

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: ) Chapter 11  
 )  
TWG CAPITAL, INC., ) Case No. 12-11019-BHL-11  
 )  
Debtor. )

**CHAPTER 11 PLAN OF LIQUIDATION OF TWG CAPITAL, INC.**

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## INTRODUCTION

TWG Capital, Inc., the debtor and debtor-in-possession (the "Debtor"), proposes the following Chapter 11 plan of liquidation pursuant to Section 1121(a) of the Bankruptcy Code, providing for the liquidation of the Debtor's assets and distributions in accordance with the priorities established by the Bankruptcy Code.

## ARTICLE 1.

### DEFINITIONS AND INTERPRETATION

A. **Definitions.** As used in this Plan, and unless the context otherwise requires, the following terms shall have the respective meanings specified below:

1.1 **Administrative Claims Bar Date** means the date that is thirty (30) days after the Confirmation Date.

1.2 **Administrative Expense Claim** means any Claim under Sections 503(b) and 507(a)(2) of the Bankruptcy Code, including, without limitation, any actual and necessary expenses of preserving the assets of the Debtor-in-Possession, any actual and necessary expenses of operating the business of the Debtor-in-Possession, all compensation and reimbursement of expenses allowed by the Bankruptcy Court under Sections 330 or 503 of the Bankruptcy Code, and any fees and charges assessed against the Debtor-in-Possession under Section 1930 of Chapter 123 of Title 28 of the United States Code.

1.3 **Affinity** means a counterparty to an Affinity Agreement.

1.4 **Affinity Agreement** means all contracts and arrangements between the Debtor, as assignee of LTPC, and an Affinity, under which the Debtor owed any compensation or had any payment obligation to such Affinity arising out of or related to assigned commission rights and the policies of long term care insurance that relate to the assigned commission rights.

1.5 **Affinity Claim** means any Claim of an Affinity related to or arising out of the Debtor's obligations under an Affinity Agreement.

1.6 **Agent** means an insurance agent, broker, underwriter or insurance agency but does not include an insurance company that is the issuer of an insurance policy.

1.7 **Allowed** means, with respect to a Claim or Equity Interest, any Claim or Equity Interest, proof of which was timely and properly filed or, if no proof of Claim or proof of interest was filed, which has been or hereafter is listed by the Debtor-in-Possession on the Schedules as liquidated in amount and not disputed or contingent and, in either case, as to which no objection to allowance has been interposed, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder. Unless otherwise specified in this Plan or by order of the Bankruptcy Court, "Allowed Claim" shall not, for purposes of computation of distributions under this Plan, include interest on a

Claim from and after the Petition Date. Further, “Allowed Claim” shall not include any portion of a Claim that is a Disputed Claim.

1.8 **Asserted Causes of Action** means all Causes of Action commenced by the Debtor or the Plan Officer on or before thirty (30) days after the Effective Date.

1.9 **Auction** means the auction of the Ownership Interests to the highest bidder pursuant to the terms and bidding procedures set forth in Exhibit A to the Plan.

1.10 **Available Cash** means all Cash of the Estate to be distributed to the holders of Allowed Claims against the Estate on the Distribution Date.

1.11 **Bankruptcy Code** means Title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Case.

1.12 **Bankruptcy Court** means the United States Bankruptcy Court for the Southern District of Indiana, Indianapolis Division, or the court so authorized with respect to any such proceeding.

1.13 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, including the local rules and general orders of the Bankruptcy Court.

1.14 **Bar Dates** means the date(s) designated by the Bankruptcy Court as the last date(s) for filing claims against the Debtor, including general unsecured claims and rejection damages claims.

1.15 **Business Day** means any day other than a Saturday, a Sunday, or any other day on which banking institutions in Indianapolis, Indiana are required or authorized to close by law or executive order.

1.16 **Carmel Funding** means Carmel Funding, LLC, a Delaware limited liability company.

1.17 **Cash** means cash and cash equivalents.

1.18 **Causes of Action** means any and all claims, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, and privileges, licenses and franchises of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, whether arising before, on or after the Petition Date in contract or in tort, in law or equity, or under any other theory of law, including all turnover, avoidance or preference actions arising under Chapter 5 of the Bankruptcy Code.

1.19 **Chapter 11 Case** means the voluntary case commenced under Chapter 11 of the Bankruptcy Code by the Debtor, styled In re TWG Capital, Inc., Case No. 12-11019-BHL-11.

1.20 **Claim** means any right to payment from the Debtor, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, known or unknown; or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment from the Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, known or unknown.

1.21 **Class** means any group of substantially similar Claims or Equity Interests classified by this Plan pursuant to Section 1123(a)(1) of the Bankruptcy Code.

1.22 **Closing Date** means December 31, 2012, the date the sale to Carmel Funding, as approved by the Sale Order, closed.

1.23 **Confirmation Date** means the date upon which the Bankruptcy Court enters an order confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

1.24 **Confirmation Order** means the order of the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

1.25 **Cost Sharing Agreement** means the Agreement for Allocation of Costs and Reimbursement of Expenses executed by the Debtor and Carmel Funding and dated January 1, 2013, and approved by the Bankruptcy Court on February 4, 2013, pursuant to the *Order Granting Motion for an Order Approving Certain Agreement for Allocation of Costs and Reimbursement of Expenses and Interim Services of Mark P. Nondorf as President* [Docket No. 199].

1.26 **Debtor** means TWG Capital, Inc., a Delaware registered corporation.

1.27 **Debtor-in-Possession** means the Debtor in its capacity as Debtor-in-Possession pursuant to Section 1107 of the Bankruptcy Code.

1.28 **Disclosure Statement** means the disclosure statement, as the same may be amended from time to time, which is required by Section 1125 of the Bankruptcy Code and which accompanies this Plan.

1.29 **Disputed** means, with respect to a Claim, (a) any such Claim proof of which was timely and properly filed and (i) which has been or hereafter is listed on each of the Schedules as unliquidated, disputed, or contingent, and which has not been resolved by written agreement of the parties or an order of the Bankruptcy Court, or (ii) as to which the Debtor or any other party in interest has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order, and (b) any Claim as to which a proof of Claim was required to be filed by order of the Bankruptcy Court but as to which a proof of Claim was filed untimely or improperly. Prior to (x) the time that an objection has been filed and (y) the expiration of the time within which to object to such Claim set forth herein or a date otherwise established by order of the Bankruptcy Court, for purposes of this Plan, (A) a Claim shall be considered a **Disputed Claim** if the amount of the Claim specified in the proof of

Claim exceeds the amount of the Claim scheduled by the Debtor as other than disputed, contingent or unliquidated or (B) in the event that a Claim is not listed on the Schedules, then the entire amount of such Claim shall be considered a Disputed Claim. Because it is not anticipated that the holders of Allowed Equity Interests will receive any distributions on account of such Equity Interests, it is unnecessary to characterize any Equity Interest, or any portion thereof, as Disputed.

1.30 **Distribution Date** means the date on which distribution of Available Cash is made pursuant to Article 6 of this Plan. The Distribution Date shall be a date, as determined by the Debtor and the Plan Officer, which is after (i) the Effective Date, (ii) the liquidation into Cash of all assets of the Debtor (other than those assets abandoned by the Debtor) and collection of other sums due or otherwise remitted or returned to the Estate, (iii) the date that all Disputed Claims have become Allowed Claims or have been disallowed by Final Order of the Bankruptcy Court, (iv) the resolution of all Asserted Causes of Action, and (v) entry of a Final Order allowing or disallowing all timely asserted Professional Fee Claims and Administrative Expense Claims.

1.31 **Dormant Subsidiaries** means certain of the Debtor's wholly-owned subsidiaries, which were acquired by the Debtor in connection with the acquisition of insurance commission receivables and had all agency operations wound down shortly after purchase and prior to the Petition Date, including the following: Professional Benefits, Inc., Senior Health Division, Inc., AIM Neighbors, LLC, and American Insurance Marketing Corp.

1.32 **Downline** means an Agent or Affinity to whom the Debtor owes any obligation to remit commissions pursuant to the Debtor's agreement with LTPC.

1.33 **Effective Date** means the date to be selected by the Debtor on which this Plan shall become effective, which date shall be as soon as reasonably practicable after the date on which the conditions specified in Section 9.1 of this Plan have been satisfied or waived by the Debtor.

1.34 **Employee Benefits** means the Debtor's (i) ERISA qualified retirement plan under Section 401(k) of the Internal Revenue Code and (ii) Section 125 Plan comprised of both medical flexible spending arrangements and dependent care flexible spending arrangements, as both such plans were in effect from the Petition Date through the Closing Date.

1.35 **Equity Interest** means the interest of any holder of equity securities of the Debtor prior to the Effective Date represented by the issued and outstanding shares of common stock, including any existing options, warrants or rights, contractual or otherwise, to acquire such equity securities.

1.36 **Estate** means the Debtor's Estate created pursuant to Section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Case.

1.37 **Exhibit** means an exhibit annexed or to be annexed to this Plan, as it may be amended.



1.38 **Exhibit Filing Date** means the date on which Exhibits to the Plan shall be filed with the Bankruptcy Court, which date shall be no fewer than ten (10) days prior to the Voting Deadline, unless a later date is approved by the Bankruptcy Court.

1.39 **Final Order** means an order or judgment, the operation or effect of which has not been stayed, reversed or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal or seek review or rehearing or move for a new trial has expired, and as to which no appeal or petition for review, reargument, rehearing or proceeding for a new trial was timely filed or, if timely filed, remains pending.

1.40 **ICRs** means insurance commission receivables.

1.41 **Insider** means any Person that qualified as an "insider" as defined in Section 101 of the Bankruptcy Code. "Insider" shall not be limited to the enumerated categories set forth in Section 101(31) of the Bankruptcy Code, and such term shall include all such Persons that qualify as an "insider" within the meaning of the Bankruptcy Code and as the Bankruptcy Court may so rule.

1.42 **Insider Claim** means any non-priority, unsecured Claim of an Insider.

1.43 **IR7** means Insurance Receivables 7, LLC, a Delaware limited liability company.

1.44 **IR7 Commission Vehicles** means certain of the Debtor's wholly owned subsidiaries that may receive insurance commissions periodically but has assigned any rights to those commissions to IR7.

1.45 **LTPC** means Long Term Preferred Care, Inc., a Tennessee corporation.

1.46 **Other General Unsecured Claim** means any Claim other than an Administrative Expense Claim, Priority Tax Claim, Other Priority Claim, Secured Claim, Insider Claim, or Affinity Claim.

1.47 **Other Priority Claim** means any Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in payment under Section 507(a) of the Bankruptcy Code.

1.48 **Ownership Interests** means the Debtor's 100% ownership interests in IR7 and the IR7 Commission Vehicles.

1.49 **Person** means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, trustee, United States Trustee, estate, unincorporated organization, government, governmental unit (as defined in the Bankruptcy Code), agency, or political subdivision thereof, or other entity.

1.50 **Petition Date** means September 14, 2012, the date on which the Debtor commenced the Chapter 11 Case.

1.51 **Plan** means this Chapter 11 plan (including all exhibits annexed hereto), either in its present form or as it may be altered, amended or modified from time to time.

1.52 **Plan Officer** means the individual deemed to be appointed by the Bankruptcy Court on the Effective Date that, among other things, shall be authorized to take all other steps necessary to effect the provisions of the Plan and shall, together with the Debtor, be an official distribution agent to the holders of Allowed Claims.

1.53 **Plan Sale** means the duly noticed and advertised sale of the Ownership Interests under Section 363 of the Bankruptcy Code.

1.54 **Priority Claim Order** means the *Order Granting Motion for an Order Authorizing the Debtor to Pay Certain Priority Claims Under 11 U.S.C. § 507(a)(4)* entered by the Bankruptcy Court on February 4, 2013 [Docket No. 196].

1.55 **Priority Tax Claim** means any Claim of a governmental unit of the kind entitled to priority in payment as specified in Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.56 **Professional Fee Claim** means any Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred prior to and including the Effective Date, when and to the extent any such Claim is Allowed by the Bankruptcy Court pursuant to Sections 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

1.57 **Professionals** means those Persons (a) employed pursuant to an order of the Bankruptcy Court in accordance with Sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (b) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

1.58 **Pro Rata Share** means the proportion that the amount of any Claim bears to the aggregate amount of such Claim and all other Claims in the same Class entitled to distributions from the same source of Cash.

1.59 **Rejection Damages Claim** means any Claim arising from the rejection of an executory contract or unexpired lease pursuant to Section 365 of the Bankruptcy Code.

1.60 **Sale Order** means the *Order Granting Motion for Entry of an Order (I) Approving Asset Purchase Agreement; (II) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Liens, Claims and Encumbrances; and (III) Authorizing the Assumption and Assignment of Leases and Contracts* entered by the Bankruptcy Court on November 9, 2012 [Docket No. 142].

1.61 **Schedules** means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor on October 12, 2012, as required by Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, including any supplements or amendments thereto through the Confirmation Date.

1.62 **Secured Claim** means a Claim held by any entity to the extent of the value, as set forth in this Plan, as agreed to by the holder of such Claim, the Debtor, or as determined by a Final Order of the Bankruptcy Court pursuant to Section 506(a) of the Bankruptcy Code, of any interest in property of the Estate securing such Claim; provided, however, that a Secured Claim shall not include any portion of the Claim that exceeds the value of the interest in property of the Estate securing such Claim.

1.63 **SPV** means a special purpose vehicle.

1.64 **Tax Claim** means a Claim asserted by a taxing entity, including without limitation, Priority Tax Claims.

1.65 **Voting Deadline** means \_\_\_\_\_, 2013, the date established by order of the Bankruptcy Court for parties to submit their ballots to accept or reject the Plan.

1.66 **Wage Order** means the *Order on First Day Motion of Debtor for Entry of an Order (A) Authorizing, But Not Requiring, Payment of Certain Pre-Petition (i) Wages, Salaries, and Other Compensation, (ii) Employee Medical and Similar Benefits, (iii) Reimbursable Employee Expenses, and (B) Authorizing and Directing Applicable Banks and Other Financial Institutions to Receive, Process, and Honor and Pay All Checks Presented for Payment and to Honor All Electronic Payment Requests Made by the Debtor Related to the Foregoing* entered by the Bankruptcy Court on September 20, 2012 [Docket No. 35].

**B. Rules of Interpretation.**

(a) For purposes of this Plan, except as expressly provided, all capitalized terms not otherwise defined shall have the meanings given them in Article 1 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.

(b) For purposes of this Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) each pronoun stated in the masculine, feminine or neuter includes the masculine, feminine and neuter; (c) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (d) any reference in this Plan to an existing document or schedule filed or to be filed means such document or schedule, as it may have been or may be amended, modified or supplemented pursuant to this Plan; (e) any reference to a Person as a Holder of a Claim or Interest includes that Person's heirs, successors, and assigns; (f) all references in this Plan to Articles and Exhibits are references to Articles and Exhibits of or to this Plan; (g) the words "herein," "hereof," "hereunder," and "hereto" unless limited by further reference refer to this Plan in its entirety rather than to a particular portion of this Plan; (h) captions

and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (i) subject to the provisions of any contract, by-laws, instrument, release or other agreement or document entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with federal law including the Bankruptcy Code and the Bankruptcy Rules; and (j) the rules of construction set forth in Section 102 of the Bankruptcy Code will apply.

C. **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. A period described as a number of "days" (as opposed to "Business Days") means calendar days.

D. **References to Monetary Figures.** All references in the Plan to monetary figures shall refer to currency of the United States of America unless otherwise expressly provided.

## ARTICLE 2.

### TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS AND PRIORITY TAX CLAIMS

2.1. **Administrative Expense Claims.** Except to the extent that the Debtor and the holder of an Allowed Administrative Expense Claim agree to a different treatment, the Debtor shall pay to each holder of an Allowed Administrative Expense Claim from Available Cash an amount equal to such Allowed Administrative Expense Claim on the Effective Date; provided, however, that Allowed Administrative Expense Claims representing obligations incurred in the ordinary course of business of the Debtor as Debtor-in-Possession shall be paid in full and performed by the Debtor in accordance with the terms and conditions of the particular transactions and any applicable agreements. **Applications for payment of Administrative Expense Claims, other than Professional Fee Claims and liabilities incurred in the ordinary course of business by the Debtor and not yet due and payable according to their terms, shall be filed on or before the Administrative Claims Bar Date.** Claims incurred by the Debtor in the ordinary course of business after the Petition Date will continue to be paid in the ordinary course of business by the Debtor when due. Within three business days of entry of the Confirmation Order, the Debtor will file and serve a Notice of Administrative Expense Claims Bar Date on all creditors and parties of interest of the Debtor's Estate.

2.2. **Priority Tax Claims.** Except to the extent that the Debtor and the holder of an Allowed Priority Tax Claim against the Debtor agree to a different treatment, the Debtor shall pay to each holder of an Allowed Priority Tax Claim from Available Cash an amount equal to such Allowed Priority Tax Claim on the Distribution Date.

### ARTICLE 3.

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

Claims and Equity Interests are classified for all purposes, including voting, confirmation, and distribution pursuant to the Plan. No interest, late fees or charges accruing on any Allowed Claim from and after the Petition Date through the Effective Date will be paid unless specifically included in the plan treatment. The classification and plan treatment of each Allowed Claim and Equity Interest is as follows:

3.1. **Class 1 - Other Priority Claims.** Class 1 consists of all Allowed Other Priority Claims against the Debtor. The Debtor is not aware of any Class 1 Claims that may become an Allowed Claim.

(a) **Impairment and Voting.** Class 1 is unimpaired by this Plan. The holder of an Allowed Claim in Class 1 is not entitled to vote to accept or reject this Plan.

(b) **Distributions to Class 1.** Each holder of an Allowed Claim in Class 1 shall be entitled to receive Cash from Available Cash in an amount equal to such Allowed Claim on the Distribution Date.

3.2. **Class 2 – Secured Claims.** Class 2 consists of all Allowed Secured Claims against the Debtor. The Debtor is not aware of any Class 2 Claims that may become an Allowed Claim.

(a) **Impairment and Voting.** Class 2 is unimpaired by this Plan. The holder of an Allowed Claim in Class 2 is not entitled to vote to accept or reject this Plan.

(b) **Distributions to Class 2.** Except to the extent that a holder of a Class 2 Allowed Secured Claim agrees to different treatment, on the Distribution Date, such holder shall receive one of the following treatments, in the discretion of the Debtor, in full and final satisfaction of such Allowed Secured Claim: (i) the Debtor shall pay such Allowed Secured Claim in full in Cash in an amount equal to the Allowed Secured Claim; (ii) the Debtor shall deliver the collateral securing any such Allowed Secured Claim in full satisfaction of its Allowed Secured Claim, unless the holder of such Claim agrees to less favorable treatment; or (iii) the Debtor shall otherwise treat any Allowed Secured Claim in any manner such that the Claim shall be rendered unimpaired. Each holder of an Allowed Secured Claim is conclusively presumed to have accepted the Plan and is not entitled to vote to accept or reject the Plan. The Debtor does not believe there are any Class 2 Claims that will become Allowed Claims.

3.3. **Class 3 – Insider Claims.** Class 3 consists of all Allowed Insider Claims against the Debtor. Class 3 is comprised primarily of (i) non-priority, unsecured Claims of former employees of the Debtor to the extent such Claims are not entitled to priority pursuant to Section 507(a)(4) of the Bankruptcy Code and therefore already satisfied pursuant to the Wage

Order and the Priority Claim Order, and (ii) non-priority, unsecured Claims held by the Debtor's SPVs and equity security holders.

(a) **Impairment and Voting.** Class 3 is impaired by this Plan. Each holder of an Allowed Claim under Class 3 is entitled to vote to accept or reject this Plan. Pursuant to Section 1129(a)(10) of the Bankruptcy Code, Class 3 will not constitute the sole accepting Class for purposes of a "cram-down" under Section 1129(b) of the Bankruptcy Code.

(b) **Distributions to Class 3.** After satisfaction in full of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Secured Claims, and unless otherwise agreed to by the Debtor and the holder of an Allowed Claim in Class 3, each holder of an Allowed Claim in Class 3 shall be entitled to receive its Pro Rata Share of Available Cash (not to exceed the amount of its Allowed Claim) on the Distribution Date. Distributions to holders of Allowed Insider Claims shall be on parity with distributions to holders of Allowed Claims belonging to Classes 4 and 5.

3.4. **Class 4 – Affinity Claims.** Class 4 consists of all Allowed Affinity Claims against the Debtor. Members of Class 4 hold non-priority, unsecured claims against the Debtor. The Debtor separately classifies the holders of Affinity Claims from other holders of non-priority, unsecured claims against the Debtor because the holders of Affinity Claims are each uninformed about their Claims, with any knowledge dependent entirely on the disclosures or actions of the Debtor. Prior to the Petition Date, members of Class 4 were entitled to a small percentage of ICRs collected from policies issued to policy holders marketed through the Affinity. Members of Class 4 have no information from which they could determine any entitlement to or calculate the amount of any Claim to such ICR percentage payment. Members of Class 4 are unable in all cases to independently value their Claims and must rely on the Debtor's determinations as set forth in the Schedules. Given the number of holders, the sums of the Affinity Claims, and the reliance of Class 4 members on the Debtor's data as set forth in the Schedules, Class 4 members are separately classified in voting to accept or reject the Plan.

(a) **Impairment and Voting.** Class 4 is impaired by this Plan. Each holder of an Allowed Claim in Class 4 is entitled to vote to accept or reject this Plan.

(b) **Distributions to Class 4.** After satisfaction in full of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Secured Claims, and unless otherwise agreed to by the Debtor and the holder of an Allowed Claim in Class 4, each holder of an Allowed Claim in Class 4 shall be entitled to receive its Pro Rata Share of Available Cash (not to exceed the amount of its Allowed Claim) on the Distribution Date. Distributions to holders of Allowed Affinity Claims shall be on parity with distributions to holders of Allowed Claims belonging to Classes 3 and 5.

3.5. **Class 5 – Other General Unsecured Claims.** Class 5 consists of all Allowed Other General Unsecured Claims against the Debtor, including without limitation, Rejection Damages Claims (except those asserted by Insiders), Claims of trade creditors, and Claims asserted against the Debtor by parties other than Insiders or Affinities. Class 5 represents the Debtor's most independent Class of creditors, whose transactions with the Debtor were conducted at arm's-length and pursuant to a direct agreement with the Debtor. Accordingly, Class 5 members are separately classified.

(a) **Impairment and Voting.** Class 5 is impaired by this Plan. Each holder of an Allowed Claim in Class 5 is entitled to vote to accept or reject this Plan.

(b) **Distributions to Class 5.** After satisfaction in full of all Allowed Administrative Expense Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Secured Claims, and unless otherwise agreed to by the Debtor and the holder of an Allowed Claim in Class 5, each holder of an Allowed Claim in Class 5 shall be entitled to receive its Pro Rata Share of Available Cash (not to exceed the amount of its Allowed Claim) on the Distribution Date. Distributions to holders of Allowed Other General Unsecured Claims shall be on parity with distributions to holders of Allowed Claims belonging to Classes 3 and 4.

3.6. **Class 6 - Equity Interests.** Class 6 consists of all Allowed Equity Interests.

(a) **Impairment and Voting.** Class 6 is impaired by this Plan. For purposes of this Plan, each holder of an Allowed Equity Interest in Class 6 is conclusively presumed to have rejected this Plan as holders of an Allowed Equity Interest in Class 6 and are not entitled to vote to accept or reject this Plan.

(b) **Distributions to Class 6.** Because the value of the Debtor's assets is less than the total value of its debts and liabilities, it is not anticipated that the holders of Allowed Equity Interests in Class 6 will receive any distributions on account of such Equity Interests. The Debtor will request that the Bankruptcy Court make a finding that the Equity Interests have no value for purposes of the "best interest" test under Section 1129(a)(7) of the Bankruptcy Code. The common stock certificates and other instruments evidencing Equity Interests in the Debtor shall be deemed cancelled without further act or action under any applicable agreement, law, regulation, order or rule, and the Equity Interests in the Debtor evidenced thereby shall be extinguished after (i) the Debtor determines following the Confirmation Date that there are not sufficient funds available to holders of Allowed Equity Interests, or (ii) in the event that sufficient funds become available to make a distribution to holders of Allowed Equity Interests, as soon as possible following the Distribution Date, distributions to Allowed Equity Interests, if any, will be paid on the Distribution Date, and the holder of Class 6 Equity Interests shall be entitled to receive its Pro Rata Share of Available Cash.

## ARTICLE 4.

### ACCEPTANCE OR REJECTION OF THE PLAN

4.1. **Voting of Claims.** Each holder of an Allowed Claim in an impaired Class of Claims (Classes 3, 4 and 5) shall be entitled to vote to accept or reject this Plan by following the procedures set forth herein and in the Disclosure Statement. For purposes of calculating the number of Allowed Claims in a Class of Claims that have voted to accept or reject this Plan under Section 1126(c) of the Bankruptcy Code, all Allowed Claims in such Class held by one entity or any affiliate thereof (as defined in the Securities Act of 1933 and the rules and regulations promulgated thereunder) shall be aggregated and treated as one Allowed Claim in such Class.

4.2. **Blank Ballots.** Any Ballot that is executed by the holder of a Claim or Equity Interest but that does not indicate an acceptance or rejection of the Plan shall be deemed to be an acceptance of the Plan.

4.3. **Acceptance by a Class of Creditors.** Consistent with Section 1126(c) of the Bankruptcy Code and except as provided for in Section 1126(e) of the Bankruptcy Code, a Class of creditors shall have accepted this Plan if it is accepted by at least two-thirds in dollar amount and more than one-half in number of the holders of Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

4.4. **Cramdown.** The Debtor shall utilize the provisions of Section 1129(b) of the Bankruptcy Code to satisfy the requirements for confirmation of this Plan over the rejection, if any, of any Class entitled to vote to accept or reject this Plan.

## ARTICLE 5.

### MEANS FOR IMPLEMENTATION AND EXECUTION OF THE PLAN

5.1. **Utilization of Plan Officer.**

(a) **Purpose of the Plan Officer.** The principal purpose of the Plan Officer is to make distributions in respect of Claims against the Debtor's Estate in accordance with the terms of this Plan.

(b) **Identity of Initial Plan Officer and Compensation of Plan Officer.** The Debtor has determined that Mark P. Nondorf, 6346 Calais Drive, Indianapolis, Indiana 46220, is well suited for the role of Plan Officer and should be so appointed. The compensation of the Plan Officer shall continue pursuant to the terms of the Cost Sharing Agreement, as such agreement has been or may be modified through the closing of the Chapter 11 Case.

(c) **Appointment of Plan Officer.** On the Effective Date, the Plan Officer shall be deemed to be appointed by the Bankruptcy Court pursuant to the terms of this Plan. On the Effective Date, the Plan Officer shall be authorized to take all steps necessary to effect the provisions of this Plan and, together with the



Debtor, shall be an official distribution agent to the holders of Allowed Claims. If, for any reason, the Plan Officer ceases to perform the functions and responsibilities set forth below prior to the completion of all distributions to be made under this Plan, the Debtor may appoint a replacement Plan Officer effective upon the submission of a Notice of Appointment of Plan Officer to the Bankruptcy Court or, if the parties are unable to agree upon the identity of a Plan Officer, the Bankruptcy Court shall appoint a replacement Plan Officer upon such notice and with such consultation as the Bankruptcy Court deems appropriate.

(d) Powers and Duties of Plan Officer. Upon appointment by the Bankruptcy Court and pursuant to the terms and provisions of this Plan, the Plan Officer shall, together with the Debtor, act as the official distribution agent for the holders of Allowed Claims. The Plan Officer, together with the Debtor, shall carry out the implementation of this Plan and shall have all duties, powers, and standing and authority necessary to implement the Plan and to administer the assets of the Debtor for the benefit of holders of Allowed Claims. The Plan Officer's powers shall include, without limitation, the following:

(i) The power to, jointly with the Debtor, provide for the maintenance of the books and records of the Debtor's Estate and provide for storage and destruction of records as deemed appropriate;

(ii) The power to, jointly with the Debtor, liquidate any remaining unliquidated assets of the Estate and to sell or otherwise transfer for value any non-Cash property, including the power to complete the Plan Sale;

(iii) The power to, jointly with the Debtor, abandon to the Debtor any property that cannot be sold or otherwise disposed of for value;

(iv) The power to, jointly with the Debtor, litigate or settle Causes of Action asserted by or against the Debtor, subject to approval by the Bankruptcy Court;

(v) The power to, jointly with the Debtor, litigate or settle Claims asserted by or against the Debtor, as provided in Article 7 of this Plan;

(vi) The power to, jointly with the Debtor, hold and invest Estate funds until distributed and, in strict accordance with the terms of this Plan, establish one or more checking, savings and investment accounts in the name of the Plan Officer;

(vii) The power to, jointly with the Debtor, make distributions of Estate funds as provided in this Plan;

(viii) The power to, jointly with the Debtor, file with the Bankruptcy Court the reports and other documents required by the Plan or otherwise required to close the Chapter 11 Case;

(ix) The power to take any other actions that the Plan Officer, in his or her reasonable discretion, determines to be in the best interests of the Debtor's creditors and consistent with the purposes of this Plan; and

(x) The power to retain, after consultation with the Debtor, any third parties that the Plan Officer deems necessary to carry out the duties of the Plan Officer or to effectuate the terms of the Plan, including any current or former employees of the Debtor. The Plan Officer shall have the power to compensate any third parties retained at rates commensurate with the services to be provided.

(e) Discharge of Plan Officer. After the Distribution Date, the Plan Officer shall file with the Bankruptcy Court a final report of distributions and perform such other duties as are specified in the Plan, whereupon the Plan Officer shall have no further duties under the Plan.

5.2. Authorization to Effectuate the Plan. The entry of the Confirmation Order shall constitute authorization for the Debtor and the Plan Officer to take or cause to take all corporate action necessary and appropriate to consummate and implement the Plan prior to and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have occurred and shall be in effect from and after the Effective Date pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the Debtor.

5.3. Continuing Existence.

(a) From and after the Confirmation Date, the Debtor shall continue in existence (and shall consult and/or confer with the Plan Officer as specifically provided for in the Plan) for the purpose of (i) winding up its affairs as expeditiously as reasonably possible, (ii) conducting the Plan Sale, (iii) liquidating, by conversion to Cash or other methods, of any remaining assets of its Estate, as expeditiously as reasonably possible, (iv) enforcing and prosecuting claims, interests, rights and privileges of the Debtor, including, without limitation, the prosecution of Causes of Action, (v) resolving Disputed Claims, (vi) administering this Plan, and (vii) filing appropriate tax returns.

(b) From and after the Confirmation Date, and subject to the Effective Date, the then current officer of the Debtor shall continue to serve in his respective capacity through the date such officer resigns, is replaced or is terminated.

(c) From and after the Effective Date, the Debtor shall not be required to file any document, or take any other action, to withdraw its business operations from any states in which the Debtor previously conducted its business operations.

5.4. **Funding for this Plan.** This Plan shall be funded by (i) Available Cash on the Effective Date, including the proceeds from the sale of the Ownership Interests pursuant to the Plan Sale, and (ii) funds available after the Effective Date from, among other things, the liquidation of the Debtor's remaining assets and the prosecution and enforcement of Asserted Causes of Action of the Debtor.

5.5. **Plan Sale.** As part of the Plan Sale, the Debtor is seeking approval of a sale of the Ownership Interests by Auction to the highest bidder. The Auction shall be conducted within thirty (30) days of the entry of the Confirmation Order pursuant to Section 363 of the Bankruptcy Code. The terms of the Plan Sale, a more detailed description of the Ownership Interests to be sold, and the bidding procedures pursuant to which the Debtor will determine the highest and best offer for the Ownership Interests will be outlined in Exhibit A to this Plan, which shall be provided on the Exhibit Filing Date. The Debtor will provide notice of the Plan Sale and the time and location of the Auction and the bidding procedures to the United States Trustee, all counsel of record, all creditors and parties in interest, Carmel Funding, and all entities known to have expressed any interest in the possible acquisition of any assets of the Debtor after the Petition Date or within three (3) years prior to the Petition Date.

5.6. **Dissolution.**

(a) *IR7 and IR7 Commission Vehicles.* If the Plan Sale fails to produce a purchaser for the Ownership Interests, the Ownership Interests will be abandoned to the Debtor. If the Ownership Interests are abandoned, the Debtor, as the sole member of IR7 and the IR7 Commission Vehicles, will cease all efforts to operate and maintain IR7 and the IR7 Commission Vehicles and will allow IR7 and the IR7 Commission Vehicles to be dissolved pursuant to Indiana Code §§ 23-1-46-1 to -4, and the Debtor will be relieved of any obligation (i) to prepare and file tax returns on behalf of IR7 and the IR7 Commission Vehicles after the Effective Date, except to the extent the Debtor determines in its sole discretion to do so, and (ii) to comply with the requirements set forth in Indiana Code § 6-8.1-10-9, § 22-4-32-23, §§ 23-1-45-1 to -7, §§ 23-1-47-1 to -4, and § 32-34-1-25 and in Section 6043 of the Internal Revenue Code of 1986, as amended, including without limitation, submission of Form 966 to the Internal Revenue Service.

(b) *Dormant Subsidiaries.* On and after the Effective Date, the Debtor may, without further approval of the Bankruptcy Court, allow the Dormant Subsidiaries to be administratively dissolved pursuant to Indiana Code §§ 23-1-46-1 to -4, and the Debtor will be relieved of any obligation to (x) conduct the business operations or obligations as the sole member of the Dormant Subsidiaries after the Effective Date, (y) prepare and file tax returns on behalf of the Dormant Subsidiaries, except to the extent the Debtor determines in its sole discretion to do so, and (z) comply with the requirements set forth in Indiana Code § 6-8.1-10-9, § 22-4-32-23, §§ 23-1-45-1 to -7, §§ 23-1-47-1 to -4, and § 32-34-1-25 and in Section 6043 of the Internal Revenue Code of 1986, as amended, including without limitation, submission of Form 966 to the Internal Revenue Service.

5.7. **Liquidation of Assets.** On and after the Confirmation Date, and subject to the Effective Date, the Debtor may, without further approval of the Bankruptcy Court, use, sell, assign, transfer, abandon or otherwise dispose of at a public or private sale any of the Debtor's remaining assets for the purpose of liquidating and converting such assets to Cash, making distributions and fully consummating the Plan.

5.8. **Termination of Employee Benefits.** Prior to the Petition Date, the Debtor established (i) an ERISA qualified retirement plan under Section 401(k) of the Internal Revenue Code for the benefit of its eligible employees, and withheld amounts designated by eligible employees from their annual earnings to contribute to the 401(k) plan, and (ii) a Section 125 Plan comprised of both medical flexible spending arrangements and dependent care flexible spending arrangements. The Debtor terminated its employees effective on the Closing Date, and there are no active participants in either of the Employee Benefits programs. Accordingly, the Employee Benefits programs shall be terminated effective on the Confirmation Date and thereafter liquidated. The Debtor, upon the Confirmation Date, shall be authorized to take all administrative actions necessary to process the termination of the Employee Benefits as required by applicable, non-bankruptcy law, including but not limited to, filing applicable forms with the Internal Revenue Service and the administrator of the Employee Benefits and to provide any applicable notices to the participants of the Employee Benefits.

5.9. **Accounts.** The Debtor, jointly with the Plan Officer, may establish one or more interest-bearing accounts as they determine may be necessary or appropriate to effectuate the provisions of this Plan consistent with Section 345 of the Bankruptcy Code and any orders of the Bankruptcy Court. The signatories to such accounts shall include, and shall be specifically limited to, a current director of the Debtor and the Plan Officer.

5.10. **Closing of the Chapter 11 Case.** When all Disputed Claims filed against the Debtor have become Allowed Claims or have been disallowed by Final Order, and all remaining assets of the Debtor (other than those assets abandoned by the Debtor), have been liquidated and converted into Cash and such Cash has been distributed in accordance with this Plan, or at such earlier time as the Debtor, jointly with the Plan Officer, deem appropriate, the Debtor and/or the Plan Officer shall seek authority from the Bankruptcy Court to close the Chapter 11 Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

## ARTICLE 6.

### PROVISIONS GOVERNING DISTRIBUTIONS.

6.1. **Distribution Date.** On the Distribution Date, the Debtor and the Plan Officer shall distribute all Available Cash to holders of Allowed Claims other than holders of Administrative Expense Claims. Administrative Expense Claims shall be paid on the Effective Date or as they are incurred and submitted for payment following the Confirmation Date. Distributions to all other holders of Allowed Claims shall be allocated first to the principal portion of any such Allowed Claim, and only after the principal portion of any such Allowed Claim is satisfied in full, to any portion of such Allowed Claim comprising interest (but solely to the extent that interest is an allowable portion of such Allowed Claim). All payments shall be made in accordance with the priorities established by the Bankruptcy Code. The Debtor

expressly intends that, except for the payment of Administrative Expense Claims, only one distribution will occur under the Plan, eliminating the administrative expenses necessarily incurred to create and administer a reserve to fund possible distributions on Disputed Claims if ultimately Allowed, whether in full or otherwise.

6.2. **Delivery of Distributions and Undeliverable Distributions.**

Distributions to holders of Allowed Claims and Equity Interests shall be made at the address of each such holder as set forth on the Schedules filed with the Bankruptcy Court unless superseded by the address as set forth on the proofs of Claim and Equity Interests filed by such holders or other writing notifying the Debtor or the Plan Officer of a change of address. All claims for undeliverable distributions shall be made on or before sixty (60) days after the Distribution Date. After such date, all unclaimed property shall, in the Debtor and the Plan Officer's discretion, be used to satisfy the costs of administering and fully consummating this Plan, as needed, or donated to the Indianapolis Bar Foundation, Inc., and the holder of any such Allowed Claim shall not be entitled to any other or further distribution under this Plan on account of such Allowed Claim.

6.3. **Time Bar to Cash Payments.**

Checks issued by the Debtor and/or the Plan Officer with respect to Allowed Claims shall be null and void if not negotiated within sixty (60) days after the Distribution Date. Requests for reissuance of any check shall be made to the Debtor and the Plan Officer by the holder of the Allowed Claim to whom such check was originally issued within sixty (60) days after the Distribution Date. If a check has not been negotiated within sixty (60) days from issuance and no request for reissuance was received by the Debtor or the Plan Officer prior to the expiration of the sixty (60) days, the Claim that is the subject of the distribution shall be discharged and forever barred against the Debtor, its Estate, and creditors, and any obligation to such holder shall be deemed null and void. After such date, the unclaimed property shall, in the Debtor and the Plan Officer's discretion, be used to satisfy the costs of administering and fully consummating this Plan, as needed, or donated to the Indianapolis Bar Foundation, Inc., and the holder of any such Allowed Claim shall not be entitled to any other or further distribution under this Plan on account of such Allowed Claim.

6.4. **De Minimis Distributions.**

If the distribution to a holder of an Allowed Claim is less than \$10.00, no distribution shall be made on account of the Allowed Claims held by the holder of the Allowed Claim unless the holder requests distribution of the Plan Officer and the Debtor no later than thirty (30) days after the Effective Date. The holder of the Allowed Claim shall forever be barred from asserting any Claim therefore against the Debtor, its Estate, and its creditors.

6.5. **Withholding and Reporting Requirements.**

In connection with this Plan and all instruments issued in connection therewith and distributed thereon, the Debtor and the Plan Officer shall comply with all applicable withholding and reporting requirements imposed by any federal, state or local taxing authority, and all distributions under this Plan shall be subject to any such withholding or reporting requirements.

6.6. **Setoffs.**

The Debtor and the Plan Officer may, in accordance with the provisions of the Plan, Section 553 of the Bankruptcy Code and applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant to this Plan on

account of such Claim (before any distribution is made on account of such Claim), the claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Debtor-in-Possession of any such claims, rights and causes of action that the Debtor or the Debtor-in-Possession may possess against such holder; and provided further, however, that any claims of the Debtor arising before the Petition Date shall first be setoff against Claims against the Debtor arising before the Petition Date.

6.7. **Professional Fees and Expenses.** Each Professional retained with approval by order of the Bankruptcy Court or requesting compensation in the Chapter 11 Case pursuant to Sections 330 or 503(b) of the Bankruptcy Code shall be required to file an application for an allowance of final compensation and reimbursement of expenses in the Chapter 11 Case incurred through the Effective Date on or before thirty (30) days after the Effective Date. Objections to any such application shall be filed on or before a date to be set by the Bankruptcy Court in the Confirmation Order. All compensation and reimbursement of expenses allowed by the Bankruptcy Court shall be paid no later than 10 days after entry of the order allowing such fees and expenses.

6.8. **Transactions on Business Days.** If the Effective Date or any other date on which a transaction may occur under this Plan shall occur on a day that is not a Business Day, the transactions contemplated by this Plan to occur on such day shall instead occur on the next succeeding Business Day.

## ARTICLE 7.

### PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS.

7.1. **Resolution of Disputed Claims.** Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, and except as otherwise expressly provided for below, the Debtor and the Plan Officer shall each have the exclusive right (except as to applications for allowances of compensation and reimbursement of expenses under Sections 330 and 503 of the Bankruptcy Code) to make and file objections to Claims (which includes, without limitation, objections to Rejection Damages Claims filed pursuant to Section 8.3 of the Plan) and shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than thirty (30) days after the Effective Date; provided, however, that such thirty (30) day period may be automatically extended by the Debtor by the filing by the Debtor or the Plan Officer of a Notice of Extension in the Chapter 11 Case, without any further application to, or approval by, the Bankruptcy Court, for an additional thirty (30) days. Such deadline may be further extended by order of the Bankruptcy Court. From and after the Confirmation Date, subject to the Effective Date, all objections shall be litigated to a Final Order except in the event the Debtor (with the consent of the Plan Officer not to be unreasonably withheld) or the Plan Officer (with the consent of the Debtor not to be unreasonably withheld), as applicable, elects to withdraw any such objection or the Debtor (with the consent of the Plan Officer, not to be unreasonably withheld) or the Plan Officer (with the consent of the Debtor, not to be unreasonably withheld), as applicable, and the claimant elect to compromise, settle or otherwise resolve any such objection by agreement, in which event they

may settle, compromise or otherwise resolve any Disputed Claim without further notice to or approval by the Bankruptcy Court.

7.2. **Estimation.** The Debtor or the Plan Officer may, at any time request that the Bankruptcy Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code regardless of whether the Debtor has previously objected to such Claim, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to such Claim. In the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount may constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor or the Plan Officer may elect to pursue any supplemental proceedings to object to any ultimate payment of such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and not necessarily exclusive of one another. On and after the Confirmation Date, Claims which have been estimated subsequently may be compromised, settled, withdrawn or otherwise resolved without further notice to or approval by the Bankruptcy Court as provided in Section 7.1 of this Plan.

## ARTICLE 8.

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

8.1. **Procedures for Rejection of Executory Contracts and Unexpired Leases.** On the Effective Date, all executory contracts and unexpired leases that exist and have not, prior to the Effective Date, been rejected pursuant to a Final Order of the Bankruptcy Court, between the Debtor and any person, shall be deemed rejected as of the Effective Date, except for any executory contract and unexpired lease (i) assumed by the Debtor and assigned to Carmel Funding pursuant to the Sale Order, or (ii) as to which a motion for approval of the assumption or rejection of such contract or lease has been filed and served prior to the Effective Date.

8.2. **Approval of Rejection of Executory Contracts and Unexpired Leases.** Entry of the Confirmation Order shall constitute the approval, pursuant to Section 365(a) of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Section 8.1 of this Plan.

8.3. **Bar Date for Filing Rejection Damages Claims.** Rejection Damages Claims must be filed with the Bankruptcy Court **no later than the later of (i) the Bar Date, and (ii) thirty (30) days after the Effective Date.** Any Claims not filed within such applicable time periods will be forever barred from assertion against the Debtor, Debtor-in-Possession, and/or the Estate.

8.4. **Retiree Benefits.** The Debtor has never funded nor maintained any retiree benefit plans, funds or programs, as defined in Section 1114 of the Bankruptcy Code, for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise). Any such retiree benefit plans established by the Debtor prior to the Petition Date

were discretionary and never funded, and, accordingly, no such payments will be, or are required to be, made pursuant to Section 1129(a)(13) of the Bankruptcy Code.

## ARTICLE 9.

### EFFECTIVENESS OF THE PLAN.

9.1. **Conditions to the Effective Date.** The following are conditions precedent to the Effective Date of this Plan:

- (a) The Bankruptcy Court shall have entered an order confirming this Plan in form and substance satisfactory to the Debtor;
- (b) No stay of the Confirmation Order shall then be in effect;
- (c) All documents, instruments and agreements, in form and substance satisfactory to the Debtor, provided for under or necessary to implement this Plan shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived by the parties benefited thereby; and
- (d) The Debtor and the Plan Officer shall have filed a Notice of Effective Date in the Chapter 11 Case certifying that the conditions precedent have occurred or have been excused.

9.2. **Waiver of Conditions.** The Debtor may waive the conditions to effectiveness of this Plan set forth in Section 9.1 of this Plan.

## ARTICLE 10.

### EFFECT OF CONFIRMATION.

10.1. **Release of Assets.** Until the Effective Date, the Bankruptcy Court shall retain jurisdiction of the Debtor, its assets and properties. Thereafter, jurisdiction of the Bankruptcy Court shall be limited to the subject matters set forth in Article 11 of this Plan, and the Debtor shall perform and wind up its affairs as provided in this Plan.

10.2. **Binding Effect.** Except as otherwise provided in Section 1141(d)(3) of the Bankruptcy Code, on and after the Confirmation Date, and subject to the Effective Date, the provisions of this Plan shall bind any holder of a Claim against, or Equity Interests in, the Debtor and their respective heirs, successors and assigns, whether or not the Claim or Equity Interest of such holder is impaired under this Plan and whether or not such holder has accepted this Plan.

10.3. **Retained Actions.** Pursuant to Section 1123(b)(3) of the Bankruptcy Code and except as otherwise provided in this Plan, the Debtor will retain and may (but is not required to) prosecute and enforce all Causes of Action or claims arising under applicable state laws, if any, and including Causes of Action of a trustee or a debtor-in-possession under the Bankruptcy Code except those that are expressly released hereunder. Exhibit B to the Plan shall set forth, without limitation, a more detailed description of the Causes of Action. Exhibit B shall



be provided on the Exhibit Filing Date. A Cause of Action that is not listed on Exhibit B shall not be lost or waived by reason of the entry of the Confirmation Order or the occurrence of the Effective Date. All Causes of Action must be commenced on or before thirty (30) days after the Effective Date or shall be deemed abandoned.

10.4. **Debtor's Releases and Exculpation.** For the purposes of this section 10.4, "**Released Parties**" means (i) the Debtor, (ii) the Plan Officer, and (iii) each and any of their respective members, shareholders, officers, directors, employees, professionals, attorneys, advisors or agents, and each of their predecessors, successors and assigns, who are or were members, shareholders, officers, directors, employees, professionals, attorneys, advisors or agents, as the case may be, during the Chapter 11 Case.

(a) *Exculpation.* On and after the Confirmation Date, subject to the Effective Date, the Released Parties shall not have or incur any liability to any holder of a Claim or Equity Interest for (i) any act or omission in connection with, relating to, or arising out of, the Chapter 11 Case, (ii) any Tax Claim except to the extent of distributions from Available Cash, (iii) the formulation, negotiation or implementation of the Disclosure Statement or this Plan, (iv) the solicitation of acceptances of this Plan, (v) the pursuit of confirmation of this Plan, (vi) the confirmation of this Plan, (vii) on account of any transactions or relationship with the Debtor (either prior to or after the Petition Date), (viii) the consummation of this Plan or any contract, instrument, release or any other agreement or document created, or entered into, in connection with the Plan, or (ix) the administration of this Plan or the property to be distributed under this Plan; provided however that the foregoing exculpation shall not be deemed to release any liability resulting from any such Released Party's willful misconduct or gross negligence as determined by a Final Order, and, in all respects, each of the Released Parties shall be entitled to (y) rely upon the advice of counsel with respect to its duties and responsibilities during the Chapter 11 Case and under this Plan, and (z) any defense of qualified immunity that may be available under applicable law.

(b) *Debtor's Release.* Notwithstanding anything to the contrary herein, as of the Effective Date, for good, valuable and adequate consideration, the adequacy of which is hereby confirmed, including without limitation, the provision of financing to the Debtor-in-Possession, acquisition of the assets of the Debtor subject to higher and better offers, and the provision of services by the Debtor's former and present officers in administering the assets and managing the affairs of the Debtor-in-Possession, the Debtor shall be deemed to forever waive and release each of the Released Parties from any and all obligations, suits, judgments, damages, demands, debts, remedies, rights, causes of action (including avoidance actions), rights of setoff and liabilities whatsoever (including any derivative claims asserted on behalf of the Debtor) in connection with or in any way related to the Debtor, the conduct of the Debtor's business, the Chapter 11 Case, the Disclosure Statement or the Plan (other than the rights of the Debtor or the Plan Officer, or a creditor holding an Allowed Claim to enforce the obligations under the Confirmation Order and the Plan and the contracts, instruments, releases and other agreements or documents delivered thereunder),

whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise, that are based, in whole or in part, on any act, omission, transaction, event or other occurrence taking place prior to the Effective Date, provided however, this release shall not operate as a release or waiver of any causes of action or liabilities as of the Petition Date arising out of gross negligence, willful misconduct, fraud or criminal acts of any such Released Party as determined by a Final Order.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the foregoing release by the Debtor, which includes by reference each of the related provisions and definitions contained herein, and further shall constitute the Bankruptcy Court's findings that the foregoing release by the Debtor is: (i) in exchange for good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of claims released by the Debtor; (iii) in the best interests of the Debtor and all holders of Claims and Interests; (iv) fair, equitable and reasonable; (v) given and made after due notice and opportunity for hearing; and (vi) a bar to the Debtor asserting any claim or Cause of Action released pursuant to the foregoing release by the Debtor.

10.5. **Term of Injunctions or Stays.** Unless otherwise provided, all injunctions or stays provided for in the Chapter 11 Case pursuant to Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all obligations of the Debtor and the Plan Officer under the Plan have been performed and the Chapter 11 Case has been closed.

10.6. **Injunction.** On and after the Confirmation Date, subject to the Effective Date, all persons are permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively or otherwise) on account of or respecting any Claim, debt, right or Cause of Action of the Debtor for which the Debtor or the Plan Officer retains sole and exclusive authority to pursue in accordance with Section 10.3 of this Plan.

## **ARTICLE 11.**

### **RETENTION OF JURISDICTION.**

11.1. **Jurisdiction of Bankruptcy Court.** The Bankruptcy Court shall retain exclusive jurisdiction of all matters arising under, arising out of, or related to, the Chapter 11 Case and this Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code and for, among other things, the following purposes:

- (a) To hear and determine any motions for the assumption, assumption and assignment or rejection of executory contracts or unexpired leases, and the allowance of any Claims resulting therefrom;

(b) To determine any and all pending adversary proceedings, applications, and contested matters;

(c) To hear and determine any objection to, or requests for estimation of, any Claims (whether filed before or after the Effective Date), that are not otherwise settled, compromised, withdrawn or resolved as provided for in Article 7 hereof;

(d) To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;

(e) To issue such orders in aid of execution of this Plan to the extent authorized by Section 1142 of the Bankruptcy Code;

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

(g) To hear and determine all applications for compensation and reimbursement of expenses of Professionals under Sections 330, 331, and 503(b) of the Bankruptcy Code;

(h) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan and the Confirmation Order;

(i) To hear and determine matters related to the Plan Sale;

(j) To hear and determine matters concerning state, local and federal taxes in accordance with Section 346, 505 and 1146 of the Bankruptcy Code;

(k) To hear and determine all suits or adversary proceedings to recover all assets of the Debtor and property of the Estate, wherever located;

(l) To hear any other matter consistent with the provisions of the Bankruptcy Code; and

(m) To enter a final decree closing the Chapter 11 Case.

## ARTICLE 12.

### MISCELLANEOUS PROVISIONS.

12.1. **Effectuating Documents and Further Transactions.** The President, or if such person is unable or unwilling to do so, any other authorized officer of the Debtor shall be authorized to execute, deliver, file, or record such contracts, instruments, releases and other agreements or documents and take such actions on behalf of the Debtor as may be necessary or

appropriate to effectuate and further evidence the terms and conditions of this Plan, without any further action by or approval of the director of the Debtor.

12.2. **Post-Effective Date Fees and Expenses of Professionals**. On or after the Effective Date, the Debtor shall, without the necessity for any approval by the Bankruptcy Court, pay the reasonable fees and expenses of the Professionals employed by the Debtor in connection with the implementation and consummation of the Plan, the claims reconciliation process, and any other matters as to which such Professionals may be engaged.

12.3. **Payment of Statutory Fees**. All fees payable pursuant to Chapter 123 of Title 28, United States Code, as determined by the Bankruptcy Court on the Confirmation Date, shall be paid on the Distribution Date. Any statutory fees accruing after the Confirmation Date shall constitute Administrative Expense Claims and be paid in accordance with Section 2.1 of this Plan.

12.4. **Modification of Plan**. The Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan at any time prior to the entry of the Confirmation Order. After the entry of the Confirmation Order, the Debtor may, upon order of the Bankruptcy Court, amend or modify this Plan, in accordance with Section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan. A holder of an Allowed Claim or Equity Interest that is deemed to have accepted this Plan shall be deemed to have accepted this Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim or Equity Interest of such holder.

12.5. **Withdrawal or Revocation**. The Debtor may withdraw or revoke this Plan at any time prior to the Confirmation Date. If the Debtor revokes or withdraws this Plan prior to the Confirmation Date, or if the Confirmation Date does not occur, then this Plan shall be deemed null and void. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim by or against the Debtor or any other person or to prejudice in any manner the rights of the Debtor or any other person in any further proceedings involving the Debtor.

12.6. **Courts of Competent Jurisdiction**. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of this Plan, such abstention, refusal or failure of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

12.7. **Notices**. Any notices to or requests of the Debtor by parties in interest under or in connection with this Plan shall be in writing and served either by (i) certified mail, return receipt requested, postage prepaid, (ii) hand delivery, or (iii) reputable overnight delivery service, all charges prepaid, and shall be deemed to have been given when received by the following parties:

TWG CAPITAL, INC.  
7434 Shadeland Station Way  
Indianapolis, IN 46256  
Attn: Mr. Mark P. Nondorf

-and-

Mr. Mark P. Nondorf, as  
Plan Officer for TWG Capital, Inc.  
6346 Calais Drive  
Indianapolis, IN 46220

with copies to:

FAEGRE BAKER DANIELS LLP  
600 East 96th Street  
Suite 600  
Indianapolis, IN 46240  
Attn: Jay Jaffe, Esq.

12.8. **Severability.** In the event that the Bankruptcy Court determines, prior to the Confirmation Date, that any provision of this Plan is invalid, void or unenforceable, the Bankruptcy Court shall, with the consent of the Debtor, have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.


12.9. **Governing Law.** Except to the extent the Bankruptcy Code or Bankruptcy Rules are applicable, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Indiana, without giving effect to the principles of conflicts of law thereof.

12.10. **Headings.** Headings are used in this Plan for convenience and reference only, and shall not constitute a part of this Plan for any other purpose.

12.11. **Exhibits.** All Exhibits and Schedules to this Plan are incorporated into and are a part of this Plan as if set forth in full herein.

Dated: Indianapolis, Indiana  
June 12, 2013

TWG CAPITAL, INC.,  
Debtor and Debtor-in-Possession

By:   
Mark P. Nondorf, President

**EXHIBIT A**

**PLAN SALE TERM SHEET**

**(To be provided on or before the Exhibit Filing Date)**

**EXHIBIT B**

**CAUSES OF ACTION**

**(To be provided on or before the Exhibit Filing Date)**