. **THIS COURT ORDERS** that any capitalized terms not otherwise defined in this Order shall have the meanings ascribed to such terms in the Confirmed Plan.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and that further service of the Notice of Motion and the Motion Record upon any interested person not served is dispensed with.

RECOGNITION OF DISCLOSURE STATEMENT ORDER

3. **THIS COURT ORDERS AND DECLARES** that the Findings of Fact, Conclusions of Law and Order Confirming the Joint Chapter 11 Plan of TerreStar Networks Inc., et al. dated February 15, 2012 (the "Confirmation Order") of the U.S. Bankruptcy Court confirming the Joint Chapter 11 Plan of TerreStar Networks Inc., et al., dated February 8, 2012 (the "Plan") and the Plan Supplement dated February 3, 2012 (as amended, supplemented and otherwise modified, the "Plan Supplement", and together with the Plan, the "Confirmed Plan") and as attached as Schedule "A" hereto, is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49(1) of the CCAA, and shall be implemented and become effective in all provinces and territories of Canada upon the issuance of this Order in accordance with its terms.

4. **THIS COURT ORDERS AND DECLARES** that the Confirmed Plan be and it is hereby recognized and given full force and effect in all provinces and territories of Canada and that it shall be implemented in Canada in accordance with its terms, pursuant to Section 49 of the CCAA.

IMPLEMENTATION OF THE CONFIRMED PLAN

5. **THIS COURT ORDERS** that the Foreign Representative is authorized and directed to take all steps and actions, and to do all things, necessary or appropriate to enter into or implement the Confirmed Plan in accordance with its terms, and enter into, implement and consummate all of the steps, transfers, transactions and agreements contemplated pursuant to the Confirmed Plan.

6. **THIS COURT ORDERS** that the directors of each of TerreStar Holdings, TerreStar Canada and 088 B.C. are authorized to take all necessary or appropriate steps and actions to implement the Confirmed Plan in accordance with its terms, including the subsequent dissolution of each of TerreStar Holdings, TerreStar Canada and 088 B.C.

7. **THIS COURT ORDERS** that as of the Effective Date, the Confirmed Plan, including all compromises, arrangements, transfers, transactions, releases, discharges and injunctions provided for therein, as applicable, shall inure to the benefit of and be binding and effective upon Canadian creditors, and all other persons affected thereby, and on their respective heirs, administrators, executors, legal personal representatives, successors and assigns.

RELEASES AND INJUNCTIONS

8. **THIS COURT ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contained and referenced in the Confirmation Order and the Confirmed Plan, are valid and that, effective on the Effective Date, all such releases, discharges and injunctions are hereby sanctioned, approved, recognized and given full force and effect in all provinces and territories of Canada, subject only to the rights of any Canadian creditors to receive distributions, if any, in respect of their claims in accordance with the Confirmation Order and the Confirmed Plan. For greater certainty, nothing herein, in the Confirmation Order or the Confirmed Plan shall release or affect any rights or obligations under the Confirmed Plan.

INFORMATION OFFICER'S REPORT

9. **THIS COURT ORDERS** that the Twelfth Report and the activities of the Information Officer as described therein be and are hereby approved.

10. **THIS COURT ORDERS AND DECLARES** that (a) the fees and disbursements of the Information Officer, as set out in the Casey Affidavit, and (b) the fees and disbursements of Bennett Jones LLP, counsel to the Information Officer, as set out in the Dolkar Affidavit, respectively, incurred in connection with this proceeding, are hereby authorized and approved.

11. **THIS COURT ORDERS AND DECLARES** that the fees and disbursements of the Information Officer and Bennett Jones LLP, respectively, incurred from and including February 13, 2012 up to the date of the filing of the Certificate of Discharge with this Court are hereby authorized and approved up to CDN $50,000 in aggregate and in that regard the Information Officer and Bennett Jones LLP are hereby directed to provide to counsel for the Foreign Representative their accounts for their respective fees and disbursements incurred during the above-noted period (the "Actual Fees and Expenses") and, for the avoidance of doubt, only the Actual Fees and Expenses shall be paid to the Information Officer and Bennett Jones LLP.

DISCHARGE OF THE INFORMATION OFFICER

12. **THIS COURT ORDERS** that the Deloitte & Touche Inc. shall be discharged from its duties as the Information Officer of the Debtors effective as of the later of the Effective Date and the Closing Date; provided that the foregoing shall not apply in respect of:

(a) any obligation of, or matters to be completed by, the Information Officer pursuant to the Confirmed Plan from and after the later of the Effective Date and the Closing Date; or

(b) matters otherwise requested by the Debtors and agreed to by the Information Officer.

13. **THIS COURT ORDERS** that the completion of the Information Officer's duties shall be evidenced, and its final discharge shall be effected by the filing by the Information Officer with this Honourable Court of a certificate of discharge (the "Certificate of Discharge"), in the form attached as Schedule "B" hereto, on the later of the Effective Date and the Closing Date.

14. **THIS COURT ORDERS AND DECLARES** that upon filing of the Certificate of Discharge, Deloitte & Touche Inc. and Bennett Jones LLP are released and discharged from any

and all liability that Deloitte & Touche Inc. and Bennett Jones LLP now or may hereafter have by reason of, or in any way arising out of, the acts and omissions of Deloitte & Touche Inc. while acting in its capacity as Information Officer and Bennett Jones LLP while acting in its capacity as counsel to the Information Officer in respect of the Debtors. Without limiting the generality of the foregoing, Deloitte & Touche Inc. and Bennett Jones LLP are forever released and discharged from all liability relating to matters that were raised, or could have been raised in the within proceedings, save and except for any gross negligence or willful misconduct on their part.

RELEASE AND DISCHARGE OF ADMINISTRATION CHARGE

15. **THIS COURT ORDERS AND DECLARES** that the Administration Charge (as that term is defined in the Supplemental Order of this Court dated October 21, 2010) shall be deemed to be discharged upon the earlier of the filing by the Information Officer of the Certificate of Discharge and the Closing Date.

EFFECT, AID AND RECOGNITION

16. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories of Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

17. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states of other subdivisions of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

FEB 17 2012

SCHEDULE "A"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR NETWORKS INC., *et al.*,[1]	)	Case No. 10-15446 (SHL)
Debtors.	)	Jointly Administered

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING THE JOINT CHAPTER 11 PLAN OF TERRESTAR NETWORKS INC., ET. AL.

The above-captioned debtors and debtors in possession (each, a "***Debtor***" and, collectively, the "***Debtors***") having:

a. commenced, on October 19, 2010 (the "***Petition Date***"), these chapter 11 cases (collectively, the "***Chapter 11 Cases***") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***");

b. continued to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108;

c. filed, on November 18, 2011, the *Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 842] (as amended, the "***Plan***")[2];

d. filed, on November 18, 2011, the *Disclosure Statement for the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 843] (the "***Disclosure Statement***");

e. filed, on November 18, 2011, the *Motion for Entry of an Order (A) Approving the Disclosure Statement for the Debtors' Joint Chapter 11 Plan and (B) Establishing Solicitation and Voting Procedures with Respect to the Debtors' Joint Chapter 11 Plan* [Docket No. 844];

f. filed, on December 6, 2011, the *First Revised Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 850];

---

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar License Inc. [6537]; TerreStar National Services Inc. [6319]; TerreStar Networks Inc. [3931]; 0887729 B.C. Ltd. [1345]; TerreStar Networks (Canada) Inc. [8766]; and TerreStar Networks Holdings (Canada) Inc. [1337].

2 Capitalized terms used herein but otherwise not defined shall have the meanings ascribed to them in the Plan, the Disclosure Statement or the Plan Confirmation Brief, as applicable.

g. filed, on December 6, 2011, the *First Revised Disclosure Statement for the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 851];

h. filed, on December 19, 2011, the *Second Revised Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 862];

i. filed, on December 19, 2011, the *Second Revised Disclosure Statement for the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 863];

j. filed, on December 27, 2011, the solicitation version of the *Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 873];

k. filed, on December 27, 2011, the solicitation version of the *Disclosure Statement for the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 874];

l. distributed solicitation materials beginning on or about December 29, 2011, consistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") and the *Order (A) Approving the Disclosure Statement for the Joint Chapter 11 Plan of the Debtors and (B) Establishing Solicitation and Voting Procedures with Respect to the Joint Chapter 11 Plan of the Debtors* [Docket No. 868] (the "***Disclosure Statement and Solicitation Procedures Order***"), which Disclosure Statement and Solicitation Procedures Order also approved, among other things, solicitation procedures (the "***Solicitation Procedures***") and related notices, forms and ballots (collectively, the "***Solicitation Packages***") as evidenced by the *Affidavit of Service of Jeffrey S. Stein - Solicitation Mailing* [Docket No. 880] (the "***GCG Affidavit***");

m. published, on January 5, 2012 and January 11, 2012, respectively, notice of the Confirmation Hearing (the "***Confirmation Hearing Notice***") in *The Wall Street Journal (National Edition), USA Today (National Edition)* and *The Global and Mail (National Edition)* consistent with the Disclosure Statement and Solicitation Procedures Order, as evidenced by the *Notice of Certification of Publication - Notice of Hearing to Consider Confirmation of the Chapter 11 Plan Filed by the Debtors and Related Voting and Objection Deadlines* [Docket No. 897] and the *Affidavit of Service of Eamon Mason - Notice of Rescheduled Confirmation Hearing* [Docket No. 893] (collectively, the "***Publication Affidavits***");

n. filed, on February 3, 2012, the *Plan Supplement to the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 909] (the "***Plan Supplement***");

o. filed, on February 6, 2012, the *Declaration of Jeffrey S. Stein of the Garden City Group, Inc. Certifying the Methodology for the Tabulation of Votes on and Results of Voting with Respect to the Joint Chapter 11 Plan of TerreStar Networks Inc., et al., with Respect to Claims in Class 3* [Docket No. 910] (the "***Voting Certification***") detailing the results of the Plan voting process;

p. filed, on February 8, 2012, the *Debtors' Memorandum of Law in Support of Confirmation of the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* [Docket No. 914] (the "***Plan Confirmation Brief***");

q. filed, on February 8, 2012, the *Declaration of Jeffrey W. Epstein in Support of Confirmation of the Joint Chapter 11 Plan of TerreStar Networks Inc. et al.* [Docket No. 916];

r. filed, on February 8, 2012, the *Declaration of C.J. Brown in Support of Confirmation of the Joint Chapter 11 Plan of TerreStar Networks Inc. et al.* [Docket No. 915]; and

s. filed, on February 8, 2012, a revised version of the Plan to reflect certain non-material and technical modifications to the terms thereof [Docket No. 913].

This Bankruptcy Court having:

a. entered, on July 7, 2011, the *Order (A) Approving Asset Purchase Agreement And Authorizing The Sale Of Assets Of Debtor Outside The Ordinary Course Of Business; (B) Authorizing The Sale Of Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances; (C) Authorizing The Assumption And Sale And Assignment Of Certain Executory Contracts And Unexpired Leases; And (D) Granting Related Relief* [Docket No. 668] (the "***Sale Order***");

b. entered, on December 15, 2011, the *Stipulation and Agreed Order Approving the Debtors' Motion for an Order Pursuant to Bankruptcy Code Section 363(b) and Federal Rule of Bankruptcy Procedure 9019 Approving the Stipulation Among the Debtors, the Creditors' Committee, EchoStar, the Ad Hoc Group, Harbinger, Lightsquared, Sprint, Solus, and the 15% Notes Trustee* [Docket No. 857] (the "***Global Settlement Order***").

c. entered, on December 21, 2011, the Disclosure Statement and Solicitation Procedures Order [Docket No. 868];

d. set February 14, 2012, at 11:30 a.m., prevailing Eastern Time, as the date and time for the commencement of the Confirmation Hearing pursuant to Bankruptcy Rules 3017 and 3018 and Bankruptcy Code sections 1126, 1128 and 1129;

e. reviewed the Plan, the Disclosure Statement, the Plan Confirmation Brief, and all pleadings, exhibits, statements, responses and comments regarding Confirmation;

f. heard the statements, arguments and objections (if any) made by counsel in respect of Confirmation;

g. considered all oral representations, testimony, documents, filings and other evidence regarding Confirmation; and

h. taken judicial notice of all papers and pleadings filed in the Chapter 11 Cases.

NOW, THEREFORE, after due deliberation and based upon the record set forth above, it appearing to the Bankruptcy Court that notice of the Confirmation Hearing, the Plan and all modifications thereto have been adequate and appropriate as to all parties affected or to be

affected by the Plan and the transactions contemplated thereby and that any party in interest so affected has had the opportunity to object to Confirmation; and, after due deliberation and based upon the record described above, it appearing to the Bankruptcy Court that the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing establish just cause for the relief granted herein; ***and no opposition to Confirmation having been filed and three informal objections to Confirmation having been resolved;*** the Bankruptcy Court hereby makes and issues the following Findings of Fact, Conclusions of Law and Order:[3]

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

IT IS HEREBY DETERMINED, FOUND, ADJUDGED, DECREED AND ORDERED THAT:

A. Jurisdiction and Venue

1. On the Petition Date, the Debtors commenced the Chapter 11 Cases in this Bankruptcy Court. Venue in this Bankruptcy Court was proper as of the Petition Date with respect to the Debtors pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2). The Bankruptcy Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The Bankruptcy Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

---

[3] ~~The findings of fact and the conclusions of law set forth herein shall constitute the Bankruptcy 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 that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.~~

B. Eligibility for Relief

2. The Debtors were and are entities eligible for relief under Bankruptcy Code section 109.

C. Commencement and Joint Administration of the Chapter 11 Cases

3. On the Petition Date, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in this Court. By prior order of the Bankruptcy Court, the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015 [Docket Nos. 32, 445]. The Debtors have operated their businesses and managed their properties as debtors in possession since the Petition Date pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in the Chapter 11 Cases.

D. Plan Supplement

4. On February 3, 2012, the Debtors filed the Plan Supplement [Docket No. 909] consisting of the following: (a) the Liquidating Trust Agreement; (b) the Interim TSN Trust Agreement; (c) the New Corporate Governance Documents; (d) to the extent known, the identity of the members of the New Boards (the "***Boards of Directors***") and the nature and compensation for any Director who is an "insider" under the Bankruptcy Code; (e) to the extent known, the identity of the officers of the Reorganized Debtors (the "***Officers***"); (f) the Assumed Executory Contract and Unexpired Lease List; (g) the Rejected Executory Contract and Unexpired Lease List; (h) the Schedule of Retained Causes of Action; (i) the New Employment Agreements; (j) a Schedule of the Insurance Policies; (k) the Summary of Terms and Conditions of Tail Insurance; and (l) the Interim TSN Warrant Agreement.

5. All materials included in the Plan Supplement are integral to, part of and incorporated by reference into the Plan. The Plan Supplement complies with the terms of the

Plan, and the filing and notice of such documents was good and proper in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Disclosure Statement and Solicitation Procedures Order, and no other or further notice is or shall be required.

E. Modifications to the Plan

6. Subsequent to the Voting Deadline, the Debtors made certain modifications to the Plan. Any and all modifications to the Plan since the entry of the Disclosure Statement and Solicitation Procedures Order are consistent with all of the provisions of the Bankruptcy Code, including Bankruptcy Code sections 1122, 1123, 1125 and 1127. None of the modifications made since the entry of the Disclosure Statement and Solicitation Procedures Order effects a materially adverse change in the treatment of any holder of a Claim or Interest under the Plan. Accordingly, pursuant to Bankruptcy Code section 1127(a) and Bankruptcy Rule 3019, these modifications do not require additional disclosure under Bankruptcy Code section 1125 or the resolicitation of votes under Bankruptcy Code section 1126, nor do they require that the holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan as modified and attached hereto as **Exhibit A** shall constitute the Plan submitted for Confirmation.

F. Judicial Notice

7. The Bankruptcy Court takes judicial notice of the docket of the Chapter 11 Cases and all related adversary proceedings and other documents filed and orders entered thereon, maintained by the clerk of the applicable court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered or adduced at the hearings held before the applicable court during the pendency of the Chapter 11 Cases. Any resolutions of informal objections to

Confirmation explained on the record at the Confirmation Hearing are hereby incorporated by reference.

G. Disclosure Statement and Solicitation Procedures Order

8. On December 21, 2011, the Bankruptcy Court entered the Disclosure Statement and Solicitation Procedures Order, which, among other things: (a) approved the Disclosure Statement in the form attached to the Disclosure Statement and Solicitation Procedures Order as containing adequate information within the meaning of Bankruptcy Code section 1125 and Bankruptcy Rule 3017; (b) fixed December 21, 2011, as the Voting Record Date; (c) fixed February 1, 2012, at 5:00 p.m. prevailing Eastern Time as the deadline for voting to accept or reject the Plan (the "***Voting Deadline***"); (d) fixed February 1, 2012, at 5:00 p.m. prevailing Eastern Time as the deadline for objecting to the Plan; (e) fixed February 13, 2012, at 10:00 a.m.[4] prevailing Eastern Time as the date and time for the commencement of the Confirmation Hearing; (f) approved the Solicitation Procedures and the form of the Solicitation Packages; and (g) approved the form and method of notice of the Confirmation Hearing Notice set forth therein.

H. Transmittal and Mailing of Materials, Notice

9. As evidenced by the GCG Affidavit and the Publication Affidavits, due, adequate and sufficient notice of the Disclosure Statement, the Plan, the Plan Supplement and the Confirmation Hearing, together with all deadlines for voting on or objecting to the Plan and with respect to Confirmation, has been given to: (a) all known holders of Claims and Interests; (b) all parties that requested notice in accordance with Bankruptcy Rule 2002; and (c) all counterparties to Executory Contracts and Unexpired Leases with the Debtors, in substantial compliance with the Disclosure Statement and Solicitation Procedures Order and Bankruptcy Rules 2002(b), 3017

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[4] The Bankruptcy Court subsequently rescheduled the Confirmation Hearing to February 14, 2012, at 11:30 a.m. prevailing Eastern Time. The Debtors provided notice of the rescheduled Confirmation Hearing date on January 10, 2012. *See* Docket No. 889.

and 3020(b), and no other or further notice is or shall be required. Adequate and sufficient notice of the Confirmation Hearing, and any applicable dates, deadlines and hearings described in the Disclosure Statement and Solicitation Procedures Order was given in compliance with the Bankruptcy Rules, the Disclosure Statement and Solicitation Procedures Order, as evidenced by the GCG Affidavit and the Publication Affidavits, and no other or further notice is or shall be required.

10. The Debtors published the Confirmation Hearing Notice once each in *The Wall Street Journal (National Edition)*, *USA Today (National Edition)* and *The Globe and Mail (National Edition)* in substantial compliance with the Disclosure Statement and Solicitation Procedures Order and Bankruptcy Rule 2002(l), as evidenced by the Publication Affidavits, and no other or further notice is or shall be required.

I. Solicitation

11. Votes for acceptance and rejection of the Plan were solicited in good faith and in compliance with Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, the Disclosure Statement, the Disclosure Statement and Solicitation Procedures Order, all other applicable provisions of the Bankruptcy Code, and all other applicable rules, laws and regulations.

12. Specifically, the Solicitation Packages approved by the Bankruptcy Court in the Disclosure Statement and Solicitation Procedures Order (including the Disclosure Statement, the Plan, the form of ballots and related notices approved thereby) were transmitted to and served on all holders of Claims or Interests in Classes that were entitled to vote to accept or reject the Plan, and relevant portions of the Solicitation Packages and other notices approved by the Disclosure Statement were transmitted to and served on other parties in interest in the Chapter 11 Cases, all in compliance with Bankruptcy Code section 1125, the Disclosure Statement and Solicitation

Procedures Order, the Solicitation Procedures and the Bankruptcy Rules. Transmittal and service were adequate and sufficient, and no further notice is or shall be required.

J. Voting Certifications

13. The Debtors filed the Voting Certifications before the commencement of the Confirmation Hearing, consistent with the Disclosure Statement and Solicitation Procedures Order. All procedures used to tabulate ballots received in connection with Confirmation were fair and conducted in accordance with the Disclosure Statement and Solicitation Procedures Order, as evidenced by the GCG Affidavit.

14. As set forth in the Plan and Disclosure Statement, holders of Claims in Class 3 (the "***Voting Class***") were eligible to vote on the Plan pursuant to the Solicitation Procedures.[5] In addition, holders of Claims in Classes 1 and 2 (together, the "***Deemed Accepting Classes***") are deemed to accept the Plan and, therefore, are not entitled to vote to accept or reject the Plan. Finally, holders of Claims in Class 4 (the "***Deemed Rejecting Class***") are deemed to reject the Plan and, therefore, are not entitled to vote to accept or reject the Plan.

15. As further evidenced by the Voting Certifications, the Voting Class voted to accept the Plan (the "***Impaired Accepting Class***").

K. Bankruptcy Rule 3016

16. The Plan is dated and identifies the Entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the clerk of the Bankruptcy Court satisfied Bankruptcy Rule 3016(b).

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[5] Although Class 4 is Impaired under the Plan, holders of Equity Interests are not receiving any Distribution under the Plan and, therefore, are conclusively presumed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g).

L. **Burden of Proof**

17. The Debtors, as proponents of the Plan, have met their burden of proving the elements of Bankruptcy Code sections 1129(a) and 1129(b) by a preponderance of the evidence, which is the applicable evidentiary standard for Confirmation.

M. **Compliance with the Requirements of Bankruptcy Code Section 1129**

18. The Plan complies with all applicable provisions of Bankruptcy Code section 1129 as follows:

i. **Section 1129(a)(1)—Compliance of the Plan with Applicable Provisions of the Bankruptcy Code**

19. The Plan complies with all applicable provisions of the Bankruptcy Code as required by Bankruptcy Code section 1129(a)(1), including sections 1122 and 1123.

a. **Sections 1122 and 1123(a)(1)—Proper Classification**

20. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. Pursuant to Bankruptcy Code sections 1122(a) and 1123(a)(1), Article III of the Plan provides for the separate classification of Claims and Interests into four (4) Classes, based on differences in the legal nature or priority of such Claims and Interests (other than Administrative Claims, Priority Tax Claims and statutory fees owed to the U.S. Trustee (***"Statutory Fees"***), which are addressed in Article II of the Plan and which are not required to be designated as separate Classes pursuant to Bankruptcy Code section 1123(a)(1)). Valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan and the classifications were not done for any improper purpose. In addition, the creation of such Classes does not unfairly discriminate between or among holders of Claims or Interests.

21. As required by Bankruptcy Code section 1122(a), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the requirements of Bankruptcy Code sections 1122(a) and 1123(a)(1) have been satisfied.

b. Section 1123(a)(2)—Specification of Unimpaired Classes

22. Article III of the Plan specifies that Claims in Classes 1 and 2 are Unimpaired under the Plan. Additionally, Article II of the Plan specifies that Administrative Claims, Priority Tax Claims and Statutory Fees are Unimpaired, although these Claims are not classified under the Plan. Accordingly, the requirements of Bankruptcy Code section 1123(a)(2) have been satisfied.

c. Section 1123(a)(3)—Specification of Treatment of Impaired Classes

23. Article III of the Plan specifies the treatment of each Impaired Class under the Plan, including Classes 3 and 4. Accordingly, the requirements of Bankruptcy Code section 1123(a)(3) have been satisfied.

d. Section 1123(a)(4)—No Discrimination

24. Pursuant to Bankruptcy Code section 1123(a)(4), Article III of the Plan uniformly provides for the same treatment of each Claim or Interest in a particular Class, as the case may be, unless the holder of a particular Claim has agreed to a less favorable treatment with respect to such Claim. In particular, all holders of Claims in Class 3 (the only Voting Class) have received the same treatment—i.e., their Pro Rata allocation of the applicable Debtors' Allocated Value—even though such treatment may result in varying percentage recoveries. Accordingly, the requirements of Bankruptcy Code section 1123(a)(4) have been satisfied.

e. Section 1123(a)(5)—Adequate Means for Plan Implementation

25. Pursuant to Bankruptcy Code section 1123(a)(5), Article V and various other provisions of the Plan specifically provide in detail adequate and proper means for the Plan's implementation, including, but not limited to: (a) the general settlement of Claims and Interests; (b) sources of consideration for Plan Distributions; (c) the authorization and Distribution of the Liquidating Trust Interests and the execution of related documents; (d) the description of operations of the Debtors between the Confirmation Date and Effective Date (and, if different) the Closing Date; (e) modifications to the Plan in the event that the Closing Date does not occur on or before the Effective Date; (f) the cancellation of securities and agreements; (g) the authorization of the New Certificates of Incorporation and New By-Laws; (h) the selection of the initial Reorganized Debtors' Boards of Directors; (i) the selection of the initial Officers of the Reorganized Debtors; (j) the treatment of employee benefits; (k) the vesting of Retained Assets in the Reorganized Debtors; (l) the proposed restructuring transactions under the Plan; (m) authorization for post-Confirmation corporate action by the Reorganized Debtors; (n) the treatment of Intercompany Claims under the Plan; (o) the application of Bankruptcy Code section 1146; (p) the authorization to enter into or continue the D&O Liability Insurance Policies; (q) the preservation of certain specified rights of action; (r) the payment of fees and expenses of the Indenture Trustees; (s) the single satisfaction of Claims under the terms of the Plan; and (t) the Reorganized Debtors' entry into the Interim TSN Trust Agreement and the execution of related documents and the issuance or Distribution of the Interim TSN Trust Interests and Interim TSN Trust Warrants (but authorization to effectuate these agreements and make Distributions thereunder, solely in the event that the provisions of Exhibit 3 to the Plan are triggered pursuant to Article V.G. thereof, and subject to the requirements of Article X.C. of the Plan).

26. Moreover, the Reorganized Debtors will have, immediately upon the Effective Date, sufficient Cash, Liquidating Trust Interests and, if necessary, Interim TSN Trust Interests and Interim TSN Warrants (but solely in the event that the provisions of Exhibit 3 to the Plan are triggered pursuant to Article V.G. thereof) to make all payments required to be made on the Effective Date pursuant to the terms of the Plan. Accordingly, the requirements of Bankruptcy Code section 1123(a)(5) have been satisfied.

f. **Section 1123(a)(6)—Voting Power of Equity Securities**

27. The New Certificates of Incorporation of Reorganized Debtors, attached as **Exhibit C** to the Plan Supplement, (and any other documents which purport to issue securities under the Plan) prohibits the issuance of nonvoting equity securities to the extent prohibited by Bankruptcy Code section 1123(a)(6), thereby satisfying Bankruptcy Code section 1123(a)(6).

g. **Section 1123(a)(7)—Selection of Officers and Directors**

28. The identities and affiliations of the members of the New Board of each of the Reorganized Debtors as of the Effective Date are listed in **Exhibit E** to the Plan Supplement, the identities of the initial Officers of the Reorganized Debtors are listed in **Exhibit F** to the Plan Supplement, and the New Employment Agreements are included in **Exhibit J** to the Plan Supplement. The New Corporate Governance Documents describe the manner of the selection of additional members of the Board of Directors of the Reorganized Debtors following the Effective Date. The selection of the initial Directors and Officers of each Reorganized Debtor was, is and will be consistent with the interests of holders of Claims and Interests and public policy. Accordingly, the requirements of Bankruptcy Code section 1123(a)(7) have been satisfied.

h. **Section 1123(b)—Discretionary Contents of the Plan**

29. The Plan contains various provisions that may be construed as discretionary, but

are not required for Confirmation under the Bankruptcy Code. As set forth below, such discretionary provisions comply with Bankruptcy Code section 1123(b) and are not inconsistent with the applicable provisions of the Bankruptcy Code. Thus, Bankruptcy Code section 1123(b) is satisfied.

(i) Section 1123(b)(1)-(2)—Claims and Executory Contracts

30. Pursuant to Bankruptcy Code sections 1123(b)(1) and 1123(b)(2), Article III of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests, and Article VI of the Plan provides for the assumption, assumption and assignment, or rejection of the Executory Contracts and Unexpired Leases of the Debtors not previously assumed, assumed and assigned, or rejected pursuant to Bankruptcy Code section 365 and appropriate authorizing orders of the Bankruptcy Court; *provided, however*, that subject to the limitations set forth in the Plan, the Debtors shall be authorized, after consultation with the Creditors' Committee or the Liquidating Trustee, as applicable, to alter, amend or supplement the list of the "Rejected Executory Contracts and Unexpired Leases" in the Plan Supplement until and including the Effective Date.

(ii) Section 1123(b)(3)—Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action

(A) Settlements Under the Plan

31. The Plan settles or implements the previously approved Global Settlement, (defined below) as set forth in the Global Settlement Order,[6] of numerous issues in the Chapter

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[6] The Plan is premised on a global settlement approved by the Bankruptcy Court [Docket No. 857] (the "***Global Settlement Order***") among the Debtors, the Creditors' Committee, Harbinger Capital Partners LLC and certain of its managed and affiliated funds ("***Harbinger***"), LightSquared Inc. and LightSquared LP, Sprint Nextel Corporation ("***Sprint***"), Solus Alternative Asset Management LP ("***Solus***"), EchoStar Corporation ("***EchoStar***"), the ad hoc group of certain holders of Senior Secured Notes (the "***Ad Hoc Group***") and the Senior Secured Note Indenture Trustee (collectively, the "***Settling Parties***"), which

11 Cases pursuant to Bankruptcy Rule 9019 and Bankruptcy Code sections 363 and 1123. These settlements are in consideration for the distributions made pursuant to the Global Settlement Order and the Distributions and other benefits provided under the Plan. Any other compromise and settlement provisions of the Plan and the Plan itself constitute a compromise of all Claims, Interests or Causes of Action relating to the contractual, legal and subordination rights that a holder of a Claim or Interest may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such an Allowed Claim or Interest. The settlements contained in the Plan, including the Plan Settlement, are the product of extensive arm's-length negotiations. Therefore, the settlements, including the Plan Settlement, are fair and equitable and in the best interest of the Debtors' Estates and are approved pursuant to Bankruptcy Rule 9019, to the extent that such settlement have not already been approved by the Bankruptcy Court.

(B) Debtors' Releases, Third-Party Releases, Exculpation, Plan Injunction and Retained Causes of Action

32. **Releases by the Debtors.** The releases and discharges of Claims and Causes of Action given by the Debtors described in Article IX.B of the Plan (the "***Debtor Releases***") are a necessary and important aspect of the Plan. The Debtor Releases are based on sound business judgment and are reasonable ~~and acceptable pursuant to the standards that courts in this district generally apply~~.

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facilitated the implementation of the Debtors' primary value maximization goals and includes the settlement of the following: (a) the Lien Litigation; (b) the TSC Intercompany Claim Recharacterization Litigation; (c) the T-2 Litigation; (d) the Sprint Claims Objection; (e) the Make-Whole Premium Objection; (f) disputes regarding allocation of expenses; (g) disputes regarding the valuation of Debtor-entity 0887729 B.C. Ltd.; (h) disputes regarding the valuation of various entities; and (i) the recovery percentages for holders of Unsecured Claims, which remain static irrespective if the Bankruptcy Court modifies but still confirms the Plan (collectively, the "***Global Settlement***"). A more thorough discussion of the Global Settlement is contained in the Disclosure Statement, Article B(v).

33. **Exculpation.** The Exculpation provision described in Article IX.D of the Plan, ***including its carve-out for gross negligence and willful misconduct,*** is appropriate under applicable law because it is part of a Plan proposed in good faith, was vital to the Plan formulation process and is appropriately limited in scope. ~~The Exculpation Provision, including its carve-out for gross negligence and willful misconduct, is entirely consistent with established practice in this jurisdiction and others.~~

34. **Injunction.** The injunction provisions set forth in Article IX.F of the Plan (the "***Plan Injunctions***") are essential to the Plan and are necessary to preserve and enforce the Debtor Releases and the Plan, and are narrowly tailored to achieve that purpose.

35. **Third-Party Releases by Holders of Claims and Interests.** The Released Parties consist of the Settlement Parties and certain other Parties ***that would be entitled to assert indemnification or contribution claims against the Debtors***, including, the current and former directors and officers of the Debtors, as of or after the Petition Date, the Indenture Trustees, the Liquidating Trust Trustee and board, the members of the Interim TSN Trust Board, Deloitte & Touche Inc., in its capacity as Information Officer and the members of the New Boards~~, which parties would be entitled to assert indemnification or contribution claims against the Debtors~~ (the "***Indemnification/Contribution Parties***"). The releases of Claims and Causes of Action by Holders of Claims and Interests described in Article IX.C of the Plan (the "***Third-Party Releases***") are an important aspect of the Plan. They are designed to provide finality for the Released Parties regarding the Parties' respective obligations under the Plan. The Ballots and Notice of Non-Voting Status clearly direct all applicable holders of Claims and Interests to Article IX of the Plan for further information about the release provisions. Thus, those holders of Claims and Interests were given due and adequate notice that Third-Party Releases would be

provided under the Plan and the votes in favor of the Plan (or lack of objection thereto, as applicable) indicate such holders' consent to the Third-Party Releases. Specifically, with respect to the Third-Party Releases of the Settlement Parties, such Settlement Parties have played an integral role in the formulation of the deal underlying the Global Settlement Order, which formed the basis for the Plan, and have expended significant time and resources analyzing and negotiating the issues presented by the Debtors' prepetition capital structure, Chapter 11 Cases, and postpetition settlement proposals. As contemplated by *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136 (2d Cir. 2005), the Settlement Parties have provided substantial consideration to the Debtors' Chapter 11 Cases by compromising aspects of their asserted Claims or other legal and/or equitable rights to reach the consensual resolution embodied in the Global Settlement Order that allowed for the maximization and preservation of value for all of the Debtors' creditors and, without which, the Plan would not be possible. ~~Specifically,~~ ***The Court finds that*** absent the foregoing compromises, the potential resulting litigation ***would have been extensive and*** would substantially have reduced the value available for distribution to unsecured creditors due to an increase in administrative costs attendant to such litigation and the likely substantial delay in concluding these Chapter 11 Cases.

36. In addition, absent receiving a release pursuant to the Third-Party Release, the Indemnification/Contribution Parties would have potential Claims for indemnification and contribution against the Debtors for any liabilities incurred in connection with their services to the Debtors, as well as any expenses incurred to defend such liabilities, which would adversely impact the Debtors' estates, including the recovery to the Debtors' unsecured creditors. Further, several of the Indemnification/Contribution Parties are Settlement Parties and thus also, provided

substantial consideration to these Debtors' Chapter 11 Cases in their capacity as such. Thus, the Third-Party Releases are appropriate, important to the success of the Plan and consistent with controlling Second Circuit precedent.

37. Thus, each of the Release, Exculpation, Third-Party Release and Plan Injunctions provisions set forth in the Plan: (a) is within the jurisdiction of the Bankruptcy Court under 28 U.S.C. §§ 1334(a), 1334(b) and 1334(d); (b) is an essential means of implementing the Plan pursuant to Bankruptcy Code section 1123(a)(6); (c) is an integral element of the transactions incorporated into the Plan; (d) confers material benefits on, and is in the best interests of, the Debtors, the Estates and all stakeholders in the Chapter 11 Cases; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Chapter 11 Cases with respect to the Debtors; and (f) is consistent with Bankruptcy Code sections 105, 1123 and 1129, other applicable provisions of the Bankruptcy Code and other applicable law, including controlling Second Circuit caselaw. The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the Release, Exculpation, Third-Party Releases and Plan Injunctions provisions contained in Article IX of the Plan.

38. **Preservation of Claims and Causes of Action.** Article V.X of the Plan appropriately provides for the preservation by the Debtors of the Causes of Action in accordance with Bankruptcy Code section 1123(b)(3)(B). A list of the Retained Causes of Action is provided in the Plan Supplement and such actions are retained pursuant to the Plan. The provisions regarding the Retained Causes of Action in the Plan are appropriate and are in the best interests of the Debtors, the Estates and all holders of Claims and Interests.

i. Section 1123(d)—Cure of Defaults

39. Article VI.B of the Plan provides for the satisfaction of any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan in

accordance with Bankruptcy Code section 365 by payment of any "cure amount" pursuant to the terms thereof. The Debtors, in accordance with the Plan, distributed notices of proposed assumption and proposed cure amounts to the applicable counterparties, which notices included procedures for objecting to and resolving proposed assumptions of Executory Contracts and Unexpired Leases and any cure amounts paid in connection therewith. Accordingly, the requirements of Bankruptcy Code section 1123(d) are satisfied.

ii. Section 1129(a)(2)—Compliance of the Debtors and Others With the Applicable Provisions of the Bankruptcy Code

40. The Debtors, as proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code as required by Bankruptcy Code section 1129(a)(2), including Bankruptcy Code sections 1122, 1123, 1124, 1125, 1126 and 1128 and Bankruptcy Rules 3017, 3018 and 3019.

41. Votes to accept or reject the Plan were solicited by the Debtors and their respective present and former members, partners, representatives, officers, directors, employees, advisors, attorneys and agents after the Bankruptcy Court approved the adequacy of the Disclosure Statement pursuant to Bankruptcy Code section 1125(a).

42. The Debtors and their respective present and former members, partners, representatives, officers, directors, employees, advisors, attorneys and agents have solicited and tabulated votes on the Plan and have participated in the activities described in Bankruptcy Code section 1125 fairly, in good faith within the meaning of Bankruptcy Code section 1125(e) and in a manner consistent with the applicable provisions of the Disclosure Statement and Solicitation Procedures Order, the Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules and all other applicable rules, laws and regulations, and have participated in good faith and in compliance with the applicable provisions of the Disclosure Statement and Solicitation

Procedures Order, the Disclosure Statement, the Bankruptcy Code, the Bankruptcy Rules and all other applicable rules, laws and regulations in the issuance and distribution of the Liquidating Trust Interests, and, if applicable, the Interim TSN Trust Interests and the Interim TSN Warrants, and are therefore entitled to the protections afforded by Bankruptcy Code section 1125(e) and the Release, Exculpation, Third-Party Release and Plan Injunctions provisions set forth in Article IX of the Plan.

43. The Debtors and their respective present and former members, officers, directors, employees, advisors, attorneys and agents have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the offering, issuance and distribution of recoveries under the Plan and, therefore, are not, and on account of such Distributions will not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or Distributions made pursuant to the Plan, so long as such Distributions are made consistent with and pursuant to the Plan. Accordingly, the requirements of Bankruptcy Code section 1129(a)(2) are satisfied.

iii. Section 1129(a)(3)—Proposal of Plan in Good Faith

44. The Debtors have proposed the Plan in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the Plan itself and the process leading to its formulation. The good faith of each of the entities who negotiated the Plan is evident from the facts and records of the Chapter 11 Cases, the Disclosure Statement and the hearing thereon and the record of the Confirmation Hearing and other proceedings held in the Chapter 11 Cases. The Plan is the product of arm's-length negotiations between and among the Settlement Parties. The Plan itself, and the process leading to its formulation, provide independent evidence of the good faith of the Entities who negotiated the

Plan, serve the public interest and assure fair treatment of holders of Claims and Interests. The Settlement Parties negotiated the Plan (following agreement on the terms of the Global Settlement) for the legitimate and honest purpose of maximizing the value of the Debtors' Estates for the benefit of all creditors. Consistent with the overriding purpose of chapter 11 of the Bankruptcy Code, the Chapter 11 Cases were filed by the Debtors, and the Plan was proposed by the Debtors, with the legitimate purpose of maximizing the value of the Debtors' Estates to satisfy their obligations to creditors.

iv. Section 1129(a)(4)—Bankruptcy Court Approval of Certain Payments as Reasonable

45. The procedures set forth in the Plan for the Bankruptcy Court's review and ultimate determination of the fees and expenses to be paid by the Debtors (or the Purchaser pursuant to the terms of the Purchase Agreement) in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, satisfy the objectives of, and are in compliance with, Bankruptcy Code section 1129(a)(4). Accordingly, the requirements of Bankruptcy Code section 1129(a)(4) are satisfied.

v. Section 1129(a)(5)—Disclosure of Identity of Proposed Management, Compensation of Insiders and Consistency of Management Proposals with the Interests of Creditors and Public Policy

46. The Plan complies with the requirements of Bankruptcy Code section 1129(a)(5) because, in the Disclosure Statement, the Plan and/or the Plan Supplement, the Debtors have disclosed the following: (a) the identity of each proposed Director, each proposed Officer and the manner in which additional Officers and Directors of the Reorganized Debtors will be chosen following Confirmation; and (b) the identity of and nature of any compensation for any insider who will be employed or retained by the Reorganized Debtors. The method of appointment of Directors and Officers of the Debtors was, is and will be consistent with the interests of holders

of Claims and Interests and public policy. Accordingly, the requirements of Bankruptcy Code section 1129(a)(5) are satisfied.

vi. Section 1129(a)(6)—Approval of Rate Changes

47. The Plan does not contain any rate changes subject to the jurisdiction of any governmental regulatory commission and therefore will not require governmental regulatory approval. Therefore, Bankruptcy Code section 1129(a)(6) is inapplicable to the Chapter 11 Cases.

vii. Section 1129(a)(7)—Best Interests of Holders of Claims and Interests

48. The liquidation analysis attached as **Exhibit D** to the Disclosure Statement (as amended and restated, the "***Liquidation Analysis***") and the other evidence related thereto in support of the Plan that was proffered or adduced at or prior to, or in affidavits in connection with, the Confirmation Hearing: (a) are reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilize reasonable and appropriate methodologies and assumptions; (c) have not been controverted by other evidence; and (d) establish that, with respect to each Impaired Class, each holder of an Allowed Claim or Interest in such Class has voted to accept the Plan or will receive under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount such holder would receive if the Debtors were liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. Accordingly, the requirements of Bankruptcy Code section 1129(a)(7) are satisfied.

viii. Section 1129(a)(8)—Conclusive Presumption of Acceptance by Unimpaired Classes; Acceptance of the Plan by Each Impaired Class

49. Classes 1 and 2 are each of the Classes of Unimpaired Claims or Interests that are conclusively presumed to have accepted the Plan under Bankruptcy Code section 1126(f).

50. Class 3 is the Class of Impaired Claims and has voted to accept the Plan.

51. Class 4 is Impaired and is receiving no property under the Plan and as such, is presumptively deemed to reject the Plan. Accordingly, with respect to Class 4, the Debtors sought Confirmation under Bankruptcy Code section 1129(b) rather than Bankruptcy Code section 1129(a)(8). Thus, although Bankruptcy Code section 1129(a)(8) has not been satisfied with respect to the Rejecting Class, based upon the record before the Bankruptcy Court, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Class and thus satisfies Bankruptcy Code section 1129(b) with respect to such Class.

ix. Section 1129(a)(9)—Treatment of Claims Entitled to Priority Pursuant to Bankruptcy Code Section 507(a)

52. The treatment of Administrative Claims, Priority Tax Claims and Statutory Fees under Article II of the Plan and the treatment of Allowed Other Priority Claims under Article III of the Plan satisfy the requirements of, and comply in all respects with, Bankruptcy Code section 1129(a)(9). Accordingly, the requirements of Bankruptcy Code section 1129(a)(9) are satisfied.

x. Section 1129(a)(10)—Acceptance by at Least One Impaired Class

53. As set forth in the Voting Certifications, the Impaired Accepting Class has voted to accept the Plan. Specifically, holders of Claims in Class 3 voted to accept the Plan. As such, there is at least one Class of Claims that is Impaired under the Plan and has accepted the Plan, determined without including any acceptance of the Plan by any insider (as defined by the Bankruptcy Code). Accordingly, the requirements of Bankruptcy Code section 1129(a)(10) have been satisfied.

xi. Section 1129(a)(11)—Feasibility of the Plan

54. The Plan satisfies Bankruptcy Code section 1129(a)(11). The evidence supporting the Plan proffered or adduced by the Debtors at, or prior to, or in affidavits filed in connection with, the Confirmation Hearing: (a) is reasonable, persuasive, credible and accurate as of the dates such analysis or evidence was prepared, presented or proffered; (b) utilizes reasonable and appropriate methodologies and assumptions; (c) has not been controverted by other evidence; (d) establishes that the Plan is feasible and Confirmation of the Plan is not likely to be followed by the need for further financial reorganization; and (e) establishes that the Reorganized Debtors and/or the Liquidating Trust will have sufficient funds available to meet their obligations under the Plan. Accordingly, the requirements of Bankruptcy Code section 1129(a)(11) have been satisfied.

xii. Section 1129(a)(12)—Payment of Bankruptcy Fees

55. Article II of the Plan provides that all fees payable pursuant to section 1930 of the United States Judicial Code shall be paid for in full, in Cash, plus interest due and payable under 31 U.S.C. § 3717 (if any), on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtors' business as of the Effective Date. Accordingly, the requirements of Bankruptcy Code section 1129(a)(12) have been satisfied.

xiii. Section 1129(a)(13)—Retiree Benefits

56. Bankruptcy Code section 1129(a)(13) requires a plan to provide for "retiree benefits" (as defined in Bankruptcy Code section 1114) at levels established pursuant to Bankruptcy Code section 1114. Because the Debtors have no retiree benefits obligations, this section of the Bankruptcy Code is inapplicable.

xiv. Sections 1129(a)(14), (15), and (16)—Domestic Support Obligations; Unsecured Claims Against Individual Debtors; Transfers by Nonprofit Organizations

57. None of the Debtors have domestic support obligations, are individuals or are nonprofit organizations. Therefore, Bankruptcy Code sections 1129(a)(14), (15) and (16) do not apply to the Chapter 11 Cases.

xv. Section 1129(b)—Confirmation of Plan Over Nonacceptance of Impaired Class

58. Notwithstanding the fact that the Rejecting Class is deemed to have voted not to accept the Plan, the Plan may be confirmed pursuant to Bankruptcy Code section 1129(b)(1) because (i) Impaired Class 3 has voted to accept the Plan and (ii) the Plan satisfies the requirements of Bankruptcy Code section 1129(b) with respect to Class 4. Specifically, each member of Class 4 will equally receive no distribution under the Plan, so the Plan necessarily does not unfairly discriminate with respect to Class 4 and there is no class junior to Class 4 and as such, no holder of any junior Claim or Interest will receive any recovery under the Plan. Further, no senior Class is receiving more than full recovery on account of its Claims (including Claims for interest and other contractual rights).

59. As a result, the Plan satisfies the requirements of Bankruptcy Code section 1129(b). Thus, the Plan may be confirmed even though Bankruptcy Code section 1129(a)(8) is not satisfied. After entry of the Confirmation Order and upon the occurrence of the Effective Date, the Plan shall be binding upon the members of, and holders of Interests in, the Rejecting Class.

xvi. Section 1129(c)—Only One Plan

60. Other than the Plan (including previous versions thereof), one other plan (including previous versions thereof) had been filed in the Chapter 11 Cases; however, such prior

plan was withdrawn on February 16, 2011. Accordingly, the requirements of Bankruptcy Code section 1129(c) have been satisfied.

xvii. Section 1129(d)—Principal Purpose of the Plan Is Not Avoidance of Taxes

61. No governmental unit has requested that the Bankruptcy Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. As evidenced by its terms, the principal purpose of the Plan is not such avoidance. Accordingly, the requirements of Bankruptcy Code section 1129(d) have been satisfied.

N. Satisfaction of Confirmation Requirements

62. Based upon the foregoing, the Plan satisfies the requirements for confirmation set forth in Bankruptcy Code section 1129.

O. Disclosure: Agreements and Other Documents

63. The Debtors have disclosed all material facts regarding the Plan, the Purchase Agreement and the documents included in the Plan Supplement, including: (a) the Liquidating Trust Agreement; (b) the Interim TSN Trust Agreement; (c) the New Corporate Governance Documents; (d) to the extent known, the identity of the members of the New Boards and the nature and compensation for any Director who is an "insider" under the Bankruptcy Code; (e) to the extent known, the identity of the Officers of the Reorganized Debtors; (f) the Assumed Executory Contract and Unexpired Lease List; and (g) the Rejected Executory Contract and Unexpired Lease List, including the adoption, execution, and delivery of all contracts, leases, instruments, securities, releases, indentures and other agreements related to any such documents.

P. Conditions to Confirmation

64. Pursuant to Article X.A of the Plan, entry of a Final Order, in form and substance acceptable to the Debtors, approving the Disclosure Statement with respect to the Plan as

containing adequate information within the meaning of Bankruptcy Code section 1125, is the only condition precedent to Confirmation. Thus, the condition precedent to Confirmation has been satisfied.

Q. Likelihood of Satisfaction of Conditions Precedent to the Effective Date

65. Each of the conditions precedent to the Effective Date, as set forth in Article X.B of the Plan, subject to regulatory approvals, are reasonably likely to be satisfied or, as set forth in and subject to the terms of the Plan, may be waived by the Debtors; *provided* that the Debtors may not waive the condition precedent to the Effective Date listed in Article X, Section B(7) to the Plan without the prior written consent of the Creditors' Committee and of the Purchaser, which consent may be given, or not, in the Creditors' Committee's or the Purchaser's sole discretion, respectively.

R. Implementation

66. All documents and agreements necessary to implement the Plan, including those contained in the Plan Supplement, and all other relevant and necessary documents have been negotiated in good faith, at arm's-length, and are in the best interests of the Debtors and the Reorganized Debtors and shall, upon completion of documentation and execution be valid, binding and enforceable documents and agreements not in conflict with any federal, provincial or state law.

S. Corporate Action

67. Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including: (a) entry into the New Employment Agreements; (b) selection of the Directors and Officers of the Reorganized Debtors; (c) the establishment of the Disputed Claims Reserve; and (d) all other actions contemplated by the Plan (whether to occur before, on or after the Effective Date). All matters provided for in the Plan

involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with implementation of the Plan shall be deemed to have occurred and shall be in effect upon the Effective Date (except for the Interim TSN Trust, which shall only be implemented, if at all, pursuant to the terms of the Plan), without any requirement of further action by the Debtors, the Reorganized Debtors, or any of their respective directors or officers.

T. Executory Contracts and Unexpired Leases

68. The Debtors have exercised reasonable business judgment in determining whether to assume or reject each of their Executory Contracts and Unexpired Leases as set forth in the Plan, the Plan Supplement, this Confirmation Order or otherwise (including the Sale Order) and such determinations with respect to the Debtors' Executory Contracts and Unexpired Leases were done in accordance with the Sale Order. Each assumption or rejection of an Executory Contract or Unexpired Lease in accordance with the Plan, the Plan Supplement, this Confirmation Order or otherwise (including the Sale Order) shall be legal, valid and binding upon (a) the applicable Debtor and upon the Reorganized Debtors if such Executory Contract or Unexpired Lease is assumed and (b) all non-Debtor parties to such Executory Contract or Unexpired Lease, all to the same extent as if such assumption or rejection had been authorized and effectuated pursuant to a separate order of the Bankruptcy Court that was entered pursuant to Bankruptcy Code section 365 before Confirmation.

U. Approval of the Liquidating Trust Agreement

69. The proposed terms and conditions of the Liquidating Trust Agreement are fair and reasonable and are approved. The Liquidating Trust Agreement is an essential element of the Plan, and entry into and consummation of the transactions contemplated by the Liquidating Trust Agreement are in the best interests of the Debtors, the Debtors' Estates and holders of

Claims, and are approved in all respects. The Debtors have exercised reasonable business judgment in determining to enter into the Liquidating Trust Agreement and have provided sufficient and adequate notice of the Liquidating Trust Agreement. The Debtors are authorized, without any further notice to, or action, order or approval of, the Bankruptcy Court, to execute and deliver all agreements, documents, instruments and certificates relating thereto and to perform their obligations thereunder. The terms and conditions of the Liquidating Trust Agreement have been negotiated in good faith, at arm's length, are fair and reasonable, and are approved. The Liquidating Trust Agreement shall, upon execution, be valid, binding and enforceable, and shall not be in conflict with any federal or state law.

V. Approval of the Interim TSN Trust Agreement, the Issuance of Interim TSN Warrants and Approval of the Interim TSN Warrant Agreement

70. To the extent the provisions of Exhibit 3 to the Plan are triggered pursuant to Article V.G. thereof, the Debtors are authorized, without any further notice to, or action, order or approval of, the Bankruptcy Court, to execute and deliver all agreements, documents, instruments and certificates relating to their entry into the Interim TSN Trust Warrant Agreement and to perform their obligations thereunder, including the issuance of the Interim TSN Warrants. The terms and conditions of the Interim TSN Warrant Agreement have been negotiated in good faith, at arm's length, are fair and reasonable and are approved. The Interim TSN Warrant Agreement shall, upon execution, be valid, binding and enforceable, and shall not be in conflict with any federal or state law.

W. Retention of Jurisdiction

71. The Bankruptcy Court properly may retain jurisdiction over the matters set forth in (a) Article XII and other applicable provisions of the Plan, (b) the Liquidating Trust

Agreement, (c) the Interim TSN Trust Agreement, and (d) all other documents included in the Plan Supplement.

II. ORDER

BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

72. This Confirmation Order shall confirm the Plan. A copy of the Plan is attached hereto as **Exhibit A**.

73. Confirmation of the Plan. The Plan and the Plan Supplement (as such may be amended by this Confirmation Order or in accordance with the Plan) and each of their provisions are confirmed in each and every respect pursuant to Bankruptcy Code section 1129. The documents contained in the Plan Supplement, and any amendments, modifications and supplements thereto, and all documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to in such papers), and the execution, delivery and performance thereof by the Debtors and the Reorganized Debtors, are authorized and approved as finalized, executed and delivered. Without further order or authorization of the Bankruptcy Court, the Debtors, the Reorganized Debtors, the Liquidating Trustee, the Interim TSN Trust Board (as necessary), any other person necessary to take any actions to effectuate the provisions of the Plan, and their successors are authorized and empowered to make all modifications to all documents included as part of the Plan Supplement that are consistent with the Plan. As set forth in the Plan, once finalized and executed and upon the occurrence of the Effective Date, the documents comprising the Plan Supplement and all other documents contemplated by the Plan shall constitute legal, valid, binding and authorized obligations of the respective parties thereto, enforceable in accordance with their terms.

74. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

75. The terms of the Plan, the Plan Supplement and exhibits thereto are incorporated by reference into, and are an integral part of, this Confirmation Order. The terms of the Plan, the Plan Supplement, all exhibits thereto, and all other relevant and necessary documents, shall be effective and binding as of the Effective Date of the Plan.

76. Plan Modifications. Subsequent to filing the Plan on December 27, 2011, the Debtors made certain non-material modifications to the Plan (the "***Plan Modifications***"), which are reflected in the version of the Plan attached hereto as **Exhibit A**. Except as provided for by law, contract or prior order of this Bankruptcy Court, none of the modifications made since the commencement of solicitation adversely affects the treatment of any Claim against or Interest in any of the Debtors under the Plan. The filing with the Bankruptcy Court of the Plan as modified by the Plan Modifications and the disclosure of the Plan Modifications on the record at the Confirmation Hearing constitute due and sufficient notice thereof. Accordingly, pursuant to Bankruptcy Code section 1127(a) and Bankruptcy Rule 3019, none of these modifications require additional disclosure under Bankruptcy Code section 1125 or resolicitation of votes under Bankruptcy Code section 1126 (especially in light of previously provided disclosures), nor do they require that holders of Claims or Interests be afforded an opportunity to change

previously cast acceptances or rejections of the Plan. The Plan as modified and attached hereto shall constitute the Plan submitted for Confirmation by the Bankruptcy Court.

77. Deemed Acceptance of Plan as Modified. In accordance with Bankruptcy Code section 1127 and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

78. Plan Classification Controlling. The terms of the Plan shall govern the classification of Claims and Interests for purposes of the Distributions to be made thereunder. The classifications set forth on the ballots tendered to or returned by the holders of Claims or Interests in connection with voting on the Plan pursuant to the Disclosure Statement and Solicitation Procedures Order: (a) were set forth on the ballots for purposes of voting to accept or reject the Plan; (b) in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Interests under the Plan for Distribution purposes; (c) may not be relied upon by any holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for Distribution purposes; and (d) shall not be binding on the Debtors, Reorganized Debtors or Liquidating Trustee except for voting purposes.

79. Administrative Claims Bar Date. Except as otherwise provided in Article II of the Plan, requests for payment of Administrative Claims must be filed and served on the Reorganized Debtors and the Purchaser pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order (the "***Notice of Confirmation***") attached hereto as **Exhibit B**, no later than 45 days after the Effective Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such

Administrative Claims by such date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors or Reorganized Debtors, the Purchaser, the Liquidating Trust and the Liquidating Trust Assets, or their respective property, and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be filed and served on the Reorganized Debtors and the requesting party no later than 90 days after the Effective Date. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim previously Allowed by Final Order, including all Administrative Claims expressly Allowed under this Plan.

80. The Reorganized Debtors or the Purchaser, in consultation with the Creditors' Committee or the Liquidating Trustee, as applicable, may settle and pay any Administrative Claim in the ordinary course of business without any further notice to or action, order or approval of the Bankruptcy Court. In the event that any party with standing objects to an Administrative Expense Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. For the avoidance of doubt, all Administrative Claims shall be paid in accordance with the Purchase Agreement.

81. General Settlement of Claims and Interests. As one element of, and in consideration for, an overall negotiated settlement of numerous disputed Claims and issues embodied in the Plan, pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 1123 and in consideration for the classification, Distributions, Releases and other benefits provided under the Plan, the provisions of the Plan shall, upon Consummation, constitute a good-faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to the

Plan. Subject to Article VII, all Distributions made pursuant to the Plan to holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

82. Approval of Settlements. The settlements provided in Article V of the Plan are expressly approved in all respects pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 1123, and the Debtors and the Reorganized Debtors are authorized, without further approval of this Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating to such settlements and to perform their obligations thereunder.

83. In addition to (and as part of) those settlements provided in Article V of the Plan, in full and final satisfaction of its Claims [Claim Nos. 143 and 144], the Texas Comptroller of Public Accounts (the "***Texas Comptroller***") shall be entitled to an Allowed Priority Tax Claim in the amount of $147,004.66 (the "***Texas Priority Tax Claim***") in respect of tax liabilities incurred during the period from October 1, 2007 through October 19, 2010, and an Allowed Administrative Claim in the amount of $42,701.82 (the "***Texas Administrative Claim***") in respect of tax liabilities incurred during the period from October 20, 2010 through September 30, 2011, which Texas Priority Tax Claim and Texas Administrative Claim will be paid on or as soon as reasonably practicable after the Effective Date in accordance with Article II of the Plan; *provided, however*, that, if the Effective Date has not occurred as of June 30, 2012, the Texas Comptroller shall be entitled to assert an additional Administrative Claim for postpetition interest, which interest will be calculated at 4.25% per annum on the amount of the Texas Administrative Claim, and which interest will begin accruing on July 1, 2012. For the avoidance of doubt, even if the Effective Date has not occurred by June 30, 2012, the Texas Comptroller shall not be entitled to any Claim for postpetition interest (other than any amounts on account of

interest already included in the Texas Administrative Claim) that may otherwise have accrued from the Petition Date through and including June 30, 2012. This settlement was negotiated in good faith, at arm's-length, and represents a fair and reasonable settlement of the Texas Comptroller's claims, in light of the various risks and costs to fully litigating whether the Texas Comptroller would be entitled to additional interest and penalties.

84. Operation as of the Effective Date. As of the Effective Date, unless otherwise provided in the Plan, the Plan Supplement or this Confirmation Order, the Reorganized Debtors may, consistent with and in accordance with the Plan, operate their businesses and may use, acquire and dispose of property and settle and compromise Claims and Interests without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code.

85. Discharge of Debtors and Certain Other Parties. Except as otherwise specifically provided in the Plan, the Plan Supplement or this Confirmation Order, pursuant to Bankruptcy Code section 1141(d), the Distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, release and discharge, effective as of the Effective Date, of all Claims, Interests and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Interests in, the Debtors, their Estates, the Purchaser, the Liquidating Trust and the Liquidating Trust Assets, or any of their respective assets or property, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, any contingent or

non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i), in each case whether or not: (1) a Proof of Claim or Interest based upon such Claim, debt, right or Interest is filed or deemed filed pursuant to Bankruptcy Code section 501; (2) a Claim or Interest based upon such Claim, debt, right or Interest is Allowed pursuant to Bankruptcy Code section 502; or (3) the holder of such a Claim or Interest has accepted the Plan; *provided* that, notwithstanding the foregoing, nothing in the Plan, the Plan Supplement or this Confirmation Order shall release or discharge any of the parties to the Purchase Agreement from any liabilities or obligations arising under the Purchase Agreement. Except as otherwise provided herein, any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed before or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. This Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

86. Releases by the Debtors. As provided for in Article IX.B of the Plan, pursuant to Bankruptcy Code section 1123(b), and except as otherwise specifically provided in the Plan or the Plan Supplement, the Debtor Releases in the Plan are approved.

87. Releases by Holders of Claims and Interests. As provided for in Article IX.C of the Plan, as of the Effective Date, the Third-Party Releases in the Plan are approved in light of the findings of fact and conclusions of law set forth herein.

88. Exculpation. The exculpations set forth in Article IX.D. of the Plan are hereby approved and authorized.

89. Injunction. From and after the Effective Date, and as contemplated in Article IX.F of the Plan, all Entities are permanently enjoined from commencing or continuing in any manner, any Cause of Action released or to be released pursuant to the Plan or this Confirmation Order.

90. Notwithstanding anything contained in the Confirmation Order or the Plan to the contrary, nothing in the Plan or Confirmation Order shall discharge, release, or otherwise preclude: (1) any liability of the Debtors or Reorganized Debtors to the United States, its agencies, departments, or agents (collectively, the "***U.S. Government***") arising on or after the Effective Date; (2) any liability to the U.S. Government that is not a "claim" within the meaning of Bankruptcy Code section 101(5); (3) any valid right of setoff or recoupment of the U.S. Government against any of the Debtors; or (4) any liability of the Debtors or Reorganized Debtors under environmental law to any governmental unit as the owner or operator of property that such entity owns or operates after the Effective Date. Moreover, nothing in the Confirmation Order or the Plan shall release or exculpate any non-Debtor, including any Released Party and/or Exculpated Party, from any liability to the U.S. Government, including but not limited to any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws against any Released Party and/or Exculpated Party, nor shall anything in this Confirmation Order or the Plan enjoin the U.S. Government from bringing any claim, suit, action or other proceeding against any non-Debtor, including any Released Party and/or Exculpated Party, for any liability whatsoever; *provided, however*, that the foregoing sentence shall not limit the scope of discharge granted to the Debtors or Reorganized Debtors under Bankruptcy Code sections 524 and 1141.

91. As to the U.S. Government, nothing in the Plan or Confirmation Order shall limit or expand the scope of discharge or injunction to which the Debtors or Reorganized Debtors are entitled under the Bankruptcy Code. The discharge and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar the U.S. Government from, subsequent to the Effective Date, pursuing any police or regulatory action.

92. Distributions. Notwithstanding anything contained in the Plan, the Plan Supplement or this Confirmation Order, as of the entry of this Confirmation Order, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes made to reflect any new record holders of any Claims or Interests. The Debtors, the Liquidating Trustee and the Indenture Trustee shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date; provided, however, the Liquidating Trustee may choose, in its sole discretion, to recognize a transfer of any Claim upon presentation of appropriate and acceptable documentation.

93. Establishment of the Liquidating Trust. On the Effective Date, the Liquidating Trust will be established and become effective for the benefit of the holders of Allowed Claims entitled to Distributions from the Liquidating Trust under the Plan and for the purpose of, among other things: (a) administering the Liquidating Trust Assets; (b) resolving all Disputed Claims; (c) pursuing or abandoning Retained Causes of Action; and (d) making all required Distributions to the Liquidating Trust Beneficiaries as provided for under the Plan and the Liquidating Trust Agreement. The Liquidating Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulation section 301.7701-4(d) and as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), with no objective to continue or engage in the conduct of a trade

or business. The Liquidating Trust shall not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth in the Plan or in the Liquidating Trust Agreement. On the Effective Date, the Debtors shall transfer the Liquidating Trust Assets then in their possession to the Liquidating Trust. To the extent that certain Liquidating Trust Assets become available on a date after the Effective Date, such Liquidating Trust Assets will be transferred to the Liquidating Trust within five (5) Business Days of the date that such Liquidating Trust Assets become available. The Liquidating Trust Assets may be transferred subject to certain liabilities, as provided in the Plan or the Liquidating Trust Agreement. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax, pursuant to Bankruptcy Code section 1146(a). Upon delivery of the Liquidating Trust Assets to the Liquidating Trust, the Debtors their Estates, the Purchaser, the Liquidating Trust and the Liquidating Trust Assets, and their respective predecessors, successors and assigns shall be discharged and released from all liability with respect to the delivery of such Distributions. The Liquidating Trustee and the Liquidating Trust Board shall thereafter be authorized and appointed to take all actions necessary to operate the Liquidating Trust pursuant to the terms of the Liquidating Trust Agreement.

94. Establishment of Interim TSN Trust and Issuance of Interim TSN Warrants. In the event that the Closing Date does not occur on or before the Effective Date, pursuant to the terms of the Plan, Exhibit 3 to the Plan will be triggered, in which case, on the Effective Date and subject to Bankruptcy Court and any other necessary regulatory approvals, the Interim TSN Trust will be established and become effective for the benefit of the holders of Allowed Claims entitled to Distributions from the Interim TSN Trust under the Plan and pursuant to the Interim TSN Trust Agreement. On the Effective Date, the holders of Allowed Unsecured Claims will, at

their option, receive the Interim TSN Warrants or the Cash equivalent to such holder's share of the Interim TSN Warrants. All Interim TSN Warrants shall be issued at an exercise price of $0.01, which shall be permitted to be exercised pursuant to and subject to the limitations of the Interim TSN Warrant Agreement. On or before the Effective Date, the Interim TSN Warrant Agreement shall be executed. To the extent the Interim TSN Trust is established, the Interim TSN Warrants will be available for Distribution to the holders of Allowed Claims entitled to Distributions from the Interim TSN Trust under the Plan, and the Interim TSN Trust Agreement. The Interim TSN Trust Board shall thereafter be authorized and empowered to take all actions necessary to operate the Interim TSN Trust.

95. After the Closing Date, all Retained Assets of Reorganized TSN will be contributed to the Liquidating Trust as determined by the Debtors or Reorganized Debtors in consultation with the Creditors' Committee or the Liquidating Trustee, as applicable (or by the Bankruptcy Court if the foregoing parties do not agree). As soon as practicable after the Closing Date, each Reorganized Debtor will be wound up and dissolved. The New Common Stock will not, at any time, be distributed to the holders of the Interim TSN Warrants or Interim TSN Trust Interests.

96. The Interim TSN Trust (to the extent established pursuant to the Plan) shall terminate as soon as practicable after Closing, but in no event later than the second anniversary of the Effective Date; provided that, on or after the date that is less than thirty (30) days before such termination date, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Interim TSN Trust for a finite period if such an extension is necessary to complete any pending matters required under the Interim TSN Trust Agreement provided that the aggregate of all extensions shall not exceed two years, unless the Interim TSN Trust Board

receives an opinion of counsel or a favorable ruling from the Internal Revenue Service to the effect that any such extension would not adversely affect the status of the Interim TSN Trust as a liquidating trust within the meaning of Section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. Notwithstanding the foregoing, extensions beyond two years in the aggregate may be obtained so long as the conditions in the preceding sentence are met no more than six months prior to the expiration of the then-current termination date of the Interim TSN Trust. There will not be any distribution of assets, i.e., the New Common Stock, by the Interim TSN Trust to holders of the Interim TSN Trust Interests.

97. Section 1145 Exemption. To the extent that the Interim TSN Trust Interests, Interim TSN Warrants (each, in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. of the Plan) and the Liquidating Trust Interests constitute "securities," the exemption provisions of Bankruptcy Code section 1145 shall apply to the Interim TSN Trust Interests, Interim TSN Warrants (each, in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. of the Plan) and Liquidating Trust Interests to the maximum extent permitted by law without further act or action by any person.

98. Key Employee Incentive Plan Payments. On or as soon as reasonably practicable after April 15, 2012 (to the extent that the Effective Date has not yet occurred), the Key Executives shall be entitled to receive, and the Confirmation Order shall serve as the Debtors' authority to pay to the Key Executives, the Partial KEIP Payment. For the avoidance of doubt, the Partial KEIP Payment (and any subsequent payments pursuant to the Initial KEIP Order or Amended KEIP Order) shall be paid from the Working Capital Fund. The balance of any compensation due to the Key Executives and the Senior Employees pursuant to the Initial KEIP Order, as modified by the terms and conditions of the Amended KEIP Order, as applicable,

including the potential disgorgement of amounts paid pursuant to the Amended KEIP Order on the terms provided therein, will be paid to such employees on the Effective Date.

99. Vesting of Assets in the Reorganized Debtors. Except as otherwise provided in the Plan, the Plan Supplement, this Confirmation Order, the Purchase Agreement, the Sale Order, or any agreement, instrument or other document incorporated therein, on the Effective Date, any and all property in each Estate and all Causes of Action (except those released pursuant to the Releases by the Debtors) shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances; provided that to the extent the Acquired Assets have been transferred to the Purchaser on or before the Effective Date, solely the Retained Assets will vest in each respective Reorganized Debtor; provided further that notwithstanding the foregoing, the Reorganized Debtors shall be obligated to transfer the Liquidating Trust Assets to the Liquidating Trust pursuant to the terms of the Plan and the Liquidating Trust Agreement. On and after the Effective Date, each Reorganized Debtor will operate its business in accordance with the terms hereof, the Plan, the Plan Supplement, the Purchase Agreement and the Sale Order, and, subject to such documents, it may use, acquire or dispose of property, and compromise or settle any Claims, Interests or Causes of Action free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

100. Effectuating Documents; Further Transactions. On and after the Effective Date, the Reorganized Debtors, the Liquidating Trustee and, as applicable, the Interim TSN Board, and the managers, officers and members of the Boards of Directors of each of the foregoing, are authorized to issue, execute, deliver, file or record such contracts, securities, instruments, releases, and other agreements or documents related to the foregoing, and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and

conditions of the Plan, and the securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, the Liquidating Trust or, as applicable, the Interim TSN Trust, without the need for any approvals, authorization or consents except for those expressly required pursuant to the Plan. The authorizations and approvals contemplated in the Plan shall be effective notwithstanding any requirements under nonbankruptcy law.

101. Approval of Consents and Authorization to Take Acts Necessary to Implement Plan. Pursuant to Bankruptcy Code section 1142(b), section 303 of the Delaware General Corporation Law, and any other applicable provision of the business corporation laws of any applicable jurisdiction, each of the Debtors and the Reorganized Debtors is hereby authorized and empowered, without further notice to or action, order, or approval of the Bankruptcy Court or further action by the respective officers, directors, members, or stockholders of the Debtors or the Reorganized Debtors, to take such actions and to perform such acts as may be necessary, desirable, or appropriate to comply with, implement, or execute the Plan, the documents and agreements included as exhibits to the Plan Supplement, all other documents relating to the Plan, all documents, instruments, and agreements related thereto, and all annexes, exhibits, and schedules appended thereto, and the obligations thereunder shall constitute legal, valid, binding and authorized obligations of each of the respective parties thereto, enforceable in accordance with their terms. On the Effective Date, the appropriate Officers of the Reorganized Debtors and members of the Boards of directors of the Reorganized Debtors are authorized and empowered to issue, execute, and deliver the agreements, documents, securities, and instruments contemplated by the Plan, the documents and agreements included as exhibits to the Plan Supplement, all other documents relating to the Plan, all documents, instruments, and agreements related thereto, and all annexes, exhibits and schedules appended thereto in the name of and on behalf of the

Reorganized Debtors. On the Effective Date, or as soon thereafter as is practicable, the Reorganized Debtors shall file their amended certificates or articles of incorporation with the applicable governmental entity in which each such entity is (or will be) organized, as applicable, in accordance with the applicable general business law of each such jurisdiction.

102. This Confirmation Order shall constitute all approvals and consents required, if any, by the federal, provincial or state laws, rules and regulations and any other governmental authority with respect to the implementation or consummation of the Plan, the documents and agreements included as exhibits to the Plan Supplement, all other documents relating to the Plan, all documents, instruments, and agreements related thereto, and all annexes, exhibits, and schedules appended thereto, and any other acts and transactions referred to in or contemplated by the Plan.

103. Each of the Debtors and the Reorganized Debtors is hereby authorized and empowered, without further notice to or action, order, or approval of the Bankruptcy Court or further action by the respective officers, directors, members or stockholders of the Debtors or the Reorganized Debtors, except as set forth in the Plan, or the Plan Supplement, to remove, elect, or appoint, as the case may be, Directors and Officers of the Debtors or the Reorganized Debtors.

104. Regulatory Approval for Transfer of Licenses. Notwithstanding any other provision in the Plan, the Plan Supplement, the Sale Order, or this Confirmation Order, no transfer of control and/or assignment of any rights and interests of the Debtors in any federal license issued by the FCC, or Industry Canada, shall take place prior to the issuance of FCC or Industry Canada regulatory approval for such transfer of control and/or assignment pursuant to the Communications Act of 1934, and the rules and regulations promulgated thereunder.

105. Section 1146 Exemption from Certain Taxes and Fees. Pursuant to Bankruptcy Code section 1146(a), any transfers of property in contemplation of, in connection with, or pursuant to the Plan and/or the Purchase Agreement shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States or Canada, and this Confirmation Order shall direct and be deemed to direct the appropriate federal, provincial, state or local governmental officials or agents to forego the collection of any such 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 tax or governmental assessment. Such exemption specifically applies, without limitation, to: (1) the transfer of the Acquired Assets to the Purchaser pursuant to the Purchase Agreement; (2) the transfer of the Liquidating Trust Assets to the Liquidating Trust; (3) the creation of any mortgage, deed of trust, lien or other security interest; (4) the making or assignment of any lease or sublease; (5) any Restructuring Transaction; or (6) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including: (a) any merger agreements; (b) agreements of consolidation, restructuring, disposition, liquidation or dissolution; (c) deeds; or (d) assignments executed in connection with any transaction occurring under the Plan.

106. Assumption and Rejection of Executory Contracts and Unexpired Leases. Except as otherwise provided in the Plan, in the Plan Supplement, in the Purchase Agreement, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, each of the Debtors' Executory Contracts and Unexpired Leases (including the Designated Contracts) shall be deemed assumed as of the Effective Date, unless such Executory Contract or Unexpired Lease: (1) was assumed or rejected previously by the

Debtors; (2) expired or terminated pursuant to its own terms before the Effective Date; (3) is the subject of a motion to assume filed on or before the Effective Date; or (4) is identified on the Rejected Executory Contract and Unexpired Lease List.

107. Entry of this Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases, as set forth in the Plan, all pursuant to Bankruptcy Code sections 365(a) and 1123. To the extent not already included in the Sale Order with regard to any Designated Contract, the Confirmation Order shall constitute an order of the Bankruptcy Court, approving (i) the assumption and assignment, or rejection, as the case may be, of Executory Contracts and Unexpired Leases, as described above, pursuant to Bankruptcy Code sections 365(a) and 1123(b)(2), (ii) that the Reorganized Debtors had properly provided for the cure of any defaults that might have existed, (iii) that each assumption and assignment was in the best interest of the Reorganized Debtors, their Estates and all parties in interest in the Chapter 11 Cases, and (iv) the requirements for assumption and assignment of any Executory Contract or Unexpired Lease to be assumed had been satisfied. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order, but not assigned to a third party before the Effective Date, shall revest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order.

108. Notwithstanding anything to the contrary in the Plan, but subject to the Purchase Agreement and the Sale Order, the Debtors, in consultation with the Creditors' Committee and the Liquidating Trustee, as applicable, reserve the right to alter, amend, modify or supplement

the Rejected Executory Contract and Unexpired Lease List in the Plan Supplement at any time before the Effective Date; *provided* that to the extent that, as of the Effective Date, there is any pending dispute between one or more of the Debtors and a counterparty to an Executory Contract or Unexpired Lease regarding such counterparty's Cure Claim, the Debtors and Reorganized Debtors shall reserve the right to add the applicable Executory Contract or Unexpired Lease to the Rejected Executory Contract and Unexpired Lease List following the resolution of such dispute, in which event such Executory Contract or Unexpired Lease shall be deemed rejected and such counterparty shall have any and all rights with respect thereto.

109. The Stipulation and Order Regarding the Assumption of Contracts Between TerreStar Networks, Inc. and Space Systems/Loral, Inc. dated as of July 7, 2011 (the "***Stipulation***"), which was "So Ordered" by this Bankruptcy Court on July 7, 2011 [Docket No. 671], is incorporated by reference into the Plan and this Confirmation Order as if fully set forth in the Plan and this Confirmation Order. To the extent of any inconsistency between (a) any other provision of the Plan or this Confirmation Order and (b) any provision of the Stipulation, the Stipulation shall govern.

110. Claims Based on 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, if any, **must be filed with the Bankruptcy Court within 30 days after the date of entry of an order of the Bankruptcy Court (including this Confirmation Order) approving such rejection.** Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates, the Purchaser, the Liquidating Trust and the Liquidating Trust

Assets or their respective property without the need for any objection by the Reorganized Debtors or further notice to, or action, order or approval of, the Bankruptcy Court. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as Unsecured Claims against the applicable Debtor and shall be treated in accordance with Article III of the Plan. **The deadline to object to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to this Confirmation Order, if any, shall be the later of (a) 210 days following the date of entry of the Confirmation Order and (b) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.**

111. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed. Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, in consultation with the Creditors' Committee or Liquidating Trustee, as applicable, pursuant to Bankruptcy Code section 365(b)(1), by payment of the default amount in Cash on the Effective Date, subject to the limitations described below and in Article VI.B of the Plan, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding: (a) the amount of any payments to cure such a default; (b) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of Bankruptcy Code section 365) under the Executory Contract or Unexpired Lease to be assumed; or (c) any other matter pertaining to assumption, the cure payments required by Bankruptcy Code section 365(b)(1) shall be made no later than ten (10) Business Days following the entry of a Final Order or orders resolving the dispute and approving the assumption.

112. **Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of the assumption.**

113. Provisions Governing Distributions. The Distribution provisions of Article VII of the Plan are hereby approved and authorized in their entirety. Except as otherwise set forth in the Plan, the Liquidating Trustee, Interim TSN Board and the Reorganized Debtors, as applicable, shall make all Distributions required under the Plan. For tax purposes, Distributions in full or partial satisfaction of Allowed Claims shall be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims.

114. Notwithstanding anything contained in the Plan, the Plan Supplement or this Confirmation Order, the Liquidating Trustee will serve as Disbursing Agent to facilitate distributions to holders of Allowed Class 3 Claims pursuant to the Plan. In the event that Exhibit 3 of the Plan is triggered pursuant to Article V.G. thereof, the Interim TSN Trust Board shall make Distributions to holders of Claims in Class 3 when, and as authorized, pursuant to the Interim TSN Warrant Agreement and in compliance with the Plan.

115. Release of Liens. Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document created pursuant to the Plan (and except as may already have occurred pursuant to previous Bankruptcy Court or Canadian Court orders in these Cases), on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan, and, in the case of a Secured Claim, satisfaction in full of the portion of the

Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Reorganized Debtor and its successors and assigns. For the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or the Canadian Court, or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code or the Personal Property Security Act (Ontario), or in accordance with any other real or personal property registry system in any of the applicable provinces in Canada.

116. Failure of Consummation. If the Effective Date of the Plan does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtors; (b) prejudice in any manner the rights of the Debtors, any holders of Claims or Interests, or any other Entity; or (c) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any holders of Claims or Interests, or any other Entity in any respect.

117. Retention of Jurisdiction. Notwithstanding the entry of this Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases and all matters arising out of or related to the Chapter 11 Cases and the Plan, the Liquidating Trust Agreement, and the Interim TSN Trust

Agreement, including jurisdiction with respect to those items enumerated in Article XII of the Plan, which are incorporated herein by reference.

A. Immediate Binding Effect

118. Immediate Binding Effect. The stays provided under Bankruptcy Rules 3020(e), 6004(h) and/or 7062 are hereby waived. Subject to Article X.B of the Plan, and notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors and any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

119. Conflicts. Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement and Solicitation Procedures Order or any other order (other than this Confirmation Order, the Sale Order or the Global Settlement Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are, in any way, inconsistent with any provision of the Plan, the Plan shall govern and control; *provided, however*, that, if there is a conflict between this Plan and a Plan Supplement document, the Plan Supplement document shall govern and control; and provided further, however, that, to the extent that any provision of the Plan conflicts with or is, in any way, inconsistent with any provision of this Confirmation Order, this Confirmation Order shall govern and control. Additionally, to the extent that any provision of the Plan or Confirmation Order conflicts with or is in any way inconsistent with any provision of the Sale Order, the

Purchase Agreement or the Global Settlement Order, the Sale Order, the Purchase Agreement or the Global Settlement Order, as applicable, shall govern and control.

120. Notice of Entry of the Confirmation Order. In accordance with Bankruptcy Rules 2002 and 3020(c), (a) within ten (10) Business Days of the date of entry of this Confirmation Order, the Debtors shall serve the Notice of Confirmation, substantially in the form attached hereto as **Exhibit B** and (b) within ten (10) Business Days of the occurrence of the Effective Date pursuant to the terms of the Plan, the Debtors shall serve the notice of Effective Date, substantially in the form attached hereto as **Exhibit C** (the "***Notice of Effective Date***") by United States mail, first-class postage prepaid, by hand, or by overnight courier service to all parties served with the notice of the Confirmation Hearing; *provided, however*, that no notice or service of any kind shall be required to be mailed or made upon any Entity to whom the Debtors mailed 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 Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity's new address.

121. To supplement the notice described in the preceding paragraph, within twenty (20) Business Days of serving the Notice of Effective Date, the Debtors shall publish the Notice of Effective Date once in *The Wall Street Journal (National Edition)*, *USA Today (National Edition)* and *The Global and Mail (National Edition)*.

122. Mailing and publication of the Notice of Confirmation and the Notice of Effective Date in the time and manner set forth herein shall be good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice shall be necessary or required.

123. The Notice of Confirmation and the Notice of Effective Date shall have the effect of an order of the Bankruptcy Court, shall constitute sufficient notice of the entry of this Confirmation Order to such filing and recording officers, and shall be a recordable instrument notwithstanding any contrary provision of applicable nonbankruptcy law.

124. Professional Compensation. All final requests for Accrued Professional Compensation shall be filed no later than 45 days after the Effective Date, or any other date scheduled by the Bankruptcy Court. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Accrued Professional Compensation shall be determined by the Bankruptcy Court.

125. Objections to any Claim for Accrued Professional Compensation must be filed and served on the Reorganized Debtors, the Creditors' Committee, the Office of the U.S. Trustee and the requesting party no later than the earlier of (a) 30 days after such application is filed or (b) 75 days after the Effective Date. All Accrued Professional Compensation and all claims for professional compensation sought under Bankruptcy Code section 503(b) shall be paid either by the Debtors or the Purchaser pursuant to the terms of the Purchase Agreement.

126. Dissolution of the Creditors' Committee. On the Effective Date, the Creditors' Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from the Chapter 11 Cases. The retention and employment of the Professionals retained by the Creditors' Committee shall terminate as of the Effective Date; *provided, however*, that the Creditors' Committee shall exist, and its Professionals shall be retained, after such date with respect to (a) all applications and objections filed, and any related hearing, pursuant to Bankruptcy Code sections 330 and 331

and (b) enforcement of the provisions of the Purchase Agreement, the Global Settlement Order, the Plan or this Confirmation Order.

127. References to Plan Provisions. The failure specifically to include or to refer to any particular article, section or provision of the Plan, Plan Supplement or any related document in this Confirmation Order shall not diminish or impair the effectiveness of such article, section or provision, it being the intent of the Bankruptcy Court that the Plan and any related documents be confirmed and approved in their entirety.

128. Nonseverability of Plan Provisions Upon Confirmation. Each term and provision of the Plan, and the transactions related thereto as it heretofore may have been altered or interpreted by the Bankruptcy Court is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and the transactions related thereto and may not be deleted or modified except by the Debtors, who reserve the right to modify the Plan as to material terms pursuant to Article XI of the Plan; and (c) nonseverable and mutually dependent.

129. Final Order and Appeals. This Confirmation Order is a final order, and the time period by which any party in interest wishing to appeal entry of this Confirmation Order shall run from the date of the entry of this Confirmation Order.

130. Authorization to Consummate. The Debtors and the Reorganized Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction or waiver (by the required parties and with appropriate notice, if any) of the conditions precedent to the Effective Date set forth in Article X.B of the Plan.

Dated: February 15, 2012
New York, New York

/s/ Sean H. Lane
United States Bankruptcy Judge

Exhibit A

Confirmation Version of the Plan

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Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR NETWORKS INC., *et al.*,[1]	)	Case No. 10-15446 (SHL)
Debtors.	)	Jointly Administered

JOINT CHAPTER 11 PLAN OF TERRESTAR NETWORKS INC., *ET AL.*

Dated: February 14, 2012

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are TerreStar Networks Inc. (3931); TerreStar License Inc. (6537); TerreStar National Services Inc. (6319); TerreStar Networks Holdings (Canada) Inc. (1337); TerreStar Networks (Canada) Inc. (8766) and 0887729 B.C. Ltd. (1345).

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THE DEBTORS HEREBY ADOPT AND INCORPORATE EACH EXHIBIT ATTACHED TO THIS PLAN BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN.

INTRODUCTION

The Debtors in these Chapter 11 Cases respectfully propose the following joint chapter 11 plan. Capitalized terms used in the Plan and not otherwise defined shall have the meanings ascribed to such terms in Article I.A hereof.

ARTICLE I.

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

A. Defined Terms

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

1. "*088*" means 0887729 B.C. Ltd.

2. "*088 Interests*" means Interests in 0887729 B.C. Ltd.

3. "*Acceptable Agreements*" shall have the meaning ascribed to it in the KEIP Motion.

4. "*Accrued Professional Compensation*" means, at any given moment, all accrued, contingent and/or unpaid fees (including success fees pursuant to previously agreed terms of engagement) for legal, financial advisory, accounting and other services and obligations for reimbursement of expenses in each case rendered or incurred before the Effective Date by any retained Professional in the Chapter 11 Cases that are awardable and allowable under sections 328, 330(a) or 331 of the Bankruptcy Code, or that are awardable and allowable under section 503 of the Bankruptcy Code, that the Bankruptcy Court has not denied by a Final Order, all to the extent that any such fees and expenses have not been previously paid. To the extent that the Bankruptcy Court or any higher court denies or reduces by a Final Order any amount of a Professional's fees or expenses, then those reduced or denied amounts shall no longer constitute Accrued Professional Compensation. For the avoidance of doubt, Accrued Professional Compensation shall not include any accrued, contingent and/or unpaid fees for services and obligations for reimbursement of expenses rendered or incurred before the Effective Date by (i) any Entity retained pursuant to the Ordinary Course Professional Order and authorized to be compensated thereunder without filing a fee application, (ii) the Senior Secured Notes Indenture Trustee/Agent, the Purchase Money Agent, and the PMCA Lenders, who are authorized to be compensated under the Final DIP Order and/or the Paydown Orders without filing a fee application, (iii) the Senior Exchangeable Notes Trustee, or (iv) the Information Officer and its counsel in connection with the Canadian Proceedings, who are authorized to be compensated their actual and documented fees and expenses without filing a fee application.

5. "*Acquired Assets*" shall have the meaning assigned and set forth in Section 2.1 of the Purchase Agreement.

6. "*Ad Hoc Group*" means the ad hoc group of certain holders of the Senior Secured Notes.

7. "*Administrative Claim*" means any right to payment constituting a cost or expense of administration of the Chapter 11 Cases of the Debtors of the kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 507(a)(2) or 507(b) of the Bankruptcy Code, including, but not limited to: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) compensation for legal, financial advisory, accounting and other services and reimbursement of expenses Allowed pursuant to sections 328, 330(a), 331 or 363 of the Bankruptcy Code or otherwise for the period commencing on the Petition Date and through the Effective Date; and (c) all fees and charges assessed against the Estates pursuant to chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1–4001.

8. "*Administrative Claims Bar Date*" means the bar date for Administrative Claims as such term is defined in Article II.A.3 hereof.

9. "*Affiliate*" has the meaning set forth in section (101)(2) of the Bankruptcy Code and, with respect to the Purchase Agreement, has the meaning set forth in Rule 12b-2 of the Exchange Act; *provided, however, that* EchoStar, on the one hand, and the Purchaser and DISH, on the other hand, shall not be deemed Affiliates of each other for purposes of the Plan; *and provided further, that* for the avoidance of doubt, except as explicitly set forth herein, DISH and the Purchaser are not parties to the Plan Settlement or the Plan.

10. "*Allocated Value*" means the percentage of the Purchase Price allocated to each individual Debtor based upon the Plan Settlement set forth herein and further explained in the Disclosure Statement. Each Debtor's Allocated Value was determined as part of the overall Settlement and the Plan Settlement embodied herein. The Allocated Value for each Debtor is set forth on Exhibit 2 to the Plan.

11. "*Allowed Claim*" *or* "*Allowed [___] Claim*" (with respect to a specific type of Claim, if specified) means: (a) any Claim (or a portion thereof) as to which no action to dispute, deny, equitably subordinate or otherwise limit recovery with respect thereto, or alter priority thereof, has been filed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or applicable law; or (b) any Claim or portion thereof that is allowed (i) in any contract, instrument, indenture or other agreement entered into in connection with the Plan, (ii) pursuant to the terms of the Plan, (iii) by Final Order of the Bankruptcy Court, including, without limitation, the Global Settlement Order, or (iv) with respect to an Administrative Expense Claim only (x) that was incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases of the Debtors to the extent due and owing without defense, offset, recoupment or counterclaim of any kind, and (y) that is not otherwise disputed.

12. "*Alternative Sale*" means the possible transaction contemplated by the Purchase Agreement wherein, after the Funding Date, Purchaser or the Debtors may under certain circumstances set forth in the Purchase Agreement deliver a written notice to implement the Alternative Sale Procedures and require that the Debtors sell or otherwise dispose of some or all of the Acquired Assets to one or more Third Parties that are eligible to hold legal title to such Acquired Assets, with all proceeds from such sale(s) accruing to the sole benefit and account of Purchaser in accordance with the procedures set forth in Exhibit B of the Purchase Agreement.

13. "*Alternative Sale Procedures*" means those processes and obligations triggered by either the Purchaser's or the Debtors' delivery of written notice to implement the Alternative Sale Procedures under Section 3.5(b) of the Purchase Agreement as determined pursuant to Exhibit B of the Purchase Agreement, and as the parties to the Purchase Agreement may otherwise agree.

14. "*Amended KEIP Order*" means the order of the Bankruptcy Court entered on August 26, 2011 [Docket No. 750] approving the Debtors' motion to amend the Initial KEIP Order.

15. "*Applicable Law*" means any law, regulation, rule, order, judgment, guideline or decree to which the Business, any Acquired Asset, or any Debtor, is subject.

16. "*Avoidance Actions*" means any and all avoidance, recovery, subordination or other actions or remedies that may be brought on behalf of the Debtors or their estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitations, actions or remedies under sections 510, 542, 543, 544, 545, 547, 548, 549, 550, 551, 552 and 553 of the Bankruptcy Code, except for any such actions (i) against Purchaser and/or any of its Affiliates (which claims were released at Funding); (ii) against the Released Parties; or (iii) related to the Acquired Assets set forth in clauses (a) through (u) of the Purchase Agreement.

17. "*Bankruptcy Code*" means title 11 of the United States Code, as amended from time to time.

18. "*Bankruptcy Court*" means the United States Bankruptcy Court for the Southern District of New York having jurisdiction over the Chapter 11 Cases or any other court having jurisdiction over the Chapter 11 Cases, including, to the extent of the withdrawal of any reference under 28 U.S.C. § 157, the United States District Court for the Southern District of New York.

19. *"Bankruptcy Rules"* means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under section 2075 of title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as well as the general and local rules of the Bankruptcy Court and the Order Pursuant to Sections 105(a) and (d) of the Bankruptcy Code and Bankruptcy Rules 1015(c), 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures [Docket No. 60], as it may be amended from time to time.

20. *"Business"* means the Debtors' business of operating a mobile wireless communications system based on integrated satellite and ground-based technology to provide mobile coverage throughout the United States and Canada.

21. *"Business Day"* means any day other than a Saturday, Sunday or a day on which banks in New York are authorized or obligated by Applicable Law or executive order to close or are otherwise generally closed.

22. *"Canadian Court"* means the Ontario Superior Court of Justice (Commercial List).

23. *"Canadian Proceedings"* means the recognition proceeding (Court File No.: CV-10-8944-00CL) commenced on October 21, 2010 before the Canadian Court by TSN, as foreign representative on behalf of the Debtors, pursuant to Part IV of the CCAA, to, among other things, recognize the jointly administered Chapter 11 Cases as a "foreign main proceeding."

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

25. *"Causes of Action"* means any action, claim, cause of action, controversy, demand, right, action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license and franchise of any kind or character whatsoever of the Debtors, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity or pursuant to any other theory of law. Causes of Action also include: (a) any right of setoff, counterclaim or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy Code, including Avoidance Actions; (d) any claim or defense including fraud, mistake, duress and usury and any other defenses set forth in section 558 of the Bankruptcy Code; (e) any state law fraudulent transfer claim; and (f) any claim set forth on the Schedule of Retained Causes of Action. For the avoidance of doubt, Causes of Action shall not include any rights, privileges, claims, demands, choses in action, prepayments, deposits, refunds, indemnification rights, warranty claims, offsets and other claims of the Debtors against (i) Third Parties relating to the Acquired Assets set forth in clauses (a) through (u) of Section 2.1 of the Purchase Agreement; (ii) against Purchaser and/or any of its Affiliates (which claims were released at Funding); or (iii) against the Released Parties.

26. *"CCAA"* means the *Companies' Creditors Arrangement Act* (Canada), R.S.C. 1985, c. C-36, as amended.

27. *"Chapter 11 Cases"* means (a) when used with reference to a particular Debtor, the chapter 11 case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court under Case No. 10-15446 (SHL).

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

29. *"Class"* means a category of holders of Claims or Interests as set forth in Article III.

30. *"Closing"* shall have the meaning assigned and set forth in the Purchase Agreement.

31. *"Closing Date"* shall have the meaning assigned and set forth in the Purchase Agreement.

32. *"Closing Date Payment"* means $30 million, less the amount of the Employee Obligations, which shall be payable as set forth in Section 2.5(b)(v) of the Purchase Agreement.

33. *"Collateral"* means any property or interest in property of the Debtors subject to a Lien to secure the payment or performance of a Claim.

34. *"Communications Act"* means Chapter 5 of title 47 of the United States Code, 47 U.S.C. § 151 et seq., as amended, and in effect from time to time.

35. *"Confirmation"* means entry of the Confirmation Order on the docket of the Chapter 11 Cases.

36. *"Confirmation Date"* means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases of the Debtors within the meaning of Bankruptcy Rules 5003 and 9021.

37. *"Confirmation Hearing"* means the hearing held by the Bankruptcy Court concerning confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

38. *"Confirmation Order"* means the order entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

39. *"Creditors' Committee"* means the statutory committee of unsecured creditors of the Debtors appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code by the U.S. Trustee, as such committee membership may be reconstituted from time to time.

40. *"Cure Claim"* means a Claim based upon a monetary default, if any, by any Debtor on an Executory Contract or Unexpired Lease at the time such contract or lease is assumed by such Debtor pursuant to sections 365 or 1123 of the Bankruptcy Code.

41. *"D&O Liability Insurance Policies"* means all insurance policies of any of the Debtors for directors', managers' and officers' liability, as set forth on the schedule of Insurance Policies to be included in the Plan Supplement.

42. *"Debtor"* means any one of the Debtors, in its individual capacity as a debtor and debtor in possession in these Chapter 11 Cases.

43. *"Debtors"* means, collectively, TSN, TLI, TSNSI, TSN Holdings (Canada), TSN Canada and 088.

44. *"Designated Contract"* means all Executory Contracts and Unexpired Leases set forth on section 2.1(c) of the Disclosure Letter.

45. *"Disallowed"* means a finding of the Bankruptcy Court in a Final Order, or provision in the Plan providing that a Disputed Claim or Interest shall not be Allowed.

46. *"Disbursing Agent"* means the Debtors, Reorganized Debtors, the Liquidating Trustee, or the Interim TSN Trust Board (but solely in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof), as applicable, or the Entity or Entities chosen by the Reorganized Debtors (upon consultation with the Creditors' Committee) to make or facilitate Distributions pursuant to the Plan and/or the Liquidating Trust Agreement.

47. *"Disclosure Letter"* means the disclosure letter of even date with the Purchase Agreement prepared by the Debtors and delivered to the Purchaser simultaneously with the execution of the Purchase Agreement, as the same may be amended from time to time as agreed to by the parties to the Purchase Agreement, subject to the Sale Order.

48. *"Disclosure Statement"* means the disclosure statement that relates to this Plan, as such disclosure statement may be amended, modified, or supplemented (including all exhibits and schedules annexed thereto or referred to therein).

49. *"DISH"* means DISH Network Corporation.

50. *"Disputed Claim"* or *"Disputed [___] Claim"* (with respect to a specific type of Claim, if specified) means a Claim that is not an Allowed Claim or Disallowed Claim as of the relevant date.

51. *"Disputed Claims Reserve"* means the reserve to be created by the Debtors to hold Cash which reserve shall be held for the benefit of holders of Disputed Claims as of the Effective Date that subsequently become Allowed Claims, for Distribution according to the procedures set forth in Article VIII. For the avoidance of doubt, and pursuant to the Settlement, neither the Sprint Claim nor any of the claims filed by LightSquared LP or LightSquared Inc. on account of Proofs of Claim no. 92 and no. 93 (collectively, the *"LightSquared Claims"*) is a Disputed Claim; *provided, however*, that the treatment of the LightSquared Claims and the Sprint Claim pursuant to the Settlement shall render such claims fully satisfied and any and all other claims filed by LightSquared shall be disallowed and expunged in their entirety.

52. *"Distributions"* means the distributions of Cash, Liquidating Trust Interests, Interim TSN Trust Interests and/or Interim TSN Warrants (but solely in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof) to be made in accordance with the Plan and the Trust Agreements. For the avoidance of doubt, "Distributions" shall not refer to payments made pursuant to the Paydown Orders. For the further avoidance of doubt, Distributions shall not include any Acquired Assets.

53. *"Distribution Date"* means any of the Initial Distribution Date or the Periodic Distribution Dates.

54. *"Distribution Record Date"* means the date that the Confirmation Order is entered by the Bankruptcy Court.

55. *"EchoStar"* means EchoStar Corporation and its subsidiaries.

56. *"Effective Date"* means the first Business Day after which all provisions, terms and conditions specified in Article X.B have been satisfied or waived pursuant to Article X.C.

57. *"Employee"* means any employee of the Debtors or Reorganized Debtors as of the Closing Date.

58. *"Employee Obligations"* shall have the meaning assigned and set forth in the Purchase Agreement.

59. *"Entity"* has the meaning set forth in section 101(15) of the Bankruptcy Code.

60. *"Equity Interests"* mean all Interests held by persons or entities in the Debtors. For the avoidance of doubt, Equity Interests include the TSN Preferred Shares and the Intercompany Interests.

61. *"Estate"* means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

62. *"Exculpated Claim"* means any claim related to any act or omission in connection with, relating to or arising out of the Debtors' restructuring efforts, the Debtors' Chapter 11 Cases, the Canadian Proceedings, the Purchase Agreement, the Paydown Orders, the Settlement, the Plan Settlement, the formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement, Plan, DIP Loan Agreement or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement, the Plan, the Settlement or the Plan Settlement, the filing of the Chapter 11 Cases, the Canadian Proceedings, the pursuit of Confirmation and recognition thereof in the Canadian Proceedings, the pursuit of consummation of the Plan, the administration and implementation of the Plan, including the issuance of Plan

securities, or the Distribution of property under the Plan or any other related agreement, or the negotiation, documentation and implementation of the Settlement; provided, however, that Exculpated Claims shall not include any act or omission that is determined in a Final Order to have constituted gross negligence, willful misconduct or fraud. For the avoidance of doubt, no Cause of Action, obligation or liability expressly set forth in or preserved by the Plan or the Schedule of Retained Causes of Action constitutes an Exculpated Claim.

63. *"Exculpated Party"* means each of: (a) the Debtors, and the Reorganized Debtors; (b) the Creditors' Committee and the current and former members thereof, in their capacity as such; (c) EchoStar; (d) the Indenture Trustees; (e) the Purchase Money Agent; (f) Deloitte & Touche Inc., in its capacity as information officer in the Canadian Proceedings; (g) the New Boards of the Reorganized Debtors and the members of the Interim TSN Trust Board (in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof), in connection with the Chapter 11 Cases, including, but not limited to any action taken in furtherance of this Plan, the Purchase Agreement and the Sale Order; (h) Harbinger, LightSquared Inc. and LightSquared LP; (i) Sprint; (j) the Ad Hoc Group, the members thereof as of the date of the Global Settlement Order and the former members that, as of the date of entry of the Confirmation Order, have not objected to the Plan and, as of the Effective Date, have not sought (in any manner, whether by filing a motion or otherwise) the reimbursement or other payment of any fees or expenses, including, without limitation, the fees and expenses of any advisors) in connection with the chapter 11 cases, in their capacity as such; (k) Solus and (l) with respect to each of the foregoing Entities in clauses (a) through (k), such Entities' subsidiaries, affiliates, members, officers, directors, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners, and representatives, in each case solely in their capacity as such.

64. *"Executory Contracts and Unexpired Leases"* means contracts and leases to which one or more of the Debtors are party that are subject to assumption or rejection under section 365 of the Bankruptcy Code.

65. *"FCC"* means the Federal Communications Commission and any successor governmental agency performing functions similar to those performed by the Federal Communications Commission on the Effective Date.

66. *"FCC Consent"* shall have the meaning assigned and set forth in the Purchase Agreement.

67. *"Final Order"* means, as applicable, an order or judgment of the Bankruptcy Court, the Canadian Court or other court of competent jurisdiction with respect to the relevant subject matter, which has not been reversed, stayed, modified or amended, and as to which the time to appeal or petition for certiorari has expired and as to which no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved, by the highest court to which such order or judgment could be appealed, or from which certiorari could be sought or the new trial, reargument or rehearing, shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

68. *"Funding"* shall have the meaning assigned and set forth in the Purchase Agreement.

69. *"Funding Date"* means August 11, 2011.

70. *"Funding Date Consideration"* means $1.345 billion (one billion, three hundred forty five million dollars).

71. *"Funding Date Payment"* means the Funding Date Consideration less the Working Capital Fund, which is available for Distribution pursuant to this Plan or which has been or may be distributed pursuant to Bankruptcy Court order, including, without limitation, pursuant to the Paydown Orders and the Global Settlement Order.

72. *"Global Settlement Order"* means the Stipulation and Order entered by the Bankruptcy Court on December 15, 2011 [Docket No. 857], approving the Settlement.

73. *"Governmental Units"* has the meaning set forth in section 101 of the Bankruptcy Code.

74. "*Harbinger*" means collectively, Harbinger Capital Partners LLC and its managed and affiliated funds.

75. "*Holdback Amount*" means, with respect to Accrued Professional Compensation, amounts held back pursuant to an order or orders of the Bankruptcy Court in the Chapter 11 Cases, including the Interim Compensation Order.

76. "*Holdback Amount Reserve*" means, with respect to Accrued Professional Compensation, a reserve established by the Reorganized Debtors, and the Purchaser, on the Effective Date for the benefit of the Professionals, and to be held in trust for the Professionals, for the payment of the Holdback Amount. To the extent any amounts held in the Holdback Amount Reserve are not ultimately paid to Professionals, such amounts shall be contributed to the Liquidating Trust and distributed in accordance with the Plan and the Liquidating Trust Agreement. The Debtors and the Purchaser shall be responsible for funding the Holdback Amount Reserve in accordance with the Purchase Agreement.

77. "*Impaired*" has the meaning set forth in section 1124 of the Bankruptcy Code.

78. "*Impaired Class*" means a Class of Claims or Interests that are Impaired. For the avoidance of doubt, Impaired Classes are Classes 3 and 4.

79. "*Indemnification Provisions*" means each of the indemnification provisions, agreements or obligations in place as of the Petition Date, whether in the bylaws, certificates of incorporation or other formation documents in the case of a limited liability company, board resolutions or employment contracts, for the Debtors and the current directors, officers, members (including *ex officio* members), employees, attorneys, other professionals and agents of the Debtors.

80. "*Indenture Trustees*" means, collectively, the Senior Secured Notes Indenture Trustee/Agent and the Senior Exchangeable Notes Indenture Trustee.

81. "*Indentures*" means, collectively, the Senior Secured Notes Indenture and the Senior Exchangeable Notes Indenture.

82. "*Industry Canada*" means the Canadian federal Department of Industry, or any successor or any department or agency thereof, administering the *Radiocommunication Act* (Canada), among other statutes, including its staff acting under delegated authority, and includes the Minister of Industry (Canada) and the Commissioner of Competition (Canada).

83. "*Industry Canada Approval*" shall have the meaning assigned and set forth in the Purchase Agreement.

84. "*Information Officer*" means Deloitte & Touche Inc. in its capacity as the court-appointed information officer in connection with the Canadian Proceedings.

85. "*Initial Distribution Date*" means the date occurring on or as soon as reasonably practicable after the Effective Date when Distributions under the Plan shall commence.

86. "*Initial KEIP Order*" means the order entered by the Bankruptcy Court on February 23, 2011 [Docket No. 444] approving the KEIP Motion.

87. "*Insurance Policies*" means, collectively, all of the Debtors' insurance policies listed on the schedule of Insurance Policies to be included in the Plan Supplement.

88. "*Intercompany Claim*" means any Claim held by a Debtor against another Debtor.

89. "*Intercompany Interests*" mean the Interests in a Debtor held by another Debtor.

90. *"Interest"* means any equity security in a Debtor as defined in section 101(16) of the Bankruptcy Code, including all issued, unissued, authorized or outstanding shares of capital stock of any of the Debtors together with any warrants, options or contractual rights to purchase or acquire such equity securities at any time and all rights arising with respect thereto. For the avoidance of doubt, the Interests include the Preferred Shares.

91. *"Interim Compensation Order"* means the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 174].

92. *"KEIP Motion"* means the *Debtors' Motion for Entry of an Order Approving the TSN Debtors' Key Employment Incentive Plan* [Docket No. 385].

93. *"Key Executives"* shall have the meaning assigned and set forth in the KEIP Motion.

94. *"Lien"* has the meaning set forth in section 101(37) of the Bankruptcy Code, including, with respect to any asset, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Uniform Commercial Code as in effect from time to time in the State of New York or comparable law of any jurisdiction) and, in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

95. *"Liquidating Trust"* means the Entity described in Article V.E that will succeed to all of the Retained Assets and liabilities of the Estates, subject to the terms of the Plan and/or the Liquidating Trust Agreement, as of the Effective Date.

96. *"Liquidating Trust Agreement"* means the trust agreement substantially in the form to be filed as part of the Plan Supplement, which will, among other things: (a) establish and govern the Liquidating Trust; (b) set forth the respective powers, duties and responsibilities of the Liquidating Trustee and the Liquidating Trust Board; and (c) provide for Distribution of Liquidating Trust Assets to the Liquidating Trust Beneficiaries.

97. *"Liquidating Trust Assets"* means (a) the Net Funding Date Proceeds; (b) the Closing Date Payment; (c) the Retained Causes of Action Net Proceeds; (d) Cash on hand of the Debtors as of December 31, 2011; (e) the Working Capital Excess Amount; and (f) any or all of the Retained Assets, as determined by the Debtors or Reorganized Debtors in consultation with the Creditors' Committee or Liquidating Trustee, as applicable.

98. *"Liquidating Trust Beneficiaries"* means the holders of Allowed Unsecured Claims.

99. *"Liquidating Trust Board"* means those individuals appointed in accordance with the Liquidating Trust Agreement with the powers and responsibilities as set forth in Article V.E. of the Plan.

100. *"Liquidating Trust Expenses"* means the reasonable fees and expenses of the Liquidating Trustee and Liquidating Trust Board, including, without limitation, reasonable professional fees, which shall be paid from the Liquidating Trust Assets.

101. *"Liquidating Trust Interests"* means the beneficial interests in the Liquidating Trust.

102. *"Liquidating Trustee"* means the person appointed by the Creditors' Committee, in accordance with the Liquidating Trust Agreement to administer the Liquidating Trust.

103. *"Net Funding Date Proceeds"* means the amount of the Funding Date Payment remaining after the Paydown or any other similar payment to creditors pursuant to an order of the Bankruptcy Court.

104. *"New Boards"* means the boards of directors of the Reorganized Debtors as of the Effective Date.

105. "*New By-laws*" means the new by-laws of the Reorganized Debtors, the form of which shall be included in the Plan Supplement.

106. "*New Certificate of Incorporation*" means the form of initial certificate of incorporation or other articles of amendment or reorganization equivalent under applicable law, of each Reorganized Debtor, the form of which shall be included in the Plan Supplement.

107. "*New Common Stock*" means the single share of common stock of Reorganized TSN authorized pursuant to the Plan, which shall be issued in the name of the Interim TSN Trust in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof, and otherwise in the name of the Liquidating Trust, as of the Effective Date.

108. "*New Corporate Governance Documents*" means the New Certificates of Incorporation and the New By-Laws.

109. "*New Employment Agreements*" means employment agreements that the Reorganized Debtors shall enter into with certain individuals in the Debtors' senior management, the salient terms of which shall be included in the Plan Supplement.

110. "*Notes*" means, collectively, the Senior Secured Notes and the Senior Exchangeable Notes.

111. "*Notes Claims*" means, collectively, the Senior Secured Notes Claims and the Senior Exchangeable Notes Claims.

112. "*Notice and Claims Agent*" means The Garden City Group, Inc., located at P.O. Box 9576, Dublin, Ohio 43017-4876, (866) 405-2137, retained as the Debtors' notice, claims and solicitation agent.

113. "*Ordinary Course Professional Order*" means the Order Authorizing the Debtors' Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business [Docket No. 173].

114. "*Other Priority Claim*" means any Claim accorded priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim; or (b) a Priority Tax Claim.

115. "*Other Secured Claims*" means a Secured Claim against the Debtors, other than the PMCA Claims and the Senior Secured Notes Claims.

116. "*Partial KEIP Payment*" means the aggregate amount of $1,680,656.50, which represents the remaining 50% of the total amount each Key Executive would receive under the SIP if they entered into Acceptable Agreements with the Purchaser. The first 50% of such amount was approved pursuant to the Amended KEIP Order and paid to the Key Executives in accordance therewith.

117. "*Paydown*" means (a) the payment made by the Debtors from the Funding Date Payment to the holders of secured obligations in the following amounts: (i) $800 million on account of outstanding prepetition principal and interest obligations under the Senior Secured Notes as directed under the First Paydown Order; (ii) approximately $90.2 million in connection with the pay off of a substantial portion of the outstanding obligations under the PMCA; and (iii) $85,093,933.77 in connection with the pay off in full of all of the outstanding obligations under the DIP Loan Agreement; (b) the payment made by the Debtors from the Funding Date Payment to the holders of the Senior Secured Notes in the amount of $143,959,275 in connection with the pay off in part of certain of the outstanding obligations under the Senior Secured Notes Indenture; (c) the payment of $8,456,706.41 in connection with the pay off of all remaining amounts due and owing under the PMCA to the PMCA Lenders pursuant to the PMCA Settlement Order; (d) any payments made pursuant to the Global Settlement Order; or (e) any payment made by the Debtors from the Funding Date Payment to the holders of secured obligations pursuant to any similar order of the Bankruptcy Court authorizing such a payment.

118. *"Paydown Orders"* means (a) the Order entered by the Bankruptcy Court [Docket No. 730] on August 3, 2011, granting the Debtors' *Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105 and 363 Authorizing the Debtors to Repay Existing Secured Claims* [Docket No. 662] (the "*First Paydown Order*"); (b) the Order entered by the Bankruptcy Court [Docket No. 792] on October 4, 2011, granting the Debtors' *Motion for Entry of* an *Order Pursuant to 11 U.S.C. §§ 105 and 363 Authorizing the Debtors to Repay Certain Amounts Due and Owing Under the 15% Notes Indenture* [Docket No. 768] (the "*Second Paydown Order*"); (c) *Stipulation and Agreed order Approving the Debtors' Motion for Entry of an Order Pursuant to Bankruptcy Code Section 363(b) and Federal Rule of Bankruptcy Procedures 9019 Approving the Stipulation between the Debtors, the Creditors' Committee, Harbinger, the PMCA Lenders, and the Collateral Agent* [Docket No. 800] (the "*PMCA Settlement Order*"); (d) the Global Settlement Order; or (e) any other similar order entered by the Bankruptcy Court.

119. *"Periodic Distribution Date"* means, unless otherwise ordered by the Bankruptcy Court, the first Business Day that is no more than 120 days after the Initial Distribution Date and for the first year thereafter, the first Business Day that is no more than 120 days after the immediately preceding Periodic Distribution Date. After one year following the Distribution Date, the Periodic Distribution Date will occur on the first Business Day that is no more than 180 days after the immediately preceding Periodic Distribution Date. Notwithstanding the foregoing, if the Disbursing Agent determines, in consultation with the Liquidating Trustee, that there are not sufficient Distributions to be made on a date that would otherwise be a Periodic Distribution Date, then the Periodic Distribution Date shall be on the last Business Day of the subsequent calendar quarter. Notwithstanding the foregoing, and to the extent that the Debtors do not receive the Closing Date Payment before the Effective Date, there shall be a Periodic Distribution Date, to the extent possible, no later than 30 days after the Reorganized Debtors receive the Closing Date Payment.

120. *"Person"* has the meaning set forth in section 101(41) of the Bankruptcy Code.

121. *"Petition Date"* means October 19, 2010.

122. *"Plan"* means this joint plan of reorganization under chapter 11 of the Bankruptcy Code, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules or herewith, as the case may be, and the Plan Supplement, which is incorporated herein by reference.

123. *"Plan Settlement"* has the meaning set forth in Article IX.A. hereof.

124. *"Plan Supplement"* means the compilation of documents and forms of documents, schedules and exhibits to the Plan to be filed by the Debtors by the Plan Supplement Filing Date compromised of, without limitation, the following: (a) the Trust Agreements; (b) the New Corporate Governance Documents, (c) the identity of the known members of the New Boards and the nature and compensation for any director who is an "insider" under the Bankruptcy Code; (d) the Rejected Executory Contract and Unexpired Lease List; (e) the Schedule of Retained Causes of Action; (f) the New Employment Agreements; (g) the terms and conditions of the tail coverage; (h) a schedule of the Insurance Policies; (i) the Interim TSN Warrant Agreement (but solely in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof); and all exhibits, attachments, supplements, annexes, schedules, and ancillary documents related to each of the foregoing.

125. *"Plan Supplement Filing Date"* means the date on which the Plan Supplement shall be filed with the Bankruptcy Court, which date shall be no later than ten (10) days prior to the Confirmation Hearing; provided, however, that the identity of the initial members of the New Boards and the nature and compensation for any director who is an "insider" under the Bankruptcy Code known at the time shall not be required to be disclosed and filed with the Bankruptcy Court until five (5) days before the Confirmation Hearing or such later date as may be approved by the Bankruptcy Court without further notice.

126. *"Priority Tax Claim"* means any Claim of a governmental unit, as defined in section 101(27) of the Bankruptcy Code, of the kind specified in section 507(a)(8) of the Bankruptcy Code.

127. *"Pro Rata"* means, as applicable: (a) the proportion that an Allowed Claim or Interest in a particular Class bears to the aggregate amount of Allowed Claims or Interests in that Class and (b) the proportion that all Allowed Claims or Interests in a particular Class bear to the aggregate amount of Allowed Claims or Interests in such Class and other Classes entitled to share in the same recovery under the Plan.

128. *"Professional"* means an Entity: (a) retained pursuant to a Final Order in accordance with sections 327, 363 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, 363 and 331 of the Bankruptcy Code or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

129. *"Proof of Claim"* means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

130. *"Purchaser"* means Gamma Acquisition L.L.C., a Colorado limited liability company, and wholly owned subsidiary of DISH.

131. *"Purchase Agreement"* means that certain Purchase Agreement entered into on June 14, 2011 by and among the Debtors, as sellers, and Purchaser, and solely with respect to Section 6.19 of the Purchase Agreement, DISH, as such agreement may be amended from time to time in accordance with its terms.

132. *"Purchase Money Agent"* means U.S. Bank National Association in its capacity as Collateral Agent under the PMCA.

133. *"Purchase Money Credit Agreement" or "PMCA"* means the Purchase Money Credit Agreement, dated as of February 5, 2008, among TSN, as borrower, each of the guarantors named therein, the lenders party thereto and the Purchase Money Agent, as amended or supplemented from time to time.

134. *"Purchase Money Lenders"* means those lenders currently party to the PMCA.

135. *"Purchase Price"* means $1.375 billion which has been paid or will be paid by the Purchaser to the Debtors pursuant to the Purchase Agreement, and which shall consist of: (i) the Funding Date Consideration; (ii) the Closing Date Payment; and (iii) the Purchaser's assumption of the Employee Obligations on the Closing Date.

136. *"Rejected Executory Contract and Unexpired Lease List"* means the list (as may be amended) of Executory Contracts and Unexpired Leases that will be rejected by the Debtors pursuant to the provisions of Article VI.

137. *"Rejection Claim"* means a Claim arising from the rejection of an Executory Contract or Unexpired Lease pursuant to section 365 of the Bankruptcy Code.

138. *"Releasing Parties"* means all Entities who have held, hold or may hold Claims or Interests that have been released pursuant to Article IX.B or Article IX.C, discharged pursuant to Article IX.E or are subject to exculpation pursuant to Article IX.D of the Plan.

139. *"Released Party"* means each of (in each case solely in their respective capacities): (a) the Debtors; (b) the current and former directors and officers of the Debtors who were directors or officers of the Debtors as of or after the Petition Date; (c) EchoStar; (d) the DIP Agent; (e) the Purchase Money Agent; (f) the Creditors' Committee and the current and former members thereof; (g) Deloitte & Touche Inc., in its capacity as Information Officer; (h) the Indenture Trustees; (i) the members of the New Boards; (j) the members of the Interim TSN Trust Board (in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof); (k) the Liquidating Trust Trustee; (l) the members of the Liquidating Trust Board; (m) the Reorganized Debtors; (n) Harbinger, LightSquared Inc. and LightSquared LP; (o) Sprint; (p) the Ad Hoc Group, the members thereof as of the date of the Global Settlement Order and the former members who, as of the date of entry of the Confirmation Order, have not objected to the Plan and, as of the Effective Date, have not sought (in any manner, whether by filing a motion or otherwise) the reimbursement or other payment of any fees or expenses, (including, without limitation,

the fees and expenses of any advisors) in connection with the chapter 11 cases, in their capacity as such; (q) Solus; and (r) with respect to each of the foregoing Entities in clauses (a) through (q), such Entities' subsidiaries, Affiliates, members, officers, directors, agents, financial advisors, accountants, investment bankers, consultants, attorneys, employees, partners, and representatives, in each case, only in their capacity as such; provided, however, that for the avoidance of doubt, nothing in this Plan shall be deemed to release the Purchaser or any of its Affiliates from their obligations under the Purchase Agreement; provided, further, that Articles IX.B and IX.C of this Plan shall not apply to DISH, which was released as and to the extent provided pursuant to the Purchase Agreement (including Exhibit A thereto).

140. "*Reorganized*" means, with respect to the Debtors, any Debtor or any successor thereto, by merger, consolidation or otherwise, on or after the Effective Date.

141. "*Restructuring Transactions*" means a dissolution or winding up of the corporate existence of a debtor or the consolidation, merger, restructuring, conversion, dissolution, transfer, liquidation, contribution of assets, or other transaction pursuant to which a Reorganized Debtor merges with or transfers substantially all of its assets and liabilities to a Reorganized Debtor or newly formed Entity, prior to, on or after the Effective Date.

142. "*Retained Assets*" means those assets that are retained by the Debtors and will not be sold or assigned to Purchaser, as set forth in Section 2.2 of the Purchase Agreement.

143. "*Retained Causes of Action*" the Causes of Action to be retained by the Liquidating Trustee (or such other Entity or Person determined by the Reorganized Debtors and the Creditors' Committee) after the Effective Date.

144. "*Retained Causes of Action Net Proceeds*" the proceeds of the Retained Causes of Action, if any, net of direct expenses of the recovery thereof (e.g., the fees, expenses and costs of the subject litigation).

145. "*Sale*" means the sale of substantially all of the Debtors' assets to the Purchaser pursuant to the Purchase Agreement.

146. "*Sale Incentive Plan*" means the Sale Incentive Plan described in the KEIP Motion, as approved by the Bankruptcy Court on February 23, 2011 [Docket No. 444], and as modified by the order [Docket No. 750] entered by the Bankruptcy Court on August 26, 2011.

147. "*Sale Order*" means the Order (A) Approving Asset Purchase Agreement And Authorizing The Sale Of Assets Of Debtor Outside The Ordinary Course Of Business; (B) Authorizing The Sale Of Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances; (C) Authorizing The Assumption And Sale And Assignment Of Certain Executory Contracts And Unexpired Leases; And (D) Granting Related Relief [Docket No. 668], entered by the Bankruptcy Court on July 7, 2011.

148. "*Schedule of Retained Causes of Action*" means the schedule, to be included as part of the Plan Supplement, listing the Retained Causes of Action.

149. "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases and statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as may be amended from time to time before entry of a final decree.

150. "*SEC*" means the Securities and Exchange Commission.

151. "*Secured*" means, when referring to a Claim: (a) secured by a Lien on property in which the Estate of the Debtor against which the Claim is asserted has an interest, which Lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, to the extent of the value of the creditor's interest in the Estates' interest in such property as determined pursuant to section 506(a) of the Bankruptcy Code; (b) subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of

the property subject to setoff; or (c) otherwise Allowed by Final Order of the Court (which may be the Confirmation Order or Global Settlement Order) as a Secured Claim.

152. *"Securities Act"* means the U.S. Securities Act of 1933, as amended.

153. *"Senior Employees"* shall have the meaning ascribed to such term in the KEIP Motion.

154. *"Senior Exchangeable Notes"* means the 6.5% senior exchangeable payment-in-kind notes, issued by TSN pursuant to the Senior Exchangeable Notes Indenture.

155. *"Senior Exchangeable Notes Claims"* means the Allowed Claims arising under the Senior Exchangeable Notes Indenture.

156. *"Senior Exchangeable Notes Indenture"* means the Indenture, dated as of February 7, 2008 between TSN, as issuer, each of the guarantors named therein and the Senior Exchangeable Notes Indenture Trustee, as well as any guarantees and other documents entered into in connection therewith.

157. *"Senior Exchangeable Notes Indenture Trustee"* means Deutsche Bank National Trust Company and/or its predecessors and duly appointed successors, in its capacity as indenture trustee under the Senior Exchangeable Notes Indenture.

158. *"Senior Secured Notes"* means the 15% senior secured payment-in-kind notes, issued by TSN pursuant to the Senior Secured Notes Indenture.

159. *"Senior Secured Notes Claims"* means the Allowed Claims of the Senior Secured Notes Indenture Trustee/Agent for its reasonable fees and expenses arising under the Senior Secured Notes Indenture, all other Claims arising under the Senior Secured Notes Indenture having been Allowed and satisfied in full pursuant to the Global Settlement Order.

160. *"Senior Secured Notes Indenture"* means the Indenture, dated as of February 14, 2007 between TSN, as issuer, the guarantors from time to time party thereto and the Senior Secured Notes Indenture Trustee/Agent, as well as any guarantees and other documents entered into in connection therewith, and as amended by those certain First and Second Supplemental Indentures, each dated as of February 7, 2008.

161. *"Senior Secured Notes Indenture Trustee/Agent"* means U.S. Bank National Association and/or its duly appointed successor, in its capacity as indenture trustee and collateral agent under the Senior Secured Notes Indenture.

162. *"Senior Secured Notes Security Agreements"* means, collectively: (i) the Security Agreement, dated as of February 14, 2007, among TSN and the domestic guarantors to the Senior Secured Notes Indenture, as grantors, and the Senior Secured Notes Indenture Trustee/Agent; and (ii) the Security Agreement, dated as of February 14, 2007, among TSN and the Canadian guarantors to the Senior Secured Notes Indenture, as grantors, and the Senior Secured Notes Indenture Trustee/Agent.

163. *"Settlement"* means the settlement entered into by and among the Settlement Parties reflected in the Global Settlement Order that resolves and settles certain disputes and pending litigation matters in the Debtors' chapter 11 cases.

164. *"Settlement Parties"* means EchoStar, Sprint, Harbinger, the Creditors' Committee, the Ad Hoc Group (and each of its members as of the date of the Global Settlement Order), the Senior Secured Notes Indenture Trustee/Agent, Solus, LightSquared Inc. and LightSquared LP, and the Debtors.

165. *"SIP"* shall have the meaning ascribed to such term in the KEIP Motion.

166. *"Solus"* means Solus Alternative Asset Management LP.

167. "*Sprint*" means Sprint Nextel Corporation.

168. "*Sprint Claim*" means the proofs of claim filed on December 9, 2010, in the amount of $104,194,649.00 against each Debtor entity in connection with certain spectrum relocation costs incurred by Sprint [Claim Nos. 49, 66, 67, 70, 79 and 82].

169. "*TLI*" means TerreStar License, Inc.

170. "*Trust Agreements*" means the Interim TSN Trust Agreement (in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof) and the Liquidating Trust Agreement.

171. "*TSC*" means TerreStar Corporation.

172. "*TSC 9019 Order*" means the Stipulation and Order entered by the Bankruptcy Court on December 15, 2011 [Docket No. 299], in the chapter 11 cases of TSC and its affiliated debtors and debtors in possession, *inter alia* assigning to Sprint the first $2.6 million to be distributed on account of the TSC Intercompany Claim, and payable pursuant to the terms thereof.

173. "*TSC Intercompany Claim*" means the Allowed Claim held by TSC against TSN in the amount of $56.9 million, on account of certain notes dated June 6, 2009, July 6, 2009, August 4, 2009, August 26, 2009, and September 21, 2009.

174. "*TSN*" means TerreStar Networks Inc.

175. "*TSN Canada*" means TerreStar Networks (Canada) Inc.

176. "*TSN Holdings (Canada)*" means TerreStar Networks Holdings (Canada) Inc.

177. "*TSN Preferred Shares*" means collectively, the TSN Series A Preferred Share and the TSN Series B Preferred Share.

178. "*TSN Series A Preferred Share*" means the one share of non-voting Series A preferred stock of TSN, which was issued to EchoStar.

179. "*TSN Series B Preferred Share*" means the one share of non-voting Series B preferred stock of TSN, which was issued to Harbinger.

180. "*TSNSI*" means TerreStar National Services, Inc.

181. "*Third Party*" means any Person other than Debtors and their Affiliates, the Purchaser, or DISH any of its respective subsidiaries.

182. "*Unimpaired*" means any Claim or Interest that is not designated as Impaired.

183. "*Unsecured Claims*" means any unsecured claim against any Debtor other than an Intercompany Claim or the Sprint Claim, including, without limitation, a Senior Exchangeable Notes Claim, a trade claim, the TSC Intercompany Claim, or a claim arising out of the rejection of Executory Contracts or Unexpired Leases by any Debtor.

184. "*U.S. Trustee*" means the United States Trustee for the Southern District of New York.

185. "*U.S. Trustee Fees*" means fees arising under 28 U.S.C. § 1930(a)(6) or accrued interest thereon arising under 31 U.S.C. § 3717.

186. "*Valuation Allocation Dispute*" means the potential dispute among various parties with regard to the proper allocation of expenses among the six Debtor Entities.

187. "*Voting Deadline*" means 5:00 p.m. (prevailing Eastern Time) on February 1, 2012.

188. "*Working Capital Fund*" means that portion of the Purchase Price that consists of $90 million, which was deposited into an escrow account on the Funding Date to provide funding for working capital and administrative expenses requested to be paid by the Debtors pursuant to and according to the terms of the Purchase Agreement.

189. "*Working Capital Excess Amount*" means the amount, if any, remaining in the Working Capital Fund after payment of all working capital and administrative expenses required to be paid by the Debtors pursuant to and according to the terms of the Purchase Agreement, other than those funds specifically required to fund the Holdback Amount Reserve.

B. Rules of Interpretation

For purposes of this Plan: (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" are references to Articles hereof or hereto; (e) unless otherwise stated, the words "herein," "hereof" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the word "including" shall always mean, "including, without limitation"; (h) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (i) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors in a manner that is consistent with the overall purpose and intent of the Plan all without further Bankruptcy Court order.

C. Computation of Time

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

D. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction and implementation of the Plan, any agreements, documents, instruments or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); *provided, however,* that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, not incorporated in New York shall be governed by the laws of the jurisdiction of incorporation of the applicable Debtor or Reorganized Debtors, as applicable.

E. Reference to Monetary Figures

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

ARTICLE II.

ADMINISTRATIVE CLAIMS, U.S. TRUSTEE FEES, AND PRIORITY TAX CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, U.S. Trustee Fees and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III and shall have the following treatment:

A. Administrative Claims

1. Administrative Claims

Except with respect to Administrative Claims that are Claims for Accrued Professional Compensation and except to the extent that a holder of an Allowed Administrative Claim agrees to less favorable treatment, each holder of an Allowed Administrative Claim shall, in complete satisfaction of such Allowed Administrative Claim, be paid Cash in the full amount of such Allowed Administrative Claim on the later of: (a) the Initial Distribution Date; (b) the first date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; and (c) the date such Allowed Administrative Claim becomes due and payable by its terms, or as soon thereafter as is reasonably practicable; *provided, however*, that (1) the Debtors may pay certain Administrative Claims from the Working Capital Fund that have already been approved by the Bankruptcy Court or incurred in the ordinary course of business, upon receipt of the Working Capital Fund, and (2) payment of any Administrative Claims (other than Accrued Professional Compensation, which shall be treated in accordance with the next subsection) incurred after December 31, 2011 shall be paid pursuant to the terms of the Purchase Agreement.

2. Professional Compensation

(a) Claims for Accrued Professional Compensation

Professionals or other Entities asserting a Claim for Accrued Professional Compensation for services rendered before the Effective Date must file and serve on the Debtors and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order, the Interim Compensation Order or other order of the Bankruptcy Court an application for final allowance of such Claim for Accrued Professional Compensation no later than 45 days after the Effective Date, or any other date scheduled by the Bankruptcy Court. Objections to any Claim for Accrued Professional Compensation must be filed and served on the Reorganized Debtors, the Creditors' Committee, the Office of the U.S. Trustee and the requesting party no later than the earlier of (a) 30 days after such application is filed or (b) 75 days after the Effective Date. All Accrued Professional Compensation and all claims for professional compensation sought under section 503(b) of the Bankruptcy Code shall be paid either by the Debtors or the Purchaser pursuant to the terms of the Purchase Agreement.

(b) Treatment of Claims for Accrued Professional Compensation

A Claim for Accrued Professional Compensation in respect of which a final fee application has been properly filed and served pursuant to this Plan shall be payable to the extent approved by order of the Bankruptcy Court. Subject to the Holdback Amount, on the Effective Date, or as soon thereafter as reasonably practicable, to the extent not otherwise paid, all Allowed Claims for Accrued Professional Compensation (including estimated Accrued Professional Compensation through the Effective Date) shall be paid in full in Cash. To receive payment on the Effective Date for unbilled fees and expenses incurred through the Effective Date, each Professional shall reasonably estimate fees and expenses due for unbilled fees and expenses for periods that will not have been billed as of the Effective Date and shall deliver such estimates to the Debtors, the Purchaser, and the U.S. Trustee prior to the Effective Date. If the estimated payment received by such Professional exceeds the actual allowed Accrued Professional Compensation for the estimated period, such excess amount shall be deducted from the Holdback Amount for such Professional and if the Holdback Amount is insufficient, such Professional shall disgorge the difference to: (i) the Debtors; or (ii) the Purchaser, in each case, pursuant to the terms of the Purchase Agreement. If the estimated payment received by the Professional is lower than the Accrued Professional Compensation of such Professional, the difference shall be promptly paid to the Professional by: (i) the Debtors; or (ii) the Purchaser, in

each case, pursuant to the terms of the Purchase Agreement. For the avoidance of doubt, all Accrued Professional Compensation and all claims for professional compensation sought under section 503(b) of the Bankruptcy Code shall be paid either by the Debtors or the Purchaser, in each case pursuant to the terms of the Purchase Agreement.

On the Effective Date, the Reorganized Debtors and the Purchaser shall fund the Holdback Amount Reserve for payment of the Holdback Amount in accordance with the terms of the Purchase Agreement. Upon final allowance by the Bankruptcy Court of the Accrued Professional Compensation, or entry of an earlier order of the Bankruptcy Court granting the release of any Holdback Amounts, such amounts, less any excess paid in connection with estimated fees and expenses through the Effective Date, shall be paid promptly and directly to the Professionals.

(c) Post- Effective Date Fees and Expenses

Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors and the Liquidating Trustee may employ and pay any Professional its reasonable, actual and documented fees and expenses for services rendered or expenses incurred after the Effective Date in the ordinary course of business without any further notice to any party or action (including, without limitation, without the need to file a fee application), order or approval of the Bankruptcy Court; provided, however, that to the extent such compensation or expense reimbursement is incurred, accrued, payable or paid prior to the Closing Date, the Purchaser shall be provided with an invoice showing all reasonable, actual and documented fees and expenses.

3. **Administrative Claim Bar Date**

Except as otherwise provided in this Article II.A, requests for payment of Administrative Claims must be filed and served on the Reorganized Debtors and the Purchaser pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than 45 days after the Effective Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors or Reorganized Debtors or their property and such Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests, if any, must be filed and served on the Reorganized Debtors and the requesting party no later than 90 days after the Effective Date. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim previously Allowed by Final Order, including all Administrative Claims expressly Allowed under this Plan. For the avoidance of doubt, all Administrative Claims incurred after December 31, 2011 shall be paid in accordance with the Purchase Agreement.

B. U.S. Trustee Fees

On the Effective Date, the Debtors shall pay all U.S. Trustee Fees that are due and owing as of the Effective Date.

C. Priority Tax Claims

Each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive, on the Distribution Date, at the option of the Debtors, one of the following treatments, in complete satisfaction of such Allowed Priority Tax Claim: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; or (2) such other treatment as may be agreed upon by such holder and the Debtors or otherwise determined upon an order of the Bankruptcy Court.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. General Rules of Classification

(i) Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtors. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

(ii) This Plan constitutes a separate chapter 11 plan for each Debtor, each of which shall include the classifications set forth below. For the avoidance of doubt, to the extent a Class contains Allowed Claims or Interests with respect to a particular Debtor, such Class is designated with respect to such Debtor. To the extent there are no Allowed Claims or Interests in a Class with respect to a particular Debtor, such Class is deemed to be omitted with respect to such Debtor. To the extent that certain Allowed Claims or Interests do not exist with respect to a particular Debtor, such Class is deemed to include only the Allowed Claims or Interests that do exist with respect to such Debtor. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims and Priority Tax Claims, as described in Article II.

B. Summary of Classification

The following chart represents the general classification of Claims and Interests against the Debtors pursuant to the Plan. Attached hereto as Exhibit 1 is a chart that delineates class for each individual Debtor and voting rights thereto.

Class	Claim	Status
1	Other Priority Claims	Unimpaired
2	Other Secured Claims	Unimpaired
3	Unsecured Claims	Impaired
4	Equity Interests	Impaired

A chart delineating the applicable classes for each individual Debtor is attached hereto as Exhibit 1.

C. Treatment of Claims and Interests

1. Class 1 – Other Priority Claims

(a) *Classification:* Class 1 consists of Other Priority Claims.

(b) *Treatment:* Except to the extent that a holder of an Allowed Other Priority Claim (i) has been paid by the Debtors, in whole or in part, prior to the Effective Date or (ii) agrees to a less favorable treatment, each holder of an Allowed Other Priority Claim shall receive, on the Initial Distribution Date and in full satisfaction, settlement, release, and discharge of, and in exchange for such Other Priority Claim, Cash in the full amount of such Allowed Other Priority Claim.

(c) *Voting:* Class 1 is Unimpaired, and the holders of Other Priority Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Priority Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Secured Claims

(a) *Classification:* Class 2 consists of Other Secured Claims. Although all Other Secured Claims have been placed in one Class for the purposes of nomenclature, each Other

Secured Claim, to the extent secured by a Lien on any property or interest in property of the Debtors different than that securing any other Other Secured Claims, shall be treated as being in a separate sub-Class for the purpose of receiving distributions under the Plan.

(b) *Treatment:* On the Initial Distribution Date, except to the extent that a holder of an Allowed Other Secured Claim agrees to a less favorable treatment, at the option of the Debtors or the Reorganized Debtors (i) each Allowed Other Secured Claim shall be reinstated and Unimpaired in accordance with section 1124(2) of the Bankruptcy Code, or (ii) each holder of an Allowed Other Secured Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Other Secured Claim, either (w) Cash in the full amount of such Allowed Other Secured Claim, including any postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (x) the proceeds of the sale or disposition of the collateral securing such Allowed Other Secured Claim to the extent of the value of the holder's secured interest in such collateral, (y) the collateral securing such Allowed Other Secured Claim and any interest on such Allowed Other Secured Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code, or (z) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code.

(c) *Voting:* Class 2 is Unimpaired, and the holders of Other Secured Claims are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, holders of Other Secured Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 – Unsecured Claims against each Debtor

(a) *Classification:* Class 3 consists of Unsecured Claims against each of the Debtors.

(b) *Treatment:* Each holder of an Allowed Unsecured Claim shall receive in full and final satisfaction of its Claim, its Pro Rata share (calculated with reference to all Allowed and Disputed Class 3 Claims against the applicable Debtor) of Liquidating Trust Interests applicable to such Debtor based on each such Debtor's Allocated Value; *provided, however*, that if, pursuant to Article V.G. hereof, the provisions of Exhibit 3 hereto are triggered, the treatment of holders of Allowed Claims in Class 3 shall be as provided in Exhibit 3.

(c) *Voting:* Holders of Unsecured Claims in Class 3 are Impaired, and receiving property under the Plan. Therefore, holders of Unsecured Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. Class 4 – Equity Interests

(a) *Classification:* Class 4 consists of all Equity Interests.

(b) *Treatment:* On the Effective Date, all Equity Interests shall be deemed cancelled and shall be of no further force and effect, whether surrendered for cancellation or otherwise, and there shall be no distribution to the holders of Equity Interests.

(c) *Voting:* Class 4 is Impaired, and the holders of Equity Interests are conclusively presumed to have rejected the Plan. Therefore, holders of Equity Interests are not entitled to vote to accept or reject the Plan.

ARTICLE IV.

ACCEPTANCE REQUIREMENTS

A. Acceptance or Rejection of the Plan

1. Voting Classes

Class 3 is Impaired under the Plan and is receiving property under the Plan. Therefore, such Class is entitled to vote to accept or reject the Plan.

2. Presumed Acceptance of the Plan

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

3. Presumed Rejection of the Plan

Class 4 is Impaired under the Plan and is not receiving any distribution under the Plan and is, therefore, conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

B. Vacant Classes

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest, as applicable, or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed to accept the Plan for purposes of determining acceptance or rejection of the Plan by such Class pursuant to sections 1129(a)(8) and 1129(a)(10) of the Bankruptcy Code.

C. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article XI hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification.

ARTICLE V.

MEANS FOR IMPLEMENTATION OF THE PLAN

A. Sale of Assets

On July 7, 2011, the Bankruptcy Court approved the Sale and entered the Sale Order. Pursuant to the Purchase Agreement, the Sale will be consummated and the Acquired Assets will be transferred to the Purchaser on the Closing Date, which shall occur after satisfaction or waiver of the conditions in Article VII of the Purchase Agreement, including, inter alia, the issuance of the FCC Consent and Industry Canada Approval. Pursuant to Article V.O hereof, after the Effective Date and before the Closing Date, all property of the Estates (including the Acquired Assets, to the extent the Closing Date does not occur on or before the Effective Date) will vest in the Reorganized Debtors and the Reorganized Debtors will operate the Business until the Closing Date in accordance with this Plan and subject to the Purchase Agreement and the Sale Order. Should the Closing Date occur on or before the Effective Date, the only activities of the Reorganized Debtors after the Effective Date will be the winding up of operations in accordance with this Plan, the Purchase Agreement and the Sale Order and the implementation of the terms of this Plan.

Proceeds from the Sale will be used (1) by the Liquidating Trust to satisfy Claims, as provided herein and (2) to fund the Working Capital Fund, which will contain funds necessary to operate the Business and administer the Chapter 11 Cases and Canadian Proceedings until December 31, 2011. Any funds remaining either in the Working Capital Fund or as Cash on hand of the Debtors as of December 31, 2011 shall be retained by the Debtors or transferred to the Liquidating Trust and be made available for Distributions in accordance with the Plan. Subject to the terms of the Purchase Agreement, after December 31, 2011, funding necessary to operate the Business and administer the Chapter 11 Cases and Canadian Proceedings will be provided to the Debtors by the Purchaser pursuant to the Purchase Agreement.

B. Retained Assets

On the Effective Date, pursuant to Article V.O hereof, the Retained Assets will vest in the Reorganized Debtors. Before and following the Effective Date, the Debtors or the Reorganized Debtors, as applicable, will use the Retained Assets to, among other things, operate the Business and administer this Plan until the Closing Date; *provided, however*, that, subject to the terms of the Purchase Agreement, after December 31, 2011, funding necessary to operate the Business will be provided by the Purchaser pursuant to the Purchase Agreement. The Debtors or Reorganized Debtors, as applicable, in consultation with the Creditors' Committee or Liquidating Trustee, as applicable, may from time to time transfer Retained Assets to the Liquidating Trust to be used to satisfy Claims, as provided herein.

C. Plan Settlement

As discussed in detail in the Disclosure Statement, the Plan Settlement addresses the treatment of certain Claims that were Allowed pursuant to the Settlement. Among other things, under the Plan Settlement,[2] and notwithstanding anything to the contrary contained herein:

- Holders of Unsecured Claims at TSN (other than any party which holds the Sprint Claim) will receive their Pro Rata portion of 70.18% of the remaining sale proceeds;
- Holders of Unsecured Claims at TSL (other than any party which holds the Sprint Claim) will receive their Pro Rata portion of 29.52% of the remaining sale proceeds;
- Holders of Unsecured Claims at TSN Canada (other than any party which holds the Sprint Claim) will receive their Pro Rata portion of 0.30% of the remaining sale proceeds;

All of the Settlement Parties have agreed that the recovery percentages for holders of Unsecured Claims listed above will not change even if the Bankruptcy Court modifies but still confirms the Plan. In any event, no single holder of a Senior Exchangeable Notes Claim shall be compelled to accept a lower recovery on account of its Claim than any other holder of a Senior Exchangeable Notes Claim. Subject to Article VII, all Distributions made to holders of Allowed Claims and Interests in any Class are intended to be and shall be final and indefeasible.

D. Sources of Consideration for Plan Distributions

All Cash consideration necessary for the Debtors, Reorganized Debtors or Liquidating Trustee, as applicable, to make payments or Distributions to the holders of Allowed Claims entitled to such Distributions under the Plan and/or the Liquidating Trust Agreement shall be obtained from (i) the Funding Date Payment, (ii) the Closing Date Payment, (iii) the Retained Causes of Action Net Proceeds, (iv) other Cash on hand or, (v) solely to the extent set forth in the Purchase Agreement, the Purchaser.

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2 The terms of the Plan Settlement set forth below are subject in all respects to the Global Settlement Order. In addition, this Plan only recites those terms of the Plan Settlement which are material to the Plan. Capitalized terms used in this section but not defined shall have the meanings ascribed to them in the Global Settlement Order.

E. The Liquidating Trust

1. Generally

On the Effective Date, the Liquidating Trust will be established and become effective for the benefit of the holders of Allowed Claims entitled to Distributions from the Liquidating Trust under the Plan. The powers, authority, responsibilities, and duties of the Liquidating Trust and the Liquidating Trustees are set forth in and shall be governed by the Liquidating Trust Agreement. The Liquidating Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, any and all provisions necessary to ensure the continued treatment of the Liquidating Trust as a grantor trust and the beneficiaries of the Liquidating Trust as the grantors and owners thereof for federal income tax purposes. The Liquidating Trust and the Liquidating Trustees, including any successors, shall be bound by the Plan and shall not challenge any provision of the Plan.

2. Purpose and Establishment of the Liquidating Trust

On the Effective Date, the Liquidating Trust shall be established for the purposes set forth in the Liquidating Trust Agreement.

On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of (a) administering the Liquidating Trust Assets; (b) resolving all Disputed Claims; (c) pursuing Retained Causes of Action; and (d) making all required Distributions to the Liquidating Trust Beneficiaries as provided for under the Plan. The Liquidating Trust is intended to qualify as a liquidating trust pursuant to Treasury Regulation section 301.7701-4(d) and as a grantor trust pursuant to Treasury Regulation section 1.671-4(a), with no objective to continue or engage in the conduct of a trade or business. The Liquidating Trust shall not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth herein or in the Liquidating Trust Agreement.

On or before the Effective Date, the Liquidating Trust Agreement shall be executed and the Debtors shall take all other steps necessary to establish the Liquidating Trust pursuant to the Liquidating Trust Agreement and consistent with the Plan.

3. Transferability of Liquidating Trust Interests

Ownership of a Liquidating Trust Interest shall be uncertificated and shall be in book entry form. The Liquidating Trust Interests will not be registered pursuant to the Securities Act, or any state securities law. If the Liquidating Trust Interests constitute "securities," the parties hereto intend that the exemption provisions of section 1145 of the Bankruptcy Code will apply to the Liquidating Trust Interests. The Liquidating Trust Interests will be non-transferable and non-assignable except by will, intestate succession or operation of law.

4. Liquidating Trust Assets

The Liquidating Trust shall consist of the Liquidating Trust Assets. On the Effective Date, the Debtors shall transfer all of the Liquidating Trust Assets to the Liquidating Trust. The Liquidating Trust Assets may be transferred subject to certain liabilities, as provided in the Plan or the Liquidating Trust Agreement. Such transfer shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax, pursuant to section 1146(a) of the Bankruptcy Code. Upon delivery of the Liquidating Trust Assets to the Liquidating Trust, the Debtors and their predecessors, successors and assigns shall be discharged and released from all liability with respect to the delivery of such distributions.

5. Appointment of the Liquidating Trustee and Liquidating Trust Board

On or prior to the Effective Date, the Creditors' Committee, in consultation with the Debtors, shall appoint a Liquidating Trustee in accordance with the Liquidating Trust Agreement. Additionally, on or prior to the Confirmation Date, a Liquidating Trust Board consisting of at least 3 members shall be appointed, which members shall be appointed by the Creditors' Committee, in consultation with the Debtors. The Liquidating Trustee shall serve at the direction of the Liquidating Trust Board, *provided, however,* the Liquidating Trust Board may not direct the Liquidating Trustee or the members of the Liquidating Trust Board to act inconsistently with their duties under

the Liquidating Trust Agreement and/or the Plan. The Liquidating Trust Board may not terminate the Liquidating Trustee for any reason, absent approval by the Bankruptcy Court in accordance with the provisions of the Liquidating Trust Agreement. In the event the Liquidating Trustee dies, is terminated, or resigns for any reason, the Liquidating Trust Board shall designate a successor.

6. Rights and Powers of the Liquidating Trustee

In furtherance of and consistent with the purpose of the Liquidating Trust and the Plan, and subject to the terms of the Confirmation Order, the Plan and the Liquidating Trust Agreement, and the oversight of the Liquidating Trust Board, the Liquidating Trustee shall be deemed the Estates' representative in accordance with section 1123 of the Bankruptcy Code with regard to the Liquidating Trust and shall have all the rights and powers set forth in the Liquidating Trust Agreement, including, without limitation, the powers of a trustee under sections 704 and 1106 of the Bankruptcy Code and Rule 2004 of the Bankruptcy Rules (including, without limitation, the right to (1) effect all actions and execute all agreements, instruments and other documents necessary to implement the provisions of the Plan and the Liquidating Trust Agreement; (2) to hold, manage, convert to Cash, and distribute the Liquidating Trust Assets, including prosecuting and resolving the Claims belonging to the Liquidating Trust; (3) to hold the Liquidating Trust Assets for the benefit of the Liquidating Trust Beneficiaries, whether their Claims are Allowed on or after the Effective Date; (4) in the Liquidating Trustee's reasonable business judgment, to investigate, prosecute, settle and/or abandon rights, causes of action, or litigation of the Liquidating Trust, including, without limitation, Avoidance Actions; (5) to monitor and enforce the implementation of the Plan; (6) to file all tax and regulatory forms, returns, reports, and other documents required with respect to the Liquidating Trust; (7) in the Liquidating Trustee's reasonable business judgment, to object to Claims, and manage, control, prosecute, and/or settle on behalf of the Liquidating Trust, objections to Claims on account of which the Liquidating Trustee will be responsible (if Allowed) for making distributions under the Plan and the Liquidating Trust Agreement; (8) to hold, manage, and distribute Cash or non-Cash Liquidating Trust Assets obtained through the exercise of its power and authority; (9) establish and administer any necessary reserves for Disputed Claims that may be required with regard to the Liquidating Trust Agreement; (10) object to the Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any manner approved by the Bankruptcy Court such objections or any other litigation or proceeding between creditors in the cases; (11) to act as a signatory to the Debtors for all purposes, including those associated with the novation of contracts or other obligations arising out of the sales of the Debtors' assets; and (12) employ and compensate professionals and other agents, provided, however, that any such compensation shall be made only out of the Liquidating Trust Assets, to the extent not inconsistent with the status of the Liquidating Trust as a liquidating trust within the meaning of U.S. Treasury Regulation section 301.7701-04(d) for federal income tax purposes.

7. Funding of the Liquidating Trust, Cash

On the Effective Date, the Reorganized Debtors will deposit with the Liquidating Trust the Liquidating Trust Assets available to the Debtors at that time. To the extent that certain Liquidating Trust Assets become available at a later date, such Liquidating Trust Assets will be deposited with the Liquidating Trust as soon as reasonably practicable after that date. The Liquidating Trustee may invest Cash (including any earnings thereon or proceeds therefrom) as permitted by section 345 of the Bankruptcy Code; *provided, however*, that such investments are investments permitted to be made by a Liquidating Trust within the meaning of Treasury Regulation section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities.

8. Fees and Expenses of the Liquidating Trust

Except as otherwise ordered by the Bankruptcy Court, the Liquidating Trust Expenses on or after the Effective Date shall be paid from the Liquidating Trust Assets without further order of the Bankruptcy Court; *provided, however*, that such fees and expenses shall be subject to the review, upon notice and other procedures set forth in the Liquidating Trust Agreement, of the Liquidating Trust Board.

9. Distributions; Withholding

a. The Liquidating Trustee shall make distributions to the beneficiaries of the Liquidating Trust when and as authorized pursuant to the Liquidating Trust Agreement in compliance with the Plan.

b. Tax Withholdings by Liquidating Trustee. The Liquidating Trustee may withhold from amounts otherwise distributable to any Person and pay to the appropriate tax authority all amounts required to be withheld pursuant to the IRC or any provision of any foreign, state or local tax law with respect to any payment or distribution to the holders of Liquidating Trust Interests. All such amounts withheld and paid to the appropriate tax authority shall be treated as amounts distributed to such holders of Liquidating Trust Interests for all purposes of the Liquidating Trust Agreement. The Liquidating Trustee shall be authorized to collect such tax information from the holders of Liquidating Trust Interests (including, without limitation, social security numbers or other tax identification numbers) as in its sole discretion the Liquidating Trustee deems necessary to effectuate the Plan, the Confirmation Order, and the Liquidating Trust Agreement. In order to receive distributions under the Plan, all holders of Liquidating Trust Interests shall be required to identify themselves to the Liquidating Trustee and provide tax information and the specifics of their holdings, to the extent the Liquidating Trustee deems appropriate in the manner and in accordance with the procedures from time to time established by the Liquidating Trustee for these purposes. This identification requirement may, in certain cases, extend to holders who hold their securities in street name. The Liquidating Trustee may refuse to make a distribution to any holder of a Liquidating Trust Interest that fails to furnish such information in a timely fashion, until such information is delivered, and may treat such holder's Liquidating Trust Interests as disputed; provided, however, that, upon the delivery of such information by a holder of a Liquidating Trust Interest, the Liquidating Trustee shall make such distribution to which the holder of the Liquidating Trust Interest is entitled, without additional interest occasioned by such holder's delay in providing tax information; and, provided, further that, if the Liquidating Trustee fails to withhold in respect of amounts received or distributable with respect to any such holder and the Liquidating Trustee is later held liable for the amount of such withholding, such holder shall reimburse the Liquidating Trustee for such liability (to the extent such amounts were actually distributed to such holder).

10. Semi-Annual Reports to be Filed by the Liquidating Trustee

The Liquidating Trust shall file semi-annual reports regarding the Liquidating Trust Assets, the Distributions made by it and other matters required to be included in such report in accordance with the Liquidating Trust Agreement. The Liquidating Trustee will file such semi-annual reports on the Debtors' case docket. In addition, the Liquidating Trust will file tax returns as a grantor trust pursuant to the Treasury Regulation Article 1.671-4(a).

11. Federal Income Tax Treatment of the Liquidating Trust

a. Liquidating Trust Assets Treated as Owned by Creditors. For all United States and Canadian federal income tax purposes, all parties (including, without limitation, the Debtors, the Liquidating Trustee, and the Liquidating Trust Beneficiaries) shall treat the transfer of the Liquidating Trust Assets to the Liquidating Trust as (1) a transfer by each Debtor of the Liquidating Trust Assets (subject to any obligations relating to those assets) directly to the Liquidating Trust Beneficiaries in full satisfaction of the Liquidating Trust Beneficiaries' claims against the Debtors and, to the extent Liquidating Trust Assets are allocable to Disputed Claims, to the Disputed Claims Reserve, followed by (2) the transfer by such beneficiaries to the Liquidating Trust of the Liquidating Trust Assets (other than the Liquidating Trust Assets allocable to the Disputed Claims Reserve) in exchange for Liquidating Trust Interests. Accordingly, the Liquidating Trust Beneficiaries shall be treated for United States federal income tax purposes as the grantors and owners of their respective share of the Liquidating Trust Assets (other than such Liquidating Trust Assets as are allocable to the Liquidating Trust Claims Reserve, discussed below). The foregoing treatment shall also apply, to the extent permitted by applicable law, for all state, provincial, territorial and local income tax purposes.

b. Tax Reporting.

i. The Liquidating Trustee shall file all relevant tax returns for the Liquidating Trust in the United States, Canada and elsewhere. The Liquidating Trustee shall treat the Liquidating Trust as a grantor trust for United States federal income tax purposes pursuant to Treasury Regulation section 1.671-4(a) and in accordance with this Article V.E.11. The Liquidating Trustee also will annually send to each holder of a Liquidating Trust Interest a separate statement regarding the receipts and expenditures of the Liquidating Trust as relevant for all U.S. federal income tax purposes and will instruct all such holders to use such information in preparing their U.S. and Canadian federal income tax returns or to forward the appropriate information to such holder's underlying beneficial

holders with instructions to utilize such information in preparing their U.S. and Canadian federal income tax returns. The Liquidating Trustee shall also file (or cause to be filed) any other statement, return or disclosure relating to the Liquidating Trust that is required by any governmental units in the United States, Canada and elsewhere.

ii. The Liquidating Trustee will in good faith value all other Liquidating Trust Assets, and shall make all such values available from time to time, to the extent relevant, and such values shall be used consistently by all parties to the Liquidating Trust (including, without limitation, the Debtors, the Liquidating Trustee, and Liquidating Trust Beneficiaries) for all United States and Canadian federal income tax purposes.

iii. Allocations of Liquidating Trust taxable income among the Liquidating Trust Beneficiaries (other than taxable income allocable to the Disputed Claims Reserve) shall be determined by reference to the manner in which an amount of cash representing such taxable income would be distributed (were such cash permitted to be distributed at such time) if, immediately prior to such deemed distribution, the Liquidating Trust had distributed all its assets (valued at their tax book value, and other than assets allocable to the Disputed Claims Reserve) to the holders of the Liquidating Trust Interests, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a hypothetical liquidating distribution of the remaining Liquidating Trust Assets. The tax book value of the Liquidating Trust Assets for purpose of this paragraph shall equal their fair market value on the Effective Date, adjusted in accordance with tax accounting principles prescribed by the IRC, the applicable Treasury Regulations, and other applicable administrative and judicial authorities and pronouncements.

iv. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Liquidating Trustee of a private letter ruling if the Liquidating Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating Trustee shall (A) timely elect to treat any Disputed Claims Reserve as a "disputed ownership fund" governed by Treasury Regulation section 1.468B-9, and (B) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. All parties (including the Liquidating Trustee, the Debtors, and the Liquidating Trust Beneficiaries) shall report for United States federal, state and local income tax purposes consistently with the foregoing.

v. The Liquidating Trustee shall be responsible for payment, out of the Liquidating Trust Assets, of any United States, Canadian, federal, provincial, territorial or local taxes imposed on the trust or its assets, including the Disputed Claims Reserve. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claims Reserve is insufficient to pay the portion of any such United States, Canadian, federal, provincial, territorial or local taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such United States, Canadian, federal, provincial, territorial or local taxes shall be (i) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims, or (ii) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts otherwise distributable by the Liquidating Trustee as a result of the resolution of such Disputed Claims.

vi. The Liquidating Trustee may request an expedited determination of taxes of the Liquidating Trust, including the Disputed Claims Reserve, or the Debtors under section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Liquidating Trust or the Debtors for all taxable periods through the dissolution of the Liquidating Trust.

c. Dissolution. The Liquidating Trustee and the Liquidating Trust shall be discharged or dissolved, as the case may be, at such time as (i) all of the Liquidating Trust Assets have been distributed pursuant to the Plan and the Liquidating Trust Agreement, (ii) the Liquidating Trustee determines, in its sole discretion, that the administration of any remaining Liquidating Trust Assets is not likely to yield sufficient additional Liquidating Trust proceeds to justify further pursuit, or (iii) all distributions required to be made by the Liquidating Trustee under the Plan and the Liquidating Trust Agreement have been made; provided, however, in no event shall the Liquidating Trust be dissolved later than three (3) years from the Effective Date unless the Bankruptcy Court, upon motion within the six-month period prior to the third (3rd) anniversary (or within the six-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable private letter ruling from the IRS or an opinion of counsel satisfactory to the Liquidating Trustee and the Liquidating Trust Board that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets. If at any time the Liquidating Trustee determines, in

reliance upon such professionals as the Liquidating Trustee may retain, that the expense of administering the Liquidating Trust so as to make a final distribution to its beneficiaries is likely to exceed the value of the assets remaining in the Liquidating Trust, the Liquidating Trustee may apply to the Bankruptcy Court for authority to (i) reserve any amount necessary to dissolve the Liquidating Trust, (ii) donate any balance to a charitable organization (A) described in section 501(c)(3) of the IRC, (B) exempt from United States federal income tax under section 501(a) of the IRC, (C) not a "private foundation", as defined in section 509(a) of the IRC, and (D) that is unrelated to the Debtors, the Liquidating Trust, and any insider of the Liquidating Trustee, and (iii) dissolve the Liquidating Trust.

12. Indemnification of the Liquidating Trustee.

The Liquidating Trustee or the individual(s) comprising the Liquidating Trustee, as the case may be, and the Liquidating Trustee's agents and professionals, shall not be liable to the Liquidating Trust Beneficiaries for actions taken or omitted in their capacity as, or on behalf of, the Liquidating Trustee, except those acts arising out of their own willful misconduct or gross negligence, and each shall be entitled to indemnification and reimbursement for fees and expenses in defending any and all actions or inactions in their capacity as, or on behalf of, the Liquidating Trustee, except for any actions or inactions involving willful misconduct or gross negligence. Any indemnification claim of the Liquidating Trustee (and the other parties entitled to indemnification under this subsection) shall be satisfied solely from the Liquidating Trust Assets and shall be entitled to a priority distribution therefrom, ahead of the Liquidating Trust Interests and any other claim to or interest in such assets. The Liquidating Trustee shall be entitled to rely, in good faith, on the advice of its retained professionals.

13. Termination of the Liquidating Trust

The Liquidating Trust shall terminate in accordance with the Liquidating Trust Agreement.

F. Operations of the Debtors between the Confirmation Date, the Effective Date and the Closing Date

The Debtors shall continue to operate as Debtors in Possession during the period from the Confirmation Date through the Effective Date. Upon the Effective Date, the Reorganized Debtors will exist and operate the Business in accordance with terms and conditions of the Purchase Agreement and the Sale Order. Upon the Closing Date, the Reorganized Debtors will transfer the Acquired Assets to the Purchaser in accordance with the Purchase Agreement. In addition, on the Closing Date (or earlier in certain circumstances, as set forth in the Purchase Agreement), the Purchaser shall pay to the Reorganized Debtors the Closing Date Payment, which will be transferred to the Liquidating Trust as soon as reasonably practicable upon the Reorganized Debtors' receipt of the Closing Date Payment. Notwithstanding the foregoing, the Reorganized Debtors will not transfer to the Purchaser the Retained Assets, but may, with the consultation of the Creditors' Committee or the Liquidating Trustee, as applicable, contribute or transfer any of the Retained Assets to the Liquidating Trust. Should the Closing Date occur on or before the Effective Date, the Reorganized Debtors will exist solely for the purpose of implementing the Plan and winding up their remaining operations after the Closing in accordance with the terms of the Plan, the Purchase Agreement and the Sale Order.

G. Modifications to the Plan in the Event that the Closing Date Does Not Occur on or Before the Effective Date

If (i) the Closing Date does not occur on or before the Effective Date or (ii) upon consultation with the Creditors' Committee, the Debtors determine in their discretion that the provisions in Exhibit 3 should be triggered, all provisions in Exhibit 3 shall take effect and shall become and be deemed operative provisions of this Plan and all applicable Articles of this Plan shall be and shall be deemed modified by the provisions contained in Exhibit 3. To the extent that the Closing Date does occur on or before the Effective Date, all provisions contained in Exhibit 3 hereto shall be and shall be deemed null, void and of no force and effect. If the Debtors, in consultation with the Creditors' Committee, trigger the provisions in Exhibit 3 in accordance with (ii), above, the Debtors shall file a notice on the docket of such determination.

H. Term of Injunction or Stays

Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Cases pursuant to 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 Chapter 11 Cases are closed.

I. Cancellation of Securities and Agreements

On the Effective Date, and to the extent not occurring sooner pursuant to the Paydown Orders or any similar order, except as otherwise specifically provided for in the Plan: (1) the remaining obligations of the Debtors, if any, under the Senior Secured Notes Security Agreements, the Indentures and the PMCA, and any other certificate, share, note, bond, indenture, purchase right, option, warrant or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Interest (except such certificates, notes or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically reinstated pursuant to the Plan), shall be cancelled as to the Debtors, and the Reorganized Debtors shall not have any continuing obligations thereunder and (2) the obligations of the Debtors pursuant, relating or pertaining to any agreements, indentures, certificates of designation, bylaws or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors (except such agreements, certificates, notes or other instruments evidencing indebtedness or obligations of the Debtors that are specifically reinstated or assumed pursuant to the Plan) shall be released and discharged; *provided, however*, notwithstanding Confirmation or the occurrence of the Effective Date, any such indenture or agreement that governs the rights of the holder of a Claim shall continue in effect solely for purposes of (a) allowing holders of Senior Secured Notes Claims and Senior Exchangeable Notes Claims (as applicable) to receive Distributions under the Plan as provided herein, (b) allowing the Indenture Trustees, if applicable, to make Distributions under the Plan as provided herein, or any other distribution under the Indentures, and in accordance with any payment priorities established under the Indentures and to deduct therefrom such unpaid compensation, reasonable fees and expenses due thereunder or incurred in making such Distributions and (c) allowing the Indenture Trustees to seek compensation and/or reimbursement of reasonable fees and expenses in accordance with the terms of the Indentures and this Plan, including, without limitation, through the exercise of their respective charging liens; *provided further, however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order or the Plan, or result in any expense or liability to the Reorganized Debtors, except to the extent set forth in or provided for under this Plan or the Global Settlement Order. On and after the Effective Date, all duties and responsibilities of the Indenture Trustees under the Indentures, and the Purchase Money Agent under the PMCA, as applicable, shall be discharged except to the extent required in order to effectuate the Plan.

J. Corporate Existence

Subject to any Restructuring Transaction and except as otherwise provided herein, including in Article V.Y hereof, in the New Corporate Governance Documents or elsewhere in the Plan Supplement, each Debtor, as Reorganized, shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership or other form, as the case may be, with all the powers of a corporation, limited liability company,

partnership or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed, subject to the terms of this Plan.

K. New Certificates of Incorporation and New By-Laws

On or as soon as reasonably practicable after the Effective Date, each of the Reorganized Debtors will file their respective New Certificates of Incorporation with the applicable Secretaries of State and/or other applicable authorities in their respective jurisdictions of incorporation in accordance with the corporate laws of the respective jurisdictions of incorporation. After the Effective Date, each of the Reorganized Debtors may amend and restate their respective New Certificates of Incorporation and New By-Laws and other constituent documents as permitted by the laws of their respective jurisdictions of incorporation and their respective New Certificates of Incorporation and New By-Laws.

L. Reorganized Debtors' Boards of Directors

To the extent known, the identity of the members of the New Boards of each of the Reorganized Debtors will be identified in the Plan Supplement.

M. Officers of Reorganized Debtors

To the extent known, officers of each of the other Reorganized Debtors shall be identified in the Plan Supplement. Such officers shall serve in accordance with applicable non-bankruptcy law and, to the extent applicable, the New Employment Agreements. The officers of each of the Reorganized Debtors will be determined by the New Boards of each of the Reorganized Debtors.

N. Employee Benefits

Except as otherwise provided herein, and in accordance with and subject to the terms of the Purchase Agreement, on and after the Effective Date, the Reorganized Debtors may: (1) honor, in the ordinary course of business, any contracts, agreements, policies, programs and plans for, among other things, compensation (other than equity based compensation related to Interests), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance and accidental death and dismemberment insurance for the directors, officers and employees of any of the Debtors who served in such capacity at any time and (2) honor, in the ordinary course of business, Claims of employees employed as of the Effective Date for accrued vacation time arising before the Petition Date; *provided, however,* that the Debtors' or Reorganized Debtors' performance under any employment agreement will not entitle any person to any benefit or alleged entitlement under any policy, program or plan that has expired or been terminated before the Effective Date, or restore, reinstate or revive any such benefit or alleged entitlement under any such policy, program or plan. Nothing herein shall limit, diminish or otherwise alter the Reorganized Debtors' defenses, claims, Causes of Action or other rights with respect to any such contracts, agreements, policies, programs and plans.

On or as soon as reasonably practicable after April 15, 2012 (to the extent that the Effective Date has not yet occurred), the Key Executives shall be entitled to receive, and the Confirmation Order shall serve as the Debtors' authority to pay to the Key Executives, the Partial KEIP Payment. For the avoidance of doubt, the Partial KEIP Payment (and any subsequent payments pursuant to the Initial KEIP Order or Amended KEIP Order) shall be paid from the Working Capital Fund. The balance of any compensation due to the Key Executives and the Senior Employees pursuant to the Initial KEIP Order, as modified by the terms and conditions of the Amended KEIP Order, as applicable, including the potential disgorgement of amounts paid pursuant to the Amended KEIP Order on the terms provided therein, will be paid to such employees on the Effective Date.

O. Vesting of Assets in the Reorganized Debtors

Except as otherwise provided in the Purchase Agreement, the Sale Order or the Plan or any agreement, instrument or other document incorporated therein, on the Effective Date any and all property in each Estate and all

Causes of Action (except those released pursuant to the Releases by the Debtors) shall vest in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges or other encumbrances; provided that to the extent the Acquired Assets have been transferred to the Purchaser on or before the Effective Date, solely the Retained Assets will vest in each respective Reorganized Debtor. On and after the Effective Date, each Reorganized Debtor will operate its business in accordance with the terms hereof, the Purchase Agreement and the Sale Order and may use, acquire or dispose of property, and compromise or settle any Claims, Interests or Causes of Action free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, but subject to the Purchase Agreement and the Sale Order.

P. Restructuring Transactions

On the Effective Date or as soon as reasonably practicable thereafter, but subject to the Purchase Agreement and the Sale Order, the Reorganized Debtors may enter into any Restructuring Transactions and may take all actions as may be necessary or appropriate to effect a restructuring of their respective businesses or the overall organizational structure of the Reorganized Debtors. The Restructuring Transactions may include one or more mergers, consolidations, restructurings, conversions, dissolutions, transfers or liquidations as may be reasonably determined by (i) the Debtors, or (ii) the Reorganized Debtors to be necessary or appropriate (including, as necessary to comply with any regulatory requirements), subject to the Purchase Agreement and the Sale Order. The actions to effect the Restructuring Transactions, which shall be subject to the Purchase Agreement and the Sale Order, may include: (1) the execution and delivery of appropriate agreements or other documents of merger, consolidation, restructuring, conversion, disposition, transfer, dissolution or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable law and any other terms to which the applicable Entities may agree; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (3) the filing of appropriate certificates or articles of incorporation or amendments thereof, reincorporation, merger, consolidation, conversion or dissolution pursuant to the law of the applicable jurisdiction; and (4) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law in connection with the Restructuring Transactions. In the event a Restructuring Transaction is a merger transaction, upon the consummation of such Restructuring Transaction, each party to such merger shall cease to exist as a separate corporate entity and thereafter the surviving Reorganized Debtor shall assume and perform the obligations of each Reorganized Debtor under the Plan. In the event a Reorganized Debtor is liquidated, the Reorganized Debtors (or the Reorganized Debtor which owned the stock in such liquidating Debtor prior to such liquidation) shall assume and perform such obligations. Implementation of the Restructuring Transactions shall not affect the Distributions under the Plan.

Q. Intercompany Claims

Each Allowed Intercompany Claim shall be reinstated on the Effective Date, except as otherwise determined by the Debtors. After the Effective Date, the Reorganized Debtors shall have the right to resolve or compromise Disputed Intercompany Claims without approval of the Bankruptcy Court subject to and consistent with the terms of the Global Settlement Order.

R. Corporate Action

Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including (1) entry into the New Employment Agreements; (2) selection of the directors and officers of the Reorganized Debtors; (3) issuance of the New Common Stock, as provided herein; and (4) all other actions contemplated by the Plan (whether to occur before, on or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the directors or officers of the Debtors or the Reorganized Debtors.

On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and directed to issue, execute and deliver the agreements, documents, securities, certificates of incorporation, operating agreements and instruments contemplated by the Plan (or

necessary or desirable to effect the transactions contemplated by the Plan) in the name of and on behalf of the Reorganized Debtors, including any and all agreements, documents, securities and instruments relating to the foregoing. Upon the Effective Date if the Closing occurs on or before the Effective Date, or upon Closing if Closing occurs after the Effective Date, the terms of all directors and officers of TSN, TSNSI and TSL (collectively, the "*U.S. Debtors*") shall be deemed to have expired, all such directors and officers shall be released of their duties, and all actions in furtherance of this Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by the U.S. Debtors, Reorganized U.S. Debtors, holders of Claims or Equity Interests, directors, managers, or officers of the U.S. Debtors, Reorganized U.S. Debtors, or any other Entity or Person, including the transfer of the Liquidating Trust Assets to the Liquidating Trust and the dissolution or winding up of the U.S. Debtors or the Reorganized U.S. Debtors, as applicable. The directors and officers of TSN Canada, TSN Holdings Canada and 088 (collectively, the "*Canadian Debtors*") shall continue in their roles (as the New Board of the Reorganized Canadian Debtors) after Closing solely for the purposes of winding up and dissolving the Canadian Debtors in accordance with applicable law. The authorizations and approvals contemplated by this Article V shall be effective notwithstanding any requirements under non-bankruptcy law.

S. Effectuating Documents; Further Transactions

On and after the Effective Date, the Reorganized Debtors and the managers, officers and members of the boards of directors thereof are authorized to issue, execute, deliver, file or record such contracts, securities, instruments, releases and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Plan and the securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorization or consents except for those expressly required pursuant to the Plan.

T. Section 1145 Exemption for Interim TSN Trust Interests, Interim TSN Warrants and Liquidating Trust Interests

To the extent that the Interim TSN Trust Interests, Interim TSN Warrants (each, in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof) and the Liquidating Trust Interests constitute "securities," the parties hereto intend that the exemption provisions of section 1145 of the Bankruptcy Code will apply to the Interim TSN Trust Interests, Interim TSN Warrants (each, in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof) and Liquidating Trust Interests.

U. Section 1146 Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property in contemplation of, in connection with, or pursuant to the Plan and/or the Purchase Agreement shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States, and the Confirmation Order shall direct and be deemed to direct the appropriate state or local governmental officials or agents to forgo the collection of any such 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 tax or governmental assessment. Such exemption specifically applies, without limitation, to (1) the transfer of the Acquired Assets to the Purchaser pursuant to the Purchase Agreement; (2) the creation of any mortgage, deed of trust, lien or other security interest; (3) the making or assignment of any lease or sublease; (4) any Restructuring Transaction; or (5) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including: (a) any merger agreements; (b) agreements of consolidation, restructuring, disposition, liquidation or dissolution; (c) deeds; or (d) assignments executed in connection with any transaction occurring under the Plan.

V. D&O Liability Insurance Policies and Indemnification Provisions

Notwithstanding anything herein to the contrary, as of the Effective Date, the D&O Liability Insurance Policies and Indemnification Provisions belonging or owed to directors, officers, and employees of the Debtors (or the estates of any of the foregoing) who served or were employed by the Debtors as of or after the Petition Date, excluding claims resulting from gross negligence, willful misconduct, breach of fiduciary duty, or intentional tort, shall be deemed to be, and shall be treated as though they are, executory contracts and the Debtors shall assume (and

assign to the Reorganized Debtors if necessary to continue the D&O Liability Insurance Policies in full force) all of the D&O Liability Insurance Policies and Indemnification Provisions pursuant to section 365(a) of the Bankruptcy Code. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the D&O Liability Insurance Policies and Indemnification Provisions. On or before the Effective Date, the Reorganized Debtors shall obtain tail coverage under a directors' and officers' liability insurance policy for the current and former directors, officers and managers for a period of five years, and placed with such insurers, the terms of which shall be set forth in the Plan Supplement.

In addition, on the Effective Date, the New Corporate Governance Documents of the Reorganized Debtors shall contain provisions which (i) eliminate the personal liability of the Debtors' and the Reorganized Debtors' then-present and future directors and officers for post-emergence monetary (or other) damages resulting from breaches of their fiduciary duties (and any other actions taken in furtherance of this Plan and the Purchase Agreement) to the fullest extent permitted by applicable law in the jurisdiction in which the subject Reorganized Debtor is organized; and (ii) require such Reorganized Debtor, subject to appropriate procedures, to indemnify the Debtors' and the Reorganized Debtors' directors, officers, and other key employees (as such key employees are identified by the New Board) serving on or after the Effective Date for all claims and actions (and any other actions taken in furtherance of this Plan and the Purchase Agreement) to the fullest extent permitted by applicable law in the jurisdiction in which the subject Reorganized Debtor is organized.

Notwithstanding anything to the contrary, as of the Effective Date, all Indemnification Provisions belonging or owed to directors, officers, and employees of the Debtors who served or were employed by the Debtors prior to, but not after, the Petition Date shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected pursuant to section 365 of the Bankruptcy Code under the Plan.

W. Payment of Fees and Expenses of the Indenture Trustees and Certain Other Professionals

In accordance with the Final DIP Order, the reasonable, actual and documented fees and expenses of the Senior Secured Notes Indenture Trustee/Agent shall be finally allowed. On the Effective Date or as soon as reasonably practicable thereafter, the Debtors, Reorganized Debtors or the Purchaser (as applicable, and subject to the terms of the Purchase Agreement) shall pay in Cash (1) all reasonable, actual and documented unpaid fees and expenses of the Senior Secured Notes Indenture Trustee/Agent and its advisors, including counsel; and (2) all reasonable, actual and documented unpaid fees and expenses of the Senior Exchangeable Notes Indenture Trustee and its advisors, including counsel. The Debtors, the Purchaser, the Reorganized Debtors and any notice party entitled to receive and review fees and expenses under the Final DIP Order may dispute any portion of such aforementioned fees and expenses in which case (a) the Debtors, Reorganized Debtors or the Purchaser shall pay the portion of such fees and expenses that is not specifically disputed and (b) in the absence of a consensual resolution, the affected Indenture Trustee/Agent or the Reorganized Debtors shall submit the dispute to the Bankruptcy Court for adjudication. For the avoidance of doubt, nothing herein affects an Indenture Trustee's right to exercise its charging lien against Distributions under the Plan (or other distribution under its Indenture) to holders of the Notes.

In addition to the foregoing, on the Effective Date or as soon as reasonably practicable thereafter, the Debtors or the Reorganized Debtors, as applicable, shall reimburse Hain Capital Holdings, Ltd. in Cash for the reasonable, actual and documented fees and expenses (including counsel fees) incurred on account of its Claim in the Chapter 11 Cases, provided that such amount shall not exceed $25,000.00, all as set forth in the *Order Pursuant to Section 363(b) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving the Stipulation Between the Debtors and Hain Resolving Claim Numbers 102, 118 and 124* [Docket No. 905].

X. Preservation of Rights and Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, and except where such Causes of Action have been expressly released (including, for the avoidance of doubt, pursuant to the Releases by the Debtors provided by Article IX.B hereof and pursuant to the Sale Order), the Liquidating Trustee shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, including Causes of Action under chapter 5 of the Bankruptcy Code, whether arising before or after the Petition Date, and the Reorganized Debtors' rights to commence, prosecute or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. No Entity may rely on the absence of a specific reference in the Plan, the Disclosure Statement,

or the Schedule of Retained Causes of Action, to any Cause of Action against them as any indication that the Debtors or Reorganized Debtors, as applicable, will not pursue any and all available Causes of Action against them. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such retained Causes of Action upon, after or as a consequence of the Confirmation or consummation of the Plan.

Y. Dissolution of Corporate Entities

After the Closing Date, and at such time as the New Board considers appropriate and consistent with the implementation of the Plan, including after (a) the vesting of the Liquidating Trust Assets in the Liquidating Trust and (b) making distributions provided for under this Plan (except those distributions to the Liquidating Trust Beneficiaries, which distributions will be made by the Liquidating Trustee in accordance with the Liquidating Trust Agreement), (i) with respect to the Reorganized U.S. Debtors, each Reorganized U.S. Debtor will be deemed to have been dissolved and wound up in accordance with applicable state law, notwithstanding the requirements of such applicable state law and (ii) with respect to the Reorganized Canadian Debtors, the New Board of the Reorganized Canadian Debtors will dissolve each Reorganized Canadian Debtor and complete the winding up thereof in accordance with applicable law. As applicable, the Confirmation Order will serve as evidence of dissolution of the Reorganized Debtors to be submitted to the applicable authority.

ARTICLE VI.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

Except as otherwise provided herein, in the Purchase Agreement, or in any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, each of the Debtors' Executory Contracts and Unexpired Leases (including the Designated Contracts) shall be deemed assumed as of the Effective Date, unless such Executory Contract or Unexpired Lease: (1) was assumed or rejected previously by the Debtors; (2) expired or terminated pursuant to its own terms before the Effective Date; (3) is the subject of a motion to assume filed on or before the Effective Date; or (4) is identified on the Rejected Executory Contract and Unexpired Lease List.

Entry of the Confirmation Order shall constitute a Bankruptcy Court order approving the assumptions or rejections of such Executory Contracts or Unexpired Leases as set forth in the Plan, all pursuant to sections 365(a) and 1123 of the Bankruptcy Code. To the extent not already included in the Sale Order with regard to any Designated Contract, the Confirmation Order shall constitute an order of the Bankruptcy Court, approving (i) the assumption and assignment, or rejection, as the case may be, of Executory Contracts and Unexpired Leases, as described above, pursuant to sections 365(a) and 1123(b)(2) of the Bankruptcy Code, (ii) that the Reorganized Debtors had properly provided for the cure of any defaults that might have existed, (iii) that each assumption and assignment was in the best interest of the Reorganized Debtors, their estates, and all parties in interest in the Chapter 11 Cases, and (iv) the requirements for assumption and assignment of any Executory Contract or Unexpired Lease to be assumed had been satisfied. Unless otherwise indicated, all assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. To the extent that an Executory Contract or Unexpired Lease was identified on the list of Designated Contracts by the Purchaser, any such Designated Contract will be assumed by the Debtors or Reorganized Debtors, as applicable, on the Effective Date and assigned by the Debtors or Reorganized Debtors, as applicable, pursuant to the Sale Order to the Purchaser (or Alternative Purchaser under an Alternative Sale, as the case may be) on the Closing Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order but not assigned to a third party before the Effective Date shall revest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by such order. Notwithstanding anything to the contrary in the Plan, but subject to the Purchase Agreement and the Sale Order, the Debtors, in consultation with the Creditors' Committee and the Liquidating Trust, as applicable, reserve the right to alter, amend, modify or supplement the Rejected Executory Contract and Unexpired Lease List in the Plan Supplement at any time before the Effective Date; *provided*, that to the extent that, as of the Effective Date, there is any pending dispute between one or more of the Debtors and a counterparty to an Executory Contract or Unexpired Lease

regarding such counterparty's Cure Claim, the Debtors and Reorganized Debtors shall reserve the right to add the applicable Executory Contract or Unexpired Lease to the Rejected Executory Contract and Unexpired Lease List following the resolution of such dispute, in which event such Executory Contract or Unexpired Lease shall be deemed rejected and such counterparty shall have any and all rights with respect thereto. After the Effective Date, the Reorganized Debtors shall have the right to terminate, amend or modify any intercompany contracts, leases or other agreements without approval of the Bankruptcy Court.

B. Cure of Defaults for Executory Contracts and Unexpired Leases Assumed

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed pursuant to the Plan shall be satisfied, in consultation with the Creditors' Committee or Liquidating Trustee, as applicable, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date, subject to the limitations described below, or on such other terms as the parties to such Executory Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (1) the amount of any payments to cure such a default, (2) the ability of the Reorganized Debtors or 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 assumed or (3) any other matter pertaining to assumption, the payment of Cure Claims required by section 365(b)(1) of the Bankruptcy Code shall be made no later than ten (10) Business Days following the entry of a Final Order or orders resolving the dispute and approving the assumption. At least ten days before the Confirmation Hearing, the Debtors shall distribute, or cause to be distributed, notices of proposed assumption and proposed amounts of Cure Claims to the applicable third parties, which notices shall include procedures for objecting to proposed assumptions of Executory Contracts and Unexpired Leases and any amounts of Cure Claims to be paid in connection therewith and resolution of disputes by the Bankruptcy Court. If an Executory Contract or Unexpired Lease was not contained on the list of Designated Contracts, but such Executory Contract or Unexpired Lease is proposed to be assumed pursuant to the Plan, any objection by a counterparty to such Executory Contract or Unexpired Lease to a proposed assumption or related Cure Claim amount must be filed, served and actually received by the Debtors at least three (3) Business Days before the Confirmation Hearing. If a counterparty to an Executory Contract or Unexpired Lease contained on the list of Designated Contracts believes that it has a Cure Claim that arose between the date of entry of the Sale Order and the Confirmation Date, any objection by a counterparty to such Executory Contract or Unexpired Lease to such Cure Claim must be filed, served and actually received by the Debtors at least five (5) Business Days before the Confirmation Hearing. Pursuant to the Sale Order, counterparties to any Executory Contract or Unexpired Lease identified on the list of Designated Contracts are estopped and shall not be permitted to object to Cure Claims arising before entry of, and approved pursuant to, the Sale Order. Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Claim amount (other than any counterparty who is estopped from objection pursuant to the previous sentence) will be deemed to have assented to such assumption or cure amount.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time before the effective date of the assumption. For the avoidance of doubt and notwithstanding anything to the contrary contained herein, payment of any and all Cure Claims shall be made by the Debtors, in consultation with the Creditors' Committee or Liquidating Trustee, as applicable, from the Funding Date Consideration.

C. Claims Based on Rejection of Executory Contracts or Unexpired Leases

All proofs of Claim with respect to Claims arising from the rejection of Executory Contracts and Unexpired Leases, if any, must be filed with the Bankruptcy Court within 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. Any Claims arising from the rejection of Executory Contracts and Unexpired Leases not filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order or approval of the Bankruptcy Court. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts and Unexpired Leases shall be classified as Unsecured Claims against the applicable Debtor and shall be treated in accordance with Article III of the Plan. The deadline to object to

Claims arising from the rejection of Executory Contracts and Unexpired Leases, if any, shall be the later of (a) 210 days following the date of entry of the Confirmation Order and (b) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

D. Insurance Policies

Notwithstanding anything herein to the contrary as of the Effective Date, the Debtors shall assume (and assign to the Reorganized Debtors if necessary to continue the Insurance Policies in full force) all of the Insurance Policies pursuant to section 365(a) of the Bankruptcy Code. To the extent that any Insurance Policy had been identified by the Purchasers as a Designated Contract, the Debtors shall assume such Insurance Policy as of the Effective Date, and the Debtors or the Reorganized Debtors, as applicable, will assign such Insurance Policy to the Purchaser on the Closing Date. To the extent not already provided in the Sale Order, entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption (and, as applicable, assignment to the Purchaser) of each of the Insurance Policies.

E. Modifications, Amendments, Supplements, Restatements or Other Agreements.

Unless otherwise provided or as otherwise set forth in the Purchase Agreement or the Sale Order, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and all Executory Contracts and Unexpired Leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan (or the Purchase Agreement or the Sale Order).

Modifications, amendments, supplements and restatements to Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed (unless otherwise agreed by the contract counterparty) to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority or amount of any Claims that may arise in connection therewith.

F. Reservation of Rights.

Except for any Designated Contract, neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Rejected Executory Contract and Unexpired Lease List, nor anything contained in the Plan, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or Reorganized Debtors, as applicable, shall have 45 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

G. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order, unless the parties thereto and the Reorganized Debtors (or, upon assignment, the Purchaser) agree to any modifications, amendments, supplements or restatements

ARTICLE VII.

PROVISIONS GOVERNING DISTRIBUTIONS

A. Initial Distribution Date

On the Initial Distribution Date or as soon thereafter as is reasonably practicable, the Liquidating Trustee shall make, or shall make adequate reserves for, the Distributions required to be made under the Plan.

B. Closing Date Payment Distribution Date

On, or as soon as reasonably practicable after, the transfer of the Closing Date Payment to the Liquidating Trust, which will occur on the earliest of (i) the Closing, (ii) two (2) Business Days following the date upon which the FCC or Industry Canada denies, dismisses or designates for an evidentiary hearing the applications for the FCC Consent or the Industry Canada Approval or (iii) two (2) Business Days following the date upon which an Alternative Sale Notice is delivered in accordance with Section 3.5(b)(i) of the Purchase Agreement, the Liquidating Trustee shall make, or make adequate reserves for, the Distributions required to be made under the Plan from the Closing Date Payment in accordance with this Plan and the Liquidating Trust Agreement.

C. Record Date for Distributions

As of the entry of the Confirmation Order, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors or their respective agents shall be deemed closed, and there shall be no further changes made to reflect any new record holders of any Claims or Interests. The Debtors and the Indenture Trustees shall have no obligation to recognize any transfer of Claims or Interests occurring on or after the Distribution Record Date.

D. Timing and Calculation of Amounts to Be Distributed

Except as otherwise provided in the Plan, on the applicable Distribution Date, each holder of an Allowed Claim or Interest against the Debtors, or the Trust Agreements, shall receive the full amount of the Distributions that the Plan provides for Allowed Claims or Interests in the applicable Class and in the manner provided herein. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. 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 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.

E. Fractional Distributions

Cash shall not be distributed under the Plan in denominations of less than one cent ($0.01). The Disbursing Agent shall have no obligation to make any Distribution of Cash that is less than $10.00.

F. Disbursing Agent

Except as otherwise provided herein, all Distributions under the Plan shall be made by the Reorganized Debtors, the Liquidating Trustee or the Interim TSN Trust Board (but solely in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof), as applicable, as Disbursing Agent, or such other Entity designated by the Reorganized Debtors, in consultation with the Creditors' Committee, as a Disbursing Agent, on the Effective Date. If the Disbursing Agent is not one of the Reorganized Debtors, the Liquidating Trustee or the Interim TSN Trust Board (but solely in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof), such entity shall obtain a bond or surety for the performance of its duties, and all costs and expenses of procuring any such bond or surety shall be borne by the Debtors, Reorganized Debtors, the Liquidating Trust or the

Interim TSN Trust Board (but solely in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof), as applicable; *provided, however*, that no Indenture Trustee shall be required to obtain such a bond or surety.

G. Rights and Powers of Disbursing Agent

1. Powers of the Disbursing Agent

The Disbursing Agent shall be empowered to: (a) affect all actions and execute all agreements, instruments and other documents necessary to perform its duties under the Plan and/or the Trust Agreements; (b) make all Distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan and/or the Trust Agreements, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable, actual and documented fees and expenses incurred by any Disbursing Agent in carrying out its obligations under this Article VII of the Plan on or after the Effective Date (including taxes) and any reasonable, actual and documented compensation and expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent related thereto shall be paid in Cash from the Liquidating Trust Assets by the Liquidating Trustee, in its reasonable discretion.

H. Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by the Debtors or the Reorganized Debtors, as applicable, and the Liquidating Trustee, in each case in their sole discretion, and the holder of a Disputed Claim, no partial payments and no partial Distributions shall be made with respect to any Disputed Claim until all Disputed Claims held by the holder of such Disputed Claim or Interest have become Allowed Claims or have otherwise been resolved by settlement or Final Order.

I. Delivery of Distributions and Undeliverable or Unclaimed Distributions

1. Delivery of Distributions in General

Except as otherwise provided in the Plan and subject to Bankruptcy Rule 9010, Distributions to holders of Allowed Claims shall be made to holders of record as of the Distribution Record Date by the Disbursing Agent: (a) to the signatory set forth on any of the Proofs of Claim filed by such holder or other representative identified therein (or at the last known addresses of such holder if no Proof of Claim is filed or if the Debtors have been notified in writing of a change of address); (b) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim; (c) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Disbursing Agent has not received a written notice of a change of address; or (d) on any counsel that has appeared in the Chapter 11 Cases on the holder's behalf. Distributions under the Plan on account of Allowed Claims shall not be subject to levy, garnishment, attachment or like legal process, so that each holder of an Allowed Claim shall have and receive the benefit of the Distributions in the manner set forth in the Plan. None of the Debtors, the Reorganized Debtors and the applicable Disbursing Agent shall incur any liability whatsoever on account of any Distributions under the Plan except for gross negligence, willful misconduct or fraud.

Except as otherwise provided in the Plan, all Distributions to holders of Notes Claims shall be governed by the Notes and the Indentures and shall be subject to each Indenture Trustee's right to exercise its charging lien for any unpaid fees and expenses. If the Debtors and the Indenture Trustees agree, the Indenture Trustees shall serve as the Disbursing Agent for Distributions on account of Notes Claims under their respective Indentures. All Distributions on account of Notes Claims shall be made (a) to the Indenture Trustees for their respective Notes or

Indentures; or (b) with the prior written consent of an Indenture Trustee, through the facilities of DTC (if applicable). Distributions made by an Indenture Trustee to the record holders of Notes, and in turn by the record holders of Notes to the beneficial holders thereof, shall not be made as of the Distribution Record Date but rather shall be accomplished (as it relates to the identity of recipients) in accordance with the applicable Indenture and the policies and procedures of DTC. Distributions made by an Indenture Trustee directly to the beneficial holders of Notes shall only be made to such holders after the surrender by each such holder of the Note certificates representing such Notes Claim. Upon surrender of such Note certificates, the applicable Indenture Trustee shall cancel and destroy such Notes. As soon as practicable after surrender of Note certificates evidencing Allowed Notes Claims, the applicable Indenture Trustee shall distribute to the holder thereof such holder's Pro Rata share of the Distribution, but subject to the rights of such Indenture Trustee to assert its charging lien against such Distribution.

2. Undeliverable Distributions and Unclaimed Property

In the event that any Distribution to any holder is returned as undeliverable, no Distribution to such holder shall be made unless and until the Disbursing Agent has determined the then current address of such holder, at which time such Distribution shall be made as soon as practicable after such Distribution has become deliverable or has been claimed to such holder without interest; *provided, however*, that such Distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited at the expiration of six months from the applicable Distribution Date. After such date, all "unclaimed property" or interests in property shall revert to the Liquidating Trust (notwithstanding any applicable federal or state escheat, abandoned or unclaimed property laws to the contrary) and shall be transferred by the Disbursing Agent or Reorganized Debtors (as applicable), in a supplemental Distribution to the holders of Allowed Claims in accordance with this Plan on a Pro Rata basis, and the Claim of any holder to such "unclaimed property" or interests in property shall be discharged and forever barred.

J. Withholding and Reporting Requirements

In connection with the Plan and all instruments issued in connection therewith, the Disbursing Agent shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all Distributions under the Plan shall be subject to any such withholding or reporting requirements.

K. Setoffs

Subject to the Sale Order and the Global Settlement Order, the Debtors, the Reorganized Debtors, the Liquidating Trustee and Interim TSN Trust Board may withhold (but not set off except as set forth below) from the Distributions called for under the Plan on account of any Allowed Claim an amount equal to any claims, equity interests, rights and Causes of Action of any nature that the Debtors, the Reorganized Debtors, the Liquidating Trust or the Interim TSN Trust may hold against the holder of any such Allowed Claim. In the event that any such claims, equity interests, rights and Causes of Action of any nature that the Debtors, the Reorganized Debtors, the Liquidating Trust or the Interim TSN Trust Board may hold against the holder of any such Allowed Claim are adjudicated by Final Order or otherwise resolved, the Debtors 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 any adjudicated or resolved claims, equity interests, rights and Causes of Action of any nature that the Debtors, the Reorganized Debtors, the Liquidating Trust or the Interim TSN Trust may hold against the holder of any such Allowed Claim, but only to the extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Reorganized Debtors, the Liquidating Trust or the Interim TSN Trust of any such claims, equity interests, rights and Causes of Action that the Debtors, the Reorganized Debtors, the Liquidating Trust or the Interim TSN Trust may possess against any such holder, except as specifically provided herein.

L. Claims Paid or Payable by Third Parties

1. Claims or Interests Paid by Third Parties

The Debtors, the Reorganized Debtors, the Liquidating Trustee or the Interim TSN Trust Board, as applicable, shall reduce in part or in full a Claim or Interest to the extent that the holder of such Claim or Interest receives payment in part or in full on account of such Claim or Interest from a party that is not a Debtor, Reorganized Debtor, the Liquidating Trust or the Interim TSN Trust. To the extent a holder of a Claim or Interest receives a Distribution on account of such Claim or Interest and receives payment from a party that is not a Debtor, a Reorganized Debtor, the Liquidating Trust or the Interim TSN Trust on account of such Claim or Interest, such holder shall, within two weeks of receipt thereof, repay or return the Distribution to the applicable Reorganized Debtor, the Liquidating Trust or the Interim TSN Trust, as applicable, to the extent the holder's total recovery on account of such Claim or Interest from the third party and under the Plan exceeds the amount of such Claim or Interest as of the date of any such Distribution under the Plan.

2. Claims Payable by Third Parties

No Distributions under the Plan shall be made on account of Allowed insured Claims until the holder of such Allowed insured Claim has exhausted all remedies with respect to the Debtors' Insurance Policies. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, such Claim may be expunged without a Claims objection having to be filed and without any further notice to or action, order or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, Distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable Insurance Policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any cause of action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

M. Postpetition Interest

Unless expressly provided herein, the Confirmation Order, the Final DIP Order, the Global Settlement Order or any contract, instrument, release, settlement or other agreement entered into in connection with the Plan, or required by the Bankruptcy Code (including without limitation sections 506(b) and 1129(b) of the Bankruptcy Code), postpetition interest shall not accrue on or after the Petition Date on account of any Claim. Nothing contained in this Plan shall be read to (a) affect the accrual or payment of interest on any claim in the chapter 11 cases of TSC, being jointly administered under Case No. 11-10612 (SHL), or (b) affect the ability of TSC or any other party in interest in the TSC cases to object to any such claim.

N. Section 506(c) Reservation

The Debtors and the Reorganized Debtors reserve all rights under section 506(c) of the Bankruptcy Code with respect to any and all Secured Claims, except to the extent waived pursuant to the Final DIP Order or the Sale Order.

O. Single Satisfaction of Claims

Except as agreed to by the Settlement Parties pursuant to the Settlement, holders of Allowed Claims may assert such Claims against each Debtor obligated with respect to such Claim, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against each obligated Debtor based upon the full Allowed amount of the Claim. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of Allowed Claims exceed 100% of the underlying Allowed Claim.

ARTICLE VIII.

PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED AND DISPUTED CLAIMS

A. Prosecution of Objections to Claims

The Debtors, the Reorganized Debtors or the Liquidating Trustee, as applicable, shall have the exclusive authority to file, settle, compromise, withdraw or litigate to judgment any objections to Claims as permitted under the Plan. From and after the Effective Date, the Reorganized Debtors or the Liquidating Trustee may settle or compromise any Disputed Claim without approval of the Bankruptcy Court. The Debtors, the Reorganized Debtors and the Liquidating Trustee reserve all rights to resolve any Disputed Claim outside the Bankruptcy Court under applicable governing law. All objections, affirmative defenses and counterclaims shall be litigated to Final Order; provided, however, that the Debtors, Reorganized Debtors and Liquidating Trustee shall have the authority to file, settle, compromise or withdraw any objections to Claims. Unless otherwise ordered by the Bankruptcy Court, to the extent not already objected to by the Debtors, the Liquidating Trustee shall file and serve all objections to Claims as soon as practicable, but, in each instance, not later than one hundred eighty (180) days following the Effective Date or such later date as may be approved by the Bankruptcy Court.

B. Allowance of Claims

Except as expressly provided herein or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), the Reorganized Debtors and the Liquidating Trust, as applicable, after the Effective Date will have and retain any and all rights and defenses held by the Debtors with respect to any Claim as of the Petition Date. All claims of any Entity against any Debtor shall be disallowed unless and until such Entity pays, in full, the amount it owes each such Debtor.

C. Disputed Claims Reserve

On the Effective Date (or as soon thereafter as is reasonably practicable), the Reorganized Debtors shall deposit in the Disputed Claims Reserve Cash having an aggregate value equal to the aggregate value of the consideration that would have been distributed to the holders of all Disputed Claims as if such Disputed Claims had been Allowed Claims on the Effective Date, with the amount of such Allowed Claims to be determined, solely for the purposes of establishing reserves, to be the lesser of (a) the asserted amount of the Disputed Claims filed with the Bankruptcy Court, or (if no proof of such Claim was filed) scheduled by the Debtors, (b) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code pursuant to Article VIII or (c) the amount otherwise agreed to by the Debtors and the holder of such Disputed Claims for reserve purposes.

On the Effective Date (or as soon thereafter as is reasonably practicable), and until such time as each Disputed Claim has been compromised and settled, estimated by the Bankruptcy Court in an amount constituting the allowed amount, or allowed or disallowed by Final Order of the Bankruptcy Court, the Liquidating Trustee shall retain, for the benefit of each holder of a Disputed Claim, Liquidating Trust Interests in an amount equal to the Pro Rata Share of distributions that would have been made to the holder of such Disputed Claim if it were an Allowed Claim in an amount equal to the lesser of (i) the liquidated amount set forth in the filed proof of Claim relating to such Disputed Claim, (ii) the amount in which the Disputed Claim shall be estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code constitutes and represents the maximum amount in which such Claim may ultimately become an Allowed Claim, or (iii) such other amount as may be agreed upon by the holder of such Disputed Claim and the Liquidating Trustee. Any Liquidating Trust Interests retained and held for the benefit of a holder of a Disputed Claim shall be treated as a payment and reduction on account of such Disputed Claim for purposes of computing any additional amounts to be distributed in Liquidating Trust Interests in the event the Disputed Claim ultimately becomes an Allowed Claim. The Liquidating Trustee shall treat any Assets retained pursuant to this Section of the Plan as part of the Disputed Claims Reserve.

D. Distributions After Allowance

On the Distribution Date following the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the holder of such Claim the Distribution (if any) to which such holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim.

E. Distribution of Excess Amounts in the Disputed Claims Reserve

Any Cash held in the Disputed Claims Reserve after all Disputed Claims have been Allowed or Disallowed shall be transferred by the Disbursing Agent or Reorganized Debtors (as applicable), in a supplemental Distribution to the holders of Allowed Claims in accordance with this Plan. The balance of any Liquidating Trust Interests previously retained but not distributed to a Disputed Claim holder shall be included in future calculations of Liquidating Trust Interests to holders of Allowed Claims.

F. Property Held in the Reserve for Disputed Claims

Each holder of a Disputed Claim that ultimately becomes an Allowed Claim will have recourse only to the undistributed Cash held in the Disputed Claims Reserve for satisfaction of the Distributions to which holders of Allowed Claims are entitled under the Plan, and not to any Reorganized Debtor, the Liquidating Trust or the Interim TSN Trust, their property or any assets previously distributed on account of any Allowed Claim.

G. Estimation of Claims

The Debtors (before the Effective Date), the Liquidating Trustee or the Reorganized Debtors (on or after the Effective Date) may, at any time, and from time to time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether an objection was previously filed with the Bankruptcy Court with respect to such Claim, or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim against any party or Entity, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtors (before the Effective Date), the Liquidating Trustee or the Reorganized Debtors (on or after the Effective Date), may elect to pursue any supplemental proceedings to object to any ultimate Distribution on such Claim. All of the objection, estimation, settlement and resolution procedures set forth in the Plan are cumulative and not necessarily exclusive of one another. Claims may be estimated and subsequently compromised, objected to, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

H. Deadline to File Objections to Claims

Except with respect to the Claims resolved by the Settlement, any objections to Claims shall be filed on or before the date that is the later of (a) one hundred and eighty (180) days after the Effective Date and (b) the last day of such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to certain Claims.

ARTICLE IX.

SETTLEMENT, RELEASE, INJUNCTION AND RELATED PROVISIONS

A. Compromise and Settlement of Claims, Interests and Controversies

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims,

Interests and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim or Interest, or any Distribution to be made on account of such Allowed Claim or Interest (the "*Plan Settlement*"). The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the Plan Settlement, as well as a finding by the Bankruptcy Court that such Plan Settlement is in the best interests of the Debtors, their Estates and holders of Claims and Interests and is fair, equitable and reasonable. In accordance with the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against them and Causes of Action against other Entities.

B. Releases by the Debtors

Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the contributions of the Released Parties to facilitate the implementation of the Plan, the Plan Settlement, the Settlement and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, the Released Parties and each of them are deemed released and discharged by the Debtors, the Reorganized Debtors and the Estates from any and all claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Reorganized Debtors, the Estates or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date (and, with regard to the New Boards of the Reorganized Debtors, subsequent to the Effective Date) in any way relating to the Debtors, the Chapter 11 Cases, the Canadian Proceedings, the Plan or the Disclosure Statement, or related agreements, instruments or other documents, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, fraud or willful misconduct, as determined by a Final Order; provided, that nothing in this Article IX.B. shall release the Purchaser or, solely to the extent it is a party to the Purchase Agreement for the purposes of Section 6.19 thereof, DISH from any claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities arising under the Purchase Agreement; provided, further, that this Article IX.B shall not apply to DISH or any of its subsidiaries, which was released as and to the extent provided pursuant to the Purchase Agreement and the Sale Order. For the avoidance of doubt, the Releases provided under this Article IX.B shall not apply to the TSC Debtors.

C. Releases by Holders of Claims and Interests

As of the Effective Date, to the fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the implementation of the Plan, the Plan Settlement, the Settlement and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, each holder of a Claim or an Interest shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Debtors, the Reorganized Debtors and the Released Parties and each of them from any and all Claims, Interests, obligations, rights, suits, damages, causes of action, remedies and liabilities whatsoever, including any derivative Claims, asserted on behalf of a Debtor, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Entity would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date (and, with regard to the New Boards of the Reorganized Debtors, subsequent to the Effective Date) in any way relating to the Debtors, the Chapter 11 Cases, the Canadian Proceedings, the Settlement, this Plan, the Plan Settlement or the Disclosure Statement, or related agreements, instruments or other documents that did or would have given rise to a Claim in the Chapter 11 Cases, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, fraud or willful misconduct, as determined by a Final Order; provided, that nothing herein shall

be deemed a waiver or release of a Releasing Party's right to receive a Distribution pursuant to the terms of this Plan; provided, further, that nothing in this Article IX.C. shall release the Debtors or the Reorganized Debtors from any claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities arising under the Purchase Agreement; provided, further, that this Article IX.C shall not apply to DISH or any of its subsidiaries. For the avoidance of doubt, the Releases provided under this Article IX.C shall not apply to the TSC Debtors.

D. Exculpation

Except as otherwise specifically provided in the Plan or Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, obligation, cause of action or liability for any Exculpated Claim, except to the extent such claim is attributable to gross negligence or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Debtors and the Reorganized Debtors (and each of their respective Affiliates, agents, directors, officers, employees, advisors and attorneys) have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distribution of the Interim TSN Trust Interests, Interim TSN Warrants (each, in the event that the provisions of Exhibit 3 are triggered pursuant to Article V.G. hereof) and Liquidating Trust Interests pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Notwithstanding anything herein to the contrary, nothing in the foregoing "Exculpation" shall (1) release any Person or Entity from any liability resulting from any act or omission constituting fraud, willful misconduct, gross negligence, criminal conduct, malpractice, misuse of confidential information that causes damages or *ultra vires* act as determined by a Final Order or (2) limit the liability of the professionals of the Exculpated Parties to their respective clients pursuant to N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

E. Discharge of Claims and Termination of Interests

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the Distributions, rights and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, release and discharge, effective as of the Effective Date, of all Claims, Interests and causes of action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities and causes of action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim or Interest based upon such Claim, debt, right or Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such Claim, debt, right or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim or Interest has accepted the Plan. Except as otherwise provided herein, any default by the Debtors or their Affiliates with respect to any Claim or Interest that existed before or on account of the filing of the Chapter 11 Cases and/or the Canadian Proceedings shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

F. Injunction

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN ARTICLE IX HEREOF, THE RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO ARTICLE IX HEREOF.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT OR RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO ARTICLE IX.B OR ARTICLE IX.C OR, DISCHARGED PURSUANT TO ARTICLE IX.E, OR ARE SUBJECT TO EXCULPATION PURSUANT TO ARTICLE IX.D, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (2) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (3) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATE OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (4) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, SETTLED OR DISCHARGED PURSUANT TO THE PLAN; AND (5) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM WITH THE PROVISIONS OF THIS PLAN TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS, PROPERTY OR ESTATES TO THE FULLEST EXTENT SET FORTH IN THE PLAN. ON THE EFFECTIVE DATE, IN ACCORDANCE WITH THE PLAN, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND THE EQUITY INTERESTS SHALL BE CANCELLED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED AND DISCHARGED, AND ALL EQUITY INTERESTS SHALL BE CANCELLED, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN, ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, THE REORGANIZED DEBTORS, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

NOTHING CONTAINED IN THIS PLAN SHALL BE READ TO (A) ENJOIN ELEKTROBIT INC. (***"ELEKTROBIT"***) FROM COMMENCING OR CONTINUING ANY ACTION ON ACCOUNT OF, IN CONNECTION WITH OR WITH RESPECT TO ANY CLAIM (AS SUCH TERM IS DEFINED IN SECTION 101(5)(A) OF THE BANKRUPTCY CODE) OR ANY OTHER RIGHT, REMEDY OR CAUSE OF ACTION, WHETHER ARISING AT LAW OR IN EQUITY, THAT ELEKTROBIT HAS OR MAY HAVE AGAINST ANY

PARTY IN INTEREST IN TSC'S CHAPTER 11 CASES, BEING JOINTLY ADMINISTERED UNDER CASE NO. 11-10612 (SHL), OR OTHERWISE TO EFFECT A RELEASE, EXCULPATION OR DISCHARGE OF ANY SUCH CLAIM, RIGHT, REMEDY OR CAUSE OF ACTION OR (B) ENJOIN TSC (OR ANY OTHER PARTY IN INTEREST IN THE TSC CASES) FROM OBJECTING TO ANY SUCH CAUSE OF ACTION (OR OTHER RIGHT OR REMEDY).

G. Term of Injunctions or Stays

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

H. Injunction Against Interference With Plan

To the fullest extent permitted by applicable law, and except as may otherwise be stated in the Sale Order, upon the entry of the Confirmation Order, all of the Releasing Parties shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan or the Sale, including, without limitation, the transfer of the Acquired Assets to the Purchaser.

I. Injunction Related to Releases and Exculpation

The Confirmation Order shall 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 Plan, including but not limited to the claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released in Article IX of this Plan.

J. Protection Against Discriminatory Treatment

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors or another Entity with whom such Reorganized Debtors have been associated, solely because one of the Debtors has been a debtor under chapter 11, an applicant in a CCAA proceeding, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtor is granted or denied a discharge) or has not paid a debt that is dischargeable in the Chapter 11 Cases.

K. No Consent to Change of Control Required

To the fullest extent permitted by applicable law, except as otherwise expressly provided by order of the Bankruptcy Court, none of (a) the facts or circumstances giving rise to the commencement of, or occurring in connection with, the Chapter 11 Cases or (b) any other transaction pursuant to the Plan (including, without limitation, the Restructuring Transactions) shall constitute a "change in ownership" or "change of control" (or a change in working control) of, or in connection with, any Debtor requiring the consent of any person other than the Debtors or the Bankruptcy Court.

L. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is

Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title and interest of any holder of such mortgages, deeds of trust, Liens, pledges or other security interests shall revert to the Reorganized Debtor and its successors and assigns. For the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released and discharged on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court, the Canadian Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code, the Personal Property Security Act (Ontario) or in accordance with any other real or personal property registry system in any of the applicable provinces in Canada.

ARTICLE X.

CONDITIONS PRECEDENT TO CONFIRMATION OF THE PLAN AND THE EFFECTIVE DATE

A. Conditions Precedent to Confirmation

It shall be a condition to Confirmation hereof that the following provisions, terms and conditions shall have been satisfied or waived pursuant to the provisions of Article X.C.

1. The Bankruptcy Court shall have entered a Final Order, in form and substance acceptable to the Debtors, approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

B. Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date that the following provisions, terms and conditions shall have been satisfied or waived pursuant to the provisions of Article X.C.

1. The Confirmation Order entered by the Bankruptcy Court shall be a Final Order acceptable in form and substance to the Debtors and the Creditors' Committee.

2. The Canadian Court shall have entered an order, in form and substance acceptable to the Debtors, recognizing the Bankruptcy Court's entry of the Confirmation Order, and such order shall have become a Final Order.

3. The Bankruptcy Court shall have entered one or more orders (which may include the Confirmation Order), authorizing the assumption and rejection of Executory Contracts and Unexpired Leases by the Debtors as contemplated herein, which shall have become Final Orders.

4. The Canadian Court shall have entered one or more orders (which may include the Canadian Court's order recognizing the Confirmation Order) recognizing the Bankruptcy Court's entry of the order(s) described in Article X.B.3 above, and such orders shall have become Final Orders.

5. All of the schedules, documents, supplements and exhibits to the Plan shall have been filed.

6. All actions, documents, certificates, and agreements necessary to implement this Plan, including, without limitation, the New By-Laws and the New Certificates of Incorporation, 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.

7. The Closing Date Payment shall have been received.

8. The FCC shall have approved the interim transfer of the New Common Stock to the Interim TSN Trust; *provided, however*, that this condition precedent shall only be applicable if the provisions of Exhibit 3 hereto are triggered pursuant to Article V.G. hereof.

C. Waiver of Conditions

The conditions to Confirmation of the Plan and to the occurrence of the Effective Date set forth in this Article X may be waived at any time by the Debtors; *provided, however,* that the Debtors may not waive (i) entry of the Confirmation Order or (ii) entry of an order recognizing the Confirmation Order issued by the Canadian Court; and *provided further, however*, that the Debtors may not waive the condition precedent to the Effective Date listed in Article X, Section B(7) above, without the prior written consent of the Creditors' Committee and of the Purchaser, which consent may be given, or not, in the Creditors' Committee's or the Purchaser's sole discretion, respectively.

D. Effect of Failure of Conditions

If Confirmation of the Plan does not occur, the Plan shall be null and void in all respects, including, among other things, the allocation percentages set forth herein and the terms of the Plan Settlement, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against the Debtors; (2) prejudice in any manner the rights of the Debtors, any holders of Claims or any other Entity; or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtors, any holders or any other Entity in any respect.

ARTICLE XI.

MODIFICATION, REVOCATION OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments

Except as otherwise specifically provided herein, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend or modify materially the Plan with respect to any or all Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article XI.

In addition, prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan, without further order or approval of the Bankruptcy Court; *provided, however*, that such technical adjustments and modifications do not adversely affect in a material way the treatment of holders of Claims or Interests.

B. Effect of Confirmation on Modifications

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan

The Debtors reserve the right to revoke or withdraw the Plan (including any or all of the individual Plans for the Debtors) before the Effective Date and to file subsequent chapter 11 plans, provided, however, that the Debtors may not revoke or withdraw the Plan without the consent of the Creditors' Committee and such consent shall not be unreasonably withheld. In addition, the Debtors reserve the right to seek confirmation of some, but not all of the chapter 11 Plans for the Debtors. If the Debtors revoke or withdraw the Plan (or one or more of the individual Plans), or if Confirmation or the Effective Date does not occur, then: (1) the Plan shall be null and void

in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests by any Debtor against any other Entity; (b) prejudice in any manner the rights of such Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by such Debtor or any other Entity.

ARTICLE XII.

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain such jurisdiction over the Chapter 11 Cases and all matters, arising out of or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority, Secured or Unsecured status or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or Unsecured status, priority, amount or allowance of Claims;

2. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

3. resolve any matters related to: (a) the assumption, assumption and assignment or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine and, if necessary, liquidate, any Claims arising therefrom, including Rejection Claims, Cure Claims pursuant to section 365 of the Bankruptcy Code or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors amending, modifying or supplementing, after the Effective Date, pursuant to Article VI, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be assumed or rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired.

4. ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

5. adjudicate, decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. adjudicate, decide or resolve any and all matters related to any Cause of Action;

7. adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;

8. enter and enforce any order for the sale of property pursuant to sections 363, 1123 or 1146(a) of the Bankruptcy Code;

9. resolve any avoidance or recovery actions under sections 105, 502(d), 542 through 551 and 553 of the Bankruptcy Code;

10. resolve any cases, claims, controversies, suits, disputes or Causes of Action that may arise in connection with the consummation, interpretation or enforcement of the Plan or any entity's obligations incurred in connection with the Plan;

11. resolve any cases, controversies, suits, disputes or Causes of Action that may arise in connection with or under the Notes;

12. issue injunctions, 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 the Plan;

13. resolve any cases, controversies, suits, disputes or Causes of Action with respect to the discharge, releases, injunctions, exculpations, indemnifications and other provisions contained in Article IX and enter such orders as may be necessary or appropriate to implement such releases, injunctions and other provisions;

14. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

15. determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan or the Disclosure Statement;

16. adjudicate any and all disputes arising from or relating to Distributions under the Plan;

17. consider any modifications of the Plan, cure any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18. determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code, including requests by Professionals for payment of Accrued Professional Fees;

19. hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

20. hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

21. hear and determine all disputes involving the existence, nature or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;

22. enforce all orders previously entered by the Bankruptcy Court;

23. hear any other matter not inconsistent with the Bankruptcy Code;

24. enter an order concluding or closing the Chapter 11 Cases;

25. for the period of time (if any) that the Interim TSN Trust is in place, enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan or the Disclosure Statement;

26. enter and implement such orders as may be necessary regarding the actions (if any) of the Interim TSN Trust pursuant to the terms of the Plan and the Interim TSN Trust Agreement including, but not limited to, orders regarding the Interim TSN Trust Board's operating decisions and exercise of control over the New Common Stock;

27. hear and determine all matters concerning the Purchase Agreement, including matters relating to any Alternative Sale (even if such Alternative Sale occurs post Confirmation Date or post Effective Date),

which includes the exclusive jurisdiction to (a) enforce the terms and provisions of the Sale Order, the Purchase Agreement and the Plan in all respects and to decide any disputes concerning the Sale Order, the Purchase Agreement, and the Plan, or the rights and duties of the parties thereunder or any issues relating to the Purchase Agreement and the Sale Order and the Plan including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Acquired Assets and any assumption or assignment of Executory Contracts or Unexpired Leases and all issues and disputes arising in connection with same and the relief authorized in the Sale Order, inclusive of those concerning the transfer of the Acquired Assets free and clear of all Encumbrances; and (b) with respect to any Alternative Sale to an Alternative Purchaser in accordance with the terms of the Purchase Agreement, (I) determine whether such Alternative Purchaser is entitled to the protections of section 363(m) of the Bankruptcy Code; (II) determine whether the requirements of section 365 of the Bankruptcy Code (including, but not limited to, the requirements of sections 365(b) and 365(f) of the Bankruptcy Code) are satisfied with respect to any proposed assignment of one or more of the Debtors' Executory Contracts to the Alternative Purchaser, (III) approve the assignment of one or more of the Debtors' Executory Contracts to the Alternative Purchaser pursuant to section 365 of the Bankruptcy Code, and (IV) provide such other authorizations and approvals as may be reasonably necessary to consummate such Alternative Sale; and

28. hear and determine all matters concerning the Paydown Orders.

ARTICLE XIII.

MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect

Subject to Article X.B, and notwithstanding Bankruptcy Rules 3020(e), 6004(h) or 7062 or any other Bankruptcy Rule, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors and any and all holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

B. Additional Documents

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

C. Dissolution of Creditors' Committee

On the Effective Date, the Creditors' Committee shall dissolve, and its members shall be released and discharged from all further authority, duties, responsibilities and obligations relating to and arising from the Chapter 11 Cases. The retention and employment of the Professionals retained by the Creditors' Committee shall terminate as of the Effective Date, *provided, however*, that the Creditors' Committee shall exist, and its Professionals shall be retained, after such date with respect to (a) applications filed pursuant to sections 330 and 331 of the Bankruptcy Code, (b) enforcement of the provisions of the Purchase Agreement, the Global Settlement Order, the Plan or the Confirmation Order; and (c) the distributions from the Closing Date Payment and/or the proceeds of the Retained Causes of Action.

D. Successors and Assigns

The rights, benefits and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries or guardian, if any, of each Entity.

E. Service of Documents

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

If to the Debtors or the Reorganized Debtors:

TerreStar Networks, Inc.
12010 Sunset Hills Road, 6th Flr.
Reston, Virginia 20190
Attn: Doug Brandon, General Counsel

with copies to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, New York 10036
Attn: Ira Dizengoff
Arik Preis
Ashleigh L. Blaylock

If to the Liquidating Trustee:

FTI Consulting, Inc.
3 Times Square, 10th Floor
New York, NY 10036
Attn: Matthew Diaz

After the Effective Date, the Debtors may, in their sole discretion, notify Entities that, in order to continue receiving documents pursuant to Bankruptcy Rule 2002, such Entities must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

F. Entire Agreement

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

G. Severability of Plan Provisions

If, before Confirmation of the Plan, any term or provision of the Plan is held by the Bankruptcy Court or any other court exercising jurisdiction to be invalid, void or unenforceable, the Bankruptcy Court or other court exercising jurisdiction shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired or invalidated by such holding,

alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (3) non-severable and mutually dependent.

H. Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be available upon request to the Debtors' counsel, by contacting Ashleigh L. Blaylock, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036, Telephone: (202) 887-4064, email: blaylocka@akingump.com, at the Bankruptcy Court's web site at *www.ecf.nysb.uscourts.gov* or at the website of the Notice and Claims Agent, at http://www.terrestarinfo.com. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

I. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code and any applicable non-bankruptcy law, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code and, therefore, will have no liability for the violation of any applicable law, rule or regulation governing the solicitation of votes on the Plan.

J. Closing of Chapter 11 Cases

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

K. Conflicts

Except as set forth in the Plan, to the extent that any provision of the Disclosure Statement or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control; *provided, however*, that if there is a conflict between this Plan and a Plan Supplement document, the Plan Supplement document shall govern and control; and *provided further, however*, that to the extent that any provision of the Plan conflicts with or is in any way inconsistent with any provision of the Confirmation Order, the Confirmation Order shall govern and control. Additionally, to the extent that any provision of the Plan or Confirmation Order conflicts with or is in any way inconsistent with any provision of the Sale Order, the Purchase Agreement or the Global Settlement Order, the Sale Order, the Purchase Agreement or the Global Settlement Order, as applicable, shall govern and control.

Dated: February 14, 2012

Respectfully submitted,

TerreStar Networks Inc. (for itself and on behalf of each of the Debtors)

By: */s/ Jeffrey Epstein*
Name: Jeffrey Epstein
Title: Chief Executive Officer

Exhibit 1

Summary of Classification of Claims and Interests for Each Debtor

Debtor	Class	Name of Class	Status	Voting Rights
TerreStar Networks Inc.	1	Other Priority Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar Networks Inc.	2	Other Secured Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar Networks Inc.	3	Unsecured Claims	Impaired	Entitled to Vote
TerreStar Networks Inc.	4	Equity Interests	Impaired	Not Entitled to Vote – Deemed to Reject
Debtor	**Class**	**Name of Class**	**Status**	**Voting Rights**
TerreStar National Services Inc.	1	Other Priority Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar National Services Inc.	2	Other Secured Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar National Services Inc.	3	Unsecured Claims	Impaired	Entitled to Vote
TerreStar National Services Inc.	4	Equity Interests	Impaired	Not Entitled to Vote – Deemed to Reject
Debtor	**Class**	**Name of Class**	**Status**	**Voting Rights**
TerreStar License Inc.	1	Other Priority Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar License Inc.	2	Other Secured Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar License Inc.	3	Unsecured Claims	Impaired	Entitled to Vote
TerreStar License Inc.	4	Equity Interests	Impaired	Not Entitled to Vote – Deemed to Reject
Debtor	**Class**	**Name of Class**	**Status**	**Voting Rights**
0887729 B.C. Ltd.	1	Other Priority Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
0887729 B.C. Ltd.	2	Other Secured Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
0887729 B.C. Ltd.	3	Unsecured Claims	Impaired	Entitled to Vote
0887729 B.C. Ltd.	4	Equity Interests	Impaired	Not Entitled to Vote – Deemed to Reject

Debtor	Class	Name of Class	Status	Voting Rights
TerreStar Networks Holdings (Canada) Inc.	1	Other Priority Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar Networks Holdings (Canada) Inc.	2	Other Secured Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar Networks Holdings (Canada) Inc.	3	Unsecured Claims	Impaired	Entitled to Vote
TerreStar Networks Holdings (Canada) Inc.	4	Equity Interests	Impaired	Not Entitled to Vote – Deemed to Reject
Debtor	**Class**	**Name of Class**	**Status**	**Voting Rights**
TerreStar Networks (Canada) Inc.	1	Other Priority Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar Networks (Canada) Inc.	2	Other Secured Claims	Unimpaired	Not Entitled to Vote – Deemed to Accept
TerreStar Networks (Canada) Inc.	3	Unsecured Claims	Impaired	Entitled to Vote
TerreStar Networks (Canada) Inc.	4	Equity Interests	Impaired	Not Entitled to Vote – Deemed to Reject

Exhibit 2

Allocated Value

Name of Debtor	Allocated Value
TSN	70.18%
TSL	29.52%
088	0.00%
TSN Canada	0.30%
TSN Canada Holdings	0.00%
TSNSI	0.00%

Exhibit 3

Modifications to Plan in the Event that the Closing Date Does Not Occur on or Before the Effective Date

In the event that the Closing Date does not occur on or before the Effective Date, pursuant to Article V.G. hereof, the Plan shall be amended to give full force and effect to the following modifications:

ARTICLE I

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

Article I(A) of the Plan shall be amended by inserting the following definitions in the appropriate location in accordance with the current alphabetical structure of the section:

- "*Interim TSN Trust*" means the trust or other entity acceptable to the FCC that shall be established on the Effective Date for the purpose of holding the New Common Stock to be issued on the Effective Date.

- "*Interim TSN Trust Agreement*" means the agreement substantially in the form to be filed as part of the Plan Supplement, which will, among other things: (a) establish and govern the Interim TSN Trust; and (b) set forth the respective powers, duties and responsibilities of the Interim TSN Trust Board.

- "*Interim TSN Trust Assets*" means the New Common Stock.

- "*Interim TSN Trust Beneficiaries*" means the holders of Allowed Unsecured Claims who exercise an Interim TSN Warrant and receive an Interim TSN Trust Interest.

- "*Interim TSN Trust Board*" means those individuals appointed in accordance with the Interim TSN Trust Agreement with the powers and responsibilities as set forth in Article V.F. of the Plan, including the power to administer the Interim TSN Trust.

- "*Interim TSN Trust Interests*" means the beneficial interests in the Interim TSN Trust, which pursuant to the terms of the Plan have no economic value.

- "*Interim TSN Warrants* " means the two year warrants issued by the Interim TSN Trust, each with a nominal exercise price and pursuant to the terms of the Plan have no economic value, to purchase the Interim TSN Trust Interests, the terms of which will provide that such warrants will not be exercisable by any Person unless such Person delivers an Ownership Certification to the Interim TSN Trust and such exercise otherwise complies with applicable law, the substantially final form of which shall be filed with the Bankruptcy Court by the Plan Supplement Filing Date.

- "*Interim TSN Warrant Agreement*" means that certain agreement to be executed on or before the Effective Date providing for, among other things, certain rights and obligations of the holders of the Interim TSN Warrants , the substantially final form of which shall be filed with the Court by the Plan Supplement Filing Date.

- "*Ownership Certification*" means a written certification in form and substance satisfactory to the Interim TSN Trust Board to the effect that the Person is a U.S. Person and that the direct and indirect voting and economic interest of such Person are held by Persons at least 75% of whom are U.S. Persons for purposes of Section 310(b)(iv) of the Communications Act as interpreted and applied by the FCC.

ARTICLE III
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

In Section C of Article III, Class 3 Treatment shall be deleted in its entirety and replaced with the following:

> *Treatment:* Each holder of an Allowed Unsecured Claim shall receive in full and final satisfaction of its Claim, its Pro Rata share (calculated with reference to all Allowed and Disputed Class 3 Claims against the applicable Debtor) of (i) Liquidating Trust Interests applicable to such Debtor based on each such Debtor's Allocated Value and (ii) at the option of each holder of an Allowed Unsecured Claim, (1) Interim TSN Warrants applicable to such Debtor based on each such Debtor's Allocated Value or (2) Cash in an amount equivalent to such holder's Pro Rata share of the Interim TSN Warrants.

ARTICLE V
MEANS FOR IMPLEMENTATION OF THE PLAN

After section D(2) of Article V, the following shall be inserted as Section D(3):

3. Interim TSN Trust Interests/Warrants

All Interim TSN Trust Warrants shall be issued at an exercise price of $0.01, which shall be permitted to be exercised pursuant to and subject to the limitations of the Interim TSN Warrant Agreement. On or before the Effective Date, the Interim TSN Warrant Agreement shall be executed. The Interim TSN Warrants will be available for Distribution to the holders of Allowed Claims entitled to Distributions from the Interim TSN Trust under the Plan.

After section E of Article V, the following shall be inserted as Section F:

F. The Interim TSN Trust

1. Generally

On the Effective Date, and subject to Bankruptcy Court and FCC approval, the Interim TSN Trust will be established and become effective for the benefit of the holders of Allowed Claims entitled to Distributions from the Interim TSN Trust under the Plan. On the Effective Date, the holders of Allowed Unsecured Claims will, at their option, receive the Interim TSN Warrants or the Cash equivalent to such holder's share of the Interim TSN Warrants. The powers, authority, responsibilities, and duties of the Interim TSN Trust and the Interim TSN Trust Board are set forth in and shall be governed by the Interim TSN Trust Agreement. The Interim TSN Trust Agreement shall contain provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, any and all provisions necessary to ensure the continued treatment of the Interim TSN Trust as a grantor trust and the Interim TSN Trust Beneficiaries as the grantors and owners thereof for federal income tax purposes. The Interim TSN Trust and the Interim TSN Trust Board, including any successors, shall be bound by the Plan and shall not challenge any provision of the Plan.

2. Purpose and Establishment of the Interim TSN Trust

On the Effective Date, the Interim TSN Trust shall be established for the purposes set forth in the Interim TSN Trust Agreement. Specifically, all currently issued and outstanding stock of TSN will be cancelled pursuant to this Plan, and the New Common Stock will be issued in the name of the Interim TSN Trust. After the Closing Date, all Retained Assets of Reorganized TSN will be contributed to the Liquidating Trust. As soon as practicable after the Closing Date, the Interim TSN Trust will be dissolved and Reorganized TSN will be wound up and dissolved. The New Common Stock will not, at any time, be distributed to the holders of the Interim TSN Warrants or Interim TSN Trust Interests.

For all federal income tax purposes, the Interim TSN Trust Beneficiaries will be treated as grantors and deemed owners of the Interim TSN Trust and it is intended that the Interim TSN Trust be classified as a liquidating trust under Treasury Regulations section 301.7701-4(d) and qualify as a "grantor trust" pursuant to Treasury Regulation section 1.671-4(a), with no objective to continue or engage in the conduct of a trade or business. The value of the interests in the Interim TSN Trust for U.S. federal income tax purposes will be zero. Accordingly, for all federal income tax purposes, it is intended that the Interim TSN Trust Beneficiaries be treated as if they had received a distribution of an undivided interest in the assets of the Interim TSN Trust (i.e., the New Common Stock) and then contributed such undivided interest to the Interim TSN Trust. The Interim TSN Trust Board shall, in an expeditious but orderly manner, make timely distributions of the Interim TSN Warrants to the holders of Allowed Claims entitled and electing to receive such Interim TSN Warrants under the Plan and the Interim TSN Trust Agreement. The Interim TSN Trust shall not be deemed a successor in interest of the Debtors for any purpose other than as specifically set forth herein or in the Interim TSN Trust Agreement.

The terms of the Interim TSN Trust Agreement shall insulate the Interim TSN Trust Beneficiaries from the day-to-day operation, management, and control of the Interim TSN Trust under the applicable FCC rules. Pursuant to the insulation provisions of the Interim TSN Trust Agreement, the Interim TSN Trust Board shall be authorized to vote the New Common Stock it holds in Reorganized TSN in any manner, subject to the ultimate jurisdiction, control and approval of the Bankruptcy Court. The Interim TSN Trust Beneficiaries shall not have the right to revoke the Trust at will nor to replace at will any member of the Interim TSN Trust Board. None of the members of the Interim TSN Trust Board shall have a familial, personal or extra-trust business relationship with any of the Interim TSN Trust Beneficiaries.

On or before the Effective Date, the Interim TSN Trust Agreement shall be executed and the Debtors shall take all other steps necessary to establish the Interim TSN Trust pursuant to the Interim TSN Trust Agreement and consistent with the Plan.

3. Transferability of Beneficial Interests and Interim TSN Warrants

Ownership of an Interim TSN Trust Interest or an Interim TSN Warrant shall be uncertificated and shall be in book entry form. The Interim TSN Trust Interests and Interim TSN Warrants will not be registered pursuant to the Securities Act, as amended, or any state securities law. If the Interim TSN Trust Interests and Interim TSN Warrants constitute "securities," the parties hereto intend that the exemption provisions of section 1145 of the Bankruptcy Code will apply to the Interim TSN Trust Interests and the Interim TSN Warrants. The Interim TSN Trust Interests and the Interim TSN Warrants will be non-transferable.

4. Appointment of the Interim TSN Trust Board

On or prior to the Effective Date, the Debtors, in consultation with the Creditors' Committee, shall appoint the Interim TSN Trust Board, a majority of whose members shall consist of members of the Board of Directors of TSN, in accordance with FCC requirements. The Interim TSN Trust Board may not act inconsistently with their duties under the Interim TSN Trust Agreement and/or the Plan.

5. Distributions; Withholding

The Interim TSN Trust Board shall make Distributions to the beneficiaries of the Interim TSN Trust when and as authorized pursuant to the Interim TSN Trust Agreement in compliance with the Plan. The Interim TSN Trust Board may withhold from amounts otherwise distributable to any Entity any and all amounts required by the Interim TSN Trust Agreement, any law, regulation, rule, ruling, directive, treaty, or other governmental requirement.

6. Termination of the Interim TSN Trust

The Interim TSN Trust shall terminate as soon as practicable after Closing, but in no event later than the second anniversary of the Effective Date; provided that, on or after the date that is less than thirty (30) days before such termination date, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Interim TSN Trust for a finite period if such an extension is necessary to complete any pending matters required under the Interim TSN Trust Agreement provided that the aggregate of all extensions shall not exceed two years unless the Interim TSN Trust Board receives an opinion of counsel or a favorable ruling from the Internal Revenue Service to the effect that any such extension would not adversely affect the status of the Interim TSN Trust as a liquidating

trust within the meaning of Section 301.7701-4(d) of the Treasury Regulations for federal income tax purposes. Notwithstanding the foregoing, multiple extensions may be obtained so long as the conditions in the preceding sentence are met no more than six months prior to the expiration of the then-current termination date of the Interim TSN Trust. There will not be any distribution of assets, i.e., the New Common Stock, by the Interim TSN Trust to holders of the Interim TSN Trust Interests.

Exhibit B

Notice of Confirmation

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
(212) 872-1000 (Telephone)
(212) 872-1002 (Facsimile)
Ira S. Dizengoff
Arik Preis
Ashleigh L. Blaylock

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR NETWORKS INC., *et al.*,[1]	)	Case No. 10-15446 (SHL)
Debtors.	)	Jointly Administered

NOTICE OF ENTRY OF ORDER CONFIRMING THE JOINT CHAPTER 11 PLAN OF TERRESTAR NETWORKS INC., *ET AL.*

PLEASE TAKE NOTICE THAT, on [_____], the United States Bankruptcy Court for the Southern District of New York (the "***Court***") entered the *Findings of Fact, Conclusions of Law and Order Confirming the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* (the "***Confirmation Order***") [Docket No.____]. Among other things, the Confirmation Order confirmed the *Joint Chapter 11 Plan of Reorganization of TerreStar Networks Inc., et al. (Confirmation Version)* [Docket No. ___] (as amended from time to time in accordance with the terms of the Confirmation Order, the "***Plan***"),[2] thereby authorizing TerreStar Networks Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "***Debtors***") to implement the Plan in accordance with its terms.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to the Confirmation Order, all proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, must be filed with the Court on or before [_____, 2012], the date

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar Networks Inc. (3931), TerreStar License Inc. (6537), TerreStar National Services Inc. (6319), TerreStar Networks Holdings (Canada) Inc. (1337), TerreStar Networks (Canada) Inc. (8766); and 0887729 B.C. Ltd. (1345).

[2] Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to such terms in the Plan.

that is 30 days after the date of entry of the Confirmation Order (or, with respect to any Executory Contract or Unexpired Lease that is added to the Rejected Executory Contract and Unexpired Lease List after confirmation but before the Effective Date, the date that is 30 days after such counterparty receives notice of being added to the Rejected Executory Contract and Unexpired Lease List). Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not filed with the Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates, the Purchaser, the Liquidating Trust and the Liquidating Trust Assets or their respective property without the need for any objection by the Reorganized Debtors or further notice to, or action, order or approval of, the Bankruptcy Court. All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as Unsecured Claims against the applicable Debtor and shall be treated in accordance with Article III of the Plan. The deadline to object to Claims arising from the rejection of Executory Contracts or Unexpired Leases, if any, shall be the later of (a) 210 days following the date of entry of the Confirmation Order and (b) such other period of limitation as may be specifically fixed by an order of the Bankruptcy Court for objecting to such Claims.

PLEASE TAKE FURTHER NOTICE THAT any proof of Claim that must be filed with the Court may be filed with the Debtors' notice and claims agent, The Garden City Group, Inc., at the address listed below. Proofs of Claim must be actually received by [_____, 2012] and must be delivered via first class U.S. Mail (postage prepaid), in person, by courier service or by overnight delivery. Facsimile and electronic submissions are not acceptable. In addition, copies of the Confirmation Order and the Plan are available (a) upon request to The Garden City Group, Inc. by (i) calling the Debtors' restructuring hotline at (866) 682-1770; (ii) visiting the Debtors' restructuring website at: www.TerreStarInfo.com; (iii) e-mailing the Debtors at TerreStarInfo@gcginc.com; (iv) writing to TerreStar Networks Inc., c/o The Garden City Group, Inc., P.O. Box 9649, Dublin, Ohio 43017-4949; and/or (b) for a fee, via PACER, by visiting https://ecf.nysb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE THAT the Plan and its provisions are binding on the Debtors, the Reorganized Debtors, any holder of a Claim or Interest and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder or Entity voted to accept the Plan.

New York, New York
Dated: [____], 2012

/s/ DRAFT

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
(212) 872-1000 (Telephone)
(212) 872-1002 (Facsimile)
Ira S. Dizengoff
Arik Preis
Ashleigh L. Blaylock

Counsel to the Debtors and Debtors in Possession

Exhibit C

Notice of Effective Date

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, New York 10036
(212) 872-1000 (Telephone)
(212) 872-1002 (Facsimile)
Ira S. Dizengoff
Arik Preis
Ashleigh L. Blaylock

Counsel to the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	)	Chapter 11
TERRESTAR NETWORKS INC., *et al.*,[1]	)	Case No. 10-15446 (SHL)
Debtors.	)	Jointly Administered

NOTICE OF (A) THE OCCURRENCE OF THE EFFECTIVE DATE UNDER THE JOINT CHAPTER 11 PLAN OF TERRESTAR NETWORKS INC., *ET AL.*; (B) ADMINISTRATIVE CLAIM BAR DATE; AND (C) DEADLINE FOR PROFESSIONALS TO FILE FINAL FEE APPLICATIONS

PLEASE TAKE NOTICE THAT, on [_____], the United States Bankruptcy Court for the Southern District of New York (the "***Bankruptcy Court***") entered the *Findings of Fact, Conclusions of Law and Order Confirming the Joint Chapter 11 Plan of TerreStar Networks Inc., et al.* (the "***Confirmation Order***") [Docket No.____]. Among other things, the Confirmation Order confirmed the *Joint Chapter 11 Plan of Reorganization of TerreStar Networks Inc., et al. (Confirmation Version)* [Docket No. ___] (as amended from time to time in accordance with the terms of the Confirmation Order, the "***Plan***"),[2] thereby authorizing TerreStar Networks Inc. and its affiliated debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "***Debtors***") to implement the Plan in accordance with its terms.

PLEASE TAKE FURTHER NOTICE THAT copies of the Confirmation Order and the Plan are available (a) upon request to The Garden City Group, Inc. by (i) calling the Debtors' restructuring hotline at (866) 682-1770; (ii) visiting the Debtors' restructuring website at: www.TerreStarInfo.com; (iii) e-mailing the Debtors at TerreStarInfo@gcginc.com; (iv) writing to

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: TerreStar Networks Inc. (3931), TerreStar License Inc. (6537), TerreStar National Services Inc. (6319), TerreStar Networks Holdings (Canada) Inc. (1337), TerreStar Networks (Canada) Inc. (8766); and 0887729 B.C. Ltd. (1345).

[2] Capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to such terms in the Plan.

TerreStar Networks Inc., c/o The Garden City Group, Inc., P.O. Box 9649, Dublin, Ohio 43017-4949; and/or (b) at the clerk's office for the Bankruptcy Court and on the Bankruptcy Court's official website at http://www.nysb.uscourts.gov, for a fee, through an account obtained from Pacer Service Center at 1-800-676-6856.

PLEASE TAKE FURTHER NOTICE THAT, on [_____], the Effective Date under the Plan occurred.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to Article II of the Plan, all requests for payment of Administrative Claims must be filed and served on the Reorganized Debtors, the Purchaser and such other Entities who are designated by the Bankruptcy Rules, the Confirmation Order or other order of the Bankruptcy Court no later than [_____], the date that is the 45th day after the Effective Date. **Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped and enjoined from asserting such Administrative Claims against the Debtors or Reorganized Debtors, the Liquidating Trust or their property, including the Liquidating Trust Assets, and such Administrative Claims shall be deemed discharged as of the Effective Date.** Notwithstanding the foregoing, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim previously Allowed by Final Order, including all Administrative Claims expressly Allowed under the Plan. For the avoidance of doubt, holders of Administrative Claims which arise and are paid in the ordinary course of business before the Administrative Claims Bar Date are not required to file a request for payment. Additionally, no requests for payment are required for obligations which arise after the Effective Date or obligations that are allowed pursuant to the Plan.

PLEASE TAKE FURTHER NOTICE THAT objections to payment of Administrative Claims, if any, must be filed and served on the Reorganized Debtors and the requesting party no later than [_____], the date that is the 90th day after the Effective Date.

PLEASE TAKE FURTHER NOTICE THAT all Professionals or other Entities asserting a Claim for Accrued Professional Compensation for services rendered before the Effective Date must file an application for final allowance of such Claim for Accrued Professional Compensation, and serve that application on the Reorganized Debtors and the notice parties specified by the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* [Docket No. 174], no later than [_____], the date that is the 45th day after the Effective Date.

PLEASE TAKE FURTHER NOTICE THAT objections to any Claim for Accrued Professional Compensation must be filed and served on the Reorganized Debtors, the Creditors' Committee, the U.S. Trustee and the requesting party no later than the earlier of (a) 30 days after such application is filed or (b) 75 days after the Effective Date.

PLEASE TAKE FURTHER NOTICE THAT the Plan and its provisions are binding on the Debtors, the Reorganized Debtors, any holder of a Claim or Interest and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is Impaired under the Plan and whether or not such holder or Entity voted to accept the Plan.

New York, New York
Dated: [____], 2012

/s/ DRAFT

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Counsel to the Debtors and Debtors in Possession

SCHEDULE "B"

Court File No.: CV-10-8944-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICATION OF TERRESTAR NETWORKS INC. UNDER SECTION 46 AND FOLLOWING OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

CERTIFICATE OF DISCHARGE

WHEREAS pursuant to an Order of the Honourable Mr. Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) made February 16, 2012, the discharge of Deloitte & Touche Inc. as information officer (the "Information Officer") in respect of TerreStar Networks Inc., TerreStar National Services, Inc., TerreStar License Inc., 0887729 B.C. Ltd., TerreStar Networks Holdings (Canada) Inc. and TerreStar Networks (Canada) Inc. was ordered to be effective upon the filing with the Court of a Certificate of Discharge.

THE UNDERSIGNED HEREBY CERTIFIES as follows:

The Information Officer's duties are fully satisfied and complete.

DATED at Toronto, Ontario this _____ day of _____, 2012.

DELOITTE & TOUCHE INC., in its capacity as information officer of TerreStar Networks Inc., TerreStar National Services, Inc., TerreStar License Inc., 0887729 B.C. Ltd., TerreStar Networks Holdings (Canada) Inc. and TerreStar Networks (Canada) Inc.

Per: _____

Name: _____

Title: _____

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICATION OF TERRESTAR NETWORKS INC. UNDER SECTION 46 AND FOLLOWING OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-10-8944-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

RECOGNITION ORDER

February 17, 2012

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Counsel to the Foreign Representative

Court File No.: CV-18-597987-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF ROCKPORT BLOCKER, LLC, THE ROCKPORT GROUP HOLDINGS, LLC, TRG 1-P HOLDINGS, LLC, TRG INTERMEDIATE HOLDINGS, LLC, TRG CLASS D, LLC, THE ROCKPORT GROUP, LLC, THE ROCKPORT COMPANY, LLC, DRYDOCK FOOTWEAR, LLC, DD MANAGEMENT SERVICES LLC AND ROCKPORT CANADA ULC (THE "DEBTORS")

APPLICATION OF ROCKPORT BLOCKER, LLC, UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

TOR01: 7681638: v1

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

BRIEF OF AUTHORITIES OF THE APPLICANT, ROCKPORT BLOCKER, LLC

(Volume 1 of 2)
(Re: Motion Returnable December 21, 2018)

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Lawyers for Rockport Blocker, LLC, The Rockport Group Holdings, LLC, TRG 1-P Holdings, LLC, TRG Intermediate Holdings, LLC, TRG Class D, LLC, The Rockport Group, LLC, The Rockport Company, LLC, Drydock Footwear, LLC, DD Management Services LLC and Rockport Canada ULC