

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 6, 2019

SPAR Group, Inc.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

0-27408
(Commission
File No.)

33-0684451
(IRS Employer
Identification No.)

333 Westchester Avenue, South Building, Suite 204, White Plains, NY

10604

(Address of Principal Executive Offices)

(Zip Code)

Registrant's telephone number, including area code: (248) 364-7727

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

| <u>Title of each class</u> | <u>Trading Symbol(s)</u> | <u>Name of each exchange on which registered</u> |
|--------------------------------|--------------------------|--|
| Common Stock, \$0.01 par value | SGRP | The NASDAQ Stock Market LLC |

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events

On August 6, 2019, SPAR Group, Inc. ("SGRP", the "Corporation" or the "Registrant"), and its subsidiaries SPAR Marketing Force, Inc., a Nevada corporation ("SMF"), and SPAR Assembly & Installation, Inc., f/k/a SPAR National Assembly Services, Inc., a Nevada corporation ("SAI", and collectively with SGRP and SMF, the "SGRP Parties"), submitted in the SBS Chapter 11 Case (as defined below) in the U.S. District for Nevada their Compromise and Settlement Agreement with SPAR Business Services, Inc., a Nevada corporation formerly known as SPAR Marketing Services, Inc., debtor and debtor-in-possession ("SBS"), and SBS, LLC, a Nevada limited liability company "SBS LLC" and together with SBS, the "SBS Parties"). SGRP and its subsidiaries may be referred to as the "Company" and file reports on a consolidated basis with the Securities and Exchange Commission ("SEC").

On August 6, 2019, with the support of (among others, the Clothier and Rodgers plaintiffs and the Company, the Court approved the Settlement Agreement and the SBS Reorganization pursuant to the SBS Plan (as all such terms are defined below).

Background: Recent Actions of the Majority Stockholders and their Control Group

The co-founders of SGRP, Mr. Robert G. Brown and Mr. William H. Bartels, are significant stockholders of SGRP. Mr. Brown was Chairman and an officer and director of SGRP through May 3, 2018 (when he retired), and Mr. Bartels is Vice Chairman and a director and officer of SGRP. Together Mr. Brown and Mr. Bartels (the "Majority Stockholders") beneficially own, as a group, a total of approximately 57.6% (or 12.0 million shares) of SGRP's common stock (the "SGRP Common Stock"). On June 1, 2018, June 29, 2018, July 5, 2018, August 6, 2018 and January 25, 2019, the Majority Stockholders each filed an amended Schedule 13D with the SEC, in which they each acknowledged that they "may be deemed to comprise a "group" within the meaning of [the Securities Exchange Act of 1934]" and "may act in concert with respect to certain matters", including various listed items. See Note 8 to the Company's Consolidated Financial Statements - *Commitments and Contingencies -- Related Parties and Related Party Litigation* and *SBS Bankruptcy*, in SGRP's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019.

The Company executes its domestic field services through the services of field merchandising, auditing, assembly and other field personnel (each a "Field Specialist"), substantially all of whom are provided to the Company and engaged by independent third parties and located, scheduled, deployed and administered domestically through the services of local, regional, district and other personnel (each a "Field Administrator"), and substantially all of the Field Administrators are in turn employed and supplied by other independent third parties. The Company believes that high quality Field Administrator performances are essential to the effective delivery and performance of their services by the Field Specialists.

SBS provided the services of Field Specialists from time to time to the SMF and SAI, and SBS is an affiliate of and related party to the Company, but SBS is not under the control of or part of the consolidated Company and has not provided services or been a vendor to the Company Parties since August 2018 (when SBS' termination by the Company took effect). SBS is an affiliate of and a related party to the Company because it is owned by an entity owned and controlled by Robert G. Brown and prior to December 2018 was owned by Robert G. Brown and William H. Bartels.

SPAR Administrative Services, Inc. ("SAS"), provided under contract the services of Field Administrators from time to time to SMF and SAI, and SAS is an affiliate of and related party to the Company, but SAS is not under the control or part of the consolidated Company and has not provided services or been a vendor to the SGRP Parties since August 2018 (when SAS' termination by the Company took effect). SAS is an affiliate of and a related party to the Company because it is owned by William H. Bartels and entities owned and controlled by family members of Robert G. Brown and prior to January 1, 2015, was owned by Robert G. Brown and William H. Bartels.

In terminating SBS and SAS and engaging a new independent vendor to provide the same services, the Company has saved approximately \$900,000 per year. For services previously provided by SBS and SAS to SMF and SAI, see Note 5 to the Company's Consolidated Financial Statements - *Related Party Transactions -- Domestic Related Party Services*, in SGRP's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019.

SBS Bankruptcy

The Company received no services from SBS after the Company's termination of SBS' services took effect in August 2018. Furthermore, even though SBS was solely responsible for its operations, methods and legal compliance, SBS continued to claim that the Company was somehow liable to reimburse SBS for its expenses in those proceedings. The Company does not believe there is any basis for such claims and would defend them vigorously. The Company anticipated that SBS would use every available means to attempt to collect reimbursement from the Company for the foreseeable future for all of its post-termination expense and other claims ("SBS Claims").

On November 23, 2018, SBS petitioned for bankruptcy protection under chapter 11 of the United States Bankruptcy Code in the U.S. District for Nevada (the "SBS Chapter 11 Case"), so the pre-petition claims of SBS' creditors then had to be made in the SBS Chapter 11 Case. See Note 8 to the Company's Consolidated Financial Statements - *Commitments and Contingencies -- SBS Bankruptcy*, in SGRP's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019.

Accordingly, the Company's management ("Management") recommended, and the Audit Committee agreed, that it would be in the best interest of all stockholders of the Company to submit the SGRP and SMF claims against SBS in the SBS Chapter 11 Case in order to preserve their value (including as an offset against the SBS Claims), particularly since those claims against SBS exceed amounts potentially owed to SBS.

A review of SBS' previous filings in the SBS Chapter 11 Case shows that SBS has listed the Company as a contingent, unliquidated, disputed creditor, but in its most recently filed amended reorganization plan in the SBS Chapter 11 Case, SBS reflected an unspecified receivable in the amount of \$300,000 due from the Company, which alleged claim was to be excluded from the assets available to creditors and retained by SBS to pursue after plan confirmation.

On March 18, 2019, the Company filed claims in the SBS Chapter 11 Case seeking reimbursement for \$378,838 for SMF's funding of the Affinity Security Deposits and \$12,963 for SMF's funding of the field payment checks that would have otherwise bounced, and \$1,839,459 for indemnification of SGRP for the Clothier settlement (see below) and legal costs and an unspecified amount for indemnification of SGRP for the Hogan action (see Note 8 to the Company's Consolidated Financial Statements, *Commitments and Contingencies - Legal Matters - SBS Clothier Litigation*, below) in SGRP's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019, and other to be discovered and identified claims (the "SGRP Claims").

Settlement Agreement

Management recommended, and the Audit Committee agreed, that it would be in the best interest of all stockholders to oppose SBS's proposed reorganization unless a reasonable settlement could be reached, and that any settlement should include a reasonable disposition of the SGRP Claims and mutual releases of all other claims. After extensive negotiation between the SBS Parties and the SGRP Parties, the SBS Parties and the SGRP Parties entered into the Compromise and Settlement Agreement dated as of July 26, 2019, and signed and released over the succeeding weekend (the "Settlement Agreement").

The Settlement Agreement provides for a mutual release of claims (including the SBS Claims and the SGRP Claims), except for the following:

- (i) Subject to plan confirmation, SBS will pay to the applicable SGRP Parties the SGRP Claims (before discount, \$2,231,260) discounted to their pro rata share (among all creditors of the same class) of the New Value Contribution (after discount, est. \$111,563) and of the Settlement Contribution in twenty-four (24) equal monthly amounts (after discount, , est. \$61,370), starting January 2020 and without any interest (collectively, the "Discounted Claim Payments").
- (ii) SMF will pay to SBS the Proven Unpaid A/R upon its determination (as described below).

In the Settlement Agreement, the parties agreed to have Rehmann Robison, a financial and accounting services firm, independently determine, based on parameters set forth in the Settlement Agreement: (i) whether SMF paid all amounts for allowable reimbursable expenses (net of all applicable credits) that were properly invoiced to SMF and the amounts of allowable reimbursable expenses that (x) were paid to vendors for expenses by SBS in 2018 for allowable reimbursable expenses (net of all applicable credits) and not paid to SBS by SMF and (y) should have been invoiced but were not invoiced to SMF and (ii) the amount put into the SBS payroll accounts, including the payments for the amounts due to SBS for the independent contractors ("IC's") (which, following the 2017 methodology of the SBS controller, includes both the net amount to be paid by SBS to the IC's and the amount to be withheld by SBS from the payments to the IC's for workman's compensation and liability insurance), plus the mark-up of 2.9638% to SBS for 2018. Rehmann Robison will use the parameters identified in Schedule 3(c) [t]hereto. See Note 5 to the Company's Consolidated Financial Statements - *Related Party Transactions – Domestic Related Party Services*, in SGRP's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019. To the extent Rehmann Robison determines that any such net allowable reimbursable expenses were not paid and are still owed to SBS ("Proven Unpaid AR"), the parties will accept the determination of Rehmann Robison as final and binding.

In the Settlement Agreement, the SGRP Parties agreed to withdraw their opposition to the SBS reorganization and vote in favor of SBS' First Amended Chapter 11 Plan of Reorganization, as amended by the Settlement Agreement (the "SBS Plan").

The Company believes the financial impact of the Settlement Agreement is immaterial since the SGRP Claims already have been all expensed or reserved, and there can be no assurance that the Discounted Claim Payments will ever be received by the Company (particularly if the reorganized SBS business does not succeed). However, the Company believes that the mutual releases in the Settlement Agreement provide valuable relief from potential future claims and litigation by SBS respecting the Company's past involvement with SBS.

SBS Reorganization

The SBS Plan generally does not describe the intended business of how, or manner in which, SBS intends to operate after its reorganization (if approved) (the "SBS Reorganization"). Those descriptions are contained in various disclosure documents, the most recent of which is Robert G. Brown's sworn Declaration of Robert G. Brown In Support of Debtor's Brief In Support Of Confirmation Of First Amended Chapter 11 Plan Of Reorganization And Final Approval Of Accompanying Disclosure Statement; And Omnibus Reply To Objections dated July 29, 2019 (the "Declaration").

On August 6, 2019, with the support of (among others, the Clothier and Rodgers plaintiffs and the Company, the Court approved the Settlement Agreement and the SBS Reorganization pursuant to the SBS Plan.

In paragraphs 4 and 15 of his Declaration cited below, Robert G. Brown, under penalty of perjury, described key elements of his plan for the intended business of how, and manner in which, SBS intends to operate after the SBS Reorganization.

Potential Competition from and Confusion respecting SBS

" 4. Business segment. SBS is a business to business company using Independent Contractors ("IC's"). The SBS services are referred to as merchandising and the IC's, merchandisers. SGRP was a customer of SBS obtaining clients (e.g., *Client names omitted by the Company due to SGRP's confidentiality obligations to such Clients*) and then SGRP subcontracted client work to SBS. SGRP as the customer was responsible for administrating the IC's (which they did through SPAR Administrative Services, Inc. ("SAS") instead of hiring their own employees), handling payroll, obtaining clients, providing working capital and recruiting merchandisers. SBS will continue to provide the services SBS offered to SGRP and SBS's customers will be responsible for what SGRP was responsible for."

The Declaration indicates that SBS' clients will provide their own Field Administrators to schedule and administer the SBS' Field Specialists, but does not specify who would provide the Field Administrators to SBS' clients if not internally provided by the client. Internal provision by the ultimate clients of Field Administrators was not SBS' previous model and is not industry practice. The Company believes that SAS has had no Field Administrators since August 2018 and was not named by SBS as a possible supplier. However, SAS is a member of Affinity Insurance Ltd. ("Affinity"), while SBS is not an Affinity member, and the Declaration implies that the necessary workers compensation and liability insurance will be provided by SBS through SAS and Affinity to SBS' Field Specialists, which may put the Affinity security deposit repayments owed to SMF by SAS at further risk. See Note 5 to the Company's Consolidated Financial Statements - *Related Party Transactions – Affinity Insurance*, in SGRP's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019.

Assuming SBS is successful in its business model (as to which the Company expresses no opinion), SBS will likely be competing (at least in part) with the Company respecting (i) the provision of field merchandising services directly to the Company's clients and (ii) the provision of Field Specialists to competitors of the Company to use in the provision of field merchandising services in competition against the Company.

SBS has the unlimited right to use the SPAR name in the United States under a perpetual royalty free license, whether or not in competition with the Company. See Note 5 to the Company's Consolidated Financial Statements - *Related Party Transactions – Other Related Party Transactions and Arrangements*, in SGRP's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019.

Assuming SBS continues to use the SPAR name in its reorganized business (and the Company believes it will do so), there will be great potential for confusion with the services marketed and provided by the Company's domestic subsidiary "SPAR Marketing Force, Inc." In at least 40 places in the Declaration, Mr. Brown implies a relationship with the SPAR Group (SGRP) or its people, know how or technology. This potential for confusion will be even greater if any of SBS' directors are involved with SBS (see below) after its reorganization.

Potential Involvement of SGRP Directors in Reorganized SBS

15. Management. In addition to me (who will work without compensation) SBS will work with experienced executives in IT, sales, field operations and administration for a share of profits and/or equity. These include Brown, Pat Franco, Bill Bartels, Peter Brown and the others with similar experience. Franco has over 30 years' experience in technology and merchandising. . . . Bartels is Vice Chairman and most senior sales person at SGRP responsible for over 70% of the current SGRP US revenue from clients and acquisitions. Bartels will help with the initial customer contacts while keeping the SGRP board fully apprised of his work and the work of SBS. Peter Brown worked for SPAR Administrative Service for a number of years and negotiated the acquisition of a subsidiary in Brazil for SGRP which is now SGRP's biggest international subsidiary. He is on the board of SPAR Brazil LLC, SGRP and Affinity insurance company. All management have agreed to work for equity or a share of the profits and PM AM is included in the budget.

In an email to William H. Bartels and Peter Brown, James R. Segreto, the Company's Chief Financial Officer, asked each of them if either would have any involvement with the reorganized SBS, as sworn by Robert G. Brown in the Declaration.

Bartels responded as follows:

- I have no ownership in SBS or any related party.
- I am not receiving and will not receive any salary, sales commission, or finder's fee from or share of sales, revenues or profits of SBS or any related party.
- "I do not consider myself part of SBS "management team". "
- "I don't believe anything above is in conflict with the statements made by [Robert G.] Brown."
- "In my view my potential involvement was supplying a list for initial customer."
- "Being fully aware of my fiduciary responsibilities to SGRP I will always act in the best interest of all SGRP shareholders."

Peter Brown responded:

- "I am not going to be attempting to represent the accuracy of Bob's statement in any way and will not respond to Jim at this time."
- "I will serve all SGRP shareholders to the best of my ability."

Accordingly, the Company believes that Mr. Bartels does not intend to be directly involved with the reorganized SBS. It is unclear how much involvement his Company, SAS, will have with the reorganized SBS.

Peter Brown has not disclaimed any involvement with the reorganized SBS.

Outside counsel have advised that any involvement with SBS by any SGRP director may be a violation of Delaware law and SGRP's Ethics Code, could put SGRP at substantial risk for liability for future potential SBS litigation, and could possibly make SGRP a liability shield for SBS, which involvement they advised was very unlikely to benefit the Company and all its shareholders.

The order confirming the SBS Plan expressly preserves the Companies rights as follows: "The SGRP Stipulations do not seek Bankruptcy Court's approval of, and the parties thereto have not agreed to, any direct or indirect waiver or violation of any applicable State or Federal Law or the governing documents, codes or policies of any entity party to the SGRP Stipulations."

In Summary:

The Company and certain other significant SBS creditors have settled and agreed to vote (and on August 6, 2019, voted) in favor of the SBS Plan to enable SBS to independently operate its reorganized business, but according to the SBS Plan and disclosure documents, none are taking any equity in SBS or providing any financing or credit to SBS. A vote in favor of the SBS Plan was not a vote to support any of the SBS business plan specifics or to change or waive any of the governing documents or policies of SGRP or any other party.

SBS is not and will never be part of the Company, the Company will never in any way use or support (financially or otherwise) SBS' reorganized business, and the Company will caution its clients and others accordingly.

The Company believes SBS will continue to imply a connection either through use of the SPAR name and or common management or affiliations, potentially leading SBS' customers, Field Specialists, and governmental regulators to wrongly look to the Company to fulfill unsatisfied SBS liabilities. This risk increases as SBS becomes more unsuccessful in its reorganized business (as to which the Company expresses no opinion). The Company had been named in numerous prior proceedings involving SBS because of (among other things) the common use of the name "SPAR". Although defensible on the merits (since there is no legal connection), correcting these matters could consume significant management time, working capital and other Company resources and negatively impact the Company's client relationships and business reputation.

Non-Settled Matters:

The Settlement Agreement and its releases are limited to the SBS matters described therein and subject to specific exclusions. Accordingly, there remain a number of unresolved claims and actions (each a "Non-Settled Matter") between the Company and SAS and SPAR Infotech, Inc. (including the lawsuit and other claims against the Company), and the claims, rights and liabilities of Robert G. Brown and William H Bartels respecting the Company. Please see Part II, Item IA - *Risk Factors - Dependence Upon and Cost of Services Provided by Affiliates and Use of Independent Contractors, Risk Factors - Risks Related to the Company's Significant Stockholders: Potential Voting Control and Conflicts*, and Note 9 to the Company's Condensed Consolidated Financial Statements – *Commitments and Contingencies -- Legal Matters*, in the Corporation's Quarterly Report on Form 10-Q as filed with the SEC on May 15, 2019, the Corporation's Current Report on Form 8-K as filed with the SEC on September 28, 2018, the Corporation's Current Report on Form 8-K as filed with the SEC on December 4, 2018.

Forward Looking Statements

This Current Report on Form 8-K and the Exhibits filed herewith (this "Current Report"), contain "forward-looking statements" within the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, made by, or respecting, SGRP and its subsidiaries (together with SGRP, the "SPAR Group" or the "Company"), and this Current Report has been filed by SGRP with the SEC. "Forward-looking statements" are defined in Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and other applicable federal and state securities laws, rules and regulations, as amended (together with the Securities Act and Exchange Act, the "Securities Laws").

All statements (other than those that are purely historical) are forward-looking statements. Words such as "may," "will," "expect," "intend," "believe," "estimate," "anticipate," "continue," "plan," "project," or the negative of these terms or other similar expressions also identify forward-looking statements. Forward-looking statements made by the Company in this Current Report may include (without limitation) statements regarding: risks, uncertainties, cautions, circumstances and other factors ("Risks"); and plans, intentions, expectations, guidance or other information respecting the potential negative effects of the Settlement, the SBS Plan or SBS Reorganization, any future litigation by or conflicts with SBS, SAS, Infotech, any other affiliate or any of the Majority Stockholders, the Company's failure to comply with any Nasdaq Rule in the future, or the pursuit or achievement of the Company's five corporate objectives (growth, customer value, employee development, greater productivity & efficiency, and increased earnings per share), building upon the Company's strong foundation, leveraging compatible global opportunities, growing the Company's client base and contracts, continuing to strengthen its balance sheet, growing revenues and improving profitability through organic growth, new business development and strategic acquisitions, and continuing to control costs.

You should carefully review and consider the Company's forward-looking statements (including all risk factors and other cautions and uncertainties) and other information made, contained or noted in or incorporated by reference into this Current Report, but you should not place undue reliance on any of them. The results, actions, levels of activity, performance, achievements or condition of the Company (including its affiliates, assets, business, clients, capital, cash flow, credit, expenses, financial condition, income, liabilities, liquidity, locations, marketing, operations, performance, prospects, sales, strategies, taxation or other achievement, results, risks, trends or condition) and other events and circumstances planned, intended, anticipated, estimated or otherwise expected by the Company (collectively, "Expectations"), and our forward-looking statements (including all Risks) and other information reflect the Company's current views about future events and circumstances. Although the Company believes those Expectations and views are reasonable, the results, actions, levels of activity, performance, achievements or condition of the Company or other events and circumstances may differ materially from our Expectations and views, and they cannot be assured or guaranteed by the Company, since they are subject to Risks and other assumptions, changes in circumstances and unpredictable events (many of which are beyond the Company's control). In addition, new Risks arise from time to time, and it is impossible for the Company to predict these matters or how they may arise or affect the Company. Accordingly, the Company cannot assure you that its Expectations will be achieved in whole or in part, that it has identified all potential Risks, or that it can successfully avoid or mitigate such Risks in whole or in part, any of which could be significant and materially adverse to the Company and the value of your investment in the Company's Common Stock.

These forward-looking statements reflect the Company's Expectations, views, Risks and assumptions only as of the date of this Current Report, and the Company does not intend, assume any obligation, or promise to publicly update or revise any forward-looking statements (including any Risks or Expectations) or other information (in whole or in part), whether as a result of new information, new or worsening Risks or uncertainties, changed circumstances, future events, recognition, or otherwise.

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement, as the same may be supplemented, modified, amended or restated from time to time in the manner provided herein (this "Agreement") is made this 26th day of July, 2019, by and between SPAR Business Services, Inc., a Nevada corporation formerly known as SPAR Marketing Services, Inc., debtor and debtor-in-possession ("SBS"); SBS, LLC, a Nevada limited liability company "SBS LLC" and together with SBS, the "SBS Parties"; SPAR Marketing Force, Inc., a Nevada corporation ("SMF"); SPAR Assembly & Installation f/k/a SPAR National Assembly Services, Inc., a Nevada corporation ("SAI"); and SPAR Group, Inc., a Delaware corporation ("SGRP", and collectively with SMF, SAI, the "SGRP Parties"). Each of the foregoing entities is a "Party", and are collectively defined herein as the "Parties". This Agreement is based on the following Recitals:

RECITALS

A. SBS filed its voluntary petition in the United States Bankruptcy Court for the District of Nevada, commencing Case No. 18-16974-abl (the "Reorganization Case") on November 23, 2018.

B. The deadline for filing non-governmental proofs of claim was March 27, 2019.

C. SGRP filed Proof of Claim No. 6 on March 18, 2019; Claim No. 9 on March 22, 2019; and Claim No. 10 on March 22, 2019 (collectively the "SGRP Proofs of Claim").

D. SMF filed Proof of Claim No. 4 on March 18, 2019, which was amended on March 22, 2019; and Claim No. 5 on March 18, 2019 (collectively the "SMF Proofs of Claim" and collectively with the SGRP Proofs of Claim, the "Proofs of Claim").

E. On June 7, 2019, SBS filed *Debtor's First Amended Chapter 11 Plan of Reorganization* [ECF No. 162] with appendix and exhibits in the Reorganization Case (the "Plan").

F. The *Disclosure Statement to Accompany Debtor's First Amended Chapter 11 Plan of Reorganization* [ECF No. 163] ("the Disclosure Statement") lists an alleged \$300,000 receivable owed to SBS by SMF (the "A/R Claim").

G. The final hearing to approve the Disclosure Statement and confirm the Plan are set for July 29, 2019 at 9 a.m. ("Confirmation Hearing").

H. SBS has asserted other claims against one or more of the SGRP Released Parties, as defined below ("Other Claims").

I. The Parties desire to resolve their differences on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree, subject only to entry of the Approval Order (defined below) as follows in this Agreement:

1. Required Bankruptcy Court Approval; Voting.

a. Within one (1) business day following the date of the Parties' execution and delivery of this Agreement (the "Execution Date"), SBS shall file an amendment to the Plan in the form attached as **Exhibit 1** modifying the treatment of SGRP and SMF and incorporating the terms of this Agreement into the Plan ("Plan Amendment") and (ii) SBS (with the support of SGRP) shall file a motion ("Settlement Motion") with the Bankruptcy Court, in form reasonably acceptable to each of the Parties, seeking the entry of an order in the form attached as **Exhibit 2** ("Approval Order"), approving this Agreement pursuant to section 105(a) of the Bankruptcy Code and Rule 9019 of the Federal Rules of Bankruptcy Procedure. The prosecution of the Settlement Motion and attainment of the Approval Order are independent from SBS efforts to have the Disclosure Statement approved and Plan confirmed at the Confirmation Hearing, except as otherwise expressly stated herein (regarding balloting, etc.)

- b. The SGRP Parties (i) will vote in favor the Plan, as amended by the Plan Amendment, (ii) will support the Plan, as amended by the Plan Amendment, (iii) will not oppose the Plan, as amended by the Plan Amendment, and (iv) will not support any plan in the Reorganization Case that does not incorporate the terms of this Agreement as the such plan's treatment of the claims/Claims and Proofs of Claim with respect to the Parties.
- c. The SBS Parties (i) will support the Plan, as amended by the Plan Amendment, (ii) will not oppose the Plan, as amended by the Plan Amendment, and (iv) will not support any plan in the Reorganization Case that does not incorporate the terms of this Agreement as the such plan's treatment of the claims/Claims and Proofs of Claim with respect to the Parties.

2. Amendment of Plan Treatment to SGRP Claims. The Approval Order shall provide that the treatment of the Proofs of Claim pursuant to Section 3.3.6 of the Plan shall be amended to provide that the payments due to the SGRP parties under the Plan will be paid in twenty-four (24) equal monthly amounts starting January 2020, and without any interest.

3. Mutual Releases. Subject to the entry of the Approval Order, the Parties each covenant and agree:

- a) Subject to the terms and provisions of this Agreement, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the SBS Parties, for themselves and on behalf of each of the SBS Released Parties (defined below) to the greatest extent the SBS Parties may lawfully do so on their behalf, and their respective, successors, assigns and legal representatives (hereinafter collectively referred to as the "SBS Releasing Parties") hereby irrevocably and unconditionally remise, release, and forever discharge the SGRP Parties and each of their holding companies, members, successors, predecessors, direct and indirect subsidiaries, past and present shareholders, officers, directors, agents, representatives, attorneys, employees, subsidiaries, successors, assigns and other representatives (hereinafter collectively referred to as the "SGRP Released Parties") of and from all debts, demands, actions, causes of action, suits, accounts, contracts, agreements, and damages in any and all claims, counterclaims, demands, and liabilities whatsoever of every kind, nature, and description whatsoever, whether known or unknown, whether in law, equity or otherwise, whether based in tort, contract, or any other theory of recovery (including, but without limitation, claims for losses, expenses, reimbursements, taxes, withholdings, fines, lost profits, and any incidental, consequential, compensatory, and punitive damages) (collectively "SBS Parties' Claims"), which the SBS Releasing Parties now have, or ever did have, or may every have against the SGRP Released Parties relating to or arising from any business or other activity of SBS (including any SBS Releasing Parties' claims, including any claim brought against any SBS Releasing Party relating to or arising from the business or other activities of SBS) or any communications, discussions, services, and/or agreements relating to the same, from the beginning of the world until the date hereof, and any later Claims arising in respect of any circumstances occurring or existing (in whole or part) on or before the date hereof (collectively, the "SBS Released Matters").

The foregoing release and waiver of claims shall be governed and construed in accordance with the laws of the State of Nevada. Each of the SBS Parties specifically represents that (i) it has executed this instrument of its own free will and intends to be bound by its terms; (ii) that it has read and understands the provisions of this release; (iii) that it voluntarily signs same for the purpose of making a full and final settlement of all SBS Parties' Claims and causes of action against the SGRP Released Parties with respect to the SBS Released Matters; (iv) that it is the intention of such SBS Releasing Party that this release be a complete and total release of any and all SBS Parties' Claims by such SBS Releasing Party relating to or arising from the SBS Released Matters notwithstanding any Party's actual or alleged fault, misconduct, negligence, knowledge, acquiescence, participation, involvement, co or joint employer status, etc.; and (v) that it has reviewed same with counsel of its choosing, and that it is not relying upon any representation of law or fact set forth by any of the SGRP Released Parties or the SGRP Released Parties' counsel.

SBS Released Matters include (without limitation) any SBS Parties' Claims respecting any of the following:

- (i) Any alleged or other liability or obligation of any SGRP Released Party to any of the SBS Releasing Parties, including those for the A/R Claim (other than the Proven Unpaid AR (defined below)), the Other Claims and any and all other unpaid fees, expense reimbursements or other amounts;
- (ii) Any alleged or other liability or obligation of any of the SBS Releasing Parties to any authority or other third party;
- (iii) Any actual or alleged responsibility for any operations, actions or omissions, governance, management, finance, methods or business legal compliance or non-compliance of any of the SBS Releasing Parties (whether or not any SGRP Party is alleged to or may be a co- or joint employer);
- (iv) Any actual or alleged miss-classification of any independent contractor engaged or administered by any of the SBS Releasing Parties (whether or not any SGRP Party is alleged to or may be a co- or joint employer);

- (v) Any other actual or alleged legal compliance or non-compliance by any of the SBS Releasing Parties (whether or not the SGRP is alleged to or may be a co- or joint employer);
- (vi) Any claim or proceeding against, by or involving any of the SBS Releasing Parties;
- (vii) Any Claims or losses by any of the SBS Releasing Parties or sought from the SBS Releasing Parties or any other related party by any authority or other third party;
- (viii) Any actual or alleged legal compliance or non-compliance of any the SBS Releasing Parties;
- (ix) Any demand for collateral, premiums or other payments by Affinity Insurance Ltd (“Affinity”) or any creditor of any of the SBS Releasing Parties (including all Affinity Amounts (defined below));
- (x) Any Claim for fees, compensation, benefits or reimbursement by any of the SBS Releasing Parties; or
- (xi) Any Claim or related losses, expenses, reimbursements, taxes, withholdings, fines, lost profits, and any incidental, consequential, compensatory, and punitive damages of any of the SBS Releasing Parties relating to any of the foregoing;

For clarity, the SGRP Released Parties do not include any of the SBS Released Parties and the SBS Released Parties do not include any of the SGRP Released Parties.

Notwithstanding the above, the Proven Unpaid AR (defined below) is specifically excluded from the SBS Released Matters and is payable solely as and to the extent provided in subsection (c) of this Section 3 below in this Agreement.

- b) Subject to the terms and provisions of this Agreement and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the SGRP Parties, for themselves and on behalf of each of the SGRP Released Parties to the greatest extent the SGRP Parties may lawfully do so on their behalf, and their respective, successors, assigns and legal representatives (hereinafter collectively referred to as the “SGRP Releasing Parties”) hereby irrevocably and unconditionally remise, release, and forever discharge the SBS Parties and each of their respective holding companies, members, successors, predecessors, direct and indirect subsidiaries past and present shareholders, officers, directors, agents, representatives, attorneys, employees, successors, assigns and other representatives (hereinafter collectively referred to as the “SBS Released Parties”) of and from all debts, demands, actions, causes of action, suits, accounts, contracts, agreements, and damages in any and all claims, counterclaims, demands, and liabilities whatsoever of every kind, nature, and description whatsoever, whether known or unknown, whether in law, equity or otherwise, whether based in tort, contract, or any other theory of recovery (including, but without limitation, claims for expenses, reimbursements, taxes, withholdings, fines, lost profits, and incidental, consequential, compensatory, and punitive damages), (“SGRP Parties’ Claims”), which the SGRP Releasing Parties now have, or ever did have, or may have, against the SBS Released Parties relating to or arising from any activity of SBS or any communications, discussions, services, and/or agreements relating to the same, from the beginning of the world until the date hereof , and any later Claims arising in respect of any circumstances occurring or existing (in whole or part) on or before the date hereof (collectively, the “SGRP Released Matters”).

The foregoing release and waiver of claims shall be governed and construed in accordance with the laws of the State of Nevada. Each of the SGRP Releasing Parties specifically represents that (i) it has executed this instrument of its own free will and intends to be bound by its terms; (ii) that it has read and understands the provisions of this release; (iii) that it voluntarily signs same for the purpose of making a full and final settlement of all SGRP Parties' Claims and causes of action against the SBS Released Parties with respect to the SGRP Released Matters; (iv) that it is the intention of such SGRP Releasing Parties that this release be a complete and total release of any and all SGRP Parties' Claims by such SGRP Releasing Party relating to or arising from the SGRP Released Matters notwithstanding any Party's actual or alleged fault, misconduct, negligence, knowledge, acquiescence, participation, involvement, co or joint employer status, etc.; and (v) that it has reviewed same with counsel of its choosing, and that it is not relying upon any representation of law or fact set forth by any of the SBS Released Parties or the SBS Released Parties' counsel.

Notwithstanding the above, the Proofs of Claim are specifically excluded from the SGRP Released Matters and the Approval Order shall allow the SGRP Proofs of Claim in the aggregate amount of \$1,839,458.82 and the SMF Proofs of Claim in the aggregate amount of \$391,800.94.

- c) With respect to the A/R Claim, the Parties have agreed to have Rehmann Robison independently determine: (i) whether SMF paid all amounts for allowable reimbursable expenses (net of all applicable credits) that were properly invoiced to SMF and the amounts of allowable reimbursable expenses that (x) were paid to vendors for expenses by SBS in 2018 for allowable reimbursable expenses (net of all applicable credits) and not paid to SBS by SMF and (z) should have been invoiced but were not invoiced to SMF and ii) the amount put into the SBS payroll accounts including the payments for the amounts due to SBS for the independent contractors ("IC's") (which, following the 2017 methodology of the SBS controller, includes both the net amount to be paid by SBS to the IC's and the amount to be withheld by SBS from the payments to the IC's for workman's compensation and liability insurance) plus the mark-up of 2.9638% to SBS for 2018. Rehmann Robison will use the parameters identified in **Schedule 3(c)** hereto. To the extent Rehmann Robison determines that any such net allowable reimbursable expenses were not paid and are still owed to SBS ("Proven Unpaid AR"), the Parties will accept the determination of Rehmann Robison as final and binding. SMF will pay the Proven Unpaid A/R, if any, to SBS.

d) The Parties agree that the SGRP Parties have and had no responsibility to fund any Affinity assessment, security deposit, premium or other amount respecting any SBS Affinity insurance coverages after November 30, 2014 ("Affinity Amounts") other than any amounts already paid.

4. Conditions to Effectiveness. Except as to Section 1(a), 1(b), and 1(c) of this Agreement, the Parties' agreements as embodied and set forth in this Agreement shall be subject to the satisfaction (or waiver, in accordance with the terms hereof) of the following conditions (the date of the satisfaction and/or waiver in writing of the conditions stated herein shall be defined as the "Effective Date"):

a) The Bankruptcy Court shall have issued and entered the Approval Order (or such other order of the Bankruptcy Court as may be in form and substance reasonably acceptable to SBS Parties and the SGRP Parties), which shall not be the subject of a stay.

5. Representations and Warranties. Each Party represents and warrants to the other Party that the following statements are true and correct with respect to such Party as of the date hereof and as of the Effective Date:

a) Power, Authority and Authorization. Subject to the entry of the Approval Order (in the case of SBS), each Party has the requisite power and corporate, limited liability company, limited partnership or similar authority to enter into this Agreement and perform all of the obligations under this Agreement, and the execution, delivery and performance of this Agreement by such Party has been duly authorized by all necessary corporate, limited liability company, limited partnership or similar action on the part of such Party, and the person executing this Agreement on behalf of such Party is duly authorized to do so and thereby bind that Party.

b) No Conflicts. Subject to the entry of the Approval Order (in the case of SBS), the execution, delivery and performance of this Agreement by such Party does not and shall not (i) violate any provision of law, rule or regulation applicable to it or its organizational documents or (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, any material contractual obligations to which it is a party or under its organizational documents.

c) Binding Obligation. Subject to the entry of the Approval Order (in the case of SBS), this Agreement is a legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws, both foreign and domestic, relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

d) No Transfer of Claims. Subject to the entry of the Approval Order (in the case of SBS), it has not transferred, sold or assigned any claims described in this agreement to be released by it under this agreement.

e) Ownership. SBS, LLC owns all of the shares of and other equity interests in SBS. Robert G. Brown owns all of the membership interests of and other equity interests in SBS, LLC.

6. Incorporation into Plans of Reorganization. This Agreement shall be incorporated in all plans of reorganization proposed or supported by any of the SBS Parties in the Reorganization Case.

7. Effect of Conversion or Dismissal. Provided that the Approval Order has been entered, any order converting to another chapter of the bankruptcy code or dismissing the Reorganization Case shall expressly provide that the Approval Order survives such conversion or dismissal.

8. Further Assurances. From and after the Execution Date, each Party shall act reasonably and in good faith to (a) seek entry by the Bankruptcy Court of the Approval Order and any other required approvals by the Bankruptcy Court of this Agreement and the transactions contemplated hereby, and (b) take all actions necessary to consummate this Agreement and the transactions contemplated hereby in accordance with its terms and to promptly execute and deliver any and all such further instruments and documents and to take all such further actions as may be reasonably required by the Parties to effectuate the terms and conditions of this Agreement and the Approval Order (or such other order of the Bankruptcy Court as may be in form and substance acceptable to each of the Parties), before or after the Effective Date; provided, however, no such instrument, document or other action need be executed, delivered or taken if it imposes any material liability or obligation on any Party not expressly contemplated by this Agreement.

9. Miscellaneous.

a) No Waiver. Each of the Parties hereto acknowledges and agrees that neither (i) a Party's executing and delivering of this Agreement, or (ii) any omission or delay in the exercise of any one or more of such Party's remedies under contract or applicable law shall operate as a waiver of any of its rights or remedies, it being expressly understood and agreed that any such waiver(s) may only occur in accordance with the terms of a written document executed and delivered by the Parties hereto.

b) Severability. Any determination that any provision of this Agreement or any application thereof is invalid, illegal, or unenforceable in any respect in any instance shall not affect the validity, legality, or enforceability of such provision in any other instance, or the validity, legality, or enforceability of any other provision of this Agreement.

c) No Modification; Amendment. No modification, amendment, or waiver of any provision of this Agreement or of any provision of any other agreement between the SBS Parties and the SGRP Parties shall be effective unless executed in writing by the Party to be charged with such modification, amendment and waiver.

d) Governing Law. All rights and obligations under this Agreement, including matters of construction, validity, and performance, shall be governed by and construed in accordance with the internal laws of the State of Nevada and without regard to any provision thereof that would defer to the substantive laws of any other jurisdiction.

e) No Third-Party Beneficiaries. No person other than a Party hereto is intended to be a beneficiary hereof, and no person other than a Party hereto shall be authorized to rely upon or enforce the contents of this Agreement; provided, however, upon entry of the Approval Order and the occurrence of the Effective Date the provisions of this Agreement may be relied upon by Debtor's estate, the SGRP Released Parties, and the SBS Released Parties.

f) Counterparts. It is the intention of the Parties hereto that this Agreement and any amendment may be executed in any number of counterparts (including by facsimile or e-mail transmission of an adobe file format document (also known as a PDF file)), and by the different Parties hereto on the same or separate counterparts, each of which shall be deemed to be an original instrument but all of which together shall constitute one and the same agreement.

g) Advice of Counsel. Each Party represents and warrants that (1) it has, in fact, reviewed this entire Agreement and its exhibit, including each and every one of its terms, conditions, provisions, and limitations, with independent counsel of its own choosing; (2) it has been fully and completely advised of its rights in connection with entering into this Agreement; and (3) it voluntarily, knowingly, and without duress enters into this Agreement as a complete, final, and binding resolution of the matters that are the subject of this Agreement.

h) Construction. This Agreement shall be interpreted in accordance with the fair meaning of its language and to implement the intent of the Parties. No Party or its attorneys shall be deemed to be the drafter of this Agreement for purposes of interpreting or construing any of the provisions of this Agreement. Without limiting the foregoing, no statutory or other rule of interpretation shall be used based on the identity, or supposed identity, of the drafter of this Agreement.

i) Titles and Captions. The Parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend, or describe the scope of this Agreement or the intent of the Parties in including any particular provision in this Agreement.

j) Disputes; Submission to Jurisdiction. In the event that there is a dispute or breach of the terms of this Agreement, each Party consents and submits to the exclusive jurisdiction of the Bankruptcy Court for the adjudication of such disputes, for so long as the Reorganization Case remains pending, and thereafter, such dispute shall be brought exclusively in courts located in Clark County, Nevada.

k) Notices. Any demand upon or notice to any Party may give shall be effective when delivered by hand, mail or overnight courier, to the following addresses:

If to **SPAR Business Services, Inc.**

To: 7711 Military Trail West, Ste. 1000
West Palm Beach, FL 33410

With copy to:

Matthew C. Zirzow, Esq.
Larson Zirzow Kaplan
850 E. Bonneville Ave.
Las Vegas, NV 89101

If to **SBS, LLC**

To:

3773 Howard Hughes Pkwy., Ste. 500S
Las Vegas, NV 89169-6014

If to **SPAR Marketing Force, Inc., SPAR Assembly & Installation f/k/a Spar National Assembly Services, Inc. or SPAR Group, Inc.**

To: Lawrence David Swift, Esq.
90 Highland Lane
Irvington, NY 10533

With copy to:

William M. Noall, Esq.
Garman Turner Gordon LLP
650 White Drive, Suite 100
Las Vegas, NV 89119

1) Successors and Assigns. This Agreement shall be binding upon each Party their respective successors, assigns and legal representatives, and shall inure to the benefit of and be enforceable by each Party and its successors, assigns and legal representatives. No Party shall assign this Agreement or any of its rights or obligations hereunder without the written consent of the other Party.

m) No Other Promises. Each Party acknowledges and agrees that, in entering into this Agreement, it has not directly or indirectly received or acted or relied upon any representation, warranty, promise, assurance or other agreement, understanding or information (whether written, electronic, oral, express, implied or otherwise) from or on behalf of the other Party, any of its subsidiaries or affiliates, or any of their respective directors (whether individually or as a chairman, board or committee), officers, employees or other representatives, respecting any of the matters contained in this Agreement, and the provisions expressly incorporated therein except for those expressly set forth therein.

n) Entire Agreement. This Agreement, contains the entire agreement and understanding of the Parties and supersede and completely replace all prior and other representations, warranties, promises, assurances and other agreements, understandings and information (including any terms, offer, response or proposal), whether written, electronic, oral, express, implied or otherwise, from a Party or between them respecting the matters contained in this Agreement.

[Remainder of Page Intentionally Left Blank]

[Signatures Appear Next Page]

WHEREFORE, the Parties hereto have caused this Agreement to be duly executed as of the date first written above.

| | |
|---|--|
| SPAR BUSINESS SERVICES, INC. By: _____ Print: _____ Title: _____ | SPAR GROUP, INC. By: _____ Print: _____ Title: _____ |
| SBS, LLC, in its capacity as a direct or indirect owner or member By: _____ Print: _____ Title: _____ | SPAR ASSEMBLY & INSTALLATION F/K/A SPAR NATIONAL ASSEMBLY SERVICES, INC. By: _____ Print: _____ Title: _____ |
| | SPAR MARKETING FORCE, INC. By: _____ Print: _____ Title: _____ |

Exhibit 99.2

1 LARSON ZIRZOW & KAPLAN, LLC
 2 ZACHARIAH LARSON, ESQ.
 Nevada Bar No. 7787
 E-mail: zlarson@lzklegal.com
 3 MATTHEW C. ZIRZOW, ESQ.
 Nevada Bar No. 7222
 E-mail: mzirzow@lzklegal.com
 4 850 E. Bonneville Ave.
 Las Vegas, Nevada 89101
 5 Tel: (702) 382-1170
 6 Fax: (702) 382-1169
 7

8 Attorneys for Debtor

9
 10 **UNITED STATES BANKRUPTCY COURT**
DISTRICT OF NEVADA

11 In re:
 12 SPAR BUSINESS SERVICES, INC.,
 13
 14 Debtor.

Case No.: BK-S-18-16974-abl
 Chapter 11

Confirmation Hearing:
 Date: August 6, 2019
 Time: 9:30 a.m.

15
 16 **DEBTOR'S FIRST AMENDED CHAPTER 11**
 17 **PLAN OF REORGANIZATION, AS MODIFIED**
 18
 19
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 21
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 23
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 25
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 27
 28

LARSON ZIRZOW & KAPLAN, LLC
 850 E. Bonneville Ave.
 Las Vegas, Nevada 89101
 Tel: (702) 382-1170 Fax: (702) 382-1169

1 **1.1.34 File.** To file with the Bankruptcy Court in the Chapter 11 Case.

2 **1.1.35 Final Decree.** An order of the Bankruptcy Court closing the Chapter 11
3 Case pursuant to section 350 of the Bankruptcy Code.

4 **1.1.36 Final Order.** An order, judgment or other decree of the Bankruptcy Court
5 and entered on the docket of such court: (a) that has not been reversed, stayed, modified,
6 amended, revoked, varied or set aside, and as to which (i) any right to appeal or seek
7 certiorari, review, stay or rehearing has been waived, or (ii) the time to appeal or seek
8 certiorari, review, stay or rehearing has expired and no appeal or petition for certiorari,
9 review, stay or rehearing is pending; or (b) as to which an appeal has been taken or petition
10 for certiorari, review, stay or rehearing has been filed, and (i) such appeal or petition for
11 certiorari, review, stay or rehearing has been resolved by the highest court to which the
12 order or judgment was appealed or from which certiorari, review, stay or rehearing was
13 sought, and (ii) the time to appeal further or seek certiorari, review, stay or rehearing has
14 been waived or expired and no such further appeal or petition for certiorari, review, stay or
15 rehearing is pending; *provided, however*, that no order or judgment shall fail to be a "Final
16 Order" hereunder solely because of the possibility that a motion pursuant to sections 502(j)
17 or 1144 of the Bankruptcy Code, Rule 59 or 60 of the Federal Rules of Civil Procedure or
18 Bankruptcy Rule 9024 may be Filed with respect to such order or judgment.

19 **1.1.37 General Unsecured Claim.** A Claim that is not secured by a charge against
20 or interest in property in which the Estate has an interest and is not an unclassified Claim,
21 Administrative Claim, Secured Claim, Priority Tax Claim, Priority Non-Tax Claim, or
22 Litigation Claimants. General Unsecured Claims shall also include all Claims arising
23 under section 502(g) of the Bankruptcy Code.

24 **1.1.38 Holder.** Any Person holding a Claim against the Debtor.

25 **1.1.39 Impaired.** Means impairment within the meaning of section 1124 of the
26 Bankruptcy Code.

27 **1.1.40 Insider.** Shall include any person having such meaning as set forth in
28 section 101(31) of the Bankruptcy Code.

1.1.41 Lien. A charge against or interest in property to secure payment of a debt
or performance of an obligation.

1.1.42 Litigation Claimants. All Holders of claims arising out of or related to
any pending or threatened litigation or arbitration proceedings against the Debtor, and
including the following: (a) the claims of Melissa Clothier and similarly situated plaintiffs
in the litigation pending in the Superior Court for the State of California, Alameda County,
Case No. RG12 639317, and asserted in the Debtor's Chapter 11 Case as Proof of Claim
No. 7; (b) the claims of Maceo Rogers and all of those similarly situated plaintiffs in a class
action pending in the U.S. District Court for the Southern District of Texas, Galveston,
Case No. 3:14-CV-00055, and asserted in the Debtor's Chapter 11 Case as Proof of Claim
No. 12; (c) the claims of Spar Marketing Force and Spar Group Inc. asserted in the Debtor's
Chapter 11 Case as Proofs of Claim Nos. 4, 5, 6, 9 and 10.

1.1.43 Other Secured Claims. Any Allowed Secured Claim other than the

1 Secured Claim of The Westchester Bank in Class 1 of this Plan.

2 **1.1.44 Person.** Any individual, corporation, partnership, limited liability
3 company, joint venture, association, trust or organization, unincorporated organization or
4 government, governmental agency, governmental unit or political subdivision, or any other
5 entity.

6 **1.1.45 Petition Date.** November 23, 2018, the date on which the Debtor filed its
7 voluntary petition for relief under chapter 11 of the Bankruptcy Code thereby commencing
8 the Chapter 11 Case.

9 **1.1.46 Plan.** This chapter 11 plan of reorganization, including all documents
10 referenced herein and all exhibits, supplements, appendices and schedules hereto or
11 thereto, either in its present form or as the same may be altered, amended or modified from
12 time to time pursuant to the Bankruptcy Code or Final Order.

13 **1.1.47 Plan Amendments.** Shall include, collectively: (a) the Settlement
14 Agreement referenced in Section 3.3.6.3 and attached as **Exhibit 3**; (b) the Stipulation to
15 Modify Debtor's First Amended Chapter 11 Plan of Reorganization Re: Melissa Clothier
16 and the Certified Class attached as **Exhibit 4**; and (c) the Stipulation to Modify Debtor's
17 First Amended Chapter 11 Plan of Reorganization Re: Rodgers Collective attached as
18 **Exhibit 5**.

19 **1.1.48 Priority Non-Tax Claim.** Any Claim, other than an Administrative Claim
20 or Priority Tax Claim, that is entitled to priority under section 507(a) of the Bankruptcy
21 Code.

22 **1.1.49 Priority Tax Claims.** Any Claim that is entitled to priority under sections
23 502(i) or 507(a)(8) of the Bankruptcy Code.

24 **1.1.50 Professional.** A Person: (a) employed pursuant to a Bankruptcy Court
25 order in accordance with sections 327, 328 and/or 1103 of the Bankruptcy Code and to be
26 compensated for services rendered prior to or on the Effective Date, pursuant to sections
27 327, 328, 329, 330, or 331 of the Bankruptcy Code; or (b) awarded compensation and
28 reimbursement by the Bankruptcy Court, pursuant to section 503(b) of the Bankruptcy
Code.

1.1.51 Professional Fees. All reasonable fees and expenses incurred by
Professionals and allowed by the Bankruptcy Court.

1.1.52 Professional Fee Claim. Any Claim for compensation or reimbursement
of fees and expenses as may be requested by a Professional to the extent such Professional
is required to apply to the Bankruptcy Court for payment of such Claim pursuant to sections
326, 327, 328, 330 or 331 of the Bankruptcy Code and the terms of the Plan.

1.1.53 Proof of Claim. A Proof of Claim Filed against the Debtor in the Chapter
11 Case.

1.1.54 Pro Rata. With respect to an amount of Cash or other consideration to be
paid or distributed on a particular date to a Holder of an Allowed Claim, that such

1 Distribution shall be made in accordance with the ratio, as of such date, of the amount such
2 Allowed Claim is to the aggregate of the amounts of Claims in the Class to which such
3 Allowed Claim belongs.

4 **1.1.55 Reorganized Debtor.** The Debtor, or any successor thereto, as reorganized
5 debtor pursuant to the Plan on or after the Effective Date.

6 **1.1.56 Representatives.** With respect to a given Person, its past and current direc-
7 tors, officers, shareholders, managers, members, partners, employees, agents, attorneys,
8 professionals, contractors and other representatives.

9 **1.1.57 Schedules.** The schedules of assets and liabilities, the list of Holders of
10 Interests and the statements of financial affairs Filed by the Debtor under section 521 of
11 the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments and modifications
12 thereto through the Confirmation Date.

13 **1.1.58 Secured.** When referring to a Claim: (a) secured by a Lien on property in
14 which the Estate have an interest, which Lien is valid, perfected, and enforceable pursuant
15 to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff
16 pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's
17 interest in the Estate's interest in such property or to the extent of the amount subject to
18 setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or
19 (b) Allowed pursuant to the Plan as a secured Claim.

20 **1.1.59 Unexpired Lease.** A lease of non-residential real property to which the
21 Debtor is a party that is subject to assumption or rejection pursuant to section 365 of the
22 Bankruptcy Code.

23 **1.1.60 Unimpaired.** With respect to a Claims or Interest, leaving unaltered the
24 legal, equitable, and contractual rights to which such Claim or Interest entitles the Holder
25 of such Claim or Interest.

26 **1.1.61 Unsecured Claim.** Any Claim that is neither Secured nor entitled to
27 priority under the Bankruptcy Code or any order of the Bankruptcy Court as a Priority Tax
28 Claim or Priority Non-Tax Claim.

1.1.62 U.S. Trustee Fees. Any fees payable pursuant to 28 U.S.C. § 1930.

1.2 Computation of Time. In computing any period of time prescribed or allowed by the
Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

1.3 Rules of Interpretation. Any term used in the Plan that is not defined in the Plan,
either in this Article or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules,
has the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules. For
purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in
the singular or the plural, shall include both the singular and the plural; (b) any reference in the
Plan to an existing document, schedule, or exhibit Filed or to be Filed means such document,
schedule, or exhibit, as it may have been or may be amended, modified, or supplemented as of the
Confirmation Date in accordance with the terms hereof; (c) unless otherwise specified in a
particular reference, all references in the Plan to Sections, Articles, and exhibits are references to

1 Sections, Articles, and exhibits of or to the Plan; (d) the words “herein”, “hereof”, “hereto”,
2 “hereunder”, and others of similar import refer to the Plan in its entirety rather than to only a
3 particular portion of the Plan; (e) the word “all” shall mean “any and all;” (f) captions and headings
4 to Articles and Sections are inserted for convenience of reference only and are not intended to be
5 a part of or to affect the interpretations of the Plan; (g) the rules of construction set forth in section
6 102 of the Bankruptcy Code shall apply, including that the terms “includes,” “shall include,” and
7 “including” are not limiting; (h) reference to a pleading, request, or document being “Filed” means
8 duly and properly filed with the Bankruptcy Court as reflected on the docket of the Bankruptcy
9 Court; (i) all exhibits and schedules to the Plan, including without limitation the Plan Amendments,
10 are incorporated into the Plan, and shall be deemed to be included in the Plan, regardless of when
11 they are Filed, and to the extent the Plan is inconsistent with the Plan Amendments, the terms of
12 the Plan Amendments shall control; (j) any service or notice provided for in the Plan shall be
13 provided at the addresses specified herein; (k) except to the extent that the Bankruptcy Code or
14 other federal law is applicable, or to the extent the exhibits provide otherwise, the rights, duties
15 and obligations under the Plan shall be governed, construed and enforced in accordance with the
16 laws of the State of Nevada; and (l) to the extent a reference or description in the Disclosure
17 Statement is inconsistent with the terms or conditions of the Plan, the terms and conditions of the
18 Plan, as applicable, shall govern over the reference contained in the Disclosure Statement.

11 **1.4 Exhibits and Plan Schedules.** All exhibits and schedules attached to the Plan are
12 incorporated into and are a part of the Plan as if set forth in full herein.

13 **2. TREATMENT OF UNCLASSIFIED CLAIMS**

14 **2.1 Treatment of Administrative Claims.**

15 **2.1.1 Generally.** Each Allowed Administrative Claim shall be paid by the
16 Reorganized Debtor (or otherwise satisfied in accordance with its terms) upon the latest of:
17 (i) such date as may be fixed by the Bankruptcy Court, or as soon thereafter as practicable;
18 (ii) the fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter
19 as practicable; or (iii) such date as the holder of such Claim and, prior to the Effective Date,
20 the Debtor, and after the Effective Date, the Reorganized Debtor, shall agree upon. The
21 Debtor or the Reorganized Debtor, as the case may be, reserves any and all defenses or
22 offsets to challenge any Administrative Claims. Holders of Administrative Claims are not
23 entitled to vote on confirmation of the Plan.

24 **2.1.2 Requests for Payment.** All requests for payment of Administrative Claims
25 against the Debtor and all final applications for allowance and disbursement of Professional
26 Fees must be filed by the Administrative Claims Bar Date or the Holders thereof shall be
27 forever barred from asserting such Administrative Claims against the Debtor and the
28 Reorganized Debtor. All Professional Fees applications must be in compliance with all of
the terms and provisions of any applicable order of the Bankruptcy Court, including the
Confirmation Order, and all other orders governing payment of Professional Fees. Unless
otherwise ordered by the Bankruptcy Court, from and after the Effective Date, no
professional shall be required to file fee applications with the Bankruptcy Court and the
Reorganized Debtor may pay all professionals in the ordinary course for fees and expenses
incurred after the Effective Date.

2.2 Priority Tax Claims. Each Allowed Priority Tax Claim, if any, will be paid in full

1 by the Reorganized Debtor on the later of: (i) the fourteenth (14th) Business Day after
2 the date on which an order allowing such Claim becomes a Final Order; or (ii) such
3 other time as is agreed to by the holder of such Claim and the Debtor prior to the
Effective Date or the Reorganized Debtor after the Effective Date. Holders of Priority
Tax Claims are not entitled to vote on confirmation of the Plan.

4 **3. DESIGNATION OF CLASSES OF CLAIMS.**

5 **3.1 Overview.** Pursuant to the Plan and in accordance with section 1123(a)(1) of the
6 Bankruptcy Code, all Claims of Creditors (except Administrative Claims and Priority Tax Claims)
7 are placed in the Classes described below. A Claim is classified in a particular Class only to the
8 extent that the Claim qualifies within the description of that Class and is classified in other Classes
9 only to the extent that any remainder of the Claim qualifies within the description of such other
10 Classes. A Claim is also classified in a particular Class only to the extent that such Claim is an
11 Allowed Claim in that Class and has not been paid, released, or otherwise satisfied prior to the
Effective Date. With respect to Classes of Claims described as Unimpaired under the Plan, except
as otherwise provided under the Plan, nothing shall affect the rights and legal and equitable
defenses of the Debtor and the Reorganized Debtor regarding such Claims classified as
Unimpaired under the Plan, including but not limited to, all rights in respect of legal and equitable
defenses to setoff or recoupment against such Claims.

12 **3.2 Summary of Classification.**

| <u>Class</u> | <u>Description</u> | <u>Treatment</u> |
|--------------|------------------------------------|---------------------------------------|
| Class 1 | The Westchester Bank Secured Claim | Impaired. Solicitation required. |
| Class 2 | Other Secured Claims | Unimpaired. No solicitation required. |
| Class 3 | Priority Non-Tax Claims | Unimpaired. No solicitation required. |
| Class 4 | Litigation Claimant Claims | Impaired. Solicitation required. |
| Class 5 | General Unsecured Claims | Impaired. Solicitation required. |
| Class 6 | Equity Securities | Unimpaired. No solicitation required. |

13 **3.3.3 Class 1: The Westchester Bank Secured Claim.**

14 **3.3.3.1 Claims in Class.** Class 1 consists of the Allowed Secured Claim of The
15 Westchester Bank secured in substantially all of the Debtor's personal property.

16 **3.3.3.2 Treatment.** Except to the extent that the Holder of a Class 1 Claim agrees
17 to a less favorable treatment, the Secured Claim of The Westchester Bank shall be satisfied
18 by equal monthly payments in the amount of \$8,622.03 per month made by the first
19 business day of each and every month starting in the month following the Effective Date
20 and continuing for each and every month thereafter for a period of sixty (60) months in
21 total, with an additional balloon payment of any remaining balance due, inclusive of all
22 interest, reasonable attorney's fees and costs, on the first business day of the month
23 following that 60-month period, pursuant to the Amortization Schedule attached as **Exhibit**
24 **1**. The Secured Claim of the Westchester Bank shall continue to accrue interest at the rate
25 of 5.5% per annum from and after the Effective Date. The Westchester Bank shall further
26 retain any and all Liens in and to its Collateral and its Claim to the extent provided in its
27 pre-petition loan and security documents. Further, nothing herein is intended or should be
28

1 construed as impairing the personal guarantys that The Westchester Bank has for its loan
2 as of the Petition Date, which shall continue in full force and effect. The Debtor further
3 retains the option to pre-pay the Secured Claim of The Westchester Bank in full without
4 prepayment penalty at any time.

5 **3.3.3.3 Impairment and Voting.** Class 1 is Impaired. The Holder of Allowed
6 Class 1 Bank Secured Claim is entitled to vote to accept or reject the Plan.

7 **3.3.4 Class 2: Other Secured Claims.**

8 **3.3.4.1 Claims in Class.** Class 2 consists of any Allowed Other Secured Claims.

9 **3.3.4.2 Treatment.** Except to the extent that a Creditor with an Allowed Other
10 Secured Claim agrees to less favorable treatment, each holder of an Other Secured Claim
11 shall be considered to be in its own separate subclass within Class 2 and each such subclass
12 shall be deemed to be a separate Class for purposes of the Plan. Except to the extent that
13 the holder of an Allowed Claim in Class 2 agrees to less favorable treatment, each holder
14 of an Allowed Claim in Class 2 shall be satisfied by, at the option of the Debtor: (i) payment
15 in Cash by the Debtor in full on the later of the Effective Date and the date such Claim
16 becomes Allowed, or as soon thereafter as is practicable; (ii) the sale or disposition
17 proceeds of the Collateral securing such Allowed Claim to the extent of the value of the
18 Collateral securing such Allowed Claim; (iii) surrender to the holder of such Allowed
19 Claim of the Collateral securing such Allowed Claim; or (iv) such treatment that leaves
20 unaltered the legal, equitable, and contractual rights to which the holder of the Allowed
21 Claim is entitled. In the event an Allowed Claim in Class 2 is treated under clause (i) or
22 (ii) above, the Liens securing such Claim shall be deemed released and extinguished
23 without further order of the Bankruptcy Court.

24 **3.3.4.3 Impairment and Voting.** Creditors in Class 2 are Unimpaired under the
25 Plan. Holders of Allowed Class 2 Claims are not entitled to vote to accept or reject the
26 Plan.

27 **3.3.5 Class 3: Priority Non-Tax Claims.**

28 **3.3.5.1 Claims in Class.** Class 3 consists of all Priority Non-Tax Claims.

3.3.5.2 Treatment. Except to the extent that a Creditor with an Allowed Priority
Non-Tax Claim agreed to less favorable treatment, each Allowed Priority Non-Tax Claim
shall be paid in full by the Reorganized Debtor upon the latest of: (i) the first Business Day
after the Effective Date; (ii) such date as may be fixed by the Bankruptcy Court; (iii) the
fourteenth (14th) Business Day after such Claim is Allowed, or as soon thereafter as
practicable; or (iv) such date as the holder of such Claim and, prior to the Effective Date,
the Debtor, and after the Effective Date, the Reorganized Debtor, shall agree.

3.3.5.3 Interest. Each Holder of a Priority Non-Tax Claim shall also receive on
account of such Holder's Allowed Priority Non-Tax Claim payment of postpetition interest
calculated at the Federal Judgment Rate unless there is an applicable contractual interest
rate, in which case interest shall be paid at the contractual interest rate so long as (i) a
contractual interest rate was set forth in a timely filed proof of claim or (ii) the Holder of
such Claim provides written notice of such contractual interest rate to the Debtor's counsel

1 on or before the Effective Date, and subject to the Debtor's and any other Person's right to
2 verify or object to the existence of the asserted contractual rate of interest.

3 **3.3.5.4 Impairment and Voting.** Creditors in Class 3 are Unimpaired under the
4 Plan. Holders of Allowed Class 3 Claims are not entitled to vote to accept or reject the
5 Plan.

6 **3.3.6 Class 4: Litigation Claimant Claims.**

7 **3.3.6.1 Claims in Class.** Class 4 consists of the Allowed Claims of the Litigation
8 Claimants against the Debtor.

9 **3.3.6.2 Treatment.** Except to the extent that the Litigation Claimants agree to less
10 favorable treatment, and subject fully to the terms and conditions of the Plan Amendments,
11 the Holders of Class 4 Allowed Litigation Claimant Claims will receive the following in
12 full and final satisfaction of their Allowed Claim: (a) payment of their Pro Rata share of
13 the New Value Contribution immediately on the Effective Date; (b) payment of their Pro
14 Rata share of the Settlement Contribution in equal quarterly installments over a five (5)
15 year period, together with interest on such sums at the Federal Judgment Rate, commencing
16 by December 15, 2019 and continuing by the following March 15, June 15, September 15,
17 and December 15 of each and every year thereafter until their Pro Rata share of the
18 Settlement Contribution is paid in full. The Debtor is entitled to pre-pay any balances
19 owing to the Holders of Class 4 Claim in its sole and absolute discretion without any
20 prepayment penalty.

21 **3.3.6.3 Specific Treatment of SMF and SGRP.** Notwithstanding section 3.3.6.2
22 of the Plan, the Claims of SPAR Marketing Force, Inc. ("SMF") and SPAR Group, Inc.
23 ("SGRP"), shall be treated as set forth pursuant to that certain Compromise and Settlement
24 Agreement (the "Settlement Agreement") dated July 25, 2019 by and between the Debtor,
25 SBS, LLC, a Nevada limited liability company, and SGRP, SMF, and SPAR Assembly
26 and Installation f/k/a SPAR National Assembly Service, Inc. The Settlement Agreement
27 and its terms are incorporated into the Plan in their entirety by this reference. A true and
28 correct copy of the Settlement Agreement is attached hereto as Exhibit 1-A and is
incorporated herein by this reference.

SMF's Proofs of Claim filed March 18, 2019, denominated as Claim Nos. 4 and 5
in the Chapter 11 Case, in the amounts of \$12,962.84 and \$378,838.10, respectively (the
"SMF Proofs of Claim"), shall be deemed Allowed Claims in the amounts set forth therein.
SGRP's Proofs of Claim filed March 18, 2019, denominated Claim Nos. 6, 9, and 10 in the
Chapter 11 Case, in the amounts of \$1,839,458.82, \$1.00, and \$1.00, respectively (the
"SGRP Proofs of Claim"), shall be deemed Allowed Claims in the aggregate amount of
\$1,839,458.82. SGRP's and SMF's Allowed Claims shall be treated as follows: Payment
to SGRP and SMF of their pro rata share of the New Value Contribution and the Settlement
Contribution shall be made in twenty-four (24) equal monthly installments commencing
on January 1, 2020 (without interest). The Debtor is entitled to prepay any balance due and
owing on the SGRP and SMF Allowed Claims in its sole discretion without any
prepayment penalty.

3.3.6.4 Impairment and Voting. Class 4 is Impaired under the Plan. Holders of

1 Allowed Class 4 Claims are entitled to vote to accept or reject the Plan.

2 **3.3.7 Class 5: General Unsecured Claims.**

3 **3.3.7.1 Claims in Class.** Class 5 consists of Allowed General Unsecured Claims
4 against the Debtor.

5 **3.3.7.2 Treatment.** Except to the extent that the Holder of a Class 5 Claim agrees
6 to less favorable treatment, Holders of Class 5 Allowed General Unsecured Claims shall
7 receive, in full and final satisfaction of their Allowed Claims: (a) payment of their Pro
8 Rata share of the New Value Contribution immediately on the Effective Date; (b) payment
9 of their Pro Rata share of the Settlement Contribution in full on June 15, 2020. The Debtor
10 is entitled to pre-pay and balances owing to the Holders of Class 5 Claims in its sole and
11 absolute discretion any without prepayment penalty.

12 **3.3.7.3 Impairment and Voting.** Class 5 is Impaired under the Plan. Holders of
13 Class 5 Claims are entitled to vote to accept or reject the Plan.

14 **3.8 Class 6: Equity Securities.**

15 **3.8.1 Claims in Class.** Class 6 consists of the holders of Equity Securities in the
16 Debtor.

17 **3.8.2 Treatment.** The Holders of Equity Securities shall retain their interests in
18 the Debtor.

19 **3.8.3 Impairment and Voting.** Class 6 is Unimpaired under the Plan. Holders
20 of Class 6 Equity Securities are not entitled to vote to accept or reject the Plan.

21 **3.9 Elimination of Vacant Classes.** Any Class of Claims that is not occupied as of
22 the date of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim
23 temporarily Allowed under Bankruptcy Rule 3018 shall be deemed eliminated from the Plan for
24 purposes of voting to accept or reject the Plan and for purposes of determining acceptance or
25 rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

26 **4. PLAN IMPLEMENTATION**

27 **4.1 Plan Implementation Occurring on Effective Date.** On the Effective Date,
28 without any further action by the Debtor or the Reorganized Debtor, all of the Debtor's Assets
shall vest in the Reorganized Debtor, subject to the terms and conditions of the Plan.

4.2 Reorganized Debtor. On and after the Effective Date, the Reorganized Debtor
shall retain all licenses necessary to its operations that existed as of the Petition Date.

4.3 Notice of Effectiveness. When all of the steps contemplated by Section 6.1 have
been completed, the Reorganized Debtor shall file with the Bankruptcy Court and serve upon all
Creditors and all potential holders of Administrative Claims known to the Reorganized Debtor
(whether or not disputed), a Notice of Effective Date of Plan. The Notice of Effective Date of Plan
shall include notice of the Administrative Claim Bar Date.

1 **4.4 Operations and Management of Reorganized Debtor.** From the Effective Date,
2 the Reorganized Debtor, by and through its sole officer and director, Robert Brown, shall continue
3 to operate any business and manage any property, with full authority to make all decisions and
4 take all actions to effectuate the Plan.

5 **4.5 Source of Payments and Distributions.** Payments and distributions under the
6 Plan will be funded by the following:

7 **4.5.1 New Value Contribution.** By the Debtor from a new value contribution of
8 cash to be funded by the Debtor's owner, SBS, LLC, in the amount of the sum of five
9 percent (5%) of the aggregate total amount of all Allowed Claims in Class 4 (Litigation
10 Claimant Claims) and all Allowed Claims in Class 5 (General Unsecured Claims) (the
11 "New Value Contribution").

12 **4.5.2 Settlement Contribution.** By the Debtor from future receipts generated
13 from the operation of the reorganized business or further infusions from SBS, LLC, in the
14 total amount of at least \$323,000.00, or such other and higher amount as the Court may
15 determine at the Confirmation Hearing as the sum of the fair liquidation value of all of the
16 following: (i) the Debtor's unencumbered personal property (per the Liquidation Analysis);
17 (ii) potential Avoidance Actions under chapter 5 of the Bankruptcy Code owned or
18 controlled by the Debtor's bankruptcy estate; (iii) \$10,000.00, but less all of the following:
19 (i) the anticipated amount of the chapter 7 trustee's commission pursuant to section 326 of
20 the Bankruptcy Code in a theoretical chapter 7 as calculated on the total value of all assets
21 available for liquidation; (ii) the anticipated fees and costs of a chapter 7 trustee and its
22 professionals in a theoretical chapter 7; (iii) any allowed administrative claims, including
23 without limitation of the Debtor's professionals from the Chapter 11 Case; (iv) any
24 Allowed Priority Tax Claims and Allowed Priority Non-Tax Claims (collectively, the
25 "Settlement Contribution").

26 **4.6 Final Decree.** Notwithstanding otherwise applicable law, the Chapter 11 Case
27 shall be closed and a Final Decree entered as soon as possible after the occurrence of the Effective
28 Date, unless and until: (a) all adversary proceedings and contested matters pending before the
Bankruptcy Court have been resolved by a Final Order; and (c) all Claims have either: (i) become
Allowed Claims and payments have begun in accordance with the treatment to be given such
Allowed Claim pursuant to the Plan; (ii) been disallowed by a Final Order or deemed to be a
Disallowed Claim, in accordance with the terms of the Plan; (iii) been assumed by the Debtor, or
(iv) reinstated.

29 **4.7 Effectuating Documents, Further Transactions.** On and after the Effective
30 Date, the Debtor is authorized to and may issue, execute, deliver, file, or record such contracts,
31 securities, instruments, releases, and other agreements or documents and take such actions as may
32 be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions
33 of the Plan in the name of and on behalf of the Debtor, as applicable, without the need for any
34 approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

35 **5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

36 **5.1 Executory Contracts and Unexpired Leases.** Except for Executory Contracts
37 and Unexpired Leases specifically addressed in the Plan or set forth on the schedule of Assumed
38

1 Executory Contracts and Unexpired Leases attached as Schedule 5.1 hereto (which may be
2 supplemented and amended up to the date the Bankruptcy Court enters the Confirmation Order
3 and thereafter pursuant to Section 5.3 of the Plan), all Executory Contracts and Unexpired Leases
4 that exist on the Confirmation Date shall be deemed rejected by the Reorganized Debtor on the
5 Effective Date.

6 **5.2 Approval of Assumption or Rejection.** Entry of the Confirmation Order shall
7 constitute as of the Effective Date: (i) approval, pursuant to section 365(a) of the Bankruptcy Code,
8 of the assumption by the Debtor of each Executory Contract and Unexpired Lease to which the
9 Debtor are a party and which is listed on Schedule 5.1, not otherwise provided for in the Plan and
10 neither assumed, assumed and assigned, nor rejected by separate order prior to the Effective Date;
11 and (ii) assumption by the Debtor of each Executory Contract and Unexpired Lease to which the
12 Debtor are a party listed on Schedule 5.1. Upon the Effective Date, each counter party to an
13 assumed Executory Contract or Unexpired Lease listed shall be deemed to have consented to
14 assumption contemplated by section 365(c)(1)(B) of the Bankruptcy Code, to the extent such
15 consent is necessary for such assumption. To the extent applicable, all Executory Contracts or
16 Unexpired Leases of the Reorganized Debtor assumed pursuant to this Section 5 shall be deemed
17 modified such that the transactions contemplated by the Plan shall not be a "change of control,"
18 however such term may be defined in the relevant Executory Contract or Unexpired Lease and any
19 required consent under any such Executory Contract or Unexpired Lease shall be deemed satisfied
20 by the Confirmation of the Plan. Also, to the extent applicable, all Executory Contracts or
21 Unexpired Leases of the Debtor assumed pursuant to this Section 5 shall be assigned to the
22 Reorganized Debtor on the Effective Date, and such assignment shall not be a "change of control,"
23 however such term may be defined in the relevant Executory Contract or Unexpired Lease, and
24 any required consent under any such Executory Contract or Unexpired Lease shall be deemed
25 satisfied by the Confirmation of the Plan.

26 **5.3 Cure of Defaults.** The Debtor or the Reorganized Debtor shall Cure any defaults
27 respecting each Executory Contract or Unexpired Lease assumed pursuant to this Section 5 upon
28 the latest of (i) the Effective Date or as soon thereafter as practicable; (ii) such date as may be fixed
by the Bankruptcy Court or agreed upon by the Debtor, and after the Effective Date, the
Reorganized Debtor; or (iii) the first Business Day following the fourteenth (14th) day after the
entry of a Final Order resolving any dispute regarding (a) a Cure amount; (b) the ability of the
Debtor or the Reorganized Debtor to provide adequate assurance of future performance under the
Executory Contract or Unexpired Lease assumed pursuant to the Plan in accordance with section
365(b)(1) of the Bankruptcy Code; *provided, however*, that upon resolution of a dispute over a
Cure amount, the Reorganized Debtor may reject the Executory Contract or Unexpired Lease
notwithstanding a previous listing as assumed; or (c) any other disputed matter pertaining to
assumption, assignment or the Cure of a particular Executory Contract or an Unexpired Lease.
Schedule 5.1 to the Plan lists the Debtor's proposed Cure amounts, if any, that will be paid as
provided for above, which may be amended up to and including the commencement of the
Confirmation Hearing.

5.4 Objection to Cure Amounts. Any party to an Executory Contract or Unexpired
Lease who objects to the Cure amounts listed on Schedule 5.1 to the Plan must file and serve an
objection on the Debtor's counsel no later than the deadline set by the Bankruptcy Court for filing
Plan objections. Failure to file and serve a timely objection shall be deemed consent to the Cure
amounts listed on Schedule 5.1. Any Cure amounts shall be the responsibility of the Reorganized
Debtor. If there is a dispute regarding: (i) the amount of any Cure payment; (ii) the ability of the

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1 Reorganized Debtor to provide "adequate assurance of future performance" under the Executory
2 Contract or Unexpired Lease to be assumed or assigned; or (iii) any other matter pertaining to
3 assumption, the Cure payments required by section 365(b)(1) of the Bankruptcy Code will be made
4 following the entry of a Final Order resolving the dispute and approving the assumption, except
5 as provided in Section 5.1 of the Plan.

6 **5.5 Confirmation Order.** The Confirmation Order will constitute an order of the
7 Bankruptcy Court approving the assumptions and rejections described in this Section 5 of the Plan,
8 pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. Notwithstanding the
9 foregoing, if, as of the date the Bankruptcy Court enters the Confirmation Order, there is pending
10 before the Bankruptcy Court a dispute concerning the cure amount or adequate assurance for any
11 particular Executory Contract or Unexpired Lease (or if the time period for a non-debtor to object
12 to the Cure has not yet lapsed), the assumption of such Executory Contract or Unexpired Lease
13 shall be effective as of the date the Bankruptcy Court enters an order resolving any such dispute
14 and authorizing assumption by the Debtor.

15 **5.6 Post-Petition Date Contracts and Leases.** Each such Executory Contract and
16 Unexpired Lease shall be performed by the Debtor or the Reorganized Debtor, as applicable, in
17 the ordinary course of business.

18 **5.7 Rejection Damages Bar Date.** All proofs of Claims with respect to Claims arising
19 from the rejection of any Executory Contract or Unexpired Lease rejected by operation of the Plan
20 shall be filed no later than twenty one (21) days after the Effective Date. Any Claim not filed
21 within such time shall be forever barred.

22 **5.8 Modifications, Amendments, Supplements, or Other Agreements.** Unless
23 otherwise provided, each Executory Contract and Unexpired Lease that is assumed shall include
24 all modifications, amendments, supplements, restatements, or other agreements that in any manner
25 affect such matter, and all Executory Contracts and Unexpired Leases related thereto, if any,
26 including all easements, licenses, permits, rights, privileges, immunities, options, rights of first
27 refusal, and any other interests, unless any of the foregoing agreements has been previously
28 rejected or repudiated or is rejected or repudiated under the Plan. Modifications, amendments,
supplements, and restatements to pre-petition Executory Contracts and Unexpired Leases that have
been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the pre-
petition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount
of any Claims that may arise in connection therewith.

5.9 Reservation of Rights. Neither the exclusion nor inclusion of any contract or
lease, nor anything contained in the Plan, shall constitute an admission by the Debtor that any such
contract or lease is in fact an Executory Contract or Unexpired Lease or that the Debtor has any
liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory
or unexpired at the time of assumption or rejection, the Debtor shall have thirty (30) days following
entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

6. MANNER OF DISTRIBUTION OF PROPERTY UNDER THE PLAN

6.1 Distributions on Account of Claims Allowed as of the Effective Date.
Distributions under the Plan on account of Claims Allowed on or before the Effective Date shall
be made on the Effective Date, as otherwise set forth in the Plan, or on the first date thereafter as

1 is reasonably practicable.

2 **6.2 Manner of Payment Under the Plan.** Distributions of Cash to be made by the
3 Debtor or the Reorganized Debtor pursuant to the Plan shall be made, at the discretion of the
4 Debtor or the Reorganized Debtor, by check drawn on the Debtor's or the Reorganized Debtor's
5 bank account, by wire transfer, or by any other means.

6 **6.3 Whole Dollars.** Any other provision of the Plan to the contrary notwithstanding,
7 no payments of cents will be made. Whenever any payment of cents would otherwise be called
8 for, the actual payment may reflect a rounding of such fraction to the nearest whole dollar (up or
9 down).

10 **6.4 Escheat.** Holders of Allowed Claims shall have ninety (90) days from the check
11 date to negotiate Distribution checks issued by the Debtor or the Reorganized Debtor under the
12 terms of the Plan, otherwise payment on such checks may at the Debtor's or the Reorganized
13 Debtor's sole discretion be stopped and the funds shall escheat to the Debtor or the Reorganized
14 Debtor and shall be promptly distributed to the Debtor or the Reorganized Debtor in accordance
15 with section 347 of the Bankruptcy Code.

16 **6.5 Delivery of Distributions.**

17 **6.5.1 Record Date for Distributions.** On the Distribution Record Date, the
18 Claims Register shall be closed and any Person responsible for making
19 Distributions shall be authorized and entitled to recognize only those record
20 Holders listed on the Claims Register as of the close of business on the
21 Distribution Record Date. Notwithstanding the foregoing, if a Claim is
22 transferred twenty or fewer days before the Distribution Record Date, the
23 Reorganized Debtor shall make Distributions to the transferee only to the
24 extent practical and in any event only if the relevant transfer forms contains
25 an unconditional and explicit certification and waiver of any objection to
26 the transfer by the transferor.

27 **6.5.2 Delivery of Distributions in General.** Except as otherwise provided in the
28 Plan, and notwithstanding any authority to the contrary, Distributions to all Holders of
Allowed Claims shall be made to Holders of record as of the Distribution Record Date by
the Debtor or the Reorganized Debtor:

6.5.2.1 In accordance with Federal Rule of Civil Procedure 4, as modified
and made applicable by Bankruptcy Rule 7004;

6.5.2.2 To the signatory set forth on any of the Proofs of Claim Filed by
such Holder or other representative identified therein (or at the last known
addresses of such Holder if no Proof of Claim is Filed or if the Debtor has been
notified in writing of a change of address);

6.5.2.3 To the addresses set forth in any written notices of address changes
delivered to the Debtor after the date of any related Proof of Claim;

6.5.2.4 To the addresses reflected in the Schedules if no Proof of Claim has
been Filed and the Debtor or the Reorganized Debtor have not received a written

1 notice of change of address; or

2 **6.5.2.5** To any counsel that has appeared in the Chapter 11 Case on the
3 Holder's behalf.

4 **6.5.3 Distributions Not Subject to Legal Process.** Except as otherwise
5 provided in the Plan, Distributions under the Plan, made on account of Allowed Claims,
6 shall not be subject to levy, garnishment, attachment, or like legal process. Each Holder
7 of an Allowed Claim shall have and receive the benefit of the Distributions in the manner
8 set forth in the Plan. Absent willful misconduct or gross negligence, the Debtor and the
9 Reorganized Debtor, as applicable, shall not incur any liability on account of any
10 Distributions made under the Plan.

11 **6.5.4 Returned Distributions.** In the case of Distributions to the Holders of
12 Allowed Claims that are returned to the Debtor or the Reorganized Debtor due to an
13 incorrect or incomplete address, the Debtor or the Reorganized Debtor shall retain any such
14 returned Distribution in a segregated account established by the Debtor or the Reorganized
15 Debtor to keep track of any returned Distributions. Unless the Holder of the Allowed Claim
16 relating to any such returned Distribution contacts the Debtor or the Reorganized Debtor
17 (or its designee) within three (3) months from the date on which such Distribution was
18 returned and provides the Debtor or the Reorganized Debtor (or its designee) with
19 acceptable proof of identity and an accurate address, such Holder shall forfeit all rights
20 thereto, and to any and all future Distributions or rights under the Plan. In such event, the
21 Claim for which such Distributions was issued shall be treated as a Disallowed Claim and
22 the Distribution on account of such Disallowed Claim shall promptly be distributed to
23 Debtor.

24 **6.5.5 Disputed Distributions.** In the event of any dispute between or among
25 Holders of Claims as to the right to any Holder of a Claim to receive or retain any
26 Distribution to be made to such Holder under the Plan, the Debtor or the Reorganized
27 Debtor, in lieu of making such Distribution to such Holder, may make it instead into an
28 escrow account for payment as ordered by the Bankruptcy Court or as the interested parties
to such dispute may otherwise agree among themselves. Any such Holder who fails to
raise such dispute by filing an appropriate request for relief with the Bankruptcy Court
prior to the issuance of such disputed Distribution by the Debtor or the Reorganized Debtor
shall be deemed to have forever waived any right to dispute such Distribution or to enjoin,
impair or otherwise restrict the use of any such Distribution.

6.5.6 Setoffs. The Debtor or the Reorganized Debtor may, but shall not be
required to, set-off against any Distributions to be made pursuant to the Plan to a Holder
of an Allowed Claim, Claims of any nature whatsoever that the Debtor may have, or may
have had, against such Holder that have not been previously released, but neither the failure
to do so, nor the allowance of any Claim held by such Holder shall constitute a waiver or
release by the Debtor or the Reorganized Debtor of any such Claim the Debtor may have,
or may have had, against such Holder.

6.5.7 Withholding Taxes. The Debtor or the Reorganized Debtor shall be
entitled to deduct any applicable federal or state withholding taxes from any payments
made with respect to Allowed Claims, as appropriate, and shall otherwise comply with

1 section 346 of the Bankruptcy Code.

2 **6.6 Claims Paid or Payable by Third Parties.**

3 **6.6.1 Claims Paid by Third Parties.** A Claim shall be reduced in full, and such
4 Claim shall be disallowed without an objection to such Claim having to be
5 filed and without any further notice to or action, order, or approval of the
6 Bankruptcy Court, to the extent that the holder of such Claim receives
7 payment in full on account of such Claim from a party that is not the Debtor
8 or the Reorganized Debtor. To the extent a holder of a Claim receives a
9 distribution on account of such Claim and receives payment from a party
10 that is not the Debtor or the Reorganized Debtor on account of such Claim,
11 such holder shall repay, return or deliver any distribution held by or
12 transferred to the holder to the Reorganized Debtor to the extent the holder's
13 total recovery on account of such Claim from the third party and under the
14 Plan exceeds the amount of such Claim as of the date of any such
15 distribution under the Plan.

16 **6.6.2 Claims Payable by Insurance Carriers.** Unless waived by the
17 Reorganized Debtor in its sole and absolute discretion, no distributions
18 under the Plan shall be made on account of an Allowed Claim that is payable
19 pursuant to one of the Debtor's insurance policies until the Holder of such
20 Allowed Claim has exhausted all remedies with respect to such insurance
21 policy. To the extent that one or more of the Debtor's insurers agrees to
22 satisfy in full or in part a Claim (if and to the extent adjudicated by a court
23 of competent jurisdiction), then immediately upon such insurers'
24 agreement, such Claim may be expunged to the extent of any agreed upon
25 satisfaction on the Claims Register by the Reorganized Debtor without a
26 Claims objection having to be filed and without any further notice to or
27 action, order, or approval of the Bankruptcy Court.

28 **6.6.3 Applicability of Insurance Policies.** Except as otherwise provided in the
Plan, distributions to Holders of Allowed Claims shall be in accordance
with the provisions of any applicable insurance policy. Nothing contained
in the Plan shall constitute or be deemed a waiver of any Cause of Action
that the Debtor or any entity may hold against any other entity, including
insurers under any policies of insurance, nor shall anything contained herein
constitute or be deemed a waiver by such insurers of any defenses, including
coverage defenses, held by such insurers.

6.6.4 Insured Claims. Notwithstanding anything to the contrary contained
herein, to the extent the Debtor has insurance with respect to any Allowed
General Unsecured Claim, the holder of such Allowed Claim shall (i) be
paid from the proceeds of insurance to the extent that the Claim is insured,
and (ii) to the extent not duplicative of (i), receive the treatment provided
for in this Plan to the extent the applicable insurance policy does not provide
coverage with respect to any portion of the Claim. Notwithstanding
anything to the contrary in the Disclosure Statement, the Plan, the
Confirmation Order, any other document related to any of the foregoing or

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1 any other order of the Bankruptcy Court (including, without limitation, any
2 other provision that purports to be preemptory or supervening or grants an
3 injunction or release in the Plan); (i) on the Effective Date, the Reorganized
4 Debtor shall assume all insurance policies issued at any time to the Debtor,
5 and all agreements related thereto (collectively, the “Insurance Contracts”);
6 (ii) nothing in the Disclosure Statement, the Plan, or the Confirmation Order
7 alters, modifies or otherwise amends the terms and conditions of (or the
8 coverage provided by) any of the Insurance Contracts, except that as of the
9 Effective Date, the Reorganized Debtor shall become and remain liable for
10 all of the Debtor’s obligations and liabilities thereunder regardless of
11 whether such obligations and liabilities arise before or after the Effective
12 Date; (iii) nothing in the Disclosure Statement, the Plan, the Confirmation
13 Order, any prepetition or administrative claim bar date order (or notice) or
14 claim objection order alters or modifies the duty, if any, that the insurers or
15 third party administrators have to pay claims covered by the Insurance
16 Contracts and their right to seek payment or reimbursement from the Debtor
17 (or after the Effective Date, the Reorganized Debtor) or draw on any
18 collateral or security therefor; (iv) insurers and third party administrators
19 shall not need to nor be required to file or serve a cure dispute or a request,
20 application, claim, proof of claim or motion for payment and shall not be
21 subject to the any Bar Date or similar deadline governing Cure Amounts or
22 Claims; and (v) the automatic stay of section 362(a) of the Bankruptcy Code
23 and the injunctions set forth in the Plan, if and to the extent applicable, shall
24 be deemed lifted without further order of the Bankruptcy Court, solely to
25 permit: (A) claimants with valid claims covered by any of the Insurance
26 Contracts (“Insured Claims”) to proceed with their claims; (B) insurers
27 and/or third party administrators to administer, handle, defend, settle, and/or
28 pay, in the ordinary course of business and without further order of the
Bankruptcy Court, (1) all Insured Claims, and (2) all costs in relation to
each of the foregoing; (C) the insurers and/or third party administrators to
draw against any or all of any collateral or security provided by or on behalf
of the Debtor (or the Reorganized Debtor, as applicable) at any time and to
hold the proceeds thereof as security for the obligations of the Debtor (and
the Reorganized Debtor, as applicable) to the applicable insurers and/or
third party administrators and/or apply such proceeds to the obligations of
the Debtor (and the Reorganized Debtor, as applicable) under the Insurance
Contracts, in such order as the applicable insurers and/or third party
administrators may determine, but solely in accordance with the terms of
such Insurance Contracts; and (D) the insurers and/or third party
administrators to (1) cancel any policies under the Insurance Contracts, and
(2) take other actions relating thereto, to the extent permissible under
applicable non-bankruptcy law, each in accordance with the terms of the
Insurance Contracts. For the avoidance of doubt, no holder of an Insured
Claim that did not file a proof of claim prior to the applicable Bar Date
(unless otherwise subject to an exception in the order governing Bar Dates)
shall be deemed to have an Allowed Claim, against the Debtor arising from
this provision.

6.7 **No Recourse.** No recourse shall ever be had, directly or indirectly, against any

1 officer, director, attorney, accountant or other Professional for the Reorganized Debtor, by legal
2 or equitable proceedings or by virtue of any statute or otherwise, nor upon any promise, contract,
3 instrument, undertaking obligation, covenant or agreement whatsoever executed by the
4 Reorganized Debtor under the Plan, or by reason of the creation of any indebtedness by the
5 Reorganized Debtor under the Plan for any purpose authorized by the Plan, it being expressly
6 understood and agreed that all such liabilities, covenants, and agreements of the Reorganized
7 Debtor, whether in writing or otherwise, shall be enforceable only against and be satisfied only by
8 the Reorganized Debtor and the Assets.

6 **7. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

7 **7.1 Objection to and Resolution of Claims.** Except as to applications for allowance
8 of compensation and reimbursement of expenses under sections 330, 331 and/or 503 of the
9 Bankruptcy Code, Debtor shall, on and after the Effective Date, have the exclusive right to make
10 and file objections to Claims. On and after the Effective Date, Debtor shall have the authority to
11 compromise, settle, otherwise resolve or withdraw any objections to any Claims and compromise,
12 settle or otherwise resolve Disputed Claims without approval of the Bankruptcy Court. Unless
13 otherwise ordered by the Bankruptcy Court, Debtor and, on and after the Effective Date, Debtor,
14 shall file all objections to Claims that are the subject of Proofs of Claim or requests for payment
15 filed with the Bankruptcy Court (other than applications for allowances of compensation and
16 reimbursement of expenses with respect to Professional Fee Claims) and serve such objections
17 upon the Holder of the Claim as to which the objection is made as soon as is practicable, but in no
18 event later than one hundred eighty (180) days after the Effective Date or such later date as may
19 be approved or extended by the Bankruptcy Court.

15 **7.2 Payments.** Payments and Distributions to each Holder of a Disputed Claim that
16 ultimately becomes an Allowed Claim shall be made in accordance with the provision of the Plan
17 with respect to the Class of Creditors to which the respective Holder of an Allowed Claim belongs.
18 Without limiting the generality of the foregoing, Debtor shall not be required to object to any
19 Claim irrespective of whether such Claim is Allowed or Disputed, whether in whole or in part.

18 **7.3 Contingent Claims.** Until such time as a contingent Claim or a contingent portion
19 of an Allowed Claim becomes fixed or absolute or is Disallowed, such Claim will be treated as a
20 Disputed Claim for all purposes related to Distributions under the Plan. The Holder of a contingent
21 Claim will only be entitled to a Distribution under the Plan when and if such contingent Claim
22 becomes an Allowed Claim.

22 **7.4 Estimation of Claims.** The Debtor shall be permitted, at any time, to request that
23 the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of
24 the Bankruptcy Code, regardless of whether Debtor previously had objected to such Claim or
25 whether the Bankruptcy Court had ruled on such objection, and the Bankruptcy Court shall retain
26 jurisdiction to estimate any Claim at any time during any litigation concerning any objection to
27 such Claim, including during the pendency of any appeal relating to such objection. In the event
28 that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated
shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim,
as determined by the Bankruptcy Court. If such estimated amount constitutes a maximum
limitation on the amount of such Claim, Debtor may elect to pursue any supplemental proceedings
to object to the allowance of such Claim.

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8. RESERVATION OF RIGHTS

8.1. Withdrawal of Plan; Rights if No Confirmation or Effective Date. The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If Debtor revokes or withdraws the Plan, or if Confirmation of the Plan or the Effective Date does not ultimately occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims), assumption or rejection of Executory Contracts or Unexpired Leases affected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests by or against Debtor or any Person; (b) prejudice in any manner the rights of Debtor or any other Person in any further proceedings involving Debtor; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by Debtor or any other Person.

8.2. No Admissions or Waiver. Without limiting the generality of any similar provision in the Plan, notwithstanding anything in the Plan to the contrary, nothing contained in the Plan or in the Disclosure Statement shall be deemed an admission by Debtor or any Person with respect to any matter set forth herein. If Confirmation of the Plan or the Effective Date does not ultimately occur, no statement contained in the Plan or in the Disclosure Statement may be used or relied on in any manner in any suit, action, proceeding or controversy within or outside of the Chapter 11 Case against Debtor. Debtor reserves any and all of their rights as against all Persons and Entities in the event Confirmation of the Plan or the Effective Date does not ultimately occur.

9. CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

9.1. Conditions to Confirmation. As a condition precedent to the Confirmation of the Plan, the Confirmation Order shall be in form and substance reasonably acceptable to the Debtor.

9.2. Conditions to Occurrence of Effective Date. The following are conditions precedent to the occurrence of the Effective Date:

9.2.1. The Confirmation Order shall be a Final Order, except that Debtor reserves the right to cause the Effective Date to occur notwithstanding the pendency of an appeal of the Confirmation Order, under circumstances that would moot such appeal;

9.2.2. No request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending, including any appeal;

9.2.3. All documents necessary to implement the transactions contemplated by the Plan shall be in form and substance reasonably acceptable to the Debtor;

9.2.4. Sufficient Cash and other assets are set aside, reserved and withheld to make the distributions required by the Bankruptcy Code and the Plan; and

9.2.5. The Debtor, in its sole discretion, may waive the Final Order condition in Section 9.2.1 above at any time from and after the Confirmation Date. In that event, the Debtor will be entitled to render any or all performance under the Plan prior to what otherwise would be the Effective Date if the above-referenced conditions were not waived;

1 including, but not limited to, the right to perform under any circumstances which would
2 moot any appeal, review or other challenge of any kind to the Confirmation Order if the
Confirmation Order is not stayed pending such appeal, review or other challenge.

3 **10. EFFECT OF CONFIRMATION OF PLAN**

4 **10.1. Discharge.** *Subject to the terms of the Plan Amendments, on the Effective Date of*
5 *this Plan, the Debtor will be discharged from any debt that arose before confirmation of this*
6 *Plan to the extent specified in section 1141(d)(1)(A) of the Bankruptcy Code, except that the*
7 *Debtor will not be discharge of any debt: (i) imposed by this Plan; or (ii) to the extent provided*
8 *in section 1141(d)(6) of the Bankruptcy Code.*

9 **10.2. Binding Effect of Plan/Injunction.** *Subject to the terms of the Plan Amendments,*
10 *on the Effective Date, except as provided in the Plan, all Persons shall be permanently*
11 *enjoined by the Plan from (i) commencing or continuing any action, employing any*
12 *process, asserting or undertaking an act to collect, recover, or offset, directly or*
13 *indirectly, any Claim, rights, Causes of Action, liabilities, or interests in or against any*
14 *property distributed or to be distributed under the Plan, or vested in the Reorganized*
15 *Debtor, based upon any act, omission, transaction, or other activity that occurred before*
16 *the Effective Date, (ii) creating, perfecting or enforcing any lien or encumbrance against*
17 *any property distributed or to be distributed under the Plan other than as permitted under*
18 *the Plan, and (iii) without limiting the generality of the foregoing, asserting any Claims*
19 *against the Reorganized Debtor based on successor liability, continuation of business,*
20 *or similar or related theory, except and only to the extent a Person holds an Allowed*
21 *Claim under the Plan and is entitled to a distribution and/or Lien under the Plan in*
22 *accordance with its terms, and to enforce its rights to distribution under the Plan. On*
23 *and after the Effective Date, each Holder of any Claim against the Debtor is permanently*
24 *enjoined from taking or participating in any action that would interfere or hinder the*
25 *Debtor or the Reorganized Debtor from implementing the Plan or the Confirmation*
26 *Order.*

27 **10.3. Exculpation.** *Neither the Debtor nor any of its Representatives shall have or incur*
28 *any liability to any Holder of a Claim against the Debtor, or any other party-in-interest, for any*
act, omission, transaction or other occurrence occurring on or after the Petition Date in
connection with or arising out of the Chapter 11 Case, the pursuit of confirmation of the Plan,
or the consummation of the Plan, except and solely to the extent such liability is based on fraud,
gross negligence or willful misconduct.

10.4. Modification of Debt Instruments. On the Effective Date, all instruments
evidencing indebtedness of the Debtor held by Holders of Claims that are Impaired by the Plan or
have been paid in full pursuant thereto shall be deemed modified as against the Debtor as set forth
in the Plan.

10.5. Judgments Void. Any judgment, decision, or order obtained before the Effective
Date in any court that is inconsistent with the terms, conditions and treatment provided by the Plan
or the Confirmation Order shall be null, void, and without effect.

10.6. Revesting of Assets in Debtor. Except as otherwise expressly provided herein or in
the Confirmation Order, on the Effective Date, but retroactive to the Confirmation Date, without

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1 any further action, the Reorganized Debtor will be vested with all of the property of the Estate,
2 wherever situate, free and clear of all Claims, Liens (except for Liens provided or authorized
3 pursuant to the Plan and Permitted Encumbrances). Without limiting the generality of the
4 foregoing, on and after the Effective Date, the Debtor shall be vested with all of the property of
5 the Estate, wherever situated, free and clear of any Claims based on any form of successor liability
6 or similar or related theory of liability. On and after the Effective Date, (i) the Debtor shall be free
7 of any restrictions imposed by the Bankruptcy Code or Bankruptcy Court, may operate its business
8 and may use, acquire or dispose of assets including the Assets free of any restrictions imposed by
9 the Bankruptcy Code and the Bankruptcy Rules and without supervision or approval by the
10 Bankruptcy Court, other than the obligations set forth in the Plan, or the Confirmation Order.
11 Without limiting the generality of the foregoing and except as otherwise expressly provided herein
12 or in the Confirmation Order, any Causes of Action, will be preserved and retained solely for
13 Debtor's commencement, prosecution, use and benefit.

14 **10.7. Preservation of Causes of Action.** Subject to the terms of the Plan Amendments,
15 pursuant to section 1123(b) of the Bankruptcy Code, the Debtor shall retain and reserve the right
16 to enforce all rights to commence and pursue Causes of Action whether arising prior to or after the
17 Petition Date, and whether pending as of or Filed after the Effective Date, in any court or other
18 tribunal. Unless a Cause of Action is expressly waived, relinquished, released, compromised or
19 settled in the Plan, or any Final Order, Debtor on behalf of themselves expressly reserve all Causes
20 of Action for later adjudication and, therefore, no preclusion doctrine, including, without
21 limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion,
22 estoppel (judicial, equitable or otherwise) or laches shall apply to any Causes of Action upon
23 Confirmation or the Effective Date. No entity may rely on the absence of a specific reference in
24 the Plan or the Disclosure Statement to any Cause of Action against them as an indication that the
25 Debtor, will not pursue any and all available Causes of Action against them. The Debtor expressly
26 reserves all rights to prosecute any and all Causes of Action against any Person, except as
27 otherwise expressly provided in the Plan.

28 **10.8. Maintenance of Administrative Claim Status.** Notwithstanding entry of the
Confirmation Order or any Discharge granted to the Debtor consistent with the other provisions
of this Plan and applicable law, Allowed Administrative Claims shall maintain their administrative
priority status under section 507(a)(2) of the Bankruptcy Code until paid in full.

10.9. Disallowance of Claims Not Allowed and Tardy Proofs of Claim. The occurrence
of the Effective Date shall operate to disallow any Unsecured Claims that either have not been
Allowed by such date, including but not limited to any claims listed on the Debtor's Schedules as
amended, as disputed, contingent or unliquidated, or which are the subject of a Proof of Claim that
was filed after the Bar Date, which tardy Proofs of Claim shall further be deemed automatically
expunged without further order of the Court as of the Effective Date.

10.10. No Limitation on Effect of Confirmation. Subject to the terms of the Plan
Amendments, nothing contained in the Plan or the Disclosure Statement will limit, waive or restrict
in any way the effect of Confirmation as set forth in section 1141 of the Bankruptcy Code.
Confirmation will bind the Debtor, all Creditors, and other parties in interest to the provisions of
the Plan, whether or not the Claim of such Creditor is Impaired under the Plan and whether or not
such Creditor has accepted the Plan and whether or not a proof of Claim has been filed or deemed
to have been filed under sections 501 or 1111(a) of the Bankruptcy Code, or such Claim is allowed
under section 502 of the Bankruptcy Code.

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11. RETENTION OF JURISDICTION

11.1. Retention of Jurisdiction. Except to the extent otherwise expressly set forth herein, the Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case following the Confirmation Date for the following purposes, it being expressly intended that such retention of jurisdiction shall in all cases hereafter set forth, extend to any actions or proceedings commenced prior or subsequent to the Confirmation Date and/or the Effective Date whether by the Debtor, or the parties specified herein:

11.1.1. To hear and determine any objections to the allowance of Claims, including any objections by the Debtor with respect to any Claims which have been reinstated or assumed in accordance with the terms of the Plan;

11.1.2. To determine any and all applications for compensation for any Professionals and similar fees to the extent made specifically subject to a hearing under the Plan and applicable provisions of the Bankruptcy Code;

11.1.3. To determine any and all applications for the rejection or assumption and assignment of Executory Contracts or for the rejection or assumption and assignment, as the case may be, of Unexpired Leases to which Debtor is a party or with respect to which it may be liable, and to hear and determine, and if need be to liquidate, any and all Claims arising therefrom;

11.1.4. To modify the Plan pursuant to section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistency in the Confirmation Order to the extent authorized by the Bankruptcy Code;

11.1.5. To hear and determine all controversies, suits and disputes, if any, as may arise in connection with the interpretation or enforcement of the Plan and the Confirmation Order, including without limitation the binding effect and injunction herein;

11.1.6. To hear and determine all controversies, suits and disputes, if any, as may arise with regard to orders of this Bankruptcy Court entered in the Chapter 11 Case;

11.1.7. To adjudicate all controversies concerning the classification of any Claim;

11.1.8. To liquidate damages in connection with any disputed, contingent or unliquidated Claim;

11.1.9. To adjudicate all Claims to a security or ownership interest in any of the Assets, or in any proceeds thereof;

11.1.10. To adjudicate all Claims or controversies arising out of any purchases, sales or contracts made or undertaken by Debtor;

11.1.11. To determine all questions and disputes regarding recovery of and entitlement to any property of Debtor, or in any proceeds thereof;

11.1.12. To adjudicate all Causes of Action with respect to which Debtor is a party, whether or not such Claim or controversy is raised or filed before or after the Effective

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1 Date;

2 **11.1.13.** To determine issues and disputes concerning entitlement to Distributions
3 to be made under and pursuant to the Plan;

4 **11.1.14.** To enter any order, including injunctions, necessary to enforce the title,
5 rights and powers of Debtor's limitations, restrictions, terms and conditions on such title,
6 rights and powers as the Bankruptcy Court may deem necessary or appropriate;

7 **11.1.15.** To determine such other matters as may be provided for in the
8 Confirmation Order and the Plan, or as may from time to time be authorized under the
9 provisions of the Bankruptcy Code or any other applicable law;

10 **11.1.16.** To enter a Final Decree closing the Chapter 11 Case;

11 **11.1.17.** To enforce the provisions of any Administrative Claim Bar Date entered
12 by the Bankruptcy Court;

13 **11.1.18.** To make such orders as are necessary or appropriate to carry out the
14 provisions of the Plan, including but not limited to orders interpreting, clarifying or
15 enforcing the provisions thereof;

16 **11.1.19.** To determine issues and disputes with respect to the Plan Amendments
17 arising after the Effective Date; and

18 **11.1.20.** Without limiting the generality of any of the foregoing, to hear and
19 determine matters concerning state, local, and federal taxes in accordance with sections
20 345, 505, and 1146 of the Bankruptcy Code.

21 **11.2. Jurisdiction Unaffected.** The occurrence of the Effective Date and/or the entry of
22 a Final Decree shall not divest the Bankruptcy Court of any jurisdiction otherwise retained under
23 this Article 11 or the Confirmation Order.

24 **11.3. Failure of Bankruptcy Court to Exercise Jurisdiction.** If the Bankruptcy Court
25 abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction
26 over any matter arising under, arising in or related to the Bankruptcy Case, including any of the
27 matters set forth in the Plan, the Plan shall not prohibit or limit the exercise of jurisdiction by any
28 other court of competent jurisdiction with respect to such matter.

29 **12. MISCELLANEOUS PROVISIONS**

30 **12.1. Modification of the Plan.**

31 **12.1.1** Provided not inconsistent with the Plan Amendments, the Debtor may alter,
32 amend or modify the Plan at any time before the entry of the Confirmation Order, provided
33 that the Plan, as altered, amended or modified, satisfies the conditions of sections 1122 and
34 1123 of the Bankruptcy Code, and Debtor shall have complied with section 1125 of the
35 Bankruptcy Code. However, the Bankruptcy Court may require a new disclosure statement
36 and/or re-voting on the Plan if Debtor modifies the Plan before Confirmation.

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1 12.1.2 Provided not inconsistent with the Plan Amendments, the Debtor may also
2 seek to alter, amend or modify the Plan at any time after Confirmation so long as (i) the
3 Plan has not been substantially consummated, (ii) as altered, amended or modified the Plan
4 satisfies the conditions of section 1122 and 1123 of the Bankruptcy Code, and (iii) the
5 Bankruptcy Court authorizes the proposed modification after notice and a hearing under
6 section 1129 of the Bankruptcy Code.

7 12.1.3 A Holder of a Claim that has accepted the Plan shall be deemed to have
8 accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment
9 or modification does not materially and adversely change the treatment of the Claim of
10 such Holder. Provided not inconsistent with the Plan Amendments, prior the Effective
11 Date, Debtor may make appropriate technical non-material modifications to the Plan or the
12 Disclosure Statement without further order or approval of the Bankruptcy Court, provided
13 that such technical modifications do not adversely affect the treatment of Holders of
14 Claims.

15 12.1.4 Provided not inconsistent with the Plan Amendments, the Debtor further
16 reserves the right to modify the treatment of any Allowed Claims at any time after the
17 Effective Date of the Plan upon the consent of the Creditor whose Allowed Claim treatment
18 is being modified, so long as no other Creditors are materially adversely affected.

19 12.1.5 Provided not inconsistent with the Plan Amendments, the Debtor reserves
20 the right, in accordance with the Bankruptcy Code, to amend, amend or modify the Plan
21 before or after the Confirmation Date, including making any amendments or modifications
22 to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

23 12.2. Notices to the Debtor. Except as otherwise set forth below, all notices, requests,
24 elections or demands in connection with the Plan, including any change of address of any
25 Holder of a Claim for the purposes of receiving any Distributions under the Plan, shall be
26 in writing and shall be delivered personally, electronic mail, overnight courier, or mailed
27 by first class mail. Such notice shall be deemed to have been given when received or, if
28 mailed by first class mail, five (5) Business Days after the date of mailing, or if express
mailed, the next Business Day following the date of mailing and addressed to the following:

If to Debtor: Spar Business Services, Inc.
Attn: Robert G. Brown
7711 N. Military Trail Rd., Ste. 1000
West Palm Beach, FL 33410
Email: rbrown6@msn.com

With a Copy to: Larson Zirzow & Kaplan, LLC
Attn: Matthew C. Zirzow, Esq.
850 E. Bonneville Ave.
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12.3. Notices to Creditors. All notices and requests to Holders of Claims of any Class
shall be sent to them at their known address or if a Proof of Claim has been filed, to the
address on their Proof of Claim. Any Holder of a Claim of any Class may designate in

1 writing any other address for purposes of this Section, which designation shall be effective
2 upon receipt.

3 **12.4. Headings.** The headings used in the Plan are inserted for convenience only and do
4 not constitute a portion of the Plan nor in any manner affect the provisions of the Plan.

5 **12.5. Non-Severability of Plan Provisions.** The Confirmation Order shall constitute a
6 judicial determination that each term and provision of the Plan is valid and enforceable
7 pursuant to its terms, integral to the Plan and may not be deleted or modified without the
8 consent of Debtor and any other Person affected by such provision, and nonseverable and
9 mutually dependent.

10 **12.6. Waiver or Estoppel.** Each Holder of a Claim or an Interest shall be deemed to have
11 waived any right to assert any argument, including the right to argue that its Claim or
12 Interest should be Allowed in a certain amount, in a certain priority, Secured or not
13 subordinated by virtue of an agreement made with Debtor or its counsel, or any other
14 Person, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers
15 Filed with the Bankruptcy Court prior to the Confirmation Date.

16 **12.7. Governing Law.** Except to the extent that the Bankruptcy Code or other federal law
17 is applicable or as provided in any contract, instrument, release or other agreement entered
18 into in connection with the Plan or in any document which remains unaltered by the Plan,
19 the rights, duties and obligations of Debtor and any other Person arising under the Plan
20 shall be governed by, and construed and enforced in accordance with, the internal laws of
21 the State of Nevada without giving effect to Nevada's choice of law provisions.

22 **12.8. Successors and Assigns.** The rights and obligations of any Person named or referred
23 to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and
24 assigns of such Person.

25 **12.9. Modification of Payment Terms.** Provided not inconsistent with the Plan
26 Amendments, the Reorganized Debtor reserves the right to modify the treatment of any
27 Allowed Claim in any manner adverse only to the holder of such Allowed Claim at any
28 time after the Effective Date upon the prior written consent of the holder whose Allowed
Claim treatment is being adversely affected.

12.10. Effectuating Documents; Further Transactions; Timing. The Debtor and the
Reorganized Debtor are each authorized to execute, deliver, file or record such contracts,
instruments, releases and other agreements or documents and to take such actions as may
be necessary or appropriate to effectuate and further evidence the terms and conditions of
the Plan and any securities issued, transferred or canceled pursuant to the Plan. All
transactions that are required to occur on the Effective Date under the terms of the Plan
shall be deemed to have occurred simultaneously. The Debtor and the Reorganized Debtor
are authorized and directed to do such acts and execute such documents as are necessary
to implement the Plan.

12.11. Exemption from Transfer Taxes. Pursuant to section 1146(c) of the Bankruptcy
Code, (i) the issuance, distribution, transfer or exchange of Estate property; (ii) the creation,
modification, consolidation or recording of any deed of trust or other security interest, the
securing of additional indebtedness by such means or by other means in furtherance of, or

1 connection with the Plan or the Confirmation Order; (iii) the making, assignment,
2 modification or recording of any lease or sublease; or (iv) the making, delivery or recording
3 of a deed or other instrument of transfer under, in furtherance of, or in connection with, the
4 Plan, Confirmation Order or any transaction contemplated above, or any transactions
5 arising out of, contemplated by or in any way related to the foregoing shall not be subject
6 to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax,
7 mortgage tax, stamp act or real estate transfer tax, mortgage recording tax or other similar
8 tax or governmental assessment and the appropriate state or local government officials or
9 agents shall be, and hereby are, directed to forego the collection of any such tax or
10 assessment and to accept for filing or recordation any of the foregoing instruments or other
11 documents without the payment of any such tax or assessment.

12.12. Default Under Plan.

12 **12.12.1 Creditor Action Restrained.** The confirmed Plan is binding on
13 every Creditor whose claims are provided for in the Plan. Therefore, even though the
14 automatic stay terminates on the Effective Date with respect to Secured Claims, no Creditor
15 may take any action to enforce either the pre-confirmation obligation or the obligation due
16 under the Plan, so long as Debtor is not in Material Default under the Plan, except as
17 provided in Section 12.12.5 below.

18 **12.12.2 Obligations to Each Class Separate.** The Debtor's obligations
19 under the Plan are separate with respect to each Class of Creditors. Default in performance
20 of an obligation due to members of one Class shall not by itself constitute a default with
21 respect to members of other Classes. For purposes of this Section 12.12.2, the holders of
22 all Administrative Claims shall be considered to be a single class, the holders of all Priority
23 Claims shall be considered to be a single class, and each non-debtor party to an assumed
24 Executory Contract or Unexpired Lease shall be considered to be a separate class.

25 **12.12.3 Material Default Defined.** In the event the Debtor fails to timely
26 perform any of the obligations set forth in the Plan from and after the Effective Date, the
27 applicable Creditor or party-in-interest shall notify the Debtor and the Debtor's counsel of
28 the default in writing in accordance with the notice provisions herein. If the Debtor fails
within thirty (30) calendar days after the date of service of the notice of default either: (i)
to cure the default; (ii) to obtain from the Bankruptcy Court an extension of time to cure
the default, which shall be given for good cause shown if the cure reasonably requires more
than thirty (30) days to cure and the Debtor initiates reasonable steps to begin such cure
and completes all reasonable and necessary steps to cure sufficient to produce compliance
as soon as reasonably practical; or (iii) to obtain from the Bankruptcy Court a determination
that no default occurred, then the Debtor is in Material Default under the Plan to all the
members of the affected Class. If the Debtor fails to timely cure the default as provided
above, the applicable Creditor shall be free to pursue any and all rights and remedies it may
have under the contract(s) between the parties and/or applicable law, as modified by this
Plan, and without further action by or proceedings before the Bankruptcy Court.

12.12.4 Remedies Upon Material Default. Upon Material Default, any
member of a Class affected by the default: (i) may file and serve a motion to dismiss the
case or to convert the case to chapter 7; or (ii) without further order of the Court has relief
from automatic stay to the extent necessary, and may pursue its lawful remedies to enforce

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1 and collect the Debtor's pre-confirmation obligations.

2 **12.12.5 Claims Not Affected by Plan.** Upon confirmation of the Plan, and
3 subject to Section 12.12.3, any Creditor whose Claims are left Unimpaired under the Plan
4 may, notwithstanding Sections 12.12.1 through Section 12.12.4, immediately exercise all
5 of its contractual, legal, and equitable rights, except rights based on default of the type that
6 need not be cured under section 1124(2)(A) and (D) of the Bankruptcy Code.

7 **12.13. Cramdown.** In the event that any Impaired Class is determined to have rejected
8 the Plan in accordance with section 1126 of the Bankruptcy Code, the Debtor may invoke
9 the provisions of section 1129(b) of the Bankruptcy Code to satisfy the requirements for
10 confirmation of the Plan. Debtor reserves the right to modify the Plan to the extent, if any,
11 that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires
12 modification.

13 **12.14. Fees and Reporting to the United States Trustee.** Prior to the Effective Date, the
14 Debtor, and after the Effective Date, the Reorganized Debtor, is obligated to pay the Office
15 of the U.S. Trustee all U.S. Trustee Fees. All U.S. Trustee Fees accruing prior to
16 Confirmation of the Plan will be paid on or before the Effective Date pursuant to section
17 1129(a)(12) of the Bankruptcy Code. All U.S. Trustee Fees accruing post-Confirmation
18 are due on a calendar quarter basis and will be reported on post-confirmation quarterly
19 reports as required by the U.S. Trustee Guidelines. Until the entry of the Final Decree and
20 case closing, the Debtor shall File, not later than twenty (20) days after the end of the
21 calendar quarter which occurs after the entry of the Confirmation Order, and every calendar
22 quarter thereafter, a report of the action taken by the Reorganized Debtor and the progress
23 made toward consummation of the confirmed Plan. U.S. Trustee Fees continue to be
24 payable to the Office of the United States Trustee post-confirmation until such time as the
25 case is converted, dismissed, or closed.

26 **12.15. Entire Agreement.** The Plan, as described herein, the Disclosure Statement and
27 exhibits thereto, set forth the entire agreement and understanding of the parties hereto
28 relating to the subject matter hereof and supersede all prior discussions and documents. No
party hereto shall be bound by any terms, conditions, definitions, understandings or
representations with respect to the subject matter hereof, other than as in expressly
provided for herein or as may hereafter be agreed by the parties in writing.

Dated: August 6, 2019.

SPAR BUSINESS SERVICES, INC.,
a Nevada corporation:

By: /s/ Robert G. Brown
Its: President and Director

Prepared and submitted:

By: /s/ Matthew C. Zirzow
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Attorneys for Debtor

APPENDIX

Exhibit 1 - Amortization Schedule for Payments to Class 1 - The Westchester Bank

Exhibit 2 - Projected Distribution Schedule Per Plan, as Modified, to General Unsecured Claims

Exhibit 3 - Compromise and Settlement Agreement with Spar Marketing Force, Inc. and Spar Group, Inc.

Exhibit 4 - Stipulation to Modify Debtor's First Amended Chapter 1 Plan of Reorganization Re: Melissa Clothier and the Certified Class

Exhibit 5 - Stipulation to Modify Debtor's First Amended Chapter 1 Plan of Reorganization Re: Rodgers Collective

SCHEDULE 5.1

**EXECUTORY CONTRACTS AND UNEXPIRED
LEASES PROPOSED TO BE ASSUMED**

| <u>Counterparty</u> | <u>Description</u> | <u>Proposed Cure</u> |
|----------------------------|---------------------------|---------------------------------|
| None. | | \$0.00 |

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1 Spar Business Services, Inc., a Nevada corporation, f/k/a Spar Marketing Services, Inc., as
2 debtor and debtor-in-possession, hereby proposes this plan of reorganization for the resolution of
3 its outstanding Claims.¹ All Creditors, holders of Equity Securities, and other parties-in-interest
4 should refer to the Disclosure Statement for a discussion of the Debtor's history, assets, historical
5 financial data, and for a summary and analysis of the Plan and certain related matters. All Holders
6 of Claims against the Debtor are encouraged to read the Plan, the Disclosure Statement, and the
7 related solicitation materials in their entirety before voting to accept or reject the Plan. Subject to
8 the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy
9 Rule 3019 and those restrictions on modifications set forth in Article 12 to the Plan, the Debtor
10 expressly reserves the right to alter, amend, strike, withdraw, or modify the Plan one or more times
11 before its substantial consummation.

12 **1. DEFINITIONS, RULES OF INTERPRETATION, AND COMPUTATION OF TIME**

13 **1.1 Definitions.** For the purposes of the Plan, except as expressly provided or unless
14 the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings
15 ascribed to them in this Section 1.1. Any term used in the Plan that is not defined herein, but is
16 defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that
17 term in the Bankruptcy Code or the Bankruptcy Rules, in that order of priority. Whenever the
18 context requires, such terms shall include the plural as well as the singular, the masculine gender
19 shall include the feminine, and the feminine gender shall include the masculine. As used in the
20 Plan, the following terms shall have the meanings specified below:

21 **1.1.1 Administrative Claim.** A Claim for any cost or expense of administration
22 of the Chapter 11 Case allowed pursuant to sections 503(b), 507(a)(2) or 507(b) of the
23 Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after
24 the Petition Date and through the Effective Date of preserving the Estate; (b) compensation
25 and reimbursement of expenses for legal, financial advisory, accounting, and other
26 services, including but not limited to, Allowed Professional Fees, pursuant to sections 327,
27 328, 330(a), or 331 of the Bankruptcy Code or otherwise for the period commencing on
28 the Petition Date and ending on the Effective Date; (c) all Bankruptcy Court approved
requests for 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
or otherwise.

1.1.2 Administrative Claim Bar Date. The deadline for filing requests for
allowance and payment of Administrative Claims, including but not limited to Professional
Fees, which shall be thirty (30) days after the Effective Date.

1.1.3 Allowed. With reference to any Claim against the Debtor: (a) any Claim
against the Debtor that has been listed in its Schedules, as such Schedules may be amended
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 has been Filed; (b) 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 has been
Filed with leave of the Bankruptcy Court after notice and a hearing, provided that no

¹ All capitalized terms herein shall have the meanings as ascribed to them in Section 1.1 of the Plan.

1 objection to the allowance of such Claim or to the estimation of such Claim has been
2 interposed by any party in interest before any final date for the filing of such objections or
3 motions set forth in the Plan, the Confirmation Order or other order of the Bankruptcy
4 Court; or (c) any Claim allowed or estimated pursuant to section 502(c) of the Bankruptcy
5 Code by Final Order of the Bankruptcy Court.

6 **1.1.4 Assets.** All of the assets, property, interests, real and personal, tangible and
7 intangible, wherever situated, of the Debtor, as they exist as of the Effective Date, and to
8 the extent provided by the applicable provisions of the Bankruptcy Code, including without
9 limitation section 541 of the Bankruptcy Code.

10 **1.1.5 Avoidance Actions.** Any actions commenced, or that may be commenced
11 before or after the Effective Date, pursuant to sections 510, 541, 542, 543, 544, 545, 547,
12 548, 549, 550, 551, 553(b) and 724(a) of the Bankruptcy Code.

13 **1.1.6 Bankruptcy Code.** The Bankruptcy Reform Act of 1978, title 11 of the
14 United States Code, as amended from time to time, as applicable to these Chapter 11 Case,
15 as now in effect or hereafter amended.

16 **1.1.7 Bankruptcy Court.** The United States Bankruptcy Court for the District
17 of Nevada having jurisdiction over the Chapter 11 Case, and to the extent of the withdrawal
18 of any reference under section 157 of title 28 of the United States Code and/or the General
19 Order of the United States District Court for the District of Nevada pursuant to section 151
20 of title 28 of the United States Code, the United States District Court for the District of
21 Nevada.

22 **1.1.8 Bankruptcy Rules.** Collectively, the Federal Rules of Bankruptcy
23 Procedure as applicable to the Chapter 11 Case, the Local Rules of Bankruptcy Practice
24 for the United States District Court for the District of Nevada, both as are now in effect or
25 hereafter amended.

26 **1.1.9 Bar Date** In the case of non-governmental Creditors, March 27, 2019,
27 which is the date established by the Bankruptcy Court by which such Creditors are required
28 to file proofs of claim with respect to pre-petition Claims including Claims asserted
pursuant to section 503(b)(9) of the Bankruptcy Code, except with respect to
Administrative Claims, Claims arising from the rejection of any Executory Contracts and
Unexpired Leases, and Claims that were scheduled by the Debtor as undisputed, non-
contingent, and unliquidated. In the case of governmental Creditors, May 22, 2019, which
is the date established by the Bankruptcy Court by which such Creditors are required to
file proofs of claim with respect to pre-petition Claims, including but not limited to Priority
Tax Claims.

1.1.10 Business Day. A day, other than a Saturday, Sunday, or "legal holiday" as
defined in Bankruptcy Rule 9006(a).

1.1.11 Cash. The legal tender of the United States of America or the equivalent
thereof, including bank deposits, checks, negotiable instruments, wire transfers of
immediately available funds, or other cash equivalents.

1.1.12 Causes of Action. Any Claim, cause of action, controversy, demand, right,

1 action, Lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account,
2 defense, offset, power, privilege, license, and franchise of any kind or character
3 whatsoever, known, unknown, contingent or non-contingent, matured or unmatured,
4 suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or
unsecured, assertable directly or derivatively, whether arising before, on or after the
Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of
law, but specifically excepting and excluding therefrom any Avoidance Actions.

5 **1.1.13 Chapter 11 Case.** The case under chapter 11 of the Bankruptcy Code
6 involving the Debtor, having case number BK-S-18-16974-abl, including all adversary
proceedings pending in connection therewith.

7 **1.1.14 Claim.** Any right to payment from the Debtor, whether or not such right is
8 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,
9 disputed, undisputed, legal, equitable, secured, or unsecured arising at any time before the
Effective Date or relating to any event that occurred before the Effective Date, or any right
10 to an equitable remedy for breach of performance if such breach gives rise to a right to
11 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.

12 **1.1.15 Claim Objection Deadline.** The date that is 90 days from the Effective
13 Date for all Claims, which deadline may be extended by the Reorganized Debtor upon
request after notice and a hearing.

14 **1.1.16 Claims Register.** The official register of Claims maintained by the Court
15 in the Debtor's Chapter 11 Case.

16 **1.1.17 Class.** A category of Holders of Claims as classified in the Plan.

17 **1.1.18 Confirmation.** The entry by the Bankruptcy Court of the Confirmation
18 Order on the docket in the Chapter 11 Case.

19 **1.1.19 Confirmation Date.** The date upon which the clerk of the Bankruptcy
20 Court enters the Confirmation Order on the docket of the Chapter 11 Case.

21 **1.1.20 Confirmation Hearing.** The hearing held by the Bankruptcy Court to
22 consider confirmation of the Plan pursuant to section 1128 of the Bankruptcy Code, as such
hearing may be adjourned or continued from time to time.

23 **1.1.21 Confirmation Order.** The order entered by the Bankruptcy Court
24 confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

25 **1.1.22 Creditor.** Any Holder of a Claim, whether or not such Claim is Allowed.

26 **1.1.23 Cure.** The distribution on the Effective Date or as soon thereafter as
27 practicable of Cash, or such other property as may be agreed upon by the parties or ordered
28 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, or with respect to any
other debt instrument, in an amount equal to: (i) all unpaid monetary obligations due under

1 such Executory Contract or Unexpired Lease or required to pay to bring current the debt
2 instrument and thereby reinstate the debt and return to the pre-default conditions to the
3 extent such obligations are enforceable under the Bankruptcy Code or applicable non-
4 bankruptcy law; and (ii) with respect to any debt instrument, if a claim arises from the
5 Debtor's failure to perform any non-monetary obligation as set forth in sections 1124(2)(C)
6 and 1124(2)(D) of the Bankruptcy Code, payment of the dollar amount that compensates
7 the Holder of such a Claim for any actual pecuniary loss incurred by such Holder as a result
8 of any such failure and the dollar amount of the Claim that is established by the Holder's
9 sworn declaration and accompanying admissible evidence filed with the Bankruptcy Court
10 on or before the deadline ordered by that Court for the filing of objections to the Disclosure
11 Statement.

12 **1.1.24 Debtor.** Spar Business Services, Inc., a Nevada corporation, f/k/a Spar
13 Marketing Services, Inc., as debtor in this Chapter 11 Case.

14 **1.1.25 Disallowed Claim.** Any Claim or portion thereof that has been disallowed
15 by a Final Order of the Bankruptcy Court.

16 **1.1.26 Disclosure Statement.** The disclosure statement that relates to the Plan,
17 including all exhibits and schedules thereto, as may be amended, supplemented or modified
18 from time to time, that is prepared and distributed in accordance with, among other matters,
19 sections 1125, 1126(b) and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other
20 applicable law.

21 **1.1.27 Disputed.** A Claim (including any Administrative Claim, Priority Claim or
22 Secured Claim), or any portion thereof, that is: (a) listed in the Schedules as disputed,
23 contingent, or unliquidated; or (b) subject to an objection interposed by the Debtor, the
24 Reorganized Debtor, or any party-in-interest entitled to file and prosecute such objection
25 in the Chapter 11 Case, if at such time such objection remains unresolved.

26 **1.1.28 Distribution.** Any distribution made by the Debtor or the Reorganized
27 Debtor to the Holders of Allowed Claims pursuant to the terms of the Plan.

28 **1.1.29 Distribution Record Date.** The Confirmation Date unless the Bankruptcy
Court establishes a different date in the Confirmation Order.

1.1.30 Effective Date. The latest to occur of: (i) the first Business Day that is at
least fourteen (14) days after the Confirmation Date and on which no stay of the
Confirmation Order is in effect; and (ii) the first (1st) Business Day on which all of the
conditions set forth in Section 9 have been satisfied or waived.

1.1.31 Estate. The estate of the Debtor that was created by the commencement of
the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

1.1.32 Executory Contract. A contract to which the Debtor is a party that is
subject to assumption or rejection pursuant to section 365 of the Bankruptcy Code.

1.1.33 Federal Judgment Rate. The rate of interest on judgments as provided for
by 28 U.S.C. § 1961 as of the Confirmation Date.

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 10 **UNITED STATES BANKRUPTCY COURT**
DISTRICT OF NEVADA

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| 11 In re: 12 SPAR BUSINESS SERVICES, INC., 13 14 Debtor. | Case No.: BK-S-18-16974-abl Chapter 11 Date: July 29, 2019 Time: 1:30 p.m. |
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 16 **DECLARATION OF ROBERT G. BROWN IN SUPPORT OF DEBTOR'S BRIEF**
IN SUPPORT OF CONFIRMATION OF FIRST AMENDED CHAPTER 11 PLAN
OF REORGANIZATION AND FINAL APPROVAL OF ACCOMPANYING
 17 **DISCLOSURE STATEMENT; AND OMNIBUS REPLY TO OBJECTIONS**

18 I, Robert G. Brown, hereby declare as follows:

19 1. I am over the age of eighteen and mentally competent. I make this declaration in
 20 support of confirmation of the *First Amended Chapter 11 Plan of Reorganization* (as may be
 21 amended or supplemented, the "Plan") [ECF No. 162], and final approval of the *Disclosure*
 22 *Statement to Accompany First Amended Chapter 11 Plan of Reorganization* (as amended, the
 23 "Disclosure Statement") [ECF No. 163] filed by Spar Business Services, as debtor and debtor-in-
 24 possession ("SBS"). Unless otherwise indicated, all capitalized terms herein shall have the same
 25 meanings as set forth in the *Debtor's Brief in Support of Confirmation of First Amended Chapter*
 26 *11 Plan of Reorganization and Final Approval of Accompanying Disclosure Statement; and*
 27 *Omnibus Reply to Objections* (the "Brief"). For ease of reference with the Brief, I will sometimes
 28 refer to myself in the third person in this Declaration. I have personal knowledge of the facts set

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1 forth herein and if called upon to testify, could and would do so. This Declaration discusses two
2 principal areas: Reorganized SBS's business plan and the chapter 11 confirmation requirements
3 as they apply to SBS's Plan.

4 **I. REORGANIZED SBS'S BUSINESS MODEL**

5 2. I was one of the founders of SBS in 1986 and have been the President of SBS since
6 1986 to date. I was a founder of SPAR Group, Inc. ("SGRP") in 1967, CEO of SGRP from 1967
7 to 2006, Chairman of the Board from 1967 to 2018, and I am currently part of a Control Group
8 that beneficially owns 57.6% of SGRP. I have extensive experience and knowledge in the business
9 segment serviced by SGRP and SBS. SGRP is a \$230,000,000 international business listed on
10 NASDAQ (symbol SGRP).

11 3. Audited financial statements for SBS in 2002, 2015 and 2016 show net income of
12 \$809,979 in 2002, \$612,878 in 2015, and \$410,336 in 2016 on revenue of \$23,262,461,
13 \$21,297,865 and \$22,964,296 respectively. The annual profits according to the SGRP CFO Jim
14 Segreto in a sworn affidavit are \$1,000,000 year.

15 4. Business segment. SBS is a business to business company using Independent
16 Contractors ("IC's"). The SBS services are referred to as merchandising and the IC's,
17 merchandisers. SGRP was a customer of SBS obtaining clients (e.g., P&G, McKesson, Family
18 Dollar) and then SGRP subcontracted client work to SBS. SGRP as the customer was responsible
19 for administrating the IC's (which they did through SPAR Administrative Services, Inc. ("SAS")
20 instead of hiring their own employees), handling payroll, obtaining clients, providing working
21 capital and recruiting merchandisers. SBS will continue to provide the services SBS offered to
22 SGRP and SBS's customers will be responsible for what SGRP was responsible for. In the US the
23 market for SBS services is estimated at 2 billion dollars per year. At a \$20/hr. rate that is
24 100,000,000 hours of work annually. The cost of labor is estimated at 70% of revenue so the
25 potential of 100,000,000 hours at \$14.00/hr. is \$1.4 billion dollars. The market is concentrated
26 with the number of potential customers being less than 100. The largest potential customers have
27 hundreds of millions of dollars in revenue and the smaller customers between \$5,000,000 and
28 \$10,000,000/yr.

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1 5. Business model. SBS operates a virtual cost plus business without W-2 employees,
2 has a leased office in Florida, software would be in the cloud eliminating the need for owning their
3 own servers, payroll, accounting and banking outsourced and recruitment and administration of
4 the IC's the responsible of the customer. SBS provides insurance paid for by the IC's using a third
5 party insurance company. This is a unique and proven business model with minimal fixed costs.

6 6. The best estimate is that 50% of the potential customers use IC's. Using W-2
7 employees means operating under 50 State laws as to overtime, rest periods, meal periods,
8 holidays, benefits, unemployment insurance ("UI") and workman's compensation ("wc"). Pro-
9 forma calculations of W-2 merchandisers vs. IC's show the cost of using W-2 merchandisers is
10 25% to 50% higher than using IC's. SGRP converted from using IC's in California to W-2
11 employees and their estimate of the increased cost is consistent with the Pro-forma calculations.

12 7. Either as an IC or W-2 the merchandiser earns a similar hourly rate but the W-2
13 model increases costs to the customer due to additional SG&A costs, various regulations and taxes
14 in 50 States. The IC has the ability to deduct expenses on their tax return and is paid 100% of the
15 compensation while a W-2 employee may get paid 70% of the hourly rate due to deductions for
16 items such as FICA, SUTA, FUTA, UI and federal, state and local taxes. IC's are different from
17 other people working in retail. Many people want full time work to maximize their earnings. But
18 some people want to work as an IC in order to turn down jobs they don't like or are too far from
19 their home, set their own schedule and increase their income by doubling up on jobs in stores when
20 they work for 2, 3 or 4 merchandising companies.

21 8. Surveys by SBS have established two important criteria for SBS merchandisers are:
22 1-flexible hours due to life style choices (*e.g.*, children in school, elderly parents, other scheduled
23 activities), and 2-being able to choose how many hours per week to work.

24 9. The average merchandiser works for 3 companies. It is more efficient to have a
25 pool of merchandiser looking for work and one administrative staff instead of each company
26 recruiting and have their own administrative staff. Field administration costs between 8% and
27 14% of revenue for each company. By combining field administration for different companies the
28 cost of field administration is reduced from 8% to 12% of revenue to 5.6% to 8.4% of revenue.

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1 10. SBS reorganized structure. With the SBS model fixed costs are negligible. On
2 \$20,000,000/yr. in revenue fixed costs were under .5% of revenue primarily for rent, utilities and
3 accounting since other expenses are paid on a cost plus basis. Going forward SBS will have a
4 monthly fixed expense of under \$2,000/mo. primarily for rent, utilities and bookkeeping until the
5 first customers. Any delay prior to getting customers will not be a cash problem.

6 11. Insurance. SBS buys workman's compensation from Affinity insurance which is a
7 cost saving over traditional insurance companies. From 1996 until 2006 as CEO of SGRP I
8 periodically confirmed the saving. Subsequent to 2006 the CEO of SGRP periodically confirmed
9 the saving. In July of 2018 when SGRP stopped using SBS, instead of using another insurance
10 company they independently contracted to buy insurance from Affinity (which requires the posting
11 of \$1,000,000 cash security deposit over three years) validating the saving. The last time I verified
12 the saving is was estimated at 2% of payroll (with payroll being over 80% of expenses) which is
13 1.6% of EBITDA margin.

14 12. Marketing/sales. SBS has contacts with many merchandising companies. The
15 selling proposition is self-explanatory and straightforward. The very definable economic
16 advantages is easily presented and understood. The selling cycle is short and uncomplicated
17 without a need for repetitive sales call. Once the customer makes a decision the next step is a
18 small test.

19 13. A validation of the business model is when SGRP cancelled the contract with SBS
20 they immediately hired another third party provider to provide the same services SBS was
21 providing. Thus SBS's customer with the most knowledge chose to pay a third party rather than
22 bring merchandisers in house and do it themselves.

23 14. Roll out of services. The service will initially be offered in Florida to allow
24 customers to test the service with minimal risk with 10-50 merchandisers. This will allow for the
25 testing of all technology and administrative processes such as payroll and banking and then
26 expanded into the adjacent states and eventually across the US.

27 15. Management. In addition to me (who will work without compensation) SBS will
28 work with experienced executives in IT, sales, field operations and administration for a share of

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1 profits and/or equity. These include Brown, Pat Franco, Bill Bartels, Peter Brown and the others
2 with similar experience. Franco has over 30 years' experience in technology and
3 merchandising. Starting in 1996 Franco was responsible for the development of the SGRP
4 Business Manager and had 60 programmers working for her. She was responsible for the
5 Business Manager being expanded internationally in any language and transforming it to mobile
6 devices. She was Senior V.P. of technology for SGRP until about 2010. SBS will also contract
7 with PM AM Corporation to provide IT contract labor. Bartels is Vice Chairman and most senior
8 sales person at SGRP responsible for over 70% of the current SGRP US revenue from clients and
9 acquisitions. Bartels will help with the initial customer contacts while keeping the SGRP board
10 fully apprised of his work and the work of SBS. Peter Brown worked for SPAR Administrative
11 Service for a number of years and negotiated the acquisition of a subsidiary in Brazil for SGRP
12 which is now SGRP's biggest international subsidiary. He is on the board of SPAR Brazil LLC,
13 SGRP and Affinity insurance company. All management have agreed to work for equity or a share
14 of the profits and PM AM is included in the budget.

15 16. Legal support. Both IC's and W-2's need to meet legal requirements in 50 States
16 and the federal government. SBS will have the ability to handle legal issues in each State with an
17 experienced legal team including the firms of Fabyankse Westra Hart & Thomson P.A., Stern
18 Kesier & Panken LLP and Duane Morris LLP. These attorneys have worked with SBS on IC
19 matters on average for 25 years. SBS has defeated many State challengers to IC status including
20 in New York, Pa., Mass., Florida, California and Ohio. SBS also has an IRS ruling that the
21 merchandisers SBS hired are IC's. SBS has a contract that has been fully vetted between itself
22 and the IC's.

23 17. Software and technology. The SGRP business manager is an excellent system for
24 managing IC's but it was developed by Franco starting in 1996 and is now a legacy system. Other
25 customers have systems that manage IC's or use off the shelf software such as EPS. Being able to
26 use the SGRP Business Manager would be a benefit but each customer has their own version of a
27 "Business Manager". The Business Manager is excellent for managing merchandising jobs but
28 does not have future looking or analytical capabilities. SBS will use software built on Artificial

1 Intelligence (“AI”) to determine what a client should be doing, not merely measuring what is
2 done. The SPARLINE system measures which trade promotions will be successful so that the
3 merchandisers will work on successful promotions and not on every promotion. For the last three
4 years this system has been updated from the earlier version which had been in use by 70% of the
5 largest packaged good companies in the world including Pepsi, Coke, P&G, Unilever, Nestle, J&J
6 and Colgate.

7 18. Summary. SBS has a proven business model that is unique, an experienced
8 management team, financing to operate the business, protection built in for the creditors to be paid
9 and an operating structure that makes losses virtually impossible.

10 **II. THE CHAPTER 11 PLAN CONFIRMATION REQUIREMENTS**

11 **11 U.S.C. § 1129(a)(1): Plan Compliance With the Bankruptcy Code**

12 **11 U.S.C. § 1122: Classification of Claims.**

13 19. In the case at hand, the Debtor’s Plan classifies its creditors (other than equity
14 security holders) into the following five (5) classes: Class 1 (Westchester Bank Secured Claims),
15 Class 2 (Other Secured Claims), Class 3 (Priority Non-Tax Claims), Class 4 (Litigation Claimant
16 Claims), and Class 5 (General Unsecured Claims). Class 1 is a secured claim, or, accepting for
17 the sake of argument the Objectors’ assertion that the Bank’s perfected status is an avoidable
18 preference pursuant to section 547 of the Bankruptcy Code, it would have a general unsecured
19 claim; Class 2 is vacant and eliminated; Class 3 are priority claims under 507 of the Bankruptcy
20 Code, and Classes 4 and 5 are general unsecured creditor classes. As a result, the Debtor’s
21 classification scheme does not place any dissimilar claims within the same class in violation of
22 section 1122 of the Bankruptcy Code.

23 **11 U.S.C. § 1123(a): Mandatory Plan Requirements.**

24 20. First, the Plan designates classes of claims and equity interests. In addition to
25 Administrative Claims and Priority Tax Claims, which need not be designated, Article 3 of the
26 Plan designates six (6) classes of claims. Accordingly, the Plan satisfies section 1123(a)(1) of the
27 Bankruptcy Code.

28 21. Second, the Plan specifies any class of claims that is not impaired. In accordance

1 therewith, Article 3 of the Plan specifies that Class 2 (Other Secured Claims), Class 3 (Priority
2 Non-Tax Claims), and Class 6 (Equity Securities) are unimpaired under the Plan. Accordingly,
3 the Plan satisfies section 1123(a)(2) of the Bankruptcy Code.

4 22. Third, the Plan specifies the treatment of impaired classes of claims. Article 3 of
5 the Plan sets forth the treatment of Class 1(Westchester Bank Secured Claims), Class 4 (Litigation
6 Claimant Claims), and Class 5 (General Unsecured Claims), all of which are impaired classes
7 under the Plan. Accordingly, the Plan satisfies section 1123(a)(3) of the Bankruptcy Code.

8 23. Fourth, the Plan provide the same treatment for each claim or interest within a
9 particular class unless any claim or interest holder agrees to less favorable treatment than other
10 class members. Article 3 of the Plan specifies the treatment of Claims in each respective Class
11 and provides for the same treatment bythe Debtor for each Claim in each respective Class, unless
12 the holder of a particular Claim has agreed to a less favorable treatment of such Claim.
13 Accordingly, the Plan satisfies section 1123(a)(4) of the Bankruptcy Code.

14 24. Fifth, the Plan provides adequate means for its implementation. Articles 4 and 10
15 of the Plan, among others, provide adequate means for implementation, including the funding of
16 the New Value Contribution and the Settlement Contribution to provide for the distributions to
17 creditors, and that sufficient cash or other assets be set aside as a condition to confirmation. See
18 Plan §§ 4.4. and 9.2.4. Accordingly, the Plan provides adequate means for its implementation as
19 required by section 1123(a)(5) of the Bankruptcy Code.

20 25. Sixth, the Plan does not provide for the issuance of nonvoting equity securities, and
21 so section 1123(a)(6) of the Bankruptcy Code is inapplicable.

22 26. Seventh, the Reorganized Debtors' sole officer and director immediately as of the
23 Effective Date will be only Robert G. Brown. See Plan § 4.4. Mr. Brown's selection is in
24 compliance with applicable private corporation law in the State of Nevada, and in particular, NRS
25 § 78.130, because he is a natural person and will hold his office for such term and have such powers
26 and duties as provided in the Debtor's corporate documents, and just as he did pre-petition. Mr.
27 Brown is also the sole manager and member of SBS, LLC, a Nevada limited liability company
28 ("SBS LLC"), which is the Debtor's sole equity security holder.

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1 27. Section 1123(a)(8) of the Bankruptcy Code does not apply because the Debtor is a
2 corporation, not an individual.

3 **11 U.S.C. § 1123(b): Permissive Plan Provisions.**

4 28. As contemplated by section 1123(b)(1), Article 3 of the Plan described the
5 treatment for the following Classes of unimpaired Classes of Claims: Class 2 (Other Secured
6 Claims), Class 3 (Priority Non-Tax Claims); and for the following impaired Classes: Class 1
7 (Westchester Bank Secured Claim), Class 4 (Litigation Claimant Claims), and Class 5 (General
8 Unsecured Claims).

9 29. As permitted by section 1123(b)(3)(B) of the Bankruptcy Code, the Plan reserves
10 Causes of Action for the Reorganized Debtor and thus essentially effectuates a settlement of related
11 party Causes of Action through the payment of the Settlement Contribution and as a way to
12 expedite payments to creditors and avoid diluting their ultimate distributions due to the cost and
13 delay that necessarily be attendant to litigating such matters. See Plan §§ 1.1.12, 4.5, and 10.6.

14 30. The Plan does not provide for the sale, transfer, or assignment of all or substantially
15 all of the Debtor's property and, therefore, section 1123(b)(4) of the Bankruptcy Code is not
16 applicable.

17 31. The Plan provides for the modification of the rights of the Westchester Bank
18 Secured Claim in Class 1, see Plan §§ 3.3 and 10.3, which is permitted by section 1123(b)(5) of
19 the Bankruptcy Code.

20 **The Discharge, Injunction and Exculpation Provisions.**

21 32. Article 10 of the Plan includes discharge, injunction and exculpation provisions.
22 See Plan §§ 10.1-10.3. These discretionary provisions are appropriate because, among other
23 things, they are (i) integral to the terms and conditions contained in the Plan; (ii) fair, equitable
24 and reasonable and in the best interests of the Debtor and its estate; and (iii) supported by fair
25 consideration. These provisions are not inconsistent with the Bankruptcy Code and thus the
26 section 1123(b) is satisfied.

27 33. Section 10.2 of the Plan provides for an injunction which enjoins all persons that
28 have held, currently hold, or mayhold a Claim that is discharged pursuant to the Plan from taking

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1 certain actions against the Debtor, the Reorganized Debtor or its respective property on account of
2 such Claims or other obligations. This injunction is necessary to preserve and enforce the
3 discharge in the Plan and the exculpation provision and it is narrowly tailored to achieve that
4 purpose.

5 34. Section 10.3 of the Plan provides for an exculpation provision, which is
6 confirmable because it does not affect the liability of parties, but rather states the standard of
7 liability under the Bankruptcy Code. Consequently, the plan exculpation provision does not
8 improperly release third party non-debtors from liability arising out of the plan proponents'
9 activities in relation to the bankruptcy proceeding because, to the extent any particular state law
10 claim is preempted, no such state law claim exists. The Debtor's exculpation provision is
11 appropriate and reasonable under the specific circumstances of this case. Here, the parties that are
12 the subject of the exculpation clause (the Debtor and its Representatives, including its management
13 and professionals) are estate fiduciaries who participated in the solicitation of acceptances of the
14 Plan, and thus are entitled to exculpation under section 1125(e) of the Bankruptcy Code.

15 35. Finally, Section 10.1 of the Plan expressly provides for the discharge of the Debtor
16 from any and all claims to the fullest extent provided under section 1141(d)(1)(A) and other
17 applicable provisions of the Bankruptcy Code. The discharge provision in the Plan are appropriate
18 because it goes no further than what the Bankruptcy Code permits.

19 **11 U.S.C. § 1129(a)(2): Proponent Compliance With the Bankruptcy Code**

20 36. As applied in the case at hand, the Debtor's Disclosure Statement contains the
21 information required by Official Form 25B, including: (a) a statement regarding Debtor's
22 background pre-petition [Disclosure Statement § V.A]; (b) a discussion of the reason for the
23 bankruptcy filing [*id.* § V.B]; (c) a summary of proceedings to date in the bankruptcy case [*id.* §
24 V.C & D]; (d) a summary of assets [*id.* V.A, and Ex. 2 (Liquidation Analysis)]; (e) a description
25 of unclassified claims, including estimated amounts of administrative and priority claims [*id.* §
26 III(B), and Ex. 2 (Liquidation Analysis)]; (f) a description of claims by class, including an estimate
27 of the amount of claims in each class as reflected by the schedules and proofs of claim on file [*id.*
28 § III]; (g) a summary of the treatment of unclassified and classified claims under the proposed plan

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1 [id. § III.B]; (h) a discussion of the means of implementing the proposed plan [id. § VI(A)]; (i) a
2 summary of risk factors [id. § VII]; (j) a discussion of the tax consequences of the proposed plan
3 [id. § VIII(D)]; (k) a summary of the treatment of executory contracts under the proposed plan [id.
4 § VI(B)]; (l) a liquidation analysis [id. Ex. 2 (Liquidation Analysis)]; and (m) a statement as to
5 how the proponent intends to achieve the payments proposed [id. § V(H)]. In addition, the Debtor
6 submits that the information contained in the Disclosure Statement contains adequate information
7 pursuant to section 1125(a) of the Bankruptcy Code, as it contains all of the information generally
8 required by the case law applying that provision.

9 37. With respect to both the Clothier Plaintiffs and the Rodgers Plaintiffs, both of
10 whom voted to reject the Plan and filed their Objections, they *would obviously never vote for or*
11 *support any iteration of the Plan proposed by the Debtor, and regardless of whatever disclosure*
12 *were made in the Disclosure Statement.* Indeed, it is absurd for them to even suggest that the
13 disclosures in the Disclosure Statement are in any way meaningful to their position and their votes,
14 as they are clearly opposed to *any* potential restructuring of the Debtor, which they consistently
15 have been throughout the Chapter 11 Case. Instead, they are really only focused on non-case
16 related recovery as against the Robert G. Brown (“Brown”) and William H. Bartels (“Bartels”),
17 which distorts their motivations and vote unlike the more typical trade creditors in Class 5, all of
18 whom, have unanimously voted to accept the Plan, as it is obvious that the Plan provides a far
19 greater recovery from the Debtor and its estate than would otherwise every be available in a chapter
20 7 liquidation.

21 38. In any event, ultimately all of Objectors’ nitpicking regarding the Disclosure
22 Statement does not result in the Disclosure Statement being materially misleading or less than
23 adequate, as disclosures need only be adequate, not perfect. In fact, most of their arguments are
24 just retreads of other more specific confirmation objections like good faith, best interests of
25 creditors and feasibility. The information contained in the Debtor’s Disclosure Statement contains
26 adequate, although certainly not perfect, information as required by section 1125(a) of the
27 Bankruptcy Code, and thus can be approved on a final basis. Accordingly, the Plan satisfies
28 section 1129(a)(2) of the Bankruptcy Code as well.

1 **11 U.S.C. § 1129(a)(3): Good Faith and Not By Means Forbidden by Law**

2 **Good Faith.**

3 39. The Debtor's Plan has proper objectives, especially given the large infusions being
4 made to support the Plan, thus greatly increasing overall creditor recovery. The Objectors raise
5 the argument that the Plan is an attempt to obtain a release of liability in favor of Mssrs. Brown
6 and Bartels, however, in fact the Plan only actually treats and discharges the *Debtor's liabilities*,
7 and does not contain any improper third party release in violation of section 524(e) and applicable
8 case law in favor of Mssrs. Brown and Bartels or any other party.

9 40. The Plan, which renders further proceedings in the Clothier Litigation -- which is,
10 again, only a litigation with claims pled *against the Debtor* presently -- as moot, is in good faith
11 pursuant to section 1129(a)(3) of the Bankruptcy Code.

12 41. First, with respect to the Rodgers Plaintiffs, who originally sued not only the
13 Debtor, but also Mssrs. Brown and Bartels personally in the Rodgers Litigation, only the Debtor's
14 liability to the Rodgers Plaintiffs is treated and discharged under the Plan, and not any separate
15 liability of Mssrs. Brown and Bartels, if any. Mssrs. Brown and Bartels will thus fully remain
16 defendants in the Rodgers Litigation, and fully subject to any orders entered in that litigation.
17 Again, because the Rodgers Plaintiffs originally named Mssrs. Brown and Bartels as defendants
18 in their litigation, those claims remain.

19 42. Likewise, with respect to the Clothier Plaintiffs, the Debtor's Plan only proposes to
20 treat and discharge the Debtor's alleged liability, however, the Clothier Litigation presents a
21 different scenario from the Rodgers Litigation *and indeed a scenario of entirely the Clothier*
22 *Plaintiffs' own making*. The Clothier Plaintiffs made the *intentional and deliberate tactical*
23 *decision not to sue* Mssrs. Brown and Bartels personally originally as additional defendants in that
24 litigation, and indeed even though by their own admission they could have, but rather chose to
25 *only sue the Debtor originally*. Indeed, as to the claims as pled presently in the Clothier Litigation,
26 the statute of limitations has expired as against Mssrs. Brown and Bartels by the Clothier counsel's
27 own admission, and thus by their own admission in their filings, the only way for the Clothier
28 Plaintiffs to ever seek to add those two individuals as additional parties liable would be by way of

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1 *post-judgment* proceedings pursuant to California Code of Civil Procedure § 187. [ECF No. 37,
2 p. 2 n.4, and pp. 13-14]. In other words, the Clothier Plaintiffs need the Clothier Litigation to
3 proceed through the Phase II portion of the trial and to a final judgment *against the Debtor* not
4 really because they care about any distribution from the Debtor or under the Plan, but rather solely
5 for the purpose that as a matter of California procedural law, and as a result of their own deliberate
6 tactical choice to only sue the Debtor originally and not Mssrs. Brown and Bartels, they must get
7 such a judgment first. This is a situation of entirely the Clothier Plaintiffs' own making and arises
8 by operation of California procedural law, and their decision to pin their hopes on trying to hold
9 Mssrs. Brown and Bartels liable via a rather unusual post-trial additur procedure allegedly
10 available under California state law, as well as the natural result of the expiration of the applicable
11 statutes of limitations. To be sure, and for the avoidance of doubt, the Debtor appreciates that by
12 virtue of the Plan's treating and discharging (after payments per the Plan) all of its liabilities, that
13 it moots the need to proceed with respect to the remainder of the Clothier Litigation, including
14 further proceedings to get to a final judgment as against the Debtor in the Phase II portion of the
15 trial, but that is not an improper result, and indeed will a substantial amount of time and money,
16 and indeed that effect is absolutely required in order to allow for the funding provided for under
17 the Plan, as the funding is contingent on the Plan being confirmed.

18 43. Moreover, in ruling on the Clothier Plaintiffs' stay relief motion, the Court in no
19 way purported to provide the Clothier Plaintiffs with any guaranty that they would necessarily be
20 able to proceed all the way through any further trial and/or any post-judgment proceedings,
21 including any appeals. In fact, quite to the contrary, although the Court did grant relief to proceed,
22 the Court was very careful to note that its decision with respect to stay relief did not prevent the
23 Debtor from still proceeding with its Chapter 11 Case, including without limitation seeking to
24 estimate claims pursuant to section 503(c) of the Bankruptcy Code, and otherwise proceed with
25 confirmation of a plan of reorganization pursuant to section 1129.

26 44. Stated another way, the Court's order granting the Clothier Plaintiffs stay relief did
27 not provide any other and further relief, including, for example, that the Bankruptcy Court would
28 abstain or suspend the Chapter 11 Case pursuant to section 305 of the Bankruptcy Code until the

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1 Clothier Litigation, or at least Phase II of the trial, was fully completed. Simply stated, the world
2 does not stop and remain on hold, including in particular, the Debtor's reorganization efforts and
3 its effort to treat all creditors (not merely just the Clothier Plaintiffs), merely because of the entry
4 of the Court's stay relief order. The stay relief order provided a grant of a limited form of relief
5 only, and nothing more (including not granting any abstention or suspension of the proceedings),
6 and certainly did provide the additional relief that the Clothier Plaintiffs are now arguing they are
7 entitled to in objecting to confirmation of the Plan. If the Clothier Plaintiffs wanted such other or
8 additional relief such as under section 305 of the Bankruptcy Code, then they should have asked
9 for it, although the burden for such relief is substantial.

10 45. It is not bad faith to seek to reorganize a business, and to use the statutes of the
11 Bankruptcy Code to provide a prompt, economical and meaningful distribution, putting an end to
12 many years of litigation, and millions of dollars in attorneys' fees incurred in that litigation. The
13 Clothier Plaintiffs essentially ask the Court to save them from themselves and their own deliberate,
14 intentional and indeed tactical decisions made many years ago in the Clothier Litigation regarding
15 who they did and did not sue, and, at the same, time by effectively arguing that the Court's stay
16 relief order entered in their favor grants them more relief than it truly did.

17 46. Even more troubling, the Clothier Plaintiffs are clearly acting with non-creditor
18 interests in mind *as to the Debtor*, and really only focused on getting to judgment in the Clothier
19 Litigation in order to thereafter proceed against Mssrs. Brown and Bartels pursuant to Cal. Civ.
20 Code § 187, and even though those two individuals *are not co-debtors in this Chapter 11 Case*.
21 This is exactly the kind of collateral, non-debtor issue outside of the parameters of the Debtor's
22 reorganization that has caused them to take the tact they have, and indeed regardless of whether
23 that position results in all other creditors in this Chapter 11 Case not receiving the distributions
24 provided for under the Plan, which are far in excess of what all creditors could ever hope to receive
25 *from the Debtor* -- which is, again, the only real and appropriate focus -- in a liquidation under
26 chapter 7. One group of disputed litigation claimants should not be allowed to hold an entire
27 bankruptcy case hostage, and at the risk of costing all other creditors their Plan distributions.

28 47. Per the Debtor's attached updated Distribution Model, total New Value

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1 Contributions will be \$576,406.56 (\$397,557.39 of which will be paid to Clothier) immediately as
2 of the Effective Date, and the total Settlement Contribution will be \$323,092.92 (\$222,842.67 of
3 which will be paid to Clothier) over the life of the Plan, for a total amount paid to unsecured
4 creditors of \$899,499.48, \$620,400.05 of which, or roughly 69%, will be paid to the Clothier
5 Plaintiffs. Similarly, the total payments to the Rodgers Plaintiffs will be \$48,220.44, which is
6 another roughly 5% of the total distributions under the Plan. In other words, roughly 75% of all
7 distributions under the Plan are going to the two large disputed litigation claimants, however, the
8 other 25% of the \$899,499.48 in total distributions to the remaining creditors is also meaningful.
9 Disputed litigation claimants recalcitrance should not be allowed to hold the entire reorganization
10 case “hostage” and cause all other creditors to lose out on the substantial distributions provided
11 for under the Plan, and which are far greater than would otherwise be available.

12 **The Claims Classification Has a Legitimate Justification.**

13 48. All the Debtor’s secured classes are in separate classes/sub-classes as is required,
14 and all general unsecured claims are aggregated into two classes (Classes 4 and 5). The Objectors
15 raise two apparent classification objections involving the separate classification of claims among
16 Classes 1 (Westchester Bank Secured Claim), Class 4 (Litigation Claimant Claims), and Class 5
17 (General Unsecured Claims), each of which will be addressed below.

18 49. First, the separate classification of Class 4 (Litigation Claimant Claims) from Class
19 5 (General Unsecured Claims), both of which are classes of general unsecured claims, is
20 appropriate and for a legitimate business and economic justification because of these claims are
21 the substantial pre-petition litigation and disputes with the creditors in Class 4, and that were all
22 the subject of 502(c) claims estimation proceedings and/or other disputes during the pendency of
23 the Chapter 11 Case as well, whereas the claims in Class 5 are all undisputed trade creditors of
24 relatively small amounts by comparison, many of whose continued services are necessary to the
25 Debtor’s future reorganized business

26 50. In fact, the Plan provides for favored treatment of Class 4 over Class 5, with the
27 payments to Class 4 creditors commencing on December 15, 2019 and continuing quarterly for
28 five (5) years, which is required given the large amount of their claims, see Plan § 3.3.6, whereas

1 Class 5 creditors do not receive any distributions under the Plan until June 15, 2030 and in a single
2 lump sum given that those obligations are fairly small in amount by comparison. See Plan § 3.3.7.

3 51. Second, with respect to the secured claim of Westchester Bank and that the timing
4 of the filing of its UCC-1 may give rise to an avoidable preference, such that it should be treated
5 as a general unsecured creditor however, even if that were the case, it is also undisputed that Mssrr.
6 Brown and Bartels personally guaranteed that debt, and thus there is an additional basis for the
7 separate classification of the Westchester Bank Claim separate and apart from Classes 4 and 5,
8 which debtors are not personally guaranteed by agreement by Mssrs. Brown and Bartels.

9 **The Plan is Not Proposed by Any Means Forbidden by Law.**

10 52. In the case at hand, none of the Objections argues that the Debtor's Plan has been
11 proposed in an unlawful manner, such as, for example, a means to improperly insulate it from
12 criminal prosecution for criminal activity. The Debtor's Plan has been proposed lawfully, and thus
13 it satisfies this second prong of the analysis in section 1129(a)(3) of the Bankruptcy Code.

14 **11 U.S.C. § 1129(a)(4): Payments for Services Reasonable.**

15 53. The Plan provides that *all* administrative claims, which would by definition
16 necessarily include, but not be limited to, any and fees and costs of professionals providing services
17 for the estate and also parties purporting to make post-petition loans to the estate, to seek and
18 obtain court approval prior to being paid from the estate, and fully reserving the Court's review
19 and approval thereof. See Plan §§ 1.1.1, 1.1.2, 2.1. For the avoidance of doubt, any such sums
20 that were not properly authorized will not be paid pursuant to this provision, and the Court retains
21 full control under the Plan to so order.

22 **11 U.S.C. § 1129(a)(5): Disclosure of Management and Insiders.**

23 54. The Debtor has disclose the identity and affiliations of the proposed officers and
24 directors of the reorganized debtor; that the appointment or continuance of such officers and
25 directors be consistent with the interests of creditors and equity security holders and with public
26 policy; and that there be disclosure of the identity and compensation of any insiders to be retained
27 or employed by the reorganized debtor.

28 55. As applied to the case at hand, the Debtor's proposed initial sole officer and director

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1 from and after the Effective Date was disclosed as Mr. Brown. See Plan § 4.4. This is only to be
2 expected as Mr. Brown is also the sole owner of SBS LLC, the Debtor's sole stockholder. Mr.
3 Brown is well qualified to serve in that capacity on behalf of the Reorganized Debtor because he
4 has continually served in that capacity since the Debtor's original incorporation in 1986, and thus
5 has more than 40 years of experience in the industry. Additionally, Mr. Brown has continued to
6 serve in that capacity during the pendency of the Debtor's Chapter 11 Case, including acting as
7 the Debtor's designated responsible person, and thus he is the party most familiar with the Debtor's
8 current situation and the Plan. Finally, as described in greater detail hereinabove, the Debtor has
9 future plans to add to its management ranks the same qualified persons as were involved in the
10 Debtor pre-petition. For the avoidance of doubt, such persons are not proposed to part of the
11 Debtor's management immediately; rather, only later, however, it is noteworthy that additional
12 management is contemplated to assist Mr. Brown, and similar to what they had done pre-petition.
13 Accordingly, the Plan satisfies section 1129(a)(5).

14 **11 U.S.C. § 1129(a)(6): Regulatory Approvals**

15 56. Section 1129(a)(6) of the Bankruptcy Code is inapplicable to the case at hand
16 because the Debtor does not charge rates that are regulated by a governmental agency.

17 **11 U.S.C. § 1129(a)(7): Best Interests Test**

18 57. Under the Debtor's Plan, each dissenting creditor will receive or retain value, as of
19 the effective date of the plan, which is not less than the amount it would receive if the debtor were
20 liquidated. As applied in the case at hand, the only impaired class of claims that voted to reject
21 the Plan is Class 4 (Litigation Claimant Claims), each of whom raises a "best interest of creditors"
22 objection pursuant to section 1129(a)(7) of the Bankruptcy Code. As the Debtor's Liquidation
23 Analysis demonstrates, Class 4 (Litigation Claimant Claims) is better off under the Plan as
24 compared with a chapter 7 liquidation because in a hypothetical liquidation proceeding. The
25 Debtor's Liquidation Analysis demonstrates that the net liquidation value of the Debtor is fairly
26 small, and indeed even if the Westchester Bank secured claim were avoided as a preference
27 pursuant to section 547 of the Bankruptcy Code, such that the Bank would only hold an unsecured
28 claim, the ultimate distributions to creditors in Class 4 *still far exceeds* what they would receive in

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1 a chapter 7 liquidation given the sheer size of the New Value Contribution and Settlement
2 Contributions provided, as compared with the net liquidation value of the Debtor's assets. As a
3 result, the Plan satisfies the "best interests of creditors" test in section 1129(a)(7) as to the
4 dissenting class Class 4.

5 **11 U.S.C. § 1129(a)(8): Class Acceptance**

6 58. Class 1 (Westchester Bank Secured Claim) voted to accept the Plan. Class 2 (Other
7 Secured Claims) is a vacant class and thus is eliminated under the terms of the Plan, and is
8 otherwise unimpaired in any event such that if there were creditors in this class, they are deemed
9 to accept the Plan pursuant to section 1126(f). See Plan §§ 3.6 and 3.9. Class 3 (Priority Non-Tax
10 Claims) is unimpaired by the Plan, and thus also is presumed to have accepted the Plan pursuant
11 to section 1126(f). Class 4 (General Unsecured Claims) is impaired but voted to reject the Plan.
12 Class 5 (Unsecured Trade Claims) is impaired and voted to accept the Plan. Accordingly, the Plan
13 does not satisfy section 1129(a)(8) of the Bankruptcy Code given the rejection by Class 4, and thus
14 the Debtor will address below the "cramdown" approval of the Plan as to that class pursuant to
15 section 1129(b).

16 **11 U.S.C. § 1129(a)(9): Administrative and Priority Claims.**

17 59. In accordance with sections 1129(a)(9)(A) and (B) of the Bankruptcy Code, the
18 Plan provides for the payment in full of each holder of an Allowed Administrative Claim, unless
19 a party has otherwise consented. See Plan §§ 1.1.1, 1.1.2, and 2.1. In accordance with sections
20 1129(a)(9)(C) and (D), the Plan provides that all Allowed Priority Tax Claims, if any, will be paid
21 in full after such claim is allowed, or on such terms as the parties may agree. See *id.* §§ 1.1.48 and
22 2.2. Accordingly, the Plan complies with section 1129(a)(9).

23 **11 U.S.C. § 1129(a)(10): One Consenting Impaired Class.**

24 60. Class 1 (Westchester Bank Secured Claim) and Class 5 (General Unsecured
25 Claims) are both impaired under the Plan, and both of those classes have voted to accept the Plan.
26 Accordingly, the acceptance of the Plan by each of those classes satisfies the requirement of section
27 1129(a)(10).

28

11 U.S.C. § 1129(a)(11): Feasibility

1
2 61. The Debtor's Plan is very feasible, and confirmation of the Plan is not likely to be
3 followed by the liquidation, or the need for further financial reorganization, of the debtor or any
4 successor to the debtor under the plan. The Debtor's Plan is workable and has a reasonable
5 likelihood of success.

6 62. In the case at hand, the Debtor recognizes that it is having to restart its business
7 after a dormancy resulting from the pending litigations and expiration of existing contracts. As a
8 result, the Plan is not reliant solely on cash generated from its future operations, and instead will
9 necessarily have to include immediate outside infusions and additional outside credit support to
10 ensure that the distributions provided for under the Plan have a reasonable prospect of being paid
11 based on a preponderance of the evidence.

12 63. In support of feasibility, in addition to the testimony of Mr. Brown regarding the
13 viability of the Reorganized Debtor's future business operations, which were once extremely
14 profitable and which he believes can return to profitability, which future operation are intended to
15 be only one means, but by no means the exclusive way by which the Debtor will fund the
16 Settlement Contribution Payment over the life of the Plan, Mssrs. Brown and Bartels have arranged
17 for sufficient cash and shares of SPAR common stock into separate, segregated accounts for each
18 of the three funds necessary under the Plan.

19 64. Attached as **Exhibit 1** and **Exhibit 2** to the Debtor's Brief are *updated* Liquidation
20 Analysis and Plan Projections, which make adjustments to the amounts of the claims in Class 4
21 (Litigation Claimant Claims) in light of the proposed settlement with the Spar Companies and the
22 Court's two decisions with respect to the 502(c) claims estimations of both the Clothier Plaintiffs
23 and the Rodgers Plaintiffs. Given the timing of the filing of the Debtor's Plan and Disclosure
24 Statement, which was before any adjudications of the Debtor's 502(c) estimation motions as
25 hereinafter described, the Debtor's original Liquidation Analysis and Projected Distribution
26 necessarily had to assume certain amounts as "placeholder" figures for these claims, which issue
27 was specifically referenced in a footnote of the chart. In July 2019, however, which was about a
28 month after the Debtor filed its Plan and Disclosure Statement, the Court entered several orders

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1 with respect to claims estimation. Specifically, on July 11, 2019, the Court entered an order
2 granting the Debtor's 502(c) motion to estimate the Clothier Plaintiffs' claims at \$7,951,147.70
3 [ECF No. 197], and on July 17, 2019, the Court entered an order granting a similar motion to
4 estimate the Rodgers Plaintiffs' claims at \$618,001.01 [ECF No. 203].

5 65. Additionally, the Debtor anticipated filing a similar estimation motion with respect
6 to the Spar Companies' claims, however, as of the date of submission of this confirmation brief,
7 the parties are currently circulating a settlement that would provide for the allowance of the Spar
8 Companies' proofs of claims in their filed amounts, but with the distributions on the Plan being
9 spread out over time and greater than as provided in the Plan. Among other filings, SGRP filed a
10 proof of claim, being Claim No. 6 in the amount of \$1,839,458.82, and SMF filed a proof of claim,
11 being claim No. 5, in the amount of \$12,962.84. Given the foregoing adjudications and resolution,
12 the Debtor has updated its Liquidation Analysis and Projected Distribution Model to adjust for
13 these updated claim amounts. Further, as a result of now having these claim numbers in hand, the
14 following infusions have been made and each in their own segregated accounts, true and correct
15 copies of which are attached to the Brown Declaration.¹ True and correct copies of the statements
16 and deposits for these sums are attached as Exhibit 1.

17 66. SBSNewValueCont: The New Value Contribution account per Plan § 4.5.1, which
18 is projected to require a total of \$576,406.56 is presently funded with \$400,000.00 of cash in a
19 segregated account, and the required balance will be covered with SGRP stock and other infusions.
20 The Clothier Plaintiffs are scheduled to receive New Value of \$397,447.39 and the Rodgers
21 Plaintiffs are scheduled to receive New Value of \$30,900.05, and thus as just between these two
22 claimants, they will receive total New Value of \$428,457.44. The balance of the New Value is
23 going to be paid to creditors most of whom have entered into deferral agreements that the Debtor
24 has been able to strike recently, and thus not paid immediately as of the Effective Date. First, with
25 respect to Spar Companies, who are in the aggregate owed \$111,562.98 in New Value, per the
26 settlement agreement among the parties, that amount is paid out 24 months, and thus the Debtor
27 will not provide a full reserve of such sums immediately as of the Effective Date as it is

28 _____
¹ Final release of all findings is obviously contingent on the Plan being confirmed by the Court.

1 unnecessary. Likewise, at least Duane Morris, Westchester Bank and Spar Administrative
2 Services, who are in the aggregate are owed \$35,225.57 of New Value, have also agreed to defer
3 their New Value payments to a later date.

4 67. SBSWorkingCapital: The Working Capital per the Plan Projections/Statement of
5 Cash Flows (Plan, Ex. 3), which is 796,986 shares of SGRP stock, and thus with a value (at \$0.7528
6 per share at the market close as of July 25, 2019) of \$599,971.06, has been placed into a segregated
7 working capital account. Notably, the Debtor's Cash Flow Budget only contemplated an initial
8 capital contribution of \$100,000 and working capital of \$400,000, so this account is substantially
9 overfunded and can be used as necessary to cover any shortfalls.

10 68. SBSSettltmtCont: The Settlement Contribution account, Plan § 4.5.2, which is
11 projected to require a total of \$323,092.92, and thus 387,549 shares of SGRP stock (and thus with
12 a value of \$291,746.89 as of the market close on July 25, 2019 with a per share price of \$0.7528)
13 have been placed in this account.

14 69. As a matter of public record and subject to judicial notice, Mssrs. Brown and
15 Bartels collectively beneficially own approximately 57% of SGRP's stock, being in excess of 12
16 million shares with a value per share as of market close as of July 25, 2019 of \$0.7528 per share,
17 and also fairly steady with a 50-day moving average of \$0.6911 per share, and a 200-day moving
18 average of \$0.6637 per share. As a result, the value of Mssrs. Brown and Bartels SGRP stock is
19 in excess of \$8,000,000. As such, the Debtor has more than ample evidence through both future
20 operations and the additional credit support from the infusions of cash and SGRP stock to
21 adequately pay for and "backstop" all distributions under the Plan, inclusive of the New Value
22 Contribution and the Settlement Contribution, as well as sufficient infusions to cover Working
23 Capital required per the Debtor's Plan Projections/Cash Flow Statement.

24 70. Additionally, although based on the cash and SGRP stock pledged the Debtor
25 asserts that no further credit support need be given, and only to the extent the Court does not
26 consider this a material modification that would require resolicitation pursuant to section 1127 of
27 the Bankruptcy Code, Mssrs. Brown and Bartels are also willing to personally guaranty all
28 distributions under the Debtor's Plan, if confirmed, by executing personal guarantees, thereby

1 providing even greater certainty that all distributions will be made. This proposed modification is
2 not material and obviously, if anything, makes the distributions under the Plan even more certain,
3 and thus could not be said to prejudice any other creditors or parties in interest.

4 **11 U.S.C. § 1129(a)(12): U.S. Trustee's Fees Paid**

5 71. All fees payable under section 1930 of title 28, as determined by the court at the
6 hearing on confirmation of the plan, have been paid or the plan provides for the payment of all
7 such fees on the effective date of the plan. Plan §§ 12.9 and 12.10 govern the payment and
8 reporting obligations to the UST and fully satisfy the foregoing.

9 **11 U.S.C. § 1129(a)(13)-(16): Various Inapplicable Provisions**

10 72. The Debtor has no "retiree benefits" as that term is defined in section 1114 of the
11 Bankruptcy Code, and thus section 1129(a)(13) is satisfied. The Debtor does not owe any
12 "domestic support obligation" as that term is defined in section 101(14)(A) of the Bankruptcy
13 Code, and thus the Plan satisfies section 1129(a)(14). The Debtor is not an "individual," but rather
14 is a corporation, and thus section 1129(a)(15) of the Bankruptcy Code does not apply. The Debtor
15 is a for profit corporation, not a non-profit corporation, and thus section 1129(a)(16) of the
16 Bankruptcy Code does not apply.

17 **11 U.S.C. § 1129(b): The Plan May be Crammed Down on Class 4**

18 73. The Debtor's Plan does not discriminate unfairly, and is fair and equitable, with
19 respect to each class of claims or interests that is impaired under, and has not accepted, it. In the
20 case at hand, Class 4 (Litigation Claimant Claims) did not vote to accept the Plan, and thus the
21 Debtor seeks to invoke section 1129(b) with respect to that class in order to have the Plan approved
22 on a "cramdown" basis.

23 74. The Debtor's Plan does discriminate in part as to the *timing* of the payment of the
24 Settlement Contribution, but not in the ultimate amount of the payment, and as hereinafter
25 explained, such discrimination is not "unfair." Indeed, the discrimination as to the timing of
26 payment in fact arguably favors the claims in Class 4 (Litigation Claimant Claims) by providing
27 them distributions commencing much earlier than those in Class 5 (General Unsecured Claims).
28 In particular, distributions of the Settlement Contribution to claimants in Class 4 begin on

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1 December 15, 2019 and necessarily must extend out over a five (5) year period in light of their
2 sheer amounts, whereas Class 5 distributions for the Settlement Contribution begin on June 15,
3 2020, and thus fully six (6) months later. See Plan §§ 3.3.6 and 3.3.7. As reflected in the Debtor's
4 updated Projected Distribution Model attached hereto, because the aggregate amount of Settlement
5 Contribution distributed to Class 5 is much smaller (\$20,395.51), by comparison, to the Class 4
6 (\$302,697.41), however, Class 5 does get paid in full in a single lump sum in June 2020. In running
7 its Projected Distribution Model, the Debtor saw no good faith reason to artificially spread out the
8 distributions on the Settlement Contribution to Class 5 over five years, as it was only a total of
9 \$20,395.51 in payments, whereas the total portion of the Settlement Payment paid to Class 4 was
10 \$302,697.41, which is a much larger sum. To be sure, it is the Debtor's hope that it does not need
11 to have to tap the pledged shares in order to make any distributions of the Settlement Contribution,
12 and instead be able to pay those sums from future earnings, however, that reserve account remains
13 if needed. Hence, the Debtor's discrimination between the two classes is not unfair, and indeed is
14 driven by the practical realities of the case and the amount of claims between those two classes in
15 particular. Further, any discrimination between these two classes is also mitigated by the fact that
16 the Plan does provide that the Class 4 distributions of the Settlement Contribution start six months
17 quicker than the distributions of the Settlement Contribution to Class 5, and that interest will also
18 be paid for the time value of money. As a result, the Debtor's Plan does not render such
19 discrimination between these classes unfair within the meaning of section 1129(b)(1).

20 75. The Debtor's Plan is "fair and equitable" as to a class of unsecured claims that
21 rejects a plan, such as Class 4 (General Unsecured Claims) in the case at hand, because even though
22 it does not comply with the absolute priority rule, because equity is retaining its interests in the
23 Debtor prior to Classes 4 and 5 being paid in full, the Debtor's plan relies on the new value
24 exception (or corollary) to the absolute priority rule. This provides that where there is an infusion
25 of new capital by the debtor or its principals, then equity holders may retain their interest even
26 though priority claimholders do not receive the full value of their claims.

27 76. The New Value Contribution under the Plan is contributed by the Debtor's current
28 and prior equity owners and is new money, substantial; in cash and liquid stock, is necessary to

1 the Debtor's reorganization, and is far in excess of the value or interest they receive. The New
2 Value Contribution under the Plan is not merely nominal, or gratuitous, token cash infusion
3 proposed primarily to buy cheap financing, but rather is substantial. Specifically, the New Value
4 Contribution is equal to 5% of all Allowed Claims including those in Class 4 in the estimated
5 amounts, which is substantial, and in real dollar terms equals \$576,406.56. The New Value
6 Contribution is also an immediate payment of cash,² from the Debtor's ultimate owner, and that,
7 as well as the additional Working Capital infusion required by the Plan Projections of \$400,000,
8 easily renders the contributions substantial. As a result, notwithstanding the rejection by Class 4
9 (General Unsecured Creditors) of the Plan, the Court may confirm the Plan via "cramdown" as to
10 that class pursuant to section 1129(b) because the Plan is "fair and equitable" as to them.

11 I declare under penalty of perjury of the laws of the United States that the foregoing is true
12 and correct to the best of my knowledge.

13 Dated: July 25, 2019.

14 /s/ Robert G. Brown
15 ROBERT G. BROWN

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27 _____
28 ²Again, as previously noted, subject to the Debtor's ability to seek specific arrangements with particular creditors to provide for less favorable treatment pursuant to section 1124(a)(4) of the Bankruptcy Code.

EXHIBIT 1



for best printing results, change page orientation to landscape.

Holdings for SBS NEW VALUE CONT 0

SBS NEWVALUE CONT
\$250,000.00
 \$0.00 0.00%

Own 27.1k 11 +140.86 -0.53% NASDAQ 6,245.73 -75.76 -0.91% S&P 500 3,003.48 -16.08 -0.53% 10 Year T-Note 207 +0.02 +11.4%
 Real time quotes

View Product Class Security Account

Real-Time quotes

As of 07/26/2019 03:39 PM ET

| Product Class | Value | Day's Value Change | Unrealized Gain/Loss |
|----------------------------------|---------------------|--------------------|----------------------|
| <u>Cash Balance</u> | \$0.00 | | |
| Pending Activity (Cash/Security) | \$250,000.00 | | |
| Short Term Gain | | | \$0.00 |
| Short Term Loss | | | \$0.00 |
| Total Short Term Gain/Loss | | | \$0.00 |
| Long Term Gain | | | \$0.00 |
| Long Term Loss | | | \$0.00 |
| Total Long Term Gain/Loss | | | \$0.00 |
| Total | \$250,000.00 | \$0.00 | \$0.00 |
| | | 0.00% | |

Holdings by Product Class Report

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The security price and market value shown is based on the latest available market data, which is displayed at least 2.0 minutes.

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BoFA Merrill Lynch Global Research Utility Risk Ratings are based on the following criteria:

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- B - Medium
- C - High

BoFA Merrill Lynch Global Research Investment Ratings reflect the analyst's assessment of a stock's absolute total return potential and attractiveness relative to other stocks within its Coverage Cluster (defined below). There are three investment ratings:

- 1 - Buy (stocks are expected to have a total return of at least 10% and are the most attractive stocks in a Coverage Cluster)
- 2 - Neutral (Stocks are expected to remain flat or increase in value, but are less attractive than Buy rated stocks)
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- 7 - same or higher (dividend considered to be secure)
- 6 - same or lower (dividend not considered to be secure)
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Holdings for SBS WORKING CAPITAL

SBS WORKING CAPITAL

\$599,971.06

+ \$26,141.14 +4.56%

Dow 27,120.04 +143.83 -0.56% NASDAQ 8,244.04 77.46 -0.93% S&P 500 3,002.50 -17.06 -0.56% 10 Year T Note 2.07 +0.02 +1.01% Real-time quote

View by Product Class Security OA=unt

As of 07/25/2019 03:22 PM ET

| Product Class | Value | Day's Value Change | Unrealized Gain/Loss |
|-----------------------------|----------|--------------------|---|
| Stocks & Related | | | |
| Symbol Description | Quantity | Price | P.Y. % <u>Change</u> |
| SGRP SPAR GROUP INC COM | 796,986 | \$0,7528 | +80.0328 +4.56% |
| | | | Value Day's Value Change Unrealized Gain/LOBS |
| | | | BoFA ML Last Updated |
| | | | 02:33PM ET Action |
| Total | | | \$599,971.06 +\$26,141.14 +4.56% |
| Cash Balance | | | |
| Short Term Gain | | | \$0.00 |
| Short Term Loss | | | \$0.00 |
| Total Short Term Gain/Loss | | | \$0.00 |
| Long Term Gain | | | \$0.00 |
| Long Term Loss | | | \$0.00 |
| Total Long Term Gain/Loss | | | \$0.00 |
| Total | | | \$599,971.06 +\$26,141.14 +4.56% |

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The bid/offer price and market value shown is based on the latest available market data, which is delayed at least 20 minutes.

Unrealized gain/loss shown is based on the latest available market data, which is delayed at least 20 minutes.

BoFA Merrill Lynch Global Research Volatility Risk Ratings indicators of potential price fluctuation, are:

- A - Low
- B - Medium
- C - High

BoFA Merrill Lynch Global Research Investment Ratings reflect the analyst's assessment of a stock's absolute total return potential and attractiveness for investment relative to other stocks within its Coverage Cluster (defined below). There are three investment ratings:

- 1 - Buy (stocks are expected to have a 12-month return of at least 10% and are the most attractive stocks in a Coverage Cluster)
- 2 - Neutral (stocks are expected to remain flat or increase in value and are less attractive than Buy rated stock)
- 3 - Underperform (stocks are the least attractive stocks in a Coverage Cluster)

BoFA Merrill Lynch Global Research Income Rating measures potential cash dividends, are:

- 7 - Same/High (dividend considered to be secure)
- 8 - Same/Low (dividend not considered to be secure)
- 9 - Pays no cash dividend

For best printing results, change page orientation to landscape.

Holdings for SBS SETTLMNT CONTRIB 0

SBS SETTLMNT CONTRIB

\$291,746.89

+ \$12,711.61 +4.56%

Dow 27,123.35 -146.62 -0.54% NASDAQ 6,244.20 -77.29 -0.93% S&P 500 3,002.68 -18.88 -0.56% 10 Year T Note 2.07 +0.02 +1.10% Realtime quotes

View by @Product Class OSecurity OAccount

AS of 07/25/2019 03:20PM ET

| Product Class | Value | Day's Value Change | Unrealized Gain/Loss |
|-----------------------------------|----------|--------------------|--|
| Stocks & Related | | | |
| Symbol Description | Quantity | Price | P.Y. Change |
| SGRP SPAR GROUP INC OCM | 387,549 | \$0.7528 | +\$0.0328 +4.56% |
| | | | Value: \$291,746.89 |
| | | | Day's Value Change: +\$12,711.61 |
| | | | Unrealized Gain/Loss: +\$12,711.61 +4.56% |
| Total | | | \$291,746.89 +\$12,711.61 +4.56% |
| Cash Balance | | | |
| Short Term Gain | | | \$0.00 |
| Short Term Loss | | | \$0.00 |
| Total Short Term Gain/Loss | | | \$0.00 |
| Long Term Gain | | | \$0.00 |
| Long Term Loss | | | \$0.00 |
| Total Long Term Gain/Loss | | | \$0.00 |
| Total | | | \$291,746.89 +\$12,711.61 +4.56% |

Holdings by Product Class Report

The data displayed is for informational purposes only. Your account statement is the official record of your holdings and balances.

Review the description of the third-party ratings methodology.

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The security price and market value shown is based on the latest available market data, which is delayed at least 20 minutes.

Unrealized gain/loss shown is based on the latest available market data, which is delayed at least 20 minutes.

BoFA Merrill Lynch Global Research Volatility Risk Ratings indicators of potential price fluctuation are:

- A - Low
- B - Medium
- C - High

BoFA Merrill Lynch Global Research Investment Ratings reflect the analyst's assessment of a stock's absolute total return potential and attractiveness for investment relative to other stocks within its Coverage Cluster (defined below). There are 11 total investment ratings:

- 1 - Buy (Stocks are expected to have a total return of at least 10% and are the most attractive stocks in a Coverage Cluster)
- 2 - Neutral (stocks are overpriced for an Buy or Incline so they are less attractive than Buy-rated stocks)
- 3 - Underperform (stocks are the least attractive stocks in a Coverage Cluster)

BoFA Merrill Lynch Global Research Income Ratings indicators of potential cash dividends are:

- 7 - Same or higher (dividend considered to be secure)
- 6 - Same or lower (dividend not considered to be secure)
- 9 - Pays no cash dividend