



A handwritten signature in black ink that reads "Basil H. Lorch III".

Basil H. Lorch III
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:)	Chapter 11
)	
)	Case No. 08-03675-BHL-11
ATA AIRLINES, INC.)	
)	
Debtor)	

AMENDED

ORDER (I) APPROVING THE FIRST AMENDED DISCLOSURE STATEMENT UNDER 11 U.S.C. § 1125 IN SUPPORT OF THE FIRST AMENDED CHAPTER 11 PLAN OF THE DEBTOR; (II) FIXING A RECORD DATE; (III) ESTABLISHING A DEADLINE TO FILE NOTICE OF CURE CLAIMS; (IV) APPROVING SOLICITATION PROCEDURES; (V) APPROVING FORM OF BALLOT AND ESTABLISHING VOTING PROCEDURES; AND (VI) ESTABLISHING NOTICE AND OBJECTION PROCEDURES WITH RESPECT TO CONFIRMATION OF THE FIRST AMENDED CHAPTER 11 PLAN OF THE DEBTOR

CONFIRMATION HEARING

March 25, 2009 at 3:00 p.m. prevailing Eastern time

**Indiana University School of Law
211 S. Indiana Avenue
Bloomington, IN 47405**

Directions and Parking Instructions Available at www.bmcgroup.com/ataairlines

DEBTOR'S DEADLINE FOR SERVING SOLICITATION MATERIALS:

February 20, 2009

DEADLINE FOR OBJECTIONS TO CLAIMS FOR VOTING PURPOSES:

February 27, 2009 at 3:00 p.m. prevailing Eastern time

DEADLINE FOR FILING MOTIONS FOR TEMPORARY ALLOWANCE OF CLAIMS:

March 13, 2009 at 3:00 p.m. prevailing Eastern time

DEADLINE FOR OBJECTIONS TO CONFIRMATION:

March 19, 2009 at 3:00 p.m. prevailing Eastern time

DEADLINE FOR FILING BALLOTS ACCEPTING OR REJECTING PLAN:

March 19, 2009 at 3:00 p.m. prevailing Eastern time

THE DEBTOR'S DEADLINE FOR FILING BALLOT REPORT AND CERTIFICATION:

March 23, 2009 at 4:00 p.m. prevailing Eastern time

1. The Bankruptcy Court conducted a hearing on January 12, 2009 (the "Disclosure Statement Hearing") to consider approval of the Disclosure Statement Pursuant to 11 U.S.C. §1125 in Support of the Chapter 11 Plan of the Debtor dated December 12, 2008 filed by ATA Airlines, Inc. (the "Debtor" or the "Plan Proponent") in support of the Chapter 11 Plan of the Debtor. Notice of the Disclosure Statement Hearing and of the Debtor's Motion For Entry of an Order (i) Approving the Disclosure Statement; (ii) Fixing a Record Date; (iii) Establishing a Deadline to File Notice of Cure Claims; (iv) Approving Solicitation Procedures; (v) Approving Form of Ballot and Establishing Voting Procedures; and (vi) Establishing Notice And Objection

Procedures With Respect to Confirmation of the Chapter 11 Plan of the Debtor (the "Motion") is sufficient. At the Disclosure Statement Hearing, the Debtor announced that certain revisions were made to the Disclosure Statement dated December 12, 2008 to accommodate comments the Debtor received from various parties in interest. These comments were incorporated into a revised Disclosure Statement and Chapter 11 Plan and the revisions were circulated to such parties prior to the Disclosure Statement Hearing. The Debtor also made revisions to the form of this Order to accommodate certain comments. No parties in interest raised an objection or requested further changes to the revised Disclosure Statement at the Disclosure Statement Hearing. Subsequently, on February 3, 2009, the Debtor filed its First Amended Disclosure Statement Pursuant to 11 U.S.C. §1125 in Support of the Chapter 11 Plan of the Debtor (the "Disclosure Statement") and the Debtor filed its First Amended Chapter 11 Plan of the Debtor, as may be further amended (the "Plan").¹ The Disclosure Statement filed on February 3, 2009 contains all of the comments and revisions made to the original Disclosure Statement dated December 12, 2008. Accordingly, all objections to the Disclosure Statement as revised and the relief requested in the Motion are hereby overruled in all respects. The Disclosure Statement (as amended) contains "adequate information" regarding the Plan in accordance with 11 U.S.C. §1125(a). Therefore, pursuant to 11 U.S.C. §1125(b) and Fed.R.Bankr.P 3017(b), the Disclosure Statement is APPROVED. Further, the Motion is GRANTED.

2. A hearing to consider confirmation of the Plan (the "Confirmation Hearing") has been set. This Order approves certain solicitation and balloting procedures with respect to the Plan, and sets forth the deadlines and requirements relating to confirmation as requested by the Plan Proponent, and as provided in the Bankruptcy Code, Federal Rules of Bankruptcy

¹ Capitalized terms that are not otherwise defined herein shall have the same meaning as such terms are given in the Glossary of Defined Terms attached to the Plan as Exhibit A.

Procedure and local rules of the Bankruptcy Court (the "Local Rules"). Accordingly, it is ORDERED:

A. HEARING TO CONSIDER CONFIRMATION OF PLAN

3. The hearing to consider confirmation of the Plan is hereby set for March 25, 2009 at 3:00 p.m. prevailing Eastern time at the Indiana University School of Law, 211 S. Indiana Avenue, Bloomington, Indiana 47405. The Confirmation Hearing may be continued to a future date by notice given in open court at the Confirmation Hearing.

B. DEADLINE FOR OBJECTIONS TO CONFIRMATION AND BRIEFING

4. The last day for filing objections to confirmation of the Plan is March 19, 2009 at 3:00 p.m. prevailing Eastern time. Objections to confirmation shall be filed with the Bankruptcy Court and served so as to be actually received by March 20, 2009 at 3:00 p.m. prevailing Eastern time upon the Confirmation Service List, which consists of the following parties: (1) counsel for the Debtor, Haynes and Boone, LLP, 1 Houston Center, 1221 McKinney, Suite 2100, Houston, Texas 77010, attn: Kenric Kattner, and Baker & Daniels, LLP, 300 N. Meridian Street, Suite 2700, Indianapolis, Indiana 46204, attn: Terry E. Hall; (2) counsel for the Committee, Ottberbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, New York 10169, attn: Steve Soll; (3) counsel for JPMorgan Chase Bank, N.A., Simpson Thacher & Bartlett, LLP, 425 Lexington Avenue, New York, New York 10117, attn: Kathy McLendon; and (4) the United States Trustee, 101 West Ohio Street, Suite 1000, Indianapolis, Indiana 46204, attn: Ronald J. Moore.

5. Briefs in Support of Confirmation of the Plan shall be filed with the Bankruptcy Court and served upon the parties listed on the Confirmation Service List so as to be actually received by March 23, 2009 at 3:00 p.m. prevailing Eastern time. Responses to objections to

confirmation (and any memorandum of law in support of such responses) shall be filed with the Bankruptcy Court and served upon those parties listed on the Confirmation Service List so as to be actually received by March 23, 2009 at 3:00 p.m. prevailing Eastern time.

C. DEADLINE FOR FILING BALLOTS ACCEPTING OR REJECTING PLAN

6. The last day for filing a Ballot (as defined below in paragraph 23) accepting or rejecting the Plan (the "Voting Deadline") is March 19, 2009 at 3:00 p.m. prevailing Eastern time. All parties entitled to vote will receive a Ballot from the Debtor by mail. If a Claimholder's entire Claim has been objected to, such Claimholder will not have the right to vote until the objection is resolved, and any vote will not be counted, unless such Claimholder requests, and receives, after notice and hearing, an order of the Bankruptcy Court under Fed.R.Bankr.P. 3018(a) temporarily allowing the Claim for voting purposes.

D. DEADLINE FOR OBJECTIONS TO CLAIMS

7. The last day for filing and serving objections to Claims solely for purposes of determining whether the holder of such Claims(s) may vote on the Plan and the amount of such claim(s) for voting purposes is indicated above as February 27, 2009 at 3:00 p.m. prevailing Eastern time. The deadline to file and serve objections to Claims for all other purposes shall be as set forth in the Plan, if confirmed, or otherwise by further order of the Bankruptcy Court or pursuant to the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or applicable Local Rules.

E. DEADLINE FOR FILING MOTIONS FOR TEMPORARY ALLOWANCE OF CLAIMS

8. The last day for filing and serving a motion requesting an order under Fed.R.Bankr.P. 3018(a) temporarily allowing a Claim for voting purposes is March 13, 2009 at 3:00 p.m. prevailing Eastern time.

F. DEBTOR'S OBLIGATIONS

9. On or before February 20, 2009, the Debtor shall serve the Solicitation Materials (as that term is defined below in paragraph 19) on (1) the United States Trustee (without a Ballot); (2) all holders of Claims and Equity Interests entitled to vote on the Plan; (3) all non-debtor parties to Assumed Contracts; and (4) all parties in interest who have filed a special notice requesting a copy of the Disclosure Statement or Plan. The Debtor is hereby relieved of any duty to transmit the Solicitation Materials (and any notices relating to the Plan, including any notice of confirmation) to parties for whom the Debtor does not have a complete mailing address or to those parties for whom any mailings are or have been returned as undeliverable.

10. The Debtor need not solicit Plan votes from individual Union members as potential holders of Class 4 General Unsecured Claims. The Unions have filed group proofs of claim on behalf of their respective members. Accordingly, the Debtor is authorized to send Solicitation Materials to each Union and solicit *one* Ballot from each Union on behalf of their respective Union members. For purposes of voting tabulation, a Ballot filed by a representative of a Union shall account for the total number of represented parties with respect to numerosity under 11 U.S.C. §1126(c).

11. Similarly, the Debtor need not solicit plan votes from individual members of the class that has been certified in the adversary proceeding styled, *Batman, et al., v. ATA Airlines, Inc., et al.*, Adv. No. 08-50208 (who might be holders of Class 4 General Unsecured Claims). In accordance with a prior Bankruptcy Court order, the Batman class representative has filed a class proof of claim on behalf of all class members. Accordingly, the Debtor is authorized to send Solicitation Materials to counsel for the Batman plaintiffs and solicit *one* Ballot on behalf of all class members. For purposes of voting tabulation, the Ballot filed by the representative of the

Batman class shall account for the total number of represented parties with respect to numerosity under 11 U.S.C. §1126(c).

12. The Debtor shall transmit the Solicitation Materials to Wilmington Trust Company (“Wilmington”) as loan trustee, indenture trustee and subordination agent for the ATA 1996-1 Series EETC (the “1996-1 EETC”).² Wilmington, at the written direction of the Debtor and provided that the Debtor timely provides sufficient copies of the Solicitation Materials to Wilmington, shall, in accordance with its internal procedures and in a manner determined in its sole and absolute discretion, take all reasonable acts to transmit the Solicitation Materials and any necessary letters of direction to the Depository Trust Company or its nominee (“DTC”) or directly to the appropriate nominees or beneficial owner of Class A Certificateholders (as defined in the Intercreditor Agreement and A Trust Agreement) or the Controlling Party under the Intercreditor Agreement (which is Class A Certificateholders holding not less than a majority in interest in the Class A Trust credited under the Class A Trust Agreement), as determined by Wilmington in its sole and absolute discretion. Wilmington may transmit the Solicitation Materials and any necessary letters of direction to the DTC. Only as consistent with the governing 1996-1 EETC Aircraft Equipment financing documents shall the Certificateholders thereunder have the right to direct the trustee to act, including voting to accept or reject the Plan. The Debtor shall promptly reimburse Wilmington for its reasonable costs and expenses in connection with the foregoing, including any fees or costs imposed or charged by the DTC, which, in the aggregate, shall not exceed \$1,000.

13. The form of Notice of (i) Approval of First Amended Disclosure Statement Pursuant to 11 U.S.C. §1125 in Support of the Chapter 11 Plan of the Debtor; (ii) Establishment

² For this paragraph only, capitalized terms may refer to agreements or transactions relating to the 1996-1 Series EETC.

of Voting Record Date; (iii) Establishment of Deadline to File Notice of Cure Claims; (iv) Hearing on Confirmation of the First Amended Chapter 11 Plan of the Debtor; (v) Procedures for Objecting to Confirmation of the First Amended Chapter 11 Plan of the Debtor; and (vi) Procedures and Deadline for Voting on the First Amended Chapter 11 Plan of the Debtor (the “Notice of Approval of Disclosure Statement”) (in substantially the same form as attached to the Motion as Exhibit 2) is hereby approved. The Debtor shall publish the Notice of Approval of Disclosure Statement electronically at www.bmcgroup.com/ataairlines.

14. On or before March 23, 2009 at 4:00 p.m. prevailing Eastern time, the Debtor shall file with the Bankruptcy Court the Section 1126 Ballot Report Form and the Certification of Balloting Report that are required by Local Rule B-3018-1.

G. ESTABLISHMENT OF VOTING RECORD DATE

15. Pursuant to Fed.R.Bankr.P. 3018(a), the Bankruptcy Court hereby establishes a record date of February 6, 2009 (the “Voting Record Date”) for purposes of determining (a) Creditors and Interestholders entitled to receive Solicitation Materials and other notices required by the solicitation procedures approved by this Court and (b) Creditors entitled to vote to accept or reject the Plan. To the extent a Person (as defined in the Plan) was not a Creditor as of the Voting Record Date but is subsequently determined to hold a Claim pursuant to an order of the Bankruptcy Court temporarily allowing such Claim for voting purposes, such Person shall be entitled to vote to accept or reject the Plan.

H. ESTABLISHMENT OF CURE CLAIM BAR DATE AND PROCEDURES

16. Pursuant to the Plan, on the Effective Date, all executory contracts and unexpired leases listed on the Schedule of Assumed Executory Contracts shall be deemed assumed by Reorganized Debtor (the “Assumed Contracts”) as more fully described in Article 5 of the Plan.

Under the Plan, all Executory Contracts not listed on the Schedule of Assumed Executory Contracts will be deemed rejected as of the Effective Date. Additionally, as of the Confirmation Date, all CBAs with any of the Unions shall be deemed terminated, extinguished, and rejected under 11 U.S.C. §§365(a) and 1113(a), and of no further force and effect.

17. Section 365 of the Bankruptcy Code requires that, among other things, the Debtor cure any existing monetary defaults with respect to the Assumed Contracts by making “cure” payments (the “Cure Amount”) to any non-debtor parties to the Assumed Contracts. On or before February 20, 2009, the Debtor shall file with the Bankruptcy Court the Schedule of Assumed Executory Contracts which shall identify those Executory Contracts to be assumed and/or assumed and assigned by the Debtor under the Plan along with the proposed Cure Amount with respect to each Executory Contract identified. The Court hereby establishes March 13, 2009, as the Cure Claim Bar Date. The Court further establishes March 23, 2009, as the Cure Claim Objection Deadline. To ensure that all non-debtor parties have an opportunity to assert a claim for a Cure Amount, the Bankruptcy Court hereby approves the following procedures:

- (a) To the extent a counterparty to an Executory Contract disputes the Cure Amount identified in the Schedule of Assumed Executory Contracts with respect to the Executory Contract, such counterparty must file a Proof of Cure Claim in the Bankruptcy Case on or before the Cure Claim Bar Date and shall serve such Proof of Cure Claim on the Debtor, JPMorgan, the Committee and the Buyer. If a Proof of Cure Claim is not filed by the Cure Claim Bar Date, the proposed Cure Amount specified on the Schedule of Assumed Executory Contracts with respect to such party’s Executory Contracts shall be the Cure Amount for that Executory Contract.
- (b) The Debtor and the Buyer shall have the right to examine any Cure Claim filed by any party, and shall have the right to object to and contest the Disputed Cure Amount asserted therein. Any objection to a Disputed Cure Amount must be filed with the Bankruptcy Court and served on the party asserting such Disputed Cure Amount on or before the Cure Claim Objection Deadline.

- (c) Within ten (10) Business Days after the Effective Date, the Buyer shall:
(1) pay, in cash, all Cure Amounts related to Executory Contracts listed on the Schedule of Assumed Executory Contracts, other than Disputed Cure Amounts, and (2) for each Executory Contract listed on the Schedule of Assumed Contracts subject to a Disputed Cure Amount, deposit in escrow funds in an amount equal to such Disputed Cure Amount pending final determination of the Cure Amount applicable to such Executory Contract.
- (d) Neither the exclusion nor inclusion of any Executory Contract by the Debtor on the Schedule of Assumed Executory Contracts, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such contract or unexpired lease is in fact an executory contract or that the Debtor has any liability thereunder.
- (e) Except as otherwise provided in the Plan and Disclosure Statement, each Claim resulting from the rejection of an Executory Contract pursuant to the Plan shall be filed with the Bankruptcy Court no later than the first Business Day that is thirty (30) days after the Confirmation Date or such earlier date that may be set by the Bankruptcy Court concerning a particular Executory Contract.

18. The Debtor shall provide notice of these procedures by mailing the Notice of Approval of Disclosure Statement to all non-debtor parties to the Assumed Contracts by the Solicitation Mailing Date (as defined in paragraph 19 below).

I. SOLICITATION PROCEDURES

19. Solicitation Materials. Pursuant to Fed.R.Bankr.P. 3017(d), the Debtor is hereby authorized to distribute the following documents (the "Solicitation Materials") to all parties as required by this Order on or before February 20, 2009 (the "Solicitation Mailing Date") by United States mail, first-class postage prepaid, or by hand delivery or by overnight courier:

- (a) the Disclosure Statement;
- (b) the Plan;
- (c) a solicitation letter from the Committee and a solicitation letter from the Debtor;
- (d) the Notice of (i) Approval of First Amended Disclosure Statement Pursuant to 11 U.S.C. §1125 in Support of the Chapter 11 Plan of the Debtor; (ii) Establishment of Voting Record Date; (iii)

Establishment of Deadline to File Notice of Cure Claims; (iv) Hearing on Confirmation of the First Amended Chapter 11 Plan of the Debtor; (v) Procedures for Objecting to Confirmation of the First Amended Chapter 11 Plan of the Debtor; and (vi) Procedures and Deadline for Voting on the First Amended Chapter 11 Plan of the Debtor (in substantially the same form as attached to the Motion as Exhibit 2); and

- (e) to the extent applicable, a Ballot and envelope and/or notice appropriate for the specific creditor or interest holder, in substantially the forms attached to the Motion (as maybe modified for particular classes and with instructions attached thereto).

20. Plan and Disclosure Statement Exhibits, Schedules and Appendices (the “Plan Documents”). The Debtor will file the Plan Documents by the Solicitation Mailing Date. After the Solicitation Mailing Date, copies of the Plan Documents will be available in accordance with the procedures set forth in paragraph 22 below for availability of the Plan and Disclosure Statement.

21. Transmission to Certain Claimholders and Interestholders Who Are Unimpaired or Are Deemed to Reject the Plan. The Debtor is not required to send Ballots to holders of Claims or Interests in classes that are unimpaired, or in classes that are deemed to reject the Plan pursuant to 11 U.S.C. §1126(g). Specifically, the Debtor is not required to solicit votes or send Ballots to Interestholders and Claimholders in Class 1.2 (Allowed Priority Unsecured Non-Tax Claims), Class 5 (Allowed Subordinated Claims) and Class 6 (Allowed Equity Interests). The form of Notice of Non-Voting Status With Respect to Impaired Classes (the “Notice of Non-Voting Status”)(in substantially the same form as attached to the Motion as Exhibit 3) is hereby approved. As to the Classes deemed to reject the Plan pursuant to 11 U.S.C. §1126(g), the Debtor is authorized to distribute only the Notice of Non-Voting Status, the Plan and the Disclosure Statement.

22. Availability of Plan, Disclosure Statement, and Plan Documents. The Debtor shall make copies of the Plan and Disclosure Statement and, after the Solicitation Mailing Date, the Plan Documents, publicly available at www.bmcgroup.com/ataairlines. In addition, copies of the Plan and Disclosure Statement (including the Plan Documents) may also be obtained (upon written request) from BMC Group, Inc., P.O. Box 921 El Segundo, CA 90245-0921, Attn: ATA Airlines, Inc.

J. BALLOTS, BALLOTING PROCEDURES AND TABULATION

23. The Bankruptcy Court hereby approves the form of ballot attached to the Motion as Exhibit 1 (the "Ballot") and authorizes the Debtor to use such Ballot in substantially the same form and containing substantially similar content, for soliciting votes of Claimholders and Interestholders entitled to vote on the Plan. Further, the following Ballot tabulation procedures are APPROVED:

- (a) Votes Counted. A timely-received Ballot that contains sufficient information to permit the identification of the claimant and is cast as an acceptance or rejection of the Plan shall be counted and be deemed to be cast as an acceptance or rejection, as the case may be, of the Plan, subject to the following exceptions and clarifications:
 - (1) If no proof of claim has been timely filed, (i) the voted amount of a Claim shall be equal to the amount listed for the particular Claim in the Schedules of Assets and Liabilities to the extent such Claim is not listed as contingent, unliquidated, or disputed, and (ii) the Claim shall be placed in the appropriate Class, based on the Debtor's records and consistent with the Schedules of Assets and Liabilities;
 - (2) If no proof of claim has been timely filed and to the extent such Claim is listed as contingent, unliquidated, or disputed based on the Debtor's records and consistent with the Schedules of Assets and Liabilities, then any Ballot filed by such a Claimholder will not be counted;
 - (3) If a proof of claim has been timely filed, and has not been objected to before the expiration of the Voting Deadline, the

voted amount of that Claim shall be as specified in the timely filed proof of claim;

- (4) If no proof of interest has been filed, the voted amount of an Equity Interest shall be equal to the amount listed for the particular Equity Interest in the List of Equity Security Holders, and the Equity Interest shall be placed in the appropriate Class based on the Debtor's records and consistent with the Schedule of Equity Interests;
- (5) If a proof of interest has been timely filed, and has not been objected to before the expiration of the Voting Deadline, the voted amount of that Equity Interest shall be as specified in the timely filed proof of interest;
- (6) Subject to subparagraph (g) below, a Claim or Equity Interest that is the subject of an objection filed before the Voting Deadline shall be disallowed for voting purposes, except to the extent and in the manner that the Debtor indicates in its objection that the Claim or Equity Interest should be allowed for voting or other purposes;
- (7) If a Claim or Equity Interest has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, the voted amount and classification shall be that set by the Bankruptcy Court;
- (8) If a Claimholder or Interestholder or its authorized representative did not use the Ballot provided by the Debtor, the Official Ballot Form authorized under the Federal Rules of Bankruptcy Procedure, or a substantially similar form of ballot, such Ballot will not be counted;
- (9) If the Ballot is not received by the Debtor on or before the Voting Deadline at the place fixed by the Bankruptcy Court, the Ballot will not be counted;
- (10) If the Ballot is not signed by the Claimholder or Interestholder or its authorized representative, the Ballot will not be counted;
- (11) If the individual or institution casting the Ballot (whether directly or as a representative) was not the holder of a Claim or Equity Interest on the Disclosure Statement Approval Date, the Ballot will not be counted;

- (12) If the Claimholder or Interestholder or its authorized representative did not check one of the boxes indicating acceptance or rejection of the Plan, or checked both such boxes, the Ballot will not be counted;
 - (13) Whenever a Claimholder or Interestholder (or its authorized representative) submits more than one Ballot voting the same Claim(s) or Equity Interest(s) before the applicable deadline for submission of Ballots, except as otherwise directed by the Bankruptcy Court after notice and a hearing, the last such Ballot shall be deemed to reflect the voter's intent and shall supersede any prior Ballots;
 - (14) If a representative of Claimholders or Interestholders is authorized to file a proof of claim or proof of interest on behalf of the Person it represents, pursuant to an order of the Bankruptcy Court, or otherwise, such representative may submit one Ballot voting all Claims or Equity Interests so long as such Ballot complies with all other tabulation procedures above.
- (b) Changing Votes. Notwithstanding Fed.R.Bankr.P. 3018(a), whenever two or more Ballots are cast voting the same claim prior to the Voting Deadline, the latest dated Ballot actually received by the Debtor prior to the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior Ballots; provided, however, that where an ambiguity exists as to which Ballot reflects the voter's intent, the Debtor reserves the right to contact the creditor and calculate the vote according to such voter's written instructions. This procedure is without prejudice to the Debtor's right to object to the validity of the second Ballot on any basis permitted by law and, if the objection is sustained, to count the first Ballot for all purposes. Furthermore, in its sole discretion, the Debtor is hereby authorized to agree to allow a creditor to change its vote after the Voting Deadline without further order of the Bankruptcy Court.
 - (c) No Vote Splitting. Claim splitting is not permitted. Creditors and Interestholders must vote all of their Claims or Interests within a particular class to either accept or reject the Plan.
 - (d) Absence of Votes in a Class. If no votes to accept or reject the Plan are received with respect to a particular class, such class is deemed to have voted to accept the Plan; however, with respect to a Claim of the USA and any of its agencies that has not been voted in such class, the USA and its agencies shall not be deemed to have voted to accept the Plan.
 - (e) Execution of Ballots By Authorized Representatives. To be counted, completed Ballots signed by trustees, executors, administrators, guardians,

attorneys-in-fact, officers of corporations, or others acting in a fiduciary or representative capacity must indicate their capacity when signing. At the Debtor's request, Ballot signatories shall submit proper evidence satisfactory to the Debtor of their authority to so act. Failure to indicate the capacity of the signatory to the Ballot may result in the Ballot being deemed invalid and not counted.

- (f) Waivers of Defects and Other Irregularities Regarding Ballots. Unless otherwise directed by this Court, all questions concerning the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of Ballots will be determined by the Debtor in its sole discretion, whose determination will be final and binding. The Debtor may reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Debtor or its counsel, be unlawful. Any defects or irregularities or conditions of delivery as to any particular Ballot must be cured within such time as the Bankruptcy Court determines. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtor (or this Court) determines. Neither the Debtor, nor any other person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots, nor will any of them incur any liability for failure to provide such notification. Unless otherwise directed by this Court, delivery of such Ballots will not be deemed to have been made until any irregularities have been cured or waived. Unless otherwise directed by this Court, Ballots previously furnished, and as to which any irregularities have not subsequently been cured or waived, will be invalidated.
- (g) Withdrawal of Votes. Except as otherwise directed by the Bankruptcy Court after notice and a hearing, any holder of a Claim or Equity Interest (or its authorized representative) in an Impaired Class who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Debtor at any time before the Voting Deadline. Any holder of a Claim or Equity Interest (or its authorized representative) in an impaired Class who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection after the Voting Deadline but before the Confirmation Hearing with the consent and agreement of the Debtor or pursuant to order of the Bankruptcy Court. To be valid, a notice of withdrawal must:
 - (1) contain the description of the Claims or Equity Interests to which it relates and the aggregate principal amount or number of shares represented by such Claims or Equity Interests;
 - (2) be signed by the Claimholder or Interestholder (or its authorized representative) in the same manner as the Ballot; and

- (3) be received by counsel for the Debtor in a timely manner at the addresses set forth in this Disclosure Statement for the submission of Ballots.

The Debtor has the absolute right to contest the validity of any such withdrawals of Ballots. Unless otherwise directed by this Court, a purported notice of withdrawal of Ballots that is not received in a timely manner by the Debtor will not be effective to withdraw a previously furnished Ballot. If a Claimholder submits a valid notice of withdrawal prior to the Voting Deadline, such holder may submit a new Ballot, and such Ballot will be counted so long as it is received prior to the Voting Deadline and is otherwise submitted in accordance with this Order.

- (h) Submission of Ballots. The Debtor will be responsible for receiving, tabulating, and reporting on Ballots cast for or against the Plan. Holders of Claims must submit their Ballot to the following address:

HAYNES AND BOONE, LLP
Attn: Jermaine K. Johnson
1 Houston Center
1221 McKinney, Suite 2100
Houston, Texas 77010

K. GENERAL PROVISIONS

24. The Debtor is authorized to take or refrain from taking any action necessary or appropriate to implement the terms of this Order without seeking further order of the Bankruptcy Court.

25. Objections to confirmation of the Plan not timely filed and served in the manner set forth in this Order will not be considered and shall be overruled.

26. The Debtor is authorized to make nonsubstantive changes to the Plan, Disclosure Statement, Ballots, Notice of Non-Voting Status and Notice of Approval of Disclosure Statement, without further order, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Plan, Disclosure Statement and any other document contained in the Solicitation Materials before distribution. The Debtor

is also authorized to update any financial information in the Disclosure Statement with more current or accurate information to the extent available prior to the distribution of the Solicitation Materials.

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Requested:

Terry E. Hall (#22041-49)
Baker & Daniels LLP
300 N. Meridian Street, Suite 2700
Indianapolis, Indiana 46204
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
terry.hall@bakerd.com

Distribution:

Service List