

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

In re:	)	
	)	
Dickinson Theatres, Inc.,	)	Case No. 12-22602
a Kansas corporation	)	Chapter 11
Debtors.	)	
	)	

**FIRST AMENDED AND RESTATED PLAN OF REORGANIZATION, AS MODIFIED**

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## EXHIBITS

- Exhibit A      Schedule of Rejected Unexpired Leases and Executory Contracts
- Exhibit B      Schedule of Retained Actions
- Exhibit C      Schedule of Class 5a and 5b Fixed Payments

## INTRODUCTION

Dickinson Theatres, Inc., as Debtor and debtor-in-possession in the above-captioned Chapter 11 reorganization case, hereby proposes the following plan of reorganization for the resolution of Debtor's outstanding creditor claims and equity interests. Capitalized terms used but not defined in this Introduction have the meanings ascribed to them in Article I.B. of this Plan.

Reference is made to the Disclosure Statement for results of operations, projections for future operations, risk factors, a summary and analysis of the Plan and certain related matters. Debtor is the proponent of this Plan within the meaning of Section 1129 of the Bankruptcy Code.

The Plan contemplates that Debtor will continue to operate its business and be responsible for its financial affairs without any significant change, except for the rejection of certain executory contracts and unexpired leases. The obligations owed to secured creditors will be paid in full. The obligations owed to unsecured creditors also will be paid in full over four years. The equity interests in Debtor will remain unchanged.

Under Section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan may not be solicited from a Claimholder or Interestholder until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Claimholders and Interestholders. ALL CLAIMHOLDERS AND INTERESTHOLDERS WHO ARE ELIGIBLE TO VOTE ON THE PLAN ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

Subject to the restrictions on modifications set forth in Section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019 and Article XIV of this Plan, Debtor expressly reserves the right to alter, amend or modify this Plan, one or more times, before the Plan's substantial consummation.



## ARTICLE I

### DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME

#### A. Scope of Definitions.

For purposes of this Plan, except as expressly provided or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I.B. of this Plan. Any term used in this Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules. Whenever it appears appropriate from the context, each term stated in the singular or the plural includes the singular and the plural, and each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter.

#### B. Definitions

**1.1** "Administrative Expense Claim" means a claim against the Debtor for costs and expenses of administration under Section 503(b) or 507(b) of the Bankruptcy Code, including: (a) all Claims for the actual and necessary costs and expenses incurred after the Filing Date of preserving the Estate and operating the business of the Debtor (such as wages, salaries or commissions for services and payment for goods and other services and leased premises); (b) all fees and charges assessed against the Debtor's Estate under section 1930, chapter 123 of Title 28, United States Code; and (c) all Professional Claims.

**1.2** "Administrative Convenience Claim" means a Claim against Debtor that otherwise would be included in the Classes of the Plan containing General Unsecured Claims that is (a) for \$2,500 or less, or (b) for more than \$2,500 if the holder of such Claim has made the Convenience Class Election on the Ballot provided for voting on the Plan within the time fixed by the Bankruptcy Court for completing and returning such Ballot, to accept the lesser of the allowed amount of such Claim or \$2,500 in Cash in full satisfaction, discharge and release of such Claim.

**1.3** "Affiliates" means the meaning given such term by Section 101(2) of the Bankruptcy Code.

**1.4** "Allowed Claim" or "Allowed Interest" means, with reference to any Claim or Interest and with respect to the Debtor, (a) any Claim against or Interest in the Debtor that (i) has been listed by the Debtor in the Schedules, as may be amended by the Debtor from time to time in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary proof of claim or interest has been Filed, or (ii) has been allowed under the Plan, or (iii) has been allowed by Final Order of the Bankruptcy Court, or (iv) as to which a proof of claim has been timely Filed in a liquidated amount with the Bankruptcy Court pursuant to the Bankruptcy Code or any order of the Bankruptcy Court, or Filed late with leave of the Bankruptcy Court after notice and a hearing, and (b) in respect of which no objection to the allowance of such Claim or Interest has been interposed within any applicable period of

limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, a Final Order or other applicable law.

**1.5** "Allowed Class \_\_ Claim" or "Allowed Class Interest" means an Allowed Claim or an Allowed Interest in the specified Class.

**1.6** "Avoidance Action" means any claim or cause of action of the Debtor or the Estate, or any of one of them that is, or may be the subject of, an adversary proceeding under Sections 510, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551 or 553 of the Bankruptcy Code, or other applicable law.

**1.7** "Ballot" means each of the ballot forms that are distributed to holders of Claims or Interests who are included in Classes that are entitled to vote to accept or reject the Plan.

**1.8** "Bankruptcy Code" means Title 11 of the United States code, 11 U.S.C. § 101-1330, as amended from time to time.

**1.9** "Bankruptcy Court" means the Bankruptcy Court of the United States District Court for the District of Kansas, or unit thereof, exercising jurisdiction over the case.

**1.10** "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Cases or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

**1.11** "Bar Date" means November 16, 2012, unless different date(s) are established by the Plan or by a Final Order of the Bankruptcy Court as the final date(s) to file proofs of claim, requests for allowance of an Administrative Expense Claim, or any other notice, objection or other document to evidence, support or seek Allowance of any Claim.

**1.12** "Bar Date Order" means that certain order entered by the Bankruptcy Court which established the Bar Date.

**1.13** "Business Day" means any day, excluding Saturdays, Sundays and legal holidays, on which commercial banks are open for business in New York City.

**1.14** "Cash" means legal tender of the United States of America, which may be conveyed by check or wire transfer.

**1.15** "Causes of Action" means any and all actions, proceedings, causes of action, liabilities, obligations, suits, accounts, controversies, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment and claims, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, including without limitation counterclaims, setoff or offset rights, and Avoidance Actions.

**1.16** "Chapter 11 Case" means the Chapter 11 Case of Debtor pending in the Bankruptcy Court.

**1.17** "Claim" means a claim against Debtor, whether or not asserted, as defined in Section 101(5) of the Bankruptcy Code.

**1.18** "Claimholder" means a holder of a Claim.

**1.19** "Claims/Interests Objection Deadline" means that day which is 45 days after the Effective Date, as the same may be from time to time extended by the Bankruptcy Court, without further notice to parties in interest.

**1.20** "Class" means a category of Claimholders or Interstholders as set forth in the Plan.

**1.21** "Class 5 Allocation" means the allocation of the Class 5 Fixed Payments eighty-five percent (85%) to holders of Allowed Claims in Class 5a and fifteen percent (15%) to the Hartley Trust Unsecured Claim, until holders of Allowed Claims in Class 5a are paid in full.

**1.22** "Class 5 Excess Cash Distribution" means the annual distribution of Cash to Class 5 in accordance with the Excess Cash Allocation, if available, made (i) fifty percent (50%) paid Pro Rata to holders of Allowed Claims in Class 5a, and (ii) fifty percent (50%) to the holder of the Hartley Trust Unsecured Claim, within ninety (90) days from the last day of the Fiscal Year.

**1.23** "Class 5 Fixed Payments" means Reorganized Debtor's payment obligations and distributions to Class 5 in accordance with the Class 5 Allocation and the payment schedule attached to the Plan as Exhibit C.

**1.24** "Committee" means the Official Committee of Unsecured Creditors appointed in this case.

**1.25** "Confirmation Date" means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the Bankruptcy Court's docket in the case.

**1.26** "Confirmation Hearing" means the hearing held by the Bankruptcy Court to consider confirmation of the Plan pursuant to Section 1128(a) and 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

**1.27** "Confirmation Hearing Notice" means the notice of, among other things, the time for submitting Ballots to accept or reject the Plan, the date, time and place of the Confirmation Hearing and the time for filing objections to the confirmation of the Plan.

**1.28** "Confirmation Order" means the Final Order entered by the Bankruptcy Court confirming the Plan as to which no pleading seeking revocation is pending.

**1.29** "Convenience Class Election" means the election pursuant to which the holder of a qualifying General Unsecured Claim against the Debtor timely elects to be treated as an Administrative Convenience Claim.

**1.30** "Creditors' Committee" means the Official Committee of Unsecured Creditors appointed pursuant to Section 1102(a) of the Bankruptcy Code in the Chapter 11 Case.

**1.31** "Cure" means the distribution within a reasonable period of time, not to exceed four months, following the Effective Date of Cash, or such other property as may be agreed upon by the parties or ordered by the Bankruptcy Court, with respect to the assumption of an executory contract or unexpired lease, pursuant to Section 365(b) of the Bankruptcy Code, in an amount equal to all unpaid monetary obligations, without interest, or such other amount as may be agreed upon by the parties, under such executory contract or unexpired lease, to the extent such obligations are enforceable under the Bankruptcy Code and applicable non-bankruptcy law.

**1.32** "D&O Insurance" means insurance maintained by Debtor which, among others, covers Debtor's officers and directors.

**1.33** "Debtor" means Dickinson Theatres, Inc., Debtor and debtor-in-possession in the above-captioned case pending in the Bankruptcy Court.

**1.34** "DIP Credit Agreement" means the DIP Credit Agreement which was executed by Debtor in connection with the DIP Facility.

**1.35** "DIP Facility" means the Debtor in possession secured financing facility provided to Debtor by the DIP Lender(s) pursuant to the DIP Credit Agreement as authorized by the Bankruptcy Court pursuant to the DIP Facility Order.

**1.36** "DIP Facility Order" means, collectively, the interim order that was entered by the Bankruptcy Court, and the final order that was entered by the Bankruptcy Court, authorizing and approving the DIP Facility and the agreements related thereto.

**1.37** "DIP Lender(s)" means the lender(s) which, from time to time, are party to the DIP Credit Agreement.

**1.38** "Disallowed Claim" or "Disallowed Interest" means a Claim or any portion thereof, or an Interest or any portion thereof, that (a) has been disallowed by a Final Order, (b) is Scheduled at zero or as contingent, disputed or unliquidated, and as to which a Bar Date has been established but no proof of claim or interest has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law, or (c) is not Scheduled and as to which a Bar Date has been set but no proof of claim or interest has been timely filed or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

**1.39** "Disbursing Agent" means Reorganized Debtor or any entity in its capacity as a disbursing agent under the Plan. All distributions under the Plan will be made by the Reorganized Debtor, with the exception of distributions to Class 5a, which will be made to the Plan Monitor and will be considered to have been made timely upon payment to the Plan Monitor.

**1.40** "Disclosure Statement" means the disclosure statement that relates to the Plan and is approved by the Court pursuant to Section 1125 of the Bankruptcy Code, as such Disclosure Statement may be amended, modified, or supplemented (and all exhibits and schedules annexed thereto or referred to therein).

**1.41** "Disputed Claim" or "Disputed Interest" means a Claim or any portion thereof, or an Interest or any portion thereof, that is neither an Allowed Claim nor a Disallowed Claim, or an Allowed Interest or a Disallowed Interest, as the case may be, and includes, without limitation, Claims or Interests that (a) (i) have not been Scheduled by Debtor or have been Scheduled at zero, as unknown or as contingent, unliquidated or disputed and (ii) are not the subject of an objection in the Bankruptcy Court; (b) that are the subject of a proof of claim or interest that differs in nature, amount or priority from the Schedules; or (c) are the subject of an objection with the Bankruptcy Court and which objection has not been withdrawn or overruled by a Final Order of the Bankruptcy Court.

**1.42** "Distribution Date" means any date on which a Distribution is made pursuant to the Plan.

**1.43** "Effective Date" means the later of January 15, 2013, or the Business Day on which all conditions to the consummation of the Plan hereof have been either satisfied or waived as provided hereof, and is the day upon which this Plan is substantially consummated.

**1.44** "Estate" means the estate created by the commencement of the Case pursuant to Section 541 of the Bankruptcy Code, including, without limitation, any and all legal rights, claims and interests of the Debtor and any and all interests in property, whether real, personal or mixed, rights, causes of action, Avoidance Actions, avoidance powers or extensions of time that the Debtor or its estate shall have had, effective as of the commencement of either of the Cases, or which such estate acquired after the commencement of the Cases, whether by virtue of Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code or otherwise.

**1.45** "Event of Default" means and shall be deemed to have occurred upon the occurrence of any of the following events: (i) Reorganized Debtor shall fail to meet its obligation to make the required Class 5 payments (and interest, if any) hereunder, and Debtor's failure to cure such default within thirty (30) days thereafter; (ii) Reorganized Debtor shall make an assignment for the benefit of creditors or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; (iii) any material default shall have occurred under an existing credit agreement of Reorganized Debtor; (iv) Reorganized Debtor shall commence any case, proceeding, or other action under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors (other than proceedings or actions brought in the Case), or any such action shall be commenced against Reorganized Debtor which is not dismissed within sixty (60) days; and (v) breach of the Plan

covenants in Section 7.10 that is not cured within thirty (30) days or that is not waived with the express permission of the Plan Monitor.

**1.46** "Excess Cash Allocation" means the allocation of (i) sixty-seven (67%) to Reorganized Debtor and (ii) thirty-three percent (33%) to holders of Allowed Claims in Class 5, of "Excess Cash" as defined and calculated herein. Excess Cash is to be computed as the amount of cash actually held by Reorganized Debtor, exclusive of (or less) any cash advanced by a Class 2, 3 or 4 lender herein set forth, which is in excess of (or over) the annual net positive cash flow projected to be generated by Reorganized Debtor per Appendix 4 to the Disclosure Statement for each fiscal year ending on May 31, commencing May 31, 2014, and each subsequent year thereafter, plus an additional \$200,000, until all holders of Allowed Claims in Class 5 are paid in full in accordance with the Plan.

**1.47** "Exhibit" means an exhibit annexed to either this Plan or as an appendix to the Disclosure Statement.

**1.48** "Exhibit Filing Date" means the date on which Exhibits to the Plan or the Disclosure Statement shall be filed with the Bankruptcy Court, which date shall be at least five days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court without further notice to parties in interest.

**1.49** "Existing Securities" means, collectively, the voting stock, the non-voting stock, and all options, warrants and rights (whether fixed or contingent, matured or unmatured, disputed or undisputed), contractual, legal, equitable or otherwise, to acquire any of the foregoing.

**1.50** "Face Amount" means, (a) when used in reference to a Disputed or Disallowed Claim, the full stated liquidated amount claimed by the Claimholder in any proof of claim timely filed with the Bankruptcy Court or otherwise deemed timely filed by any Final Order of the Bankruptcy Court or other applicable bankruptcy law, and (b) when used in reference to an Allowed Claim, the allowed amount of such Claim.

**1.51** "Final Order" means an order or judgment (a) as to which the time to appeal, petition for *certiorari*, or move for re-argument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for re-argument or rehearing shall then be pending; or (b) as to which any right of appeal, move for a stay pending appeal, petition for *certiorari*, reargue or rehear shall have been waived in writing in form and substance satisfactory to the Debtor; or (c) in the event that an appeal, writ of *certiorari*, or re-argument or rehearing thereof has been sought, such order shall have been denied by the highest court to which such order was appealed, or *certiorari*, re-argument or rehearing shall have been taken and the time to take any further appeal, petition for *certiorari* or move for re-argument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rules 9023 or 9024 may be filed with respect to such order shall not cause such order not to be a final order.

**1.52** "Fiscal Year" means, with respect to Debtor, the 52- or 53-week period ending on the last day in May.

**1.53** "General Unsecured Claim" means a Claim that does not fall within another Class of Claims, including without limitation Classes of Administrative Claims, Priority Tax Claims, Other Priority Claims, Secured Claims, Administrative Convenience Claims, and Subordinated Claims, with such General Unsecured Claims classified in Class 5a of this Plan.

**1.54** "Hartley Release" means the release to the Hartley Released Parties as described in Section 11.5 of the Plan.

**1.55** "Hartley Released Parties" means John W. Hartley, Jr., and the John W. Hartley Jr. Revocable Trust under Agreement dated October 30, 2001 and their successors and assigns.

**1.56** "Hartley Trust Unsecured Claim" means that certain General Unsecured Claim represented by a certain Unconditional Guaranty of Payment dated as of January 23, 2012 and held by the John W. Hartley Revocable Trust under Agreement dated October 30, 2001 and John W. Hartley, Jr.

**1.57** "Impaired" refers to any Claim or Interest that is impaired within the meaning of Section 1124 of the Bankruptcy Code.

**1.58** "Indemnification Rights" means any obligations or rights of Debtor to indemnify, reimburse, advance or contribute to the losses, liabilities or expenses of an Indemnitee pursuant to Debtor's certificate of incorporation, bylaws, or policy of providing employee indemnification, or other applicable law or specific agreement in respect of any claims, demands, suits, causes of action or proceedings against an Indemnitee based upon any act or omission related to an Indemnitee's service with, for or on behalf of Debtor.

**1.59** "Indemnitee" means all present and former directors, officers, employees, agents or representatives of Debtor who are entitled to assert Indemnification Rights.

**1.60** "Insurance Coverage" shall have the meaning ascribed to it in Section 11.8 hereof.

**1.61** "Interest" means (a) the legal, equitable contractual and other rights (whether fixed or contingent, matured or unmatured, disputed or undisputed) of any Person with respect to voting stock, non-voting stock, or any other equity securities of Debtor; and (b) the legal, equitable, contractual and other rights, whether fixed or contingent, matured or unmatured, disputed or undisputed, of any Person to purchase, sell, subscribe to, or otherwise acquire or receive (directly or indirectly) any of the foregoing.

**1.62** "Interestholder" means a holder of an Interest.

**1.63** "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

**1.64** "New Value Contribution" means the equity contribution and line of credit in the amount of \$500,000 provided by 6801 West 107<sup>th</sup> LLC under the 6801 West 107<sup>th</sup> LLC Loan Documents.

**1.65** "Other Priority Claim" means a Claim entitled to priority pursuant to Section 507(a) of the Bankruptcy Code other than a Priority Tax Claim or an Administrative Claim.

**1.66** "Periodic Distribution Date" means (a) the Distribution Date, as to the first distribution made by Reorganized Debtor, and (b) thereafter, (i) the first Business Day occurring ninety (90) days after the Distribution Date and (ii) subsequently, the first Business Day occurring ninety (90) days after the immediately preceding Periodic Distribution Date.

**1.67** "Person" has the meaning set forth in Section 101(41) of the Bankruptcy Code.

**1.68** "Petition Date" means September 21, 2012, the date on which Debtor filed its petition commencing the Chapter 11 Case.

**1.69** "Plan" means this Chapter 11 plan of the Debtor, including, without limitation, all documents referenced herein and all exhibits, supplements, appendices and schedules hereto, either in its present form or as the same may be altered, amended or modified from time to time.

**1.70** "Plan Monitor" means the person selected by the Creditors' Committee pursuant to Section 7.11 of this Plan. After Class 5a General Unsecured Claims are paid in full under the Plan, the holder of the Hartley Trust Unsecured Claim shall designate the Plan Monitor.

**1.71** "Priority Tax Claim" means any Claim against any Debtor of a governmental unit of the kind specified in Sections 502(i) or 507(a)(8) of the Bankruptcy Code.

**1.72** "Pro Rata" means proportionally, so that with respect to an Allowed Claim or Allowed Interest, the ratio of (a)(i) the amount of property distributed on account of a particular Allowed Claim or Allowed Interest to (ii) the amount of the Allowed Claim or Allowed Interest which is equal to the ratio of (b)(i) the amount of property distributed on account of all Allowed Claims or Allowed Interests of the Class in which the particular Allowed Claim or Allowed Interest is included to (ii) the amount of all Claims or Interests in that Class (including Disputed Claims and Disputed Interests, until disallowed).

**1.73** "Professional Claim" means a Claim of a professional retained in the Chapter 11 Cases pursuant to Sections 327 and 1103 of the Bankruptcy Code or otherwise, for compensation or reimbursement of costs and expenses relating to services rendered or expenses incurred after the Petition Date and prior to and including the Effective Date.

**1.74** "Professional Fee Order" means the order entered by the Bankruptcy Court authorizing the interim or final payment of Professional Claims.

**1.75** "Projections" means the financial projections covering the operations of Debtor and Reorganized Debtor as set forth by Debtor in the Appendix attached to the Disclosure Statement.

**1.76** "Reinstated" or "Reinstatement" means (a) leaving unaltered the legal, equitable and contractual rights to which a Claim entitles the Claimholder, so as to leave such Claim Unimpaired in accordance with Section 1124 of the Bankruptcy Code, or (b) notwithstanding



any contractual provision or applicable law that entitles the Claimholder to demand or receive accelerated payment of such Claim after the occurrence of a default (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in Section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the Claimholder for any damages incurred as a result of any reasonable reliance by such Claimholder on such contractual provision or such applicable law; and (iv) not otherwise altering the legal, equitable or contractual rights to which such Claim entitles the Claimholder; provided, however, that any contractual right that does not pertain to the payment when due of principal and interest on the obligation on which such Claim is based, including but not limited to financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, "going dark" provisions, and affirmative covenants regarding corporate existence prohibiting certain transactions or actions contemplated by the Plan, or conditioning such transactions or actions on certain factors, shall not be required to be cured or reinstated in order to accomplish Reinstatement.

**1.77** "Released Parties" means, collectively, (i) Debtor and Debtor's officers and directors, (ii) Reorganized Debtor and the officers and directors of Reorganized Debtor serving in such capacity after the Effective Date, (iii) the DIP Lender(s), and the holders of Claims in Classes 2, 3, and 4, (iv) the Creditors' Committee and its members, (v) the Hartley Released Parties, and, with respect to each of the above-named Persons, such Persons' Affiliates, principals, employees, agents, officers, directors, financial advisors, attorneys and other professionals, each solely in their capacity as such.

**1.78** "Reorganized Debtor" means Debtor from and after the Effective Date. Debtor and Reorganized Debtor may be used interchangeably, as appropriate, under this Plan.

**1.79** "Retained Actions" means (a) all claims, rights of action, suits and proceedings, whether in law or in equity, whether known or unknown, which Debtor may hold against any Person, including, without limitation, any Causes of Action brought prior to the Petition Date, and actions against any Persons for failure to pay for products or services provided or rendered by Debtor, (b) all claims, Causes of Action, suits and proceedings relating to strict enforcement of Debtor's intellectual property rights, including patents, copyrights and trademarks, and (c) all claims or Causes of Action seeking the recovery of Debtor's or Reorganized Debtor's accounts receivable or other receivables or rights to payment created or arising in the ordinary course of Debtor's or Reorganized Debtor's business.

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

**1.81** "Schedules" mean the schedules of assets and liabilities, the list of holders of Interests and the statements of financial affairs filed by the Debtor under Section 521 of the Bankruptcy Code and the Bankruptcy Rule 1007, and all amendments and modifications thereto through the Confirmation Date.

**1.82** "Security" shall have the meaning ascribed to it in Section 101(49) of the Bankruptcy Code.

**1.83** "Secured Claim" means a Claim secured by a security interest in or lien on property of the Estates to the extent of the value, as of the Effective Date or such other date as is established by the Bankruptcy Court, of such Claimholder's interest in the Estate's interest in property of the Estate as determined by a Final Order of the Bankruptcy Court pursuant to Section 506 of the Bankruptcy Code or as otherwise agreed upon in writing by Debtor and the Claimholder.

**1.84** "Solicitation Procedures Order" means the order of the Bankruptcy Court pursuant to which the Bankruptcy Court, *inter alia*, approved the Disclosure Statement and set various procedures for soliciting and tabulating votes on the Plan.

**1.85** "Spirit Unsecured Claim" means the General Unsecured Claim currently held by Spirit Master Funding IV, LLC for that certain Promissory Note executed by Debtor in the original principal amount of \$500,000 dated as of April 11, 2012.

**1.86** "Subordinated Claim" means a Claim subject to subordination under Section 510 of the Bankruptcy Code, including, without limitation, any Claim that arises from the rescission of a purchase or sale of a Security of Debtor, or for damages arising from the purchase or sale of such a Security, or for reimbursement, indemnification, or contribution allowed under Section 502 of the Bankruptcy Code on account of such Claim. But Subordinated Claim does not include the Hartley Trust Unsecured Claim.

**1.87** "Unimpaired" refers to any Claim or Interest which is not Impaired.

**1.88** "Voting Deadline" means November 21, 2012, at 5:00 p.m. (prevailing Central time).

**1.89** "503 Deadline" shall have the meaning ascribed to it in Section 10.3 hereof.

### **C. Rules of Interpretation.**

For purposes of the Plan (a) any reference in the Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in the Plan to an existing document or Exhibit filed or to be filed means such document or Exhibit as it may have been or may be amended, modified or supplemented, (c) unless otherwise specified, all references in the Plan to Sections, Articles, Schedules and Exhibits are references to Sections, Articles, Schedules and Exhibits of or to the Plan, (d) the words "herein" and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan, (e) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan, and (f) the rules of construction set forth in Section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, Debtor, representatives of the holders of Secured Claims, the Committee and certain other creditors and constituencies. Each of the foregoing was represented by counsel who either (a) participated in the formulation and documentation of, or (b) was afforded the opportunity to

review and provide comments on, the Plan, Disclosure Statement, and the documents ancillary thereto. Accordingly, the general rule of construing a contract against its drafter (i.e. - Debtor) shall not apply to the construction or interpretation of any provision of this Plan, the Disclosure Statement, or any contract, instrument, release, indenture, exhibit, or other agreement or document generated in connection herewith.

#### **D. Computation of Time**

In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply.

#### **E. Exhibits**

All Exhibits are incorporated into and are a part of the Plan as if set forth in full herein and, to the extent not annexed hereto, such Exhibits shall be filed with the Bankruptcy Court on or before the Exhibit Filing Date. After the Exhibit Filing Date, copies of Exhibits can be obtained upon written request to Stinson Morrison Hecker LLP (Attention: Sharon L. Stolte, Esq.), counsel to Debtor. To the extent any Exhibit is inconsistent with the terms of the Plan, the Plan shall control.

## **ARTICLE II**

### **ADMINISTRATIVE EXPENSES AND PRIORITY TAX CLAIMS**

**2.1 Administrative Claims.** Subject to the provisions of Article X of this Plan, on the first Periodic Distribution Date occurring after the later of (i) the date an Administrative Claim becomes an Allowed Administrative Claim or (ii) the date an Administrative Claim becomes payable pursuant to any agreement between a Debtor (or Reorganized Debtor) and the holder of such Administrative Claim, an Allowed Administrative Claimholder in Debtor's Chapter 11 Case shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Administrative Claim, (a) Cash equal to the unpaid portion of such Allowed Administrative Claim or (b) such other treatment as to which Debtor (or Reorganized Debtor) and such Claimholder shall have agreed upon in writing; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by Debtor in the ordinary course of business during the Chapter 11 Cases shall be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto.

**2.2 DIP Facility Claim.** See Section 5.2 and 5.3 below.

**2.3 Priority Tax Claims.** With respect to any Allowed Priority Tax Claim in Debtor's Chapter 11 Case, at the sole option of Debtor (or Reorganized Debtor), the Allowed Priority Tax Claimholder shall be entitled to receive on account of such Priority Tax Claim, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Priority Tax Claim, (a) equal Cash payments made on the last Business Day of every three-month period following the Effective Date, over a period not exceeding six years after the assessment of the tax on which such Claim is based, totaling the principal amount of such Claim plus simple interest on any outstanding balance from the Effective Date calculated at the interest rate

available on ninety (90) day United States Treasuries on the Effective Date, (b) such other treatment agreed to by the Allowed Priority Tax Claimholder and Debtor (or Reorganized Debtor), provided such treatment is on more favorable terms to Debtor (or Reorganized Debtor after the Effective Date) than the treatment set forth in clause (a) hereof, or (c) payment in full in Cash.

### ARTICLE III

#### **CLASSIFICATION OF CLAIMS AND INTERESTS**

Pursuant to Section 1122 of the Bankruptcy Code, set forth below is a designation of classes of Claims against and Interests in Debtor. A Claim or Interest is placed in a particular Class for purposes of voting on the Plan and of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims of the kinds specified in the Bankruptcy Code have not been classified, and their treatment is set forth in Article II above.

The Other Priority Claims are in Class 1. The Secured Claim of Peoples Bank is in Class 2. The Secured Claim of 6801 West 107<sup>th</sup> LLC is in Class 3. Hawthorn Bank is in Class 4. The General Unsecured Claims are in Class 5a. The Hartley Trust Unsecured Claim is in Class 5b. The Administrative Convenience Claims are in Class 6. The Spirit Master Funding Claim is in Class 7. And the Horton Trust Interests are in Class 8.

### ARTICLE IV

#### **IDENTIFICATION OF CLASSES OF CLAIMS AND INTERESTS IMPAIRED AND NOT IMPAIRED BY THE PLAN**

**4.1 Unimpaired Classes of Claims and Interests.** Classes 1, 4, 6 and 7, are Unimpaired by the Plan.

**4.2 Impaired Classes of Claims and Interests.** Classes 2, 3, 5a, 5b, and 8 are Impaired Classes under the Plan.

### ARTICLE V

#### **PROVISIONS FOR TREATMENT OF CLAIMS AND INTERESTS**

**5.1 Class 1 (Other Priority Claims).** On the first Distribution Date occurring after the later of (i) the date an Other Priority Claim becomes an Allowed Other Priority Claim or (ii) the date an Other Priority Claim becomes payable pursuant to any agreement between a Debtor (or Reorganized Debtor) and the holder of such Priority Claim, an Allowed Class 1 Other Priority Claimholder shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 1 Other Priority Claim, (a) Cash equal to the amount of such

Allowed Class 1 Other Priority Claim or (b) such other treatment as to which Debtor (or Reorganized Debtor) and such Claimholder shall have agreed in writing.

**5.2 Class 2 (Secured Claims of Peoples Bank).** As used in this Plan, the term "Secured Claims of Peoples Bank" shall mean and include all prepetition and postpetition claims of Peoples Bank against the Debtor (including, without limitation, all claims), indebtedness, and obligations arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests And Priority Pursuant To 11 U.S.C. §§ 364(C) and (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral And Providing Adequate Protection, and (5) Setting A Final Hearing On The Motion). All documents and instruments evidencing and/or securing the Secured Claims of Peoples Bank are herein sometimes collectively referred to as the "Peoples Loan Documents."

Peoples Bank shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and Peoples Bank as of the Petition Date and obligations arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests and Priority Pursuant To 11 U.S.C. §§ 364(C) and (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral and Providing Adequate Protection, and (5) Setting A Final Hearing On The Motion).

The Secured Claims of Peoples Bank, as evidenced and secured by the Peoples Loan Documents, shall not be discharged, impaired, or affected in any way by the Plan or the Confirmation Order, except that the \$500,000 and \$400,000 lines of credit shall have their maturity date extended to May 31, 2013, subject to further extension by agreement of the parties. Without limiting the generality of the immediately preceding sentence, (i) Peoples Bank shall retain its liens under the Peoples Loan Documents, and (ii) the Secured Claims of Peoples Bank shall continue to be evidenced and secured by and payable as provided in the Peoples Loan Documents. On or before the Effective Date, the Debtor shall execute one or more Modification Agreements containing such other terms and conditions as Peoples Bank may reasonably request that are not inconsistent with the terms and provisions of this Plan.

**5.3 Class 3 (Secured Claim of 6801 West 107<sup>th</sup> LLC).** As used in this Plan, the term "Secured Claim of 6801 West 107<sup>th</sup> LLC" shall mean and include all prepetition and postpetition claims of 6801 West 107<sup>th</sup> LLC against the Debtor (including, without limitation, all claims), indebtedness, and obligations arising under the DIP Facility or described in that certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests And Priority Pursuant To 11 U.S.C. §§ 364(C) and (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral And Providing Adequate Protection, and (5) Setting A Final Hearing On The Motion). All documents and instruments evidencing and/or securing the Secured Claim of 6801 West 107<sup>th</sup> LLC are herein sometimes collectively referred to as the "6801 West 107<sup>th</sup> LLC Loan Documents."

Except as provided herein, 6801 West 107<sup>th</sup> LLC shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and 6801 West 107<sup>th</sup> LLC under the DIP Facility or described in that

certain Interim Order (1) Authorizing Debtor-In-Possession To Obtain Post-Petition Secured Financing, (2) Granting Security Interests and Priority Pursuant To 11 U.S.C. §§ 364(C) and (D), (3) Modifying The Automatic Stay, (4) Allowing Use Of Cash Collateral and Providing Adequate Protection, and (5) Setting A Final Hearing On The Motion).

The Secured Claims of 6801 West 107th LLC, as evidenced and secured by the 6801 West 107th LLC Loan Documents, shall not be discharged, impaired, or affected in any way by the Plan or the Confirmation Order, except that (a) the \$500,000 line of credit shall have its maturity date extended to the later of (i) December 31, 2016 and (ii) the day after all the obligations to holders of Allowed Claims in Class 5a have been satisfied, subject to further extension by agreement of the parties, (b) the claims of 6801 West 107<sup>th</sup> LLC shall also be secured by a mortgage on the building commonly known as 6801 West 107<sup>th</sup> Street, subordinate to the mortgage in favor of Peoples Bank under Class 2, and (c) any liens securing the claim of 6801 West 107<sup>th</sup> LLC may not be foreclosed without the prior written consent of the Plan Monitor and holder of the Hartley Trust Unsecured Claim. Without limiting the generality of the immediately preceding sentence, and except as modified above, (i) The 6801 West 107th LLC shall retain its liens under the 6801 West 107th LLC Loan Documents, and (ii) the Secured Claims of 6801 West 107th LLC shall continue to be evidenced and secured by and payable as provided in the 6801 West 107th LLC Loan Documents. On or before the Effective Date, the Debtor shall execute one or more Modification Agreements containing such other terms and conditions as The 6801 West 107th LLC may reasonably request that are not inconsistent with the terms and provisions of this Plan.

**5.4 Class 4 (Secured Claim Of Hawthorn Bank).** Hawthorn Bank shall retain the liens securing its claim, plus receive cash, all in accordance with and under the provisions of the Loan Documents in effect between Debtor and Hawthorn Bank as of the Petition Date (the "Hawthorn Loan Documents"), and as provided for in this Court's DIP Facility Order (Doc. No. 166). The Secured Claims of Hawthorn Bank shall continue to be evidenced and secured by and payable as provided in the Hawthorn Loan Documents. Except as otherwise set forth herein, the secured claims of Hawthorn Bank as evidenced by the Loan Documents attached to Hawthorn Bank's proof of claim, and the liens granted thereunder, shall not be discharged, impaired, or affected in any way by the Plan or Confirmation Order.

**5.5 Class 5 (General Unsecured Claims and Hartley Trust Unsecured Claims).** Class 5 includes two subclasses of Claims—Class 5a (General Unsecured Claims) and Class 5b (Hartley Trust Unsecured Claim).

**5.5.1 Class 5a (General Unsecured Claims).** Each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Claim, (i) a Pro Rata payment in Cash of its share in the Class 5 Fixed Payments pursuant to the Class 5 Allocation and (ii) the Class 5 Excess Cash Distribution, until such Claim is paid the Allowed Amount of the Claim with such Claim earning interest equal to an annual percentage rate of four and one-half percent (4.5%), and such payment obligations, as will be further provided in the Confirmation Order, having the status of and deemed to be an unsecured note of Debtor to Class 5a. As will also be provided in the Confirmation Order, Debtor's obligations to Class 5a are guaranteed by the Debtor's subsidiaries on an unsecured basis. Debtor's outstanding obligations to Class 5 may be prepaid in whole or in part at any time

without penalty; provided that no prepayment shall be made to Class 5b until Class 5a has been paid in full in accordance with the Plan.

**5.5.2 Class 5b (Hartley Trust Unsecured Claim).** On the Effective Date, the Hartley Trust Unsecured Claim shall be Allowed in the amount of \$1,967,008.50, and the Hartley Trust Guaranty and related documents giving rise to the Hartley Trust Unsecured Claim shall remain in effect, subject to the modifications in this Section 5.5.2. Notwithstanding Section 9.4 of the Plan, the holder of the Hartley Trust Unsecured Claim will not surrender any agreements or documents pertaining to the Hartley Trust Unsecured Claim. The holder of the Hartley Trust Unsecured Claim shall receive, in full satisfaction, settlement, release, and discharge of the Hartley Trust Unsecured Claim, payments totaling the sum of (a) Hartley Trust's reasonable attorneys' fees as of the Effective Date less any post-Petition Date payments to Hartley Trust, plus (b) the principal amount of \$1,967,008.50, plus (c) interest on that principal amount at four percent (4%) per annum from the Effective Date until paid in full (collectively, the "**Total Hartley Payoff Amount**"). As of the Effective Date, (1) the Reorganized Debtor hereby ratifies and reaffirms the releases set forth in Section 14.1 of the Stock Purchase Agreement dated effective as of January 23, 2012; (2) Reorganized Debtor's obligations under the Hartley Trust Guaranty shall be limited to the Total Hartley Payoff Amount; and (3) neither the Reorganized Debtor, Ronald J. Horton nor the Ronald J. Horton Revocable Trust, their respective representatives, successors, beneficiaries, assigns nor other obligors, shall have any further payment obligations in connection with the Promissory Note dated January 23, 2012 in the original principal amount of One Million Nine Hundred Twenty-Five Thousand Dollars (\$1,925,000). After all holders of Allowed Claims in Class 5a General Unsecured Claims are paid in full in accordance with the Plan, all subsequent Class 5 Fixed Payments and any subsequent Class 5 Excess Cash Distribution shall be paid to the holder of the Hartley Trust Unsecured Claim until the Reorganized Debtor's obligations to the holder of the Hartley Trust Unsecured Claim are satisfied pursuant to the terms of the Plan, and the right to make early, full, or accelerated payments as to the Total Hartley Payoff Amount shall remain with Reorganized Debtor without any prepayment penalty. The Reorganized Debtor's payments to the holder of the Hartley Trust Unsecured Claim will be applied first to attorneys' fees and costs, then to accrued interest, and then to principal. Payment of the Total Hartley Payoff Amount will be secured by a pledge of all Interests in the Debtor and the Reorganized Debtor until the holder of the Hartley Trust Unsecured Claim receives the Total Hartley Payoff Amount and the Reorganized Debtor's obligations to the holder of the Hartley Trust Unsecured Claim are satisfied pursuant to the terms of the Plan.

If the Reorganized Debtor defaults on its obligations under the Plan to make the Class 5 Fixed Payments or any Class 5 Excess Cash Distribution and the Plan Monitor is required to pursue the Reorganized Debtor to enforce those obligations under the Plan, the holder of the Hartley Trust Unsecured Claim shall receive only its agreed portion of any recovery of a Class 5 Fixed Payment (15%) or Class 5 Excess Cash Distribution (50%) until the Class 5a General Unsecured Claims are paid in full.

**5.5.3 Excess Cash.** On or before July 1st of each year until the Class 5 Claims are paid pursuant to the Plan, Reorganized Debtor shall (1) calculate any Class 5 Excess Cash Distribution owed under the Plan and (2) provide such calculation to the Plan Monitor (until Class 5a General Unsecured Claims are paid in full) and John W. Hartley, Jr. (or his designee or

successor) for their review and discussion. If the Plan Monitor or John W. Hartley, Jr. (or his designee or successor) disputes Reorganized Debtor's calculation of the Class 5 Excess Cash Distribution, then (a) such dispute shall be subject to binding arbitration, and (b) no distribution will be made on the disputed portion of the Class 5 Excess Cash Distribution until the conclusion of the binding arbitration.

If and only to the extent Reorganized Debtor makes any Class 5 Excess Cash Distribution to holders of Class 5a General Unsecured Claims and Class 5b Hartley Trust Unsecured Claim, then Reorganized Debtor shall have the discretion to suspend payment of all or part of any subsequent Class 5 Fixed Payment, up to the amount of the Class 5 Excess Cash Distribution actually made during the previous Fiscal Year and only if the suspension of payment is necessary, in Reorganized Debtor's business judgment, to avoid a default under the Plan. In such event, Reorganized Debtor shall provide the Plan Monitor and John W. Hartley, Jr. (or his designee or successor) no less than thirty (30) days' notice and opportunity to discuss such a proposed suspension. If the Plan Monitor or John W. Hartley, Jr. (or his designee or successor) disputes Reorganized Debtor's proposal, then (a) such dispute shall be subject to binding arbitration, and (b) the proposed suspended payment will not be made until the conclusion of the binding arbitration.

**5.6 Class 6 (Administrative Convenience Claims).** On the Effective Date or the first Periodic Distribution Date occurring after the later of (i) the date an Administrative Convenience Claim becomes an Allowed Administrative Convenience Claim or (ii) the date an Administrative Convenience Claim becomes payable pursuant to any agreement between Debtor (or Reorganized Debtor) and the holder of such Administrative Convenience Claim, the holder of an Allowed Class 6 Administrative Convenience Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Class 6 Administrative Convenience Claim, Cash equal to (a) the amount of such Allowed Claim if such amount is less than or equal to \$2,500 or (b) \$2,500 if the amount of such Allowed Claim is greater than \$2,500.

**5.7 Class 7 (Spirit Unsecured Claim).** The Spirit Unsecured Claim shall not be discharged, impaired, or affected in any way by the Plan or the Confirmation Order.

**5.8 Class 8 (Interests).** The Interests in Debtor shall not be discharged, impaired, or affected in any way by the Plan or the Confirmation Order, subject to the holder of the Class 8 Interest arranging for the New Value Contribution.

## ARTICLE VI

### **ACCEPTANCE OR REJECTION OF THE PLAN; EFFECT OF REJECTION BY ONE OR MORE IMPAIRED CLASSES OF CLAIMS OR INTERESTS**

**6.1 Impaired Classes of Claims and Interests Entitled to Vote.** Except as otherwise provided in the Solicitation Procedures Order and Section 6.4 of the Plan, Claimholders or Interestholders in each Impaired Class of Claims or Interests are entitled to vote as a class to accept or reject the Plan.



## **6.2 Acceptance by an Impaired Class.**

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

6.2.2 **Impaired Interests.** Pursuant to Section 1126(d) of the Bankruptcy Code, and except as provided in Section 1126(e) of the Bankruptcy Code, (a) an Impaired Class of Interests has accepted the Plan if the holders of at least two-thirds the amount of the Allowed Interests of such Class actually voting on the Plan have voted to accept the Plan.

**6.3 Presumed Acceptances by Unimpaired Classes.** Classes 1, 4, 6, and 7 are Unimpaired by the Plan. Under Section 1126(f) of the Bankruptcy Code and/or the Solicitation Procedures Order, such Claimholders and Interestholders are conclusively presumed to have accepted the Plan, and the votes of such Claimholders and Interestholders will not be solicited.

**6.4 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.** To the extent that any Impaired Class entitled to vote rejects the Plan or is deemed to have rejected it, Debtor hereby requests confirmation of the Plan.

## **ARTICLE VII**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

**7.1 Continued Corporate Existence.** Debtor shall continue to exist as Reorganized Debtor after the Effective Date as a separate corporate entity, with all the powers of a corporation under applicable law in the jurisdiction in which it is incorporated and pursuant to the certificate of incorporation and bylaws in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws are amended by this Plan.

**7.2 Directors and Officers.** The directors and officers of Debtor as of the Confirmation Date shall continue to serve in such capacities for Reorganized Debtor after the Effective Date.

**7.3 Employment, Retirement, Indemnification and Other Agreements and Incentive Compensation Programs.** To the extent that Debtor has in place, as of the Effective Date, employment, retirement, indemnification, and other agreements with its respective active directors, officers, and employees who will continue in such capacities (or similar capacities) after the Effective Date, or retirement income plans, welfare benefit plans, and other plans for such Persons, such agreements, programs, and plans shall remain in place after the Effective Date, and Reorganized Debtor shall continue to honor such agreements, programs, and plans. However, as of the Effective Date, Reorganized Debtor shall have the authority to terminate, amend, or enter into employment, retirement, indemnification, and other agreements with their respective active directors, officers, and employees and to terminate, amend, or implement retirement income plans, welfare benefit plans, and other plans for active employees.

**7.4 Certificate of Incorporation and Bylaws.** The certificate of incorporation and bylaws of Reorganized Debtor shall be amended as may be required in order that they are consistent with the provisions of the Plan and the Bankruptcy Code. The certificate of incorporation of Reorganized Debtor shall be amended pursuant to Section 1123 (a)(6) of the Bankruptcy Code to add (i) a provision prohibiting the issuance of non-voting equity securities for a period of four (4) years from the Effective Date and, if applicable, (ii) a provision setting forth an appropriate distribution of voting power among classes of equity securities possessing voting power, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends.

**7.5 Corporate Action.** Each of the matters provided for under the Plan involving the corporate structure of Reorganized Debtor or corporate action to be taken by or required of Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement of further action by stockholders, creditors, officers or directors of Reorganized Debtor.

**7.6 Amendment of Hartley Trust Agreements.** Reorganized Debtor, the holder of the Hartley Trust Unsecured Claim, and Ronald J. Horton, both individually and as Trustee of the Ronald J. Horton Revocable Trust under Agreement dated May 26, 2005, shall as of the Effective Date, execute such documents and amendments as may be reasonably necessary to incorporate the terms of the Plan into the underlying agreements among or between them relating to the Hartley Trust Unsecured Claim. All original stock certificates evidencing an interest in the Debtor or the Reorganized Debtor that are in the possession of anyone other than John W. Hartley, Jr., shall be delivered to John W. Hartley, Jr. or his designee on the Effective Date.

**7.7 Preservation of Causes of Action.** Subject to the releases otherwise provided in this Plan, in accordance with Section 1123(b)(3) of the Bankruptcy Code, and except for "preference" claims under Section 547 of the Bankruptcy Code, Reorganized Debtor shall retain and may (but is not required to) enforce all Retained Actions and all Avoidance Claims, and other similar claims arising under applicable state laws, including, without limitation, fraudulent transfer claims, if any, and all other Causes of Action of a trustee and debtor in possession under the Bankruptcy Code. Reorganized Debtor, in its sole and absolute discretion, will determine whether to bring, settle, release, compromise, or enforce such rights (or decline to do any of the foregoing).<sup>1</sup>

**7.8 Exclusivity Period.** Debtor shall retain the exclusive right to amend or modify the Plan, and to solicit acceptances of any amendments to or modifications of the Plan, through and until the Effective Date.

**7.9 Effectuating Documents; Further Transactions.** The President, or any other executive officer of Debtor, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as

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<sup>1</sup> A nonexclusive list of possible Retained Action/Avoidance Claims is attached hereto and incorporated herein as Exhibit B.

may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Secretary or Assistant Secretary of Debtor shall be authorized to certify or attest to any of the foregoing actions.

**7.10 Plan Covenants.** Beginning on the Effective Date and continuing until Reorganized Debtor fulfills all obligations to Class 5 under the Plan, Reorganized Debtor covenants as follows:

7.10.1 Lines of Business. Reorganized Debtor shall at all times continue to engage in the same line of business engaged in by the Debtor on the date hereof and shall not engage to any substantial extent in any line or lines of business activity other than such current lines of business.

7.10.2 Limitation on Fundamental Changes. Reorganized Debtor will not convey, sell, lease, transfer or otherwise dispose of, in one transaction or in a series of transactions, a material portion of the property necessary or useful in the conduct of its business, including but not limited to property of its subsidiaries.

7.10.3 Negative Pledge. Without express written approval from the Plan Monitor and a representative of the holder of the Hartley Trust Unsecured Claim, Reorganized Debtor shall not create, incur or suffer to exist any lien, security interest, pledge, charge or other encumbrance (a "Lien") upon or with respect to any of its assets, including but not limited to property of its subsidiaries, now or hereafter owned except Liens in existence on the date hereof and disclosed by Debtor and Reorganized Debtor covenants that as of the date hereof, no such Liens in fact do exist other than Liens in favor of the holders of senior debt described in the Disclosure Statement.

7.10.4 No Dilution or Impairment of Stock Pledge. Until the Hartley Trust Unsecured Claim is paid in full pursuant to the Plan, Reorganized Debtor shall not take any action that could dilute the Interests pledged to secure repayment of the underlying obligation that gives rise to the Hartley Trust Unsecured Claim, including issuing or granting any new preferred or common stock, stock warrants, or convertible notes or debentures. Reorganized Debtor shall not take any action that will impair the pledge of the Interests to the holder of the Hartley Trust Unsecured Claim.

7.10.5 Government Approvals. Reorganized Debtor shall maintain and keep in full force and effect any approvals and consents required by any governmental authority for the incurrence of the Lien.

## **7.11 Plan Monitor.**

7.11.1 The Committee shall select a Plan Monitor, identified on an Exhibit filed with the Court on or before the Exhibit Filing Date, to receive monthly financial statements from Reorganized Debtor on or before the 15th day of each month for the preceding month, commencing February 15, 2013, and continuing until all Class 5 Claims are paid in full under the Plan. In full and final satisfaction, discharge and release of any and all claims by the Plan Monitor for performing such services, the Plan Monitor shall receive \$5,000 on or before the 15th day of March, June, September, and December, commencing March 15, 2013 and continuing until Class

5a Claims are paid in full under the Plan. When all Class 5a Claims are paid in full under the Plan, the holder of the Hartley Trust Unsecured Claim will select a Plan Monitor, but such Plan Monitor will not receive the \$5,000 payments set forth above. If the Plan Monitor engages counsel or other professionals to handle a dispute with Reorganized Debtor over the calculation of Excess Cash Allocation, then Reorganized Debtor also shall pay the reasonable fees and expenses of such professional.

7.11.2 If there is an Event of Default, notwithstanding anything to the contrary in the Plan, the Plan Monitor, as the duly appointed representative of Class 5, may enforce all outstanding obligations to Class 5 under the Plan against Reorganized Debtor in state or federal court, in law, in equity or otherwise and Reorganized Debtor agrees to indemnify and hold the Plan Monitor harmless from any reasonable expenses incurred by the Plan Monitor in connection with the collection of the Debtor's obligations, including, but not limited to, reasonable attorney's fees. All such expenses incurred by the Plan Monitor in connection with the collection of the Debtor's obligations to Class 5 will be added to the principal owed to Class 5a (if prior to full payment of Class 5a Claims) or Class 5b (if after Class 5a Claims are paid), and shall be payable in accordance with the terms of the Plan. Reorganized Debtor hereby waives presentment, demand, protest or other notice of any kind from any secured or unsecured creditor bound by this Plan. For the avoidance of doubt, in the event of an Event of Default hereunder, the entire amount due hereunder shall be immediately due and payable.

**7.12 Effectuating Documents; Further Transactions.** The President, or any other executive officer of Debtor, shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Secretary or Assistant Secretary of Debtor shall be authorized to certify or attest to any of the foregoing actions.

## ARTICLE VIII

### UNEXPIRED LEASES AND EXECUTORY CONTRACTS

**8.1 Assumed Contracts and Leases.** Each executory contract and unexpired lease to which Debtor is a party shall be deemed automatically assumed and Reinstated as of the Effective Date, unless such executory contract or unexpired lease (a) shall have been previously rejected by Debtor, (b) is the subject of a filed motion to reject, or a notice of rejection served pursuant to order of the Bankruptcy Court, on or before the Confirmation Date, or (c) is listed on the schedule of rejected contracts and leases annexed hereto as **Exhibit A**. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such assumptions, pursuant to Section 365(b)(1) of the Bankruptcy Code and, to the extent applicable, Section 365(b)(3) of the Bankruptcy Code, as of the Effective Date.

Each executory contract and unexpired lease that is assumed and relates to the use, ability to acquire, or occupancy of real property shall include (a) all modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affect such executory contract or unexpired lease and (b) all executory contracts or unexpired leases appurtenant to the premises, including

all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, powers, uses, reciprocal easement agreements, and any other interests in real estate or rights *in rem* related to such premises, unless any of the foregoing agreements has been rejected pursuant to a Final Order of the Bankruptcy Court or is otherwise rejected as a part of this Plan.

**8.2 Rejected Contracts and Leases.** Except with respect to executory contracts and unexpired leases that have previously been rejected or are the subject of a filed motion to reject, or a notice of rejection served pursuant to order of the Bankruptcy Court, on or before the Confirmation Date, all executory contracts and unexpired leases set forth on **Exhibit A** shall be deemed automatically rejected as of the Effective Date or such earlier date as Debtor may have unequivocally terminated its performance under such lease or contract; provided, however, that neither the inclusion by Debtor of a contract or lease on Exhibit A nor anything contained in this Plan shall constitute an admission by Debtor that such lease or contract is an unexpired lease or executory contract or that either Debtor, or its respective Affiliates, has any liability thereunder. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejections, pursuant to Section 365 of the Bankruptcy Code. Debtor reserves the right to file a motion on or before the Confirmation Date to reject any executory contract or unexpired lease.

**8.3 Payments Related to Assumption of Executory Contracts and Unexpired Leases.** The provisions (if any) of each executory contract and unexpired lease to be assumed and Reinstated under the Plan which are or may be in default shall be satisfied solely by Cure. In the event of a dispute regarding (a) the nature or the amount of any Cure, (b) the ability of Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of Section 365 of the Bankruptcy Code) under the contract or lease to be assumed, or (c) any other matter pertaining to assumption, Debtor hereby reserves and retains the right to reject such unexpired lease or executory contract and, if not rejected, Cure shall occur as soon as practicable following the entry of a Final Order resolving the dispute and approving the assumption and, as the case may be, assignment.

**8.4 Rejection Damages Bar Date.** If the rejection by Debtor (pursuant to the Plan or otherwise) of an executory contract or unexpired lease results in a Claim, then such Claim shall be forever barred and shall not be enforceable against either Debtor or Reorganized Debtor or such entities' properties unless a proof of claim is filed with the clerk of the Bankruptcy Court and served upon counsel to Debtor within **thirty (30) days after service of the earlier of (a) notice of the Confirmation Order or (b) other notice that the executory contract or unexpired lease has been rejected.**

## ARTICLE IX

### PROVISIONS GOVERNING DISTRIBUTIONS

**9.1 Time of Distributions.** Except as otherwise provided for herein or ordered by the Bankruptcy Court, distributions under the Plan shall be made on a Periodic Distribution Date.

**9.2 No Interest on Claims or Interests.** Unless otherwise specifically provided for in the Plan, Confirmation Order, or the DIP Credit Agreement, interest shall not accrue or be paid on Claims or Interests after the Petition Date.

**9.3 Disbursing Agent.** The Disbursing Agent shall make all distributions required under this Plan.

**9.4 Surrender of Securities or Instruments.** On or before the Distribution Date, or as soon as practicable thereafter, each holder of an instrument evidencing either a Claim or an Interest, other than the holder(s) of the Class 8 equity interests (as to each, a "Certificate") shall surrender such Certificate to the Disbursing Agent and such Certificate shall be cancelled. No distribution of property hereunder shall be made to or on behalf of any such holder unless and until such Certificate is received by the Disbursing Agent, or the unavailability of such Certificate is reasonably established to the satisfaction of the Disbursing Agent. Any holder who fails to surrender or cause to be surrendered such Certificate, or fails to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Disbursing Agent prior to the second anniversary of the Effective Date, shall be deemed to have forfeited all rights, Interests, and Claims in respect of such Certificate and shall not participate in any distribution hereunder, and all property in respect of such forfeited distribution, including any dividends or interest attributable thereto, shall revert to Reorganized Debtor notwithstanding any federal or state escheat laws to the contrary.

**9.5 Claims Administration Responsibility.** Reorganized Debtor will retain responsibility for administering, disputing, objecting to, compromising, or otherwise resolving and making distributions on all Claims against and Interests in Debtor, including but not limited to Administrative Claims, Priority Tax Claims, Other Priority Claims, Claims under the DIP Facility, Secured Claims, General Unsecured Claims, Subordinated Claims, and Interests.

**9.6 Delivery of Distributions.** Distributions on Allowed Claims and Allowed Interests shall be made by the Disbursing Agent (a) at the addresses set forth on the proofs of claim or interest filed by such Claimholders or Interestholders (or at the last known addresses of such Claimholders or Interestholders if no proof of claim or interest is filed or if Debtor has 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 or interest, or (c) at the addresses reflected in the Schedules if no proof of claim or interest has been filed and the Disbursing Agent has not received a written notice of a change of address. If any Claimholder's or Interestholder's distribution is returned as undeliverable, no further distributions to such Claimholder shall be made unless and until the Disbursing Agent is notified of such Claimholder's or Interestholder's then current address, at which time all missed distributions shall be made to such Claimholder or Interestholder without interest. Amounts in respect of undeliverable distributions shall be returned to or held by Reorganized Debtor until such distributions are claimed. All claims for undelivered distributions must be made on or before the second anniversary of the Effective Date. After such date, all unclaimed property shall revert to Reorganized Debtor. Upon such reversion, the claim of any Claimholder or Interestholder, or their successors, with respect to such property, shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary.

**9.7 Procedures for Treating and Resolving Disputed and Contingent Claims.**

**9.7.1 No Distributions Pending Allowance.** No payments or distributions will be made with respect to all or any portion of a Disputed Claim or Disputed Interest unless and until all objections to such Disputed Claim or Disputed Interest have been settled or withdrawn or have been determined by a Final Order of the Bankruptcy Court, and the Disputed Claim or Disputed Interest has become an Allowed Claim or Allowed Interest. All objections to Claims or Interests must be filed and served on or before the Claims/Interests Objection Deadline. Notwithstanding any authority to the contrary, an objection to a Claim or Interest shall be deemed properly served on the holder of such Claim or Interest if service is made in any of the following manners (a) in accordance with rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004, (b) by first class mail, postage prepaid, on any counsel that has appeared on behalf of the holder of such Claim or Interest in the Chapter 11 Case and has not withdrawn such appearance, (c) by first class mail, postage prepaid, on the signatory on the respective proof of claim or interest or other representative identified on the proof of claim or interest or any attachment thereto, or (d) at the last known address of the holder of such Claim if no proof of claim is filed or if the Debtor has been notified in writing of a change of address.

**9.7.2 Distribution Reserve.** The Disbursing Agent shall create a separate Distribution Reserve from the property to be distributed to the holders of General Unsecured Claims. The amount of Cash withheld as a part of the Distribution Reserve shall be equal to the amount Reorganized Debtor reasonably determines is necessary to satisfy the distributions required to be made, respectively, to the Claimholders when the allowance or disallowance of each Disputed Claim or Disputed Interest is ultimately determined. The Disbursing Agent may request estimation for any Disputed Claim or Disputed Interest that is contingent or unliquidated (but is not required to do so). If practicable, the Disbursing Agent will invest any Cash that is withheld as the Distribution Reserve in a manner that will yield a reasonable net return, taking into account the safety of the investment.

**9.7.3 Distributions After Allowance.** Payments and distributions from the Distribution Reserve to each respective Claimholder or Interestholder on account of a Disputed Claim or Disputed Interest, to the extent that it ultimately becomes an Allowed Claim or Allowed Interest, will be made in accordance with provisions of the Plan that govern distributions to such Claimholders and Interestholders. On the first Periodic Distribution Date following the date when a Disputed Claim or Disputed Interest becomes an undisputed, noncontingent and liquidated Claim or Interest, the Disbursing Agent will distribute to the Claimholder or Interestholder any Cash from the Distribution Reserve that would have been distributed on the dates distributions were previously made to Claimholders or Interestholders had such Allowed Claim or Allowed Interest been an Allowed Claim or Allowed Interest on such dates.

**9.7.4 De Minimis Distributions.** The Distribution Agent shall not have any obligation to make a distribution on account of an Allowed Claim or Allowed Interest from any Distribution Reserve or otherwise if (a) the aggregate amount of all distributions authorized to be made from such Distribution Reserve or otherwise on the Periodic Distribution Date in question is or has a value less than \$100, or if (b) the amount to be distributed to the specific holder of the Allowed Claim or Allowed Interest on the particular Periodic Distribution Date does not constitute a final distribution to such holder and is or has a value less than \$50.00.

**9.8 Fractional Dollars.** Any other provision of this Plan notwithstanding, neither Debtor nor the Disbursing Agent shall be required to make distributions or payments of fractions of dollars. Whenever any payment of a fraction of a dollar under this Plan would otherwise be called for, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down.

## ARTICLE X

### ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS

#### **10.1 Professional Claims.**

**10.1.1 Final Fee Applications.** All final requests for payment of Professional Claims must be filed no later than **thirty (30) days after the Effective Date**. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior orders of the Bankruptcy Court, the allowed amounts of such Professional Claims shall be determined by the Bankruptcy Court.

**10.1.2 Termination of Compliance with Certain Provisions of the Bankruptcy Code.** 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 will terminate.

**10.2 Substantial Contribution Compensation and Expenses Bar Date.** Any Person who requests compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Case pursuant to Sections 503(b)(3), (4), and (5) of the Bankruptcy Code must file an application with the clerk of the Bankruptcy Court, and arrange for counsel for Debtor to receive, no later than **thirty (30) days after the Effective Date** (the "503 Deadline"), or be forever barred from seeking such compensation or expense reimbursement.

**10.3 Other Administrative Claims.** All other requests for payment of an Administrative Claim (other than as set forth in Sections 10.1 and 10.2 of this Plan) must be filed with the Bankruptcy Court and received by counsel for Debtor no later than **thirty (30) days after the Effective Date**. Unless Reorganized Debtor objects to an Administrative Claim by the Claims/Interests Objection Deadline, such Administrative Claim shall be deemed allowed in the amount requested. In the event that Reorganized Debtor objects to an Administrative Claim, the Bankruptcy Court shall determine the allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim which is paid or payable by Debtor in the ordinary course of business.

## ARTICLE XI

### EFFECT OF THE PLAN ON CLAIMS AND INTERESTS

**11.1 Revesting of Assets.** Except as otherwise explicitly provided in this Plan, on the Effective Date all property comprising the Estate (including Retained Actions and Avoidance Claims) shall revert in Reorganized Debtor free and clear of all Claims, liens, charges,



encumbrances, rights and Interests of creditors and equity security holders (other than as expressly provided herein). As of the Effective Date, Reorganized Debtor may operate its business and use, acquire, and dispose of property, and settle and compromise Claims or Interests without supervision of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions expressly provided by the Plan and Confirmation Order.

**11.2 Discharge of the Debtor.** Pursuant to Section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in this Plan or in the Confirmation Order, the distributions and rights that are provided in this Plan shall be in complete satisfaction, discharge, and release, effective as of the Confirmation Date (but subject to the occurrence of the Effective Date), of Claims against, and Interests in, Debtor and Reorganized Debtor, and 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, 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 (i) a proof of claim or interest based upon such Claim or Interest is filed or deemed filed under Section 501 of the Bankruptcy Code, (ii) a Claim or Interest is allowed under Section 502 of the Bankruptcy Code, or (iii) the holder of such a Claim or Interest accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims against and Interests in Debtor, subject to the Effective Date occurring.

**11.3 Compromises and Settlements.** Pursuant to relevant law, including but not limited to Bankruptcy Rule 9019(a), Debtor and Reorganized Debtor may compromise and settle any Claims (a) against them and (b) that they have against other Persons. Debtor and Reorganized Debtor expressly reserve the right (with Bankruptcy Court approval, following appropriate notice and opportunity for a hearing) to compromise and settle Claims against them and Claims that they may have against other Persons up to and including the Effective Date. After the Effective Date, such right shall pass to Reorganized Debtor as contemplated in Section 11.1 of this Plan.

**11.4 Release of Certain Parties.** As of the Confirmation Date, but subject to the Effective Date, and except as otherwise expressly provided in the Plan or in the Confirmation Order, Debtor and Reorganized Debtor will be deemed to have released the Released Parties from any and all Claims, obligations, rights, Causes of Action, and liabilities which Debtor or Reorganized Debtor or the Estate is entitled to assert, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part upon any act or omission, transaction, or occurrence taking place after the Petition Date in any way relating to Debtor, this Chapter 11 Case, or the Plan. Pursuant to Bankruptcy Rule 3016, this Release applies to all parties in interest in the case.

**11.5 The Hartley Release and Related Injunctive Relief.** In exchange for the concessions given under the Plan by the holder of the Hartley Trust Unsecured Claim, in the form of the inter-creditor agreement between Classes 5a and 5b such that the Class 5a Claims will be paid significantly earlier than the Class 5b Claim, on the Effective Date, the Hartley Released Parties shall be forever released of all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, Avoidance Actions, and Causes of Action relating in any way to the Hartley Trust Unsecured Claim, the Debtor,

the Reorganized Debtor, or the Plan. The Confirmation Order shall provide, among other things, that from and after the Effective Date, the Debtor, Reorganized Debtor, Ronald J. Horton (both in his individual capacity and as Trustee of the Ronald J. Horton Revocable Trust under Agreement dated May 26, 2005), the Committee, and all Persons who hold Claims or Interests are permanently enjoined from (A) commencing, continuing, or prosecuting any judicial, administrative, or other action or proceeding, whether directly, indirectly, derivatively, or otherwise, to recover any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, or liabilities that are the subject of the Hartley Release; (B) seeking to subordinate the Hartley Trust Unsecured Claims, except to the extent a portion of that Claim is expressly subordinated in the Plan; or (C) taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of this Plan against the Hartley Released Parties. Pursuant to Bankruptcy Rule 3016, this Release applies to all parties in interest in the case.

**11.6 Setoffs.** Debtor and Reorganized Debtor may, but shall not be required to, set off against any Claim or Interest, and the payments or other distributions to be made pursuant to the Plan in respect of such Claim or Interest, claims of any nature whatsoever that Debtor may have against such Claimholder or Interestholder; but neither the failure to do so nor the allowance of any Claim or Interest hereunder shall constitute a waiver or release by Debtor or Reorganized Debtor of any such claim that Debtor or Reorganized Debtor may have against such Claimholder or Interestholder.

**11.7 Satisfaction of Subordination Rights.** All Claims against Debtor and all rights and claims between or among Claimholders relating in any manner whatsoever to distributions on account of Claims against or Interests in Debtor, based upon any subordination rights, whether asserted or unasserted, legal or equitable, shall be deemed satisfied by the distributions under the Plan to Claimholders or Interestholders having such subordination rights, and such subordination rights shall be deemed waived, released, discharged, and terminated as of the Effective Date. Distributions to the various Classes of Claims and Interests hereunder shall not be subject to levy, garnishment, attachment, or like legal process by any Claimholder or Interestholder by reason of any subordination rights or otherwise, so that each Claimholder and Interestholder shall have and receive the benefit of the distributions in the manner set forth in the Plan.

**11.8 Exculpation and Limitation of Liability.** Except as otherwise specifically provided in this Plan, Debtor, Reorganized Debtor, the Hartley Released Parties, the Creditors' Committee, the members of the Creditors' Committee in their capacity as such, the DIP Lender(s), and the holders of Claims in Classes 2, 3, 4, 5, and 6, any of such parties' respective present or former members, officers, directors, employees, advisors, attorneys, representatives, financial advisors, investment bankers, or agents, and any of such parties' successors and assigns, shall not have or incur, and are hereby released from, any claim, obligation, Cause of Action, or liability to one another or to any Claimholder or Interestholder, or any other party in interest, or any of their respective agents, employees, representatives, financial advisors, attorneys or Affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of Debtor's Chapter 11 Case, negotiation and filing of the Plan, filing the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, the administration of the Plan

or the property to be distributed under the Plan, except for their willful misconduct, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan. Nothing contained herein shall be construed as a release or discharge by Peoples Bank or Hawthorn Bank of (a) any of the pre-petition or post-petition Secured Claims of Peoples Bank or Hawthorn Bank, or (b) any claims or defenses that Peoples Bank or Hawthorn Bank may have against any non-Debtor person or entity. Pursuant to Bankruptcy Rule 3016, this Release applies to all parties in interest in the case.

**11.9 Indemnification Obligations.** Except as specifically provided in Section 7.3 of the Plan, in satisfaction and compromise of the Indemnitees' Indemnification Rights: (a) all Indemnification Rights, except (i) those based upon any act or omission arising out of or relating to any Indemnitee's service with, for, or on behalf of Debtor on or after the Petition Date and (ii) those held by Persons who served during the Chapter 11 Case as Debtor's officers, directors, or employees and/or serve in such capacities (or similar capacities) after the Effective Date, shall be released and discharged on and as of the Effective Date, provided that the Indemnification Rights excepted in subparts (i) and (ii) shall remain in full force and effect on and after the Effective Date and shall not be modified, reduced, discharged, or otherwise affected in any way by the Chapter 11 Case; (b) Debtor or Reorganized Debtor, as the case may be, covenant to use commercially reasonable efforts to purchase and maintain D&O Insurance providing coverage for those Persons currently covered by such policies for a period of two years after the Effective Date, insuring such parties in respect of any claims, demands, suits, Causes of Action, or proceedings against such Persons based upon any act or omission related to such Person's service with, for, or on behalf of Debtor in at least the scope and amount as currently maintained by Debtor (the "Insurance Coverage"); and (c) Debtor or Reorganized Debtor, as the case may be, hereby indemnifies such Persons referred to in subclause (b) above to the extent of, and agrees to pay for, any deductible or retention amount that may be payable in connection with any claim covered by either the foregoing Insurance Coverage or by any prior similar policy.

**11.10 Injunction.** The satisfaction, release, and discharge pursuant to this Article XI of this Plan shall also act as an injunction against any Person commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released, or discharged under this Plan to the fullest extent authorized or provided by the Bankruptcy Code, including, without limitation, to the extent provided for or authorized by Sections 524 and 1141 thereof.

## ARTICLE XII

### CONDITIONS PRECEDENT

**12.1 Conditions to Confirmation.** The following are conditions precedent to confirmation of the Plan that may be satisfied or waived in accordance with Section 12.3 of the Plan:

12.1.1 The Bankruptcy Court shall have approved a disclosure statement with respect to the Plan in form and substance acceptable to Debtor in its sole discretion.

12.1.2 The Confirmation Order shall be in form and substance acceptable to Debtor in its sole discretion.

**12.2 Conditions to Consummation.** The Effective Date shall occur on or prior to February 15, 2013, unless such date is extended by Debtor. The following are conditions precedent to the occurrence of the Effective Date, each of which may be satisfied or waived in accordance with Section 12.3 of the Plan:

12.2.1 The Bankruptcy Court shall have entered one or more orders (which may include the Confirmation Order) authorizing the assumption of unexpired leases and executory contracts by Debtor as contemplated by Section 8.1 hereof.

12.2.2 Debtor shall not be in default under the DIP Facility.

12.2.3 The Confirmation Order shall have been entered by the Bankruptcy Court in form and substance satisfactory to the Debtor, Peoples Bank, Hawthorn Bank, the holder of the Hartley Trust Unsecured Claim, and the Creditors' Committee, and shall be in full force and effect, and there shall not be a stay or injunction (or similar prohibition) in effect with respect thereto.

12.2.4 All other actions and all agreements, instruments, or other documents necessary to implement the Plan shall have been (i) effected or (ii) duly and validly executed and delivered by the parties thereto and all conditions to their effectiveness shall have been satisfied or waived.

**12.3 Waiver of Conditions to Confirmation or Consummation.** The conditions set forth in Sections 12.1 and 12.2 of the Plan may be waived by Debtor and Reorganized Debtor with prior written consent of Peoples Bank, Hawthorn Bank, the holder of the Hartley Trust Unsecured Claim, and the Creditors' Committee, provided such consent shall not be unreasonably withheld. The failure to satisfy or waive any condition to the Confirmation Date or the Effective Date may be asserted by Debtor or Reorganized Debtor in their sole discretion regardless of the circumstances giving rise to the failure of such condition to be satisfied (including any action or inaction by Debtor or Reorganized Debtor in its sole discretion). The failure of Debtor or Reorganized Debtor in their sole discretion to exercise any of the foregoing rights shall not be deemed a waiver of any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

## ARTICLE XIII

### RETENTION OF JURISDICTION

Pursuant to Sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall have jurisdiction of all matters arising out of, and related to, the Chapter 11 Case and the Plan, including, among others, the following matters:

13.1 to hear and determine pending motions for (i) the assumption or rejection, or (ii) the assumption and assignment, of executory contracts or unexpired leases to which Debtor is a party or with respect to which Debtor may be liable, and to hear and determine the allowance of

Claims resulting therefrom including the amount of Cure, if any, required to be paid;

13.2 to adjudicate any and all adversary proceedings, applications, and contested matters that may be commenced or maintained pursuant to the Chapter 11 Case or the Plan, proceedings to adjudicate the allowance of Disputed Claims and Disputed Interests, and all controversies and issues arising from or relating to any of the foregoing;

13.3 to adjudicate any and all disputes arising from the distributions under the Plan;

13.4 to ensure that distributions to Allowed Claimholders and Allowed Interestholders are accomplished as provided herein;

13.5 to hear and determine any and all objections to the allowance of Claims and Interests and the estimation of Claims, both before and after the Confirmation Date, including any objections to the classification of any Claim or Interest, and to allow or disallow any Claim or Interest, in whole or in part;

13.6 to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

13.7 to issue orders in aid of execution, implementation, or consummation of the Plan;

13.8 to consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

13.9 to hear and determine all applications for compensation and reimbursement of Professional Claims under the Plan or under Sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;

13.10 to determine requests for the payment of Claims entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including compensation of and reimbursement of expenses of parties entitled thereto;

13.11 to hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan;

13.12 to hear and determine all suits or adversary proceedings to recover assets of Debtor and property of its Estate, wherever located;

13.13 to hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505, and 1146 of the Bankruptcy Code;

13.14 to hear any other matter not inconsistent with the Bankruptcy Code;

13.15 to hear and determine all disputes involving the existence, nature, or scope of Debtor's 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 prior to or after the Effective Date;

13.16 to enter a final decree closing the Chapter 11 Cases; and

13.17 to enforce all orders previously entered by the Bankruptcy Court.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims, Interests, Retained Actions, and any motions to compromise or settle such disputes.

## ARTICLE XIV

### MISCELLANEOUS PROVISIONS

**14.1 Binding Effect.** The Plan shall be binding upon and inure to the benefit of Debtor, Reorganized Debtor, all present and former Claimholders, all present and former Interestholders, other parties in interest and their respective heirs, successors, and assigns.

**14.2 Modification and Amendments.** Debtor may alter, amend, or modify the Plan or any Exhibits thereto under Section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Hearing. After the Confirmation Date and prior to substantial consummation of the Plan as defined in Section 1101 (2) of the Bankruptcy Code, Debtor may, under Section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan.

**14.3 Withholding and Reporting Requirements.** In connection with the Plan and all instruments issued in connection therewith and distributions thereunder, Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements.

**14.4 Revocation, Withdrawal, or Non-Consummation.** Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Effective Date. If Debtor revokes or withdraws the Plan prior to the Effective Date, or if the Confirmation Date or the Effective Date does not occur, then the Plan, any settlement, or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), the 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 null and void and of no force or effect. 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 Interests in, Debtor or any other Person, to prejudice in any manner the rights of Debtor or any Person in any further proceedings involving Debtor, or to constitute an admission of any sort by Debtor or any other Person.

**14.5 Notices.** Any notice required or permitted to be provided to Debtor, the Creditors' Committee, or the DIP Lender(s) under the Plan shall be in writing and served by (a) certified mail, return receipt requested, (b) hand delivery, (c) telecopy, receipt confirmed, or (d) overnight delivery service, to be addressed as follows:

If to Debtor:

Dickinson Theatres, Inc.  
6801 W. 107<sup>th</sup> Street  
Overland Park, Kansas 66212  
Attention: Ron Horton, President & CEO

with a copy to:

Sharon L. Stolte  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, Missouri 64106-2150

If to the DIP Lender(s):

Peoples Bank  
Southcreek  
13180 Metcalf Ave.  
Overland Park, Kansas 66213  
Attn: Charles R. Wooten, Jr.

with a copy to:

Wesley F. Smith  
STEVENS & BRAND, L.L.P.  
U. S. Bank Tower  
900 Massachusetts Street - Suite 500  
Post Office Box 189  
Lawrence, Kansas 66044-0189

If to the Creditors' Committee:

Eric R. Wilson  
Benjamin Blaustein  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, New York 10178

If to the John W. Hartley Revocable Trust or John W. Hartley, Jr.:

Brian T. Fenimore  
Lathrop & Gage LLP  
2345 Grand Blvd., Suite 2200  
Kansas City, Missouri 64108

**14.6 Term of Injunctions or Stays.** Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**14.7 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 Kansas shall govern the construction and implementation of the Plan, any agreements, documents, and instruments executed in connection with the Plan, and corporate governance matters.

**14.8 No Waiver or Estoppel.** Each Claimholder or Interestholder shall be deemed to have waived any right to assert that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with Debtor and/or their counsel, the Creditors' Committee and/or its counsel, or any other Person, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers filed with the Bankruptcy Court prior to the Confirmation Date.

**14.9 Termination of Committee.** On the Effective Date, the Committee and its professional shall be deemed terminated and discharged, subject only to reimbursement of fees and expenses through the Effective Date.



Dated: November 5, 2012

DICKINSON THEATRES, INC.

s/ Sharon L. Stolte

Sharon L. Stolte, MO #41133  
Paul M. Hoffmann, KS Fed. Bar. No. 70170  
Timothy M. Swanson, KS #24516  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150  
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and

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[Robert@rayburngrp.com](mailto:Robert@rayburngrp.com)

*ATTORNEYS FOR DICKINSON THEATRES, INC.,  
DEBTOR AND DEBTOR-IN-POSSESSION*

**PLAN EXHIBIT A**

**SCHEDULE OF REJECTED LEASES AND  
EXECUTORY CONTRACTS**

<b>Counterparty</b>	<b>Description</b>	<b>Address</b>
Allied Services LLC a/k/a Allied Waste Services of Kansas city	Miscellaneous services as to the Blue Springs 8 Theatre location only, which is a separate contract	3150 7 <sup>th</sup> Street Trafficway Kansas City, KS 66115
Olathe Christian School	Contract for Deed	12030 Hedge Lane Terrace Olathe, KS 66061
Prize Properties LLC	Blue Springs 8 Theatre Lease	c/o Fred Stevens Klestadt & Winters 570 Seventh Ave., 17 <sup>th</sup> Fl New York, NY 10018  11520 Grandview Road Kansas City, MO 64137
Leavenworth Plaza Associates, LP	Leavenworth Theatre Lease	3400 S. 4 <sup>th</sup> Street Leavenworth, KS 66048
NR14, LLC	Northrock 14 Theatre Lease	8111 E 32 <sup>nd</sup> St. North, Suite 101 Wichita, KS 67226
Penn Square Limited Partnership	Penn Square 10 Theatre Lease	National City Center 115 W. Washington Indianapolis, IN 46204
Hartley's Executive Cleaners	Cleaning services	11520 Grandview Road Kansas City, MO 64137
Central Mechanical Serv. Inc.	Miscellaneous services	1887 State Highway 92 Chickasha, OK 73018
Harkness Screens, LTD.	Theatre services	10 Harkness Boulevard Fredericksburg, VA 22401
American Tower	American Tower	10 Presidential Way Woburn, MA 01801
Tresko, Inc. – Kansas City	Miscellaneous services	6218 Melrose Shawnee, KS 66203
Wagon Construction Co.	Construction services	PO Box 817 Bixby, OK 74008
Ice Masters, Inc. – KC	Miscellaneous services	6218 Melrose Shawnee, KS 66203
NEC Financial Services, LLC	Miscellaneous services	24189 Network Place Chicago, IL 60673-1241

<b>Counterparty</b>	<b>Description</b>	<b>Address</b>
Accurate Mechanical & Plumbing	Plumbing services	29800 Parkwood Rd McLoud, OK 74851
Grainger	Miscellaneous services	Dept. 862960960 P. O. Box 419267 Kansas City, MO 64141-6267
Rubloff Hasting, LLC*	Imperial 3 Theatre	Corpdirect Agents, Inc. 400 West Market St. #1800 Louisville, KY 40202
Rubloff Hutchinson, LLC*	Mall 8 Hutchinson Theatre	5083 Payshere Circle Chicago, IL
DTD – Deveo BE*	Gateway 12 IMAX Theatre	17207 N. Perimeter Drive, Ste. 200 Scottsdale, AZ 85255
Little Rock Development Comp, LLC*	Chenal 9 IMAX Theatre	Attn: Corp Creation Network, Inc. PO Box 405764 Atlanta, GA 30384-5764

\* Debtor is continuing to negotiate with this landlord and may delete this listing to assume the lease with or without modifications agreed by the parties

**PLAN EXHIBIT B**  
**NONEXCLUSIVE LIST OF RETAINED ACTIONS/AVOIDANCE CLAIMS**

1. Dickinson Theatre, Inc. v. Johnson County (Docket No. 2012-5496-EQ and Docket No. 2012-5495-EQ); pending in the State Court of Tax Appeals, Johnson County, KS;
2. Dickinson Theatre, Inc. v. John Heeter and Joseph Heeter (Case No. 12CV4020); pending in the District Court of Johnson County, KS;
3. Pending Internal Revenue Service Audit(s);
4. Pending Employee Alleged Discrimination Action(s) and other tort claims;
5. Dickinson Theatres, Inc. v. Spirit Master Funding, LLC; BAP No. KS-12-089
6. All retained actions, claim objections and avoidance claims applicable to any Claim, or the holder of a Claim, filed for \$5,000 higher than the amount listed on Debtor's Schedules, including but not limited to, duplicate claims, overstated claims, late filed claims, non liability claims and claims filed by the following:
  - a. Pulaski County Treasurer (Claim #26)
  - b. Penn Square Mall LP (Claim #34)
  - c. Maricopa County Treasurer (Claim #35)
  - d. Leavenworth Mall LLC (Claim #10)
  - e. Coca-Cola Refreshments USA, Inc. (Claim #9)
  - f. Mather Real Estate LLC (Claim #1)
  - g. Summit Entertainment Inc. (Claim #52)
  - h. Metro-Goldwyn-Mayer Studios, Inc. (Claim #53)
  - i. New Line Distribution, Inc. (Claim #54)
  - j. Warner Bros. Distributing, Inc. (Claim #55)
  - k. The Weinstein Company (Claim #56)
  - l. Walt Disney Studios Motion Pictures (Claim #57)
  - m. Twentieth Century Fox Film Corp. (Claim #58)
  - n. Paramount Pictures Corporation (Claim #59)
  - o. NEC Financial Services, LLC Claim #64)

- p. GG&A Central Mall Partners, LP (Claim #65)
- q. Cole DI Yukon OK, LLC (Claim #71)
- r. Prize Properties, LLC (Claim #77)
- s. Hartley Executive Cleaners (Claim #78)
- t. First Community Bank (Claim #82)

PLAN EXHIBIT C  
SCHEDULE OF CLASS 5a AND 5b FIXED PAYMENTS

[SEE ATTACHED]

Schedule of Class 5 Fixed Payments with Amortization Tables

Interest Rate	4.30%		4.00%		Total	Class 5a		Class 5b		Legal Fee	
	Class 5a Pymt	Class 5b Pymt	Class 5a Interest	Class 5b Interest		Class 5a Payment	Class 5b Payment	Class 5a Ending Balance	Class 5b Ending Balance		
1/1/13						\$ 1,477,843.07	\$ 3,341.92	\$ -	\$ 1,481,184.99	\$ -	\$ 1,973,263.20
2/1/13						\$ 1,483,386.99	\$ 3,362.70	\$ -	\$ 1,486,749.69	\$ -	\$ 1,980,183.73
3/1/13						\$ 1,488,949.69	\$ 3,383.26	\$ -	\$ 1,492,332.95	\$ -	\$ 1,986,744.22
4/1/13						\$ 1,494,533.25	\$ 3,404.30	\$ -	\$ 1,497,937.55	\$ -	\$ 1,993,366.71
5/1/13						\$ 1,500,137.75	\$ 3,425.32	\$ -	\$ 1,503,563.07	\$ -	\$ 2,000,011.26
6/1/13	\$ 84,404.17	\$ 14,894.83	\$ 3,446.81	\$ 3,446.81	\$ 99,299.02	\$ 1,505,763.27	\$ 3,468.81	\$ 84,404.17	\$ 1,512,167.44	\$ -	\$ 2,006,877.97
7/1/13	\$ 67,323.33	\$ 11,913.88	\$ 3,511.27	\$ 3,511.27	\$ 79,439.21	\$ 1,507,000.00	\$ 3,511.27	\$ 67,323.33	\$ 1,520,688.66	\$ -	\$ 2,013,366.89
8/1/13	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,508,233.66	\$ 3,518.13	\$ 16,880.83	\$ 1,529,200.79	\$ -	\$ 2,020,078.11
9/1/13						\$ 1,509,467.22	\$ 3,518.13	\$ -	\$ 1,532,718.92	\$ -	\$ 2,026,811.71
10/1/13						\$ 1,510,700.78	\$ 3,518.13	\$ -	\$ 1,536,237.05	\$ -	\$ 2,033,567.33
11/1/13	\$ 67,323.33	\$ 11,913.88	\$ 3,518.13	\$ 3,518.13	\$ 79,439.21	\$ 1,511,934.34	\$ 3,518.13	\$ 67,323.33	\$ 1,544,755.47	\$ -	\$ 2,040,346.31
12/1/13	\$ 30,642.11	\$ 8,936.83	\$ 3,518.13	\$ 3,518.13	\$ 39,379.00	\$ 1,513,167.90	\$ 3,518.13	\$ 30,642.11	\$ 1,553,273.50	\$ 642.44	\$ 2,046,203.02
1/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,514,401.46	\$ 3,518.13	\$ 16,880.83	\$ 1,561,791.63	\$ 2,979.00	\$ 2,052,059.73
2/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,515,635.02	\$ 3,518.13	\$ 16,880.83	\$ 1,570,309.76	\$ 2,979.00	\$ 2,057,916.44
3/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,516,868.58	\$ 3,518.13	\$ 16,880.83	\$ 1,578,827.89	\$ 2,979.00	\$ 2,063,773.15
4/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,518,102.14	\$ 3,518.13	\$ 16,880.83	\$ 1,587,346.02	\$ 2,979.00	\$ 2,069,629.86
5/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,519,335.70	\$ 3,518.13	\$ 16,880.83	\$ 1,595,864.15	\$ 2,979.00	\$ 2,075,486.57
6/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,520,569.26	\$ 3,518.13	\$ 16,880.83	\$ 1,604,382.28	\$ 2,979.00	\$ 2,081,343.28
7/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,521,803.82	\$ 3,518.13	\$ 16,880.83	\$ 1,612,900.41	\$ 2,979.00	\$ 2,087,200.00
8/1/14	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,523,038.38	\$ 3,518.13	\$ 16,880.83	\$ 1,621,418.54	\$ 2,979.00	\$ 2,093,056.71
9/1/14						\$ 1,524,272.94	\$ 3,518.13	\$ -	\$ 1,629,936.67	\$ -	\$ 2,098,913.42
10/1/14						\$ 1,525,507.50	\$ 3,518.13	\$ -	\$ 1,638,454.80	\$ -	\$ 2,104,770.13
11/1/14	\$ 67,323.33	\$ 11,913.88	\$ 3,518.13	\$ 3,518.13	\$ 79,439.21	\$ 1,526,742.06	\$ 3,518.13	\$ 67,323.33	\$ 1,646,972.93	\$ -	\$ 2,110,626.84
12/1/14	\$ 30,642.11	\$ 8,936.83	\$ 3,518.13	\$ 3,518.13	\$ 39,379.41	\$ 1,527,976.62	\$ 3,518.13	\$ 30,642.11	\$ 1,655,491.06	\$ 9,369.91	\$ 2,116,483.55
1/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,529,211.18	\$ 3,518.13	\$ 16,880.83	\$ 1,664,009.19	\$ 2,978.97	\$ 2,122,340.26
2/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,530,445.74	\$ 3,518.13	\$ 16,880.83	\$ 1,672,527.32	\$ 2,978.97	\$ 2,128,196.97
3/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,531,680.30	\$ 3,518.13	\$ 16,880.83	\$ 1,681,045.45	\$ 2,978.97	\$ 2,134,053.68
4/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,532,914.86	\$ 3,518.13	\$ 16,880.83	\$ 1,689,563.58	\$ 2,978.97	\$ 2,139,910.39
5/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,534,149.42	\$ 3,518.13	\$ 16,880.83	\$ 1,698,081.71	\$ 2,978.97	\$ 2,145,767.10
6/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,535,383.98	\$ 3,518.13	\$ 16,880.83	\$ 1,706,600.84	\$ 2,978.97	\$ 2,151,623.81
7/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,536,618.54	\$ 3,518.13	\$ 16,880.83	\$ 1,715,119.97	\$ 2,978.97	\$ 2,157,480.52
8/1/15	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,537,853.10	\$ 3,518.13	\$ 16,880.83	\$ 1,723,639.10	\$ 2,978.97	\$ 2,163,337.23
9/1/15						\$ 1,539,087.66	\$ 3,518.13	\$ -	\$ 1,732,158.23	\$ -	\$ 2,169,193.94
10/1/15						\$ 1,540,322.22	\$ 3,518.13	\$ -	\$ 1,740,677.36	\$ -	\$ 2,175,050.65
11/1/15	\$ 67,323.33	\$ 11,913.88	\$ 3,518.13	\$ 3,518.13	\$ 79,439.21	\$ 1,541,556.78	\$ 3,518.13	\$ 67,323.33	\$ 1,749,196.49	\$ -	\$ 2,180,907.36
12/1/15	\$ 30,642.11	\$ 8,936.83	\$ 3,518.13	\$ 3,518.13	\$ 39,379.00	\$ 1,542,791.34	\$ 3,518.13	\$ 30,642.11	\$ 1,757,715.62	\$ 9,369.91	\$ 2,186,764.07
1/1/16	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,544,025.90	\$ 3,518.13	\$ 16,880.83	\$ 1,766,234.75	\$ 2,978.97	\$ 2,192,620.78
2/1/16	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,545,260.46	\$ 3,518.13	\$ 16,880.83	\$ 1,774,753.88	\$ 2,978.97	\$ 2,198,477.49
3/1/16	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,546,495.02	\$ 3,518.13	\$ 16,880.83	\$ 1,783,273.01	\$ 2,978.97	\$ 2,204,334.20
4/1/16	\$ 16,880.83	\$ 2,978.97	\$ 3,518.13	\$ 3,518.13	\$ 19,859.80	\$ 1,547,729.58	\$ 3,518.13	\$ 16,880.83	\$ 1,791,792.14	\$ 2,978.97	\$ 2,210,190.91

	Class 5a Pymt		Class 5b Pymt		Class 5a Pymt		Class 5b Pymt		Class 5a Pymt		Class 5b Pymt		Class 5a Pymt		Class 5b Pymt		Class 5a Pymt		Class 5b Pymt			
	5/8/13	6/7/16	7/1/16	8/1/16	9/1/16	10/1/16	11/4/16	12/1/16	1/6/17	2/1/17	3/1/17	4/1/17	5/1/17	6/1/17	7/1/17	8/1/17	9/1/17	10/1/17	11/1/17	12/1/17	1/1/18	
Class 5a Pymt	67,303.11	84,404.17	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	67,303.33	
Class 5b Pymt	11,915.88	14,894.83	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	11,915.88	
Total	79,439.00	99,299.02	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	79,439.21	
Legal Fee																						
Ending Balance	366,994.13	283,966.19	283,966.19	217,307.73	201,442.36	202,197.97	202,936.21	136,193.97	86,062.34	69,304.28	32,883.92	36,201.23	19,433.99									
Class 5a Beg Balance	432,893.93	366,994.13	283,966.19	217,307.73	201,442.36	202,197.97	202,936.21	136,193.97	86,062.34	69,304.28	32,883.92	36,201.23	19,433.99									
Class 5a Interest	\$ 1,623.33	\$ 1,376.23	\$ 1,064.87	\$ 813.63	\$ 733.41	\$ 730.24	\$ 761.09	\$ 510.73	\$ 322.73	\$ 260.64	\$ 198.31	\$ 133.75	\$ 72.96									
Class 5a Payment	\$ 67,303.33	\$ 84,404.17	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33	\$ 67,303.33									
Class 5b Beg Balance	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12	2,077,794.12									
Class 5b Interest	\$ 6,923.98	\$ 6,909.33	\$ 6,882.73	\$ 6,855.93	\$ 6,878.91	\$ 6,901.84	\$ 6,924.84	\$ 6,948.21	\$ 6,973.54	\$ 7,000.15	\$ 7,027.84	\$ 7,056.64	\$ 7,086.68									
Class 5b Payment	\$ 11,915.88	\$ 14,894.83	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88	\$ 11,915.88									
Ending Balance	\$ 2,072,804.23	\$ 2,064,818.74	\$ 2,056,832.99	\$ 2,048,847.06	\$ 2,040,861.13	\$ 2,032,875.19	\$ 2,024,889.26	\$ 2,016,903.33	\$ 2,008,917.40	\$ 2,000,931.47	\$ 1,992,945.54	\$ 1,984,959.61	\$ 1,976,973.68									



	Class 5a Pymt		Class 5b Pymt		Total	Class 5a		Class 5b		Payments		Legal Fee	
	Class 5a Pymt	Class 5b Pymt	Class 5a Pymt	Class 5b Pymt	Total	Class 5a	Class 5a	Class 5b	Class 5b	Class 5a	Class 5b	Legal Fee	
			Begin Balance	Interest	Payment	Begin Balance	Interest	Payment	Payment	Ending Balance	Ending Balance	Legal Fee	
12/6/19	\$ -	\$ -	\$ 29,379.00	\$ -	\$ 29,379.00	\$ -	\$ -	\$ -	\$ -	\$ 910,730.87	\$ 3,003.77	\$ 29,379.00	\$ 30,000.00
1/3/20	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 894,187.64	\$ 2,847.29	\$ 19,860.00	\$ 837,174.93
2/7/20	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 877,174.93	\$ 2,790.38	\$ 19,860.00	\$ 820,103.91
3/6/20	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 820,103.91	\$ 2,733.69	\$ 19,860.00	\$ 802,979.20
4/3/20	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 802,979.20	\$ 2,676.60	\$ 19,860.00	\$ 785,793.79
5/1/20	\$ -	\$ -	\$ 79,439.00	\$ -	\$ 79,439.00	\$ -	\$ -	\$ -	\$ -	\$ 785,793.79	\$ 2,619.32	\$ 79,439.00	\$ 708,976.11
6/9/20	\$ -	\$ -	\$ 99,299.02	\$ -	\$ 99,299.02	\$ -	\$ -	\$ -	\$ -	\$ 708,976.11	\$ 2,563.23	\$ 99,299.02	\$ 612,040.33
7/8/20	\$ -	\$ -	\$ 79,439.21	\$ -	\$ 79,439.21	\$ -	\$ -	\$ -	\$ -	\$ 612,040.33	\$ 2,040.13	\$ 79,439.21	\$ 394,641.27
8/7/20	\$ -	\$ -	\$ 19,829.80	\$ -	\$ 19,829.80	\$ -	\$ -	\$ -	\$ -	\$ 394,641.27	\$ 1,782.14	\$ 19,829.80	\$ 316,763.61
9/1/20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 316,763.61	\$ 1,721.88	\$ -	\$ 318,203.49
10/1/20	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 318,203.49	\$ 1,727.62	\$ -	\$ 320,013.11
11/6/20	\$ -	\$ -	\$ 79,439.21	\$ -	\$ 79,439.21	\$ -	\$ -	\$ -	\$ -	\$ 320,013.11	\$ 1,733.38	\$ 79,439.21	\$ 442,307.27
12/4/20	\$ -	\$ -	\$ 29,379.00	\$ -	\$ 29,379.00	\$ -	\$ -	\$ -	\$ -	\$ 442,307.27	\$ 1,474.36	\$ 29,379.00	\$ 384,202.63
1/1/21	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 384,202.63	\$ 1,280.68	\$ 19,860.00	\$ 365,623.31
2/9/21	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 365,623.31	\$ 1,218.74	\$ 19,860.00	\$ 346,982.03
3/9/21	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 346,982.03	\$ 1,156.61	\$ 19,860.00	\$ 328,278.66
4/2/21	\$ -	\$ -	\$ 19,860.00	\$ -	\$ 19,860.00	\$ -	\$ -	\$ -	\$ -	\$ 328,278.66	\$ 1,094.26	\$ 19,860.00	\$ 309,512.92
5/7/21	\$ -	\$ -	\$ 79,439.00	\$ -	\$ 79,439.00	\$ -	\$ -	\$ -	\$ -	\$ 309,512.92	\$ 1,031.71	\$ 79,439.00	\$ 231,103.63
6/4/21	\$ -	\$ -	\$ 99,299.02	\$ -	\$ 99,299.02	\$ -	\$ -	\$ -	\$ -	\$ 231,103.63	\$ 770.33	\$ 99,299.02	\$ 132,376.96
7/2/21	\$ -	\$ -	\$ 79,439.21	\$ -	\$ 79,439.21	\$ -	\$ -	\$ -	\$ -	\$ 132,376.96	\$ 441.92	\$ 79,439.21	\$ 39,379.67
8/6/21	\$ -	\$ -	\$ 19,829.80	\$ -	\$ 19,829.80	\$ -	\$ -	\$ -	\$ -	\$ 39,379.67	\$ 178.60	\$ 19,829.80	\$ 33,898.47
9/1/21	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 33,898.47	\$ 112.99	\$ -	\$ 34,011.47
10/1/21	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 34,011.47	\$ 113.37	\$ -	\$ 34,124.84
11/9/21	\$ -	\$ -	\$ 34,238.39	\$ -	\$ 34,238.39	\$ -	\$ -	\$ -	\$ -	\$ 34,124.84	\$ 113.73	\$ 34,238.39	\$ -
	\$ 1,640,009.46	\$ 2,364,708.80	\$ 4,204,798.36	\$ 1,640,009.46	\$ 2,314,708.90	\$ 1,640,009.46	\$ 1,640,009.46	\$ 2,314,708.90	\$ 2,314,708.90	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00

\* Actual payments and interest may vary depending upon actual payment dates, excess payments & other payments that may be applied from time to time