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10 Attorneys for Chapter 11 Debtor and Debtor in Possession,
11 FOCUS ENHANCEMENTS, INC.

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 In re:) Case No. 08-55216
16)
17 FOCUS ENHANCEMENTS, INC.,) Chapter 11
18)
19 Debtor.) **DEBTOR'S SECOND AMENDED PLAN**
20) **OF REORGANIZATION (DATED**
21) **MARCH 19, 2009)**
22)
23 EIN: 04-3144936) Plan Confirmation Hearing:
24) Date: April 20, 2009
25) Time: 1:00 p.m.
26) Place: Courtroom 3099
27) 280 South First Street
28) 3rd Floor
29) San Jose, CA 95113
30) Judge: Hon. Roger L. Efremsky
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I.
INTRODUCTION

On September 16, 2008 (the "Petition Date"), Focus Enhancements, Inc., the debtor and debtor in possession herein (the "Debtor"), commenced this bankruptcy case by filing a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. ("Bankruptcy Code"). This document is the Debtor's Second Amended Plan of Reorganization (the "Plan").

Chapter 11 of the Bankruptcy Code allows the Debtor, and, under some circumstances, creditors and other parties in interest, to propose a plan of reorganization. This Plan is a plan of reorganization which is being proposed by the Debtor. The effective date of this Plan (the "Effective Date") will be the first business day which is at least eleven days following the date of entry of the Court order confirming this Plan (the "Plan Confirmation Order"). The Debtor following the Effective Date shall be referred to herein as the "Reorganized Debtor."

All defined terms contained in this Plan which are not defined in this Plan shall have the same definitions that were provided to such terms in the Debtor's Disclosure Statement

III.
PLAN SUMMARY

A. Classification and Treatment of Claims and Interests

1. What Creditors and Interest Holders Will Receive Under this Plan

As required by the Bankruptcy Code, this Plan classifies claims and interests in various classes according to their right to priority. This Plan states whether each class of claims or interests is impaired or unimpaired. This Plan provides the treatment each class will receive.

<u>Name</u>	<u>Amount Owed</u>	<u>Treatment</u>
		days after the Court enters an order allowing such fees and expenses. Amounts in excess of \$25,000 to be paid from the \$200,000 fund allocated to the Class 3 general unsecured within 5 days after the Court enters an order allowing such fees and expenses.
Administrative Expense Claims of Berg and I&S pursuant to Final Financing Order	Unknown	Treatment will be as set forth below
TOTAL	\$165,000 est.	

Court Approval of Fees Required:

The Court must approve all professional fees and expenses listed in the foregoing chart before they may be paid. For all fees except Clerk's Office Fees and the UST Fees, the professional in question must file and serve a properly noticed fee application and the Court must rule on the application. Only the amount of fees and expenses allowed by the Court will be required to be paid under this Plan. The administrative claim amounts set forth above simply represent the Debtor's best estimate as to the amount of allowed administrative claims in this Case. The actual administrative claims may be higher or lower.

By voting to accept this Plan, creditors are not acknowledging the validity of, or consenting to the amount of, any of these administrative claims, and creditors are not waiving any of their rights to object to the allowance of any of these administrative claims.

b. Priority Tax Claims

Priority tax claims include certain unsecured income, employment and other taxes described by Section 507(a)(8) of the Bankruptcy Code. The Bankruptcy Code requires that each holder of such a Section 507(a)(8) priority tax claim receive the present value of such

claim in regular installment payments in cash (i) of a total value, as of the Effective Date of this Plan, equal to the allowed amount of such claim; (ii) over a period ending not later than five years after the Petition Date; and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for under this Plan.

The following charts list all of the Debtor’s Section 507(a)(8) priority tax claims and their treatment under this Plan:¹

Description	Amount Owed	Treatment
Internal Revenue Service	\$300 per an amended proof of claim which amended a prior proof of claim (claim no. 18) filed by the Internal Revenue Service.	Paid in full by the Reorganized Debtor on the Effective Date.
Arizona Department of Revenue	\$18,261.80 (per proof of claim no. 26). The Debtor believes that the ultimate allowed claim will be substantially less than this figure, and the Debtor will file an objection to this claim if the Debtor and the Arizona Department of Revenue are unable to reach an agreement on the appropriate amount of this claim.	Paid in full by the Reorganized Debtor in equal annual payments, with interest thereon at the rate specified in 26 U.S.C. § 6621 on the Effective Date, computed on a fully amortized basis.

3. Classified Claims and Interests

a. Classes of Secured Claims

¹ The Debtor has not included any priority tax claims in its Schedules. The two claims listed in the chart below reflect priority tax claims which have thus far been asserted in filed claims. By including them in the chart below, the Debtor is not acknowledging the validity or allowability of any such claims, and the Debtor reserves all rights to object to the allowance of any such claims, as well as any additional proofs of claim which are filed by any taxing agencies.

1 Secured claims are claims secured by liens on property of the estate. The following
 2 charts set forth the description and treatment of each of the Debtor's known secured claims.

<u>CLASS</u> <u>#</u>	<u>DESCRIPTION</u>	<u>INSIDERS</u> <u>(Y/N)</u>	<u>IMPAIRED</u> <u>(Y/N)</u>	<u>TREATMENT</u>
1-A	<p data-bbox="337 428 609 499">The allowed secured claims of Berg.</p> <p data-bbox="337 537 639 1003">Estimated claim amount is approximately \$281,204 (exclusive of any post-petition interest, fees or costs and exclusive of the DIP Financing provided by Berg to the Debtor). The DIP Financing is described in the Disclosure Statement.</p> <p data-bbox="337 1050 634 1409">Estimated value of assets securing claim is \$6,061,811 (estimated book value of all assets, less estimated value of accounts receivable, available to secure claims of Berg and the Note Purchasers).</p>	Y	Yes – Impaired - allowed claim in this class is entitled to vote on this Plan.	<p data-bbox="1076 428 1404 1045">In exchange for waiving any obligation of the Reorganized Debtor to repay \$2.5 million of the DIP Financing provided by Berg and the Note Purchasers to the Debtor, Berg and the Note Purchasers will be issued 100% of the stock in the Reorganized Debtor on a proportional basis based upon the amount of DIP Financing provided by them to the Debtor.</p> <p data-bbox="1076 1083 1404 1883">The balance of DIP Financing provided by Berg and the Note Purchasers to the Debtor, along with all outstanding secured debt owing by the Debtor to Berg and the Note Purchasers on the Petition Date, will (i) accrue interest following the Effective Date at the rate of 8% per annum until repaid, (ii) be treated on a para passu basis based upon the amount of their claims, (iii) have a maturity date of January 1, 2011, and (iv) prior to maturity be repaid out of any funds</p>

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				<p>received by the Reorganized Debtor in excess of the funds needed by the Reorganized Debtor to operate its business, pay all of its debts and expenses, and provide for sufficient working capital and reserves, whether such funds are obtained from the operation of the Reorganized Debtor's business, the sale of the Reorganized Debtor's assets, or otherwise.</p> <p>The Reorganized Debtor shall have the right, but not the obligation, to prepay all or any portion of the class 1-A claims with no prepayment penalty.</p> <p>The holder of the class 1-A claim has made the election to have its claim treated in accordance with the provisions of Section 1111(b) of the Bankruptcy Code</p>
1-B	<p>The allowed secured claims of the Note Purchasers</p> <p>Estimated claim amount is approximately \$23 million (exclusive of any post-petition interest, fees or costs and exclusive of the DIP Financing</p>	N	Yes – Impaired - allowed claim in this class is entitled to vote on this Plan.	<p>In exchange for waiving any obligation of the Reorganized Debtor to repay \$2.5 million of the DIP Financing provided by Berg and the Note Purchasers to the Debtor, Berg and the Note Purchasers will be issued 100% of the stock in the Reorganized Debtor on</p>

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	<p>provided by the Note Purchasers to the Debtor). The DIP Financing is described in the Disclosure Statement</p> <p>Estimated value of assets securing claim is \$6,061,811 (estimated book value of all assets, less estimated value of accounts receivable, available to secure claims of Berg and the Note Purchasers).</p>			<p>a proportional basis based upon the amount of DIP Financing provided by them to the Debtor.</p> <p>The balance of DIP Financing provided by Berg and the Note Purchasers to the Debtor, along with all outstanding secured debt owing by the Debtor to Berg and the Note Purchasers on the Petition Date, will (i) accrue interest following the Effective Date at the rate of 8% per annum until repaid, (ii) be treated on a para passu basis based upon the amount of their claims, (iii) have a maturity date of January 1, 2011, and (iv) prior to maturity be repaid out of any funds received by the Reorganized Debtor in excess of the funds needed by the Reorganized Debtor to operate its business, pay all of its debts and expenses, and provide for sufficient working capital and reserves, whether such funds are obtained from the operation of the Reorganized Debtor's business, the sale of the Reorganized Debtor's assets, or otherwise.</p>
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				<p>The Reorganized Debtor shall have the right, but not the obligation, to prepay all or any portion of the class 1-B claims with no prepayment penalty.</p> <p>The holders of the class 1-B claims have made the election to have their claims treated in accordance with the provisions of Section 1111(b) of the Bankruptcy Code.</p>
1-C	<p>The allowed secured claim of Heritage.</p> <p>Estimated claim amount is \$6.5 million</p> <p>Estimated value of assets securing claim is \$838,189 (estimated value of accounts receivable available to secure claim of Heritage).</p>	N	<p>No - Not Impaired - allowed claim in this class is not entitled to vote on this Plan.</p>	<p>The allowed secured claim of Heritage will continue to be treated in accordance with the terms of the Debtor's pre-petition loan agreement with Heritage, as may be extended in writing by Heritage, and approved by a post-petition order entered by the Court Nothing in this Plan or the Plan Confirmation Order shall affect, modify, or exonerate that certain Unconditional Guaranty dated February 22, 2008 provided by Berg to Heritage and no amount paid by Heritage as a result of the Committee Carveout or the Trustee Carveout or for any other purpose shall reduce the amount of the indebtedness owed to Heritage as guaranteed by Berg.</p>

				The holder of the class 1-C claim has made the election to have its claim treated in accordance with the provisions of Section 1111(b) of the Bankruptcy Code.
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b. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Bankruptcy Code Sections 507(a) (1), (4), (5), (6) and (7) are required to be placed in classes. These types of claims are entitled to priority treatment as follows: the Bankruptcy Code requires that each holder of such a claim receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claim. The following chart lists all classes containing the Debtor’s (non-tax) priority claims existing after payments were made to employees pursuant to the Wage Order and their treatment under this Plan:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>INSIDERS (Y/N)</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
2	Priority claims pursuant to 11 U.S.C. Sections 507(a)(1), (4), (5), (6), and (7) (the “Non-Tax Priority Claims”). <u>Amount of Non-Tax Priority Claims:</u> As of the date of this	No[except to the extent Directors or Officers of the Debtor are participants in the Debtor’s 401(k) plan and benefit	No – Not Impaired - allowed claims in this class are not entitled to vote on this Plan.	The Class 2 Non-Tax Priority Claims will be paid in full by the Reorganized Debtor on the later of the Effective Date or, in the event an objection to a particular Non-Tax Priority Claim is filed

² This is the total amount of priority employee wage claims set forth in the Debtor’s amended Schedules (\$548,813.00) less priority wage claims previously paid pursuant to the Wage Order (\$332,528.97).

	<p>Plan, the Debtor was aware of the following alleged Non-Tax Priority Claims:</p> <p>The Debtor's Employees - \$237,714.04² (priority employee wage claims) - § 507(a)(4) (per amended schedules). These claims consist of accrued but unpaid vacation pay, but only to the extent that such accrued vacation pay, together with any amounts paid to the claimant pursuant to the Wage Order, does not exceed the statutory cap of \$10,950 set forth in §507(a)(4).</p> <ul style="list-style-type: none"> • Charles Schwab - \$85,119 (employer matching contribution to 401(k) plan) - § 507(a)(5) (per amended schedules) • Disputed Claims filed as Priority- Certain claims were filed as "Priority" claims although the Debtor believes that such claims are not 	<p>from payments on account of distributions made to Charles Schwab on its claim.]</p>		<p>or a particular Non-Tax Priority Claim was Scheduled as unknown, contingent, unliquidated or disputed, entry of a final order allowing such Non-Tax Priority Claim; provided, however, that to the extent that any priority wage claim consists of vacation pay owing to a current employee of the Debtor, such vacation pay shall be a continuing obligation of the Debtor and shall be subject to use or payment in accordance with the Reorganized Debtor's vacation policy</p>
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³ The following are the claimants and amounts which the Debtor asserts were improperly filed as priority claims: Chris Grant: \$1,506.96; Further Tech: \$299,585.99; Gary A. Girasole: \$24,112.50; Elaine Whitman: \$3,151.26; Venture Programs: \$13,737.00; SunGard Availability Services LP: \$5,995.00.

	entitled to any priority (and in certain instances are disputed as to amount and allowability). The total amount of such claims is \$348,088.41. The Debtor will object to the treatment of such claims as priority claims. ³			
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c. Class of General Unsecured Claims

General unsecured claims are unsecured claims not entitled to priority under Bankruptcy Code Section 507(a). The following chart identifies this Plan's treatment of the class containing all of the Debtor's non-priority general unsecured claims:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
3	All general unsecured claims. According to the Debtor's bankruptcy schedules, the total amount of general unsecured claims, exclusive of the unsecured portions of the partially secured claims of Berg, Heritage, and the Note Purchasers, is \$4,126,775.32. Based upon the proofs of claim filed with the Bankruptcy	Yes – Impaired - allowed claims in this class are entitled to vote on this Plan.	On the Effective Date, the Reorganized Debtor will place the cash sum of \$200,000 (the "Class 3 Funds") into a segregated trust account maintained by the Reorganized Debtor (the "Class 3 Funds Trust Account"). The Class 3 Funds Trust Account and any amounts deposited therein shall be held by the Reorganized Debtor in trust for the claimants in Class 3 and no other creditor or lienholder of the Reorganized Debtor shall have any rights therein. The Class 3 Funds shall be used first to pay any allowed fees and expenses of BP, the OCC's counsel, to the extent that such fees and expenses exceed the \$25,000 carveout provided for in the DIP Financing, with all remaining funds

1 Court, the Debtor
2 believes that the total
3 amount of general
4 unsecured claims is
5 between \$5.1 million
6 and \$5.7 million.⁴
7 There will be certain
8 additional class 3
9 claims resulting from
10 pre-bankruptcy
11 employee related
12 claims which are not
13 entitled to priority.
14 The Debtor estimates
15 that such claims will
16 total \$170,000

to be distributed on a pro rata basis to
the holders of class 3 allowed claims,
except to the extent that the OCC may
request that the Reorganized Debtor
retain any of the Class 3 funds in the
Class 3 Funds Trust Account as a
reserve to fund any future litigation costs
which may be incurred by the OCC in
objecting to claims or prosecuting
Avoidance and D&O Causes of Action
(as defined below). By the later of (i)
thirty days after the Effective Date, and
(ii) thirty days after entry of the Court
order allowing the final fees and
expenses of BP, all remaining Class 3
Funds will be distributed to holders of
class 3 allowed claims on a pro rata
basis. If there remain any disputed class
3 claims at that time, an interim
distribution will be made to holders of
class 3 allowed claims, with the
distribution to be computed as if all
disputed class 3 claims are deemed class
3 allowed claims in the amounts asserted
by the holders of disputed class 3 claims.
No distribution will be made to holders
of disputed class 3 claims unless and
until such disputed class 3 claims
become class 3 allowed claims. Once a
disputed class 3 claim becomes a class 3
allowed claim, a distribution will be
made to such claim holder in the amount
that such claim holder would have
received had its claim been a class 3
allowed claim at the time of the interim
distribution. If an interim distribution is
made to holders of class 3 allowed
claims because of the existence of
disputed class 3 claims, then within
thirty days after the final disputed class 3
claim has been resolved to final order of

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26 ⁴ Such estimate does not include an unliquidated claim in the stated amount of \$6.0 million filed by Hallo
27 Development Company, LLC (“Hallo”), which claim is the projected rejection damages in the event that
28 the Debtor rejects its contract with Hallo. The Debtor proposes to assume its contract with Hallo and
therefore does not anticipate that Hallo will have any general unsecured claim in Class 3.

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			<p>the Court, all remaining Class 3 Funds will be distributed to holders of class 3 allowed claims on a pro rata basis. Unclaimed distributions or payments which are not cashed within ninety days of distribution will be deemed forfeited, and all remaining Class 3 Funds relating thereto will be redistributed to other holders of class 3 allowed claims, unless such remaining Class 3 Funds are less than \$10,000, in which case they shall be donated to the Clerk of the Bankruptcy Court. In the event that the OCC obtains any recovery on account of Avoidance and D&O Causes of Action, or any funds previously reserved for litigation expenses remain in the Class 3 Funds Trust Account, the Reorganized Debtor shall distribute such funds to holders of allowed class 3 claims on a pro-rata basis at such times and in such total amounts as the OCC shall direct.</p> <p>Assuming the total pool of class 3 allowed claims is approximately \$5.44 million, then unless BP's fees and expenses exceed \$45,000 (of which \$25,000 would be paid by the Reorganized Debtor and the \$20,000 balance paid from the Class 3 Funds), the Debtor estimates that the distribution of the Class 3 Funds will enable each holder of a class 3 allowed claim to receive a cash payment equal to approximately 3.4% of the amount of their class 3 allowed claim.</p> <p>In addition to their receipt of the Class 3 Funds, holders of class 3 allowed claims will collectively be paid on a pro rata basis the net recoveries obtained from the prosecution of any avoidance causes of action arising under the Bankruptcy Code ("Avoidance Causes of Action") or any causes of action or claims which the Debtor's estate may hold under, or with regard to, any</p>
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			<p>insurance policy owned by the Debtor, including but not limited to policies which insure the Debtor's directors and officers ("D&O Causes of Action", with Avoidance Causes of Action and D&O Causes of Action being collectively defined herein as the "Avoidance and D&O Causes of Action"). Following the Effective Date, the OCC shall have the right, if it so elects, to pursue any Avoidance or D&O Causes of Action and to compensate its professionals for the pursuit of such Avoidance or D&O Causes of Action either out of the Class 3 Funds and/or out of the recoveries obtained from the pursuit of Avoidance Causes of Action.</p> <p>The Debtor has not had the time or the resources to investigate whether there are any Avoidance or D&O Causes of Action which have any merit or source of recovery. Based upon the relatively small amount of business the Debtor was engaged in prior to the Petition Date, the Debtor is not aware of any meaningful Avoidance Causes of Action. Attached as Exhibit "2" to this Disclosure Statement is a schedule of all known payments that were made by the Debtor to non-insiders during the ninety-day period prior to the Petition Date and a schedule of all known payments that were made by the Debtor to insiders during the one-year period prior to the Petition Date.</p> <p>The Debtor intends to work with the OCC to determine whether any Avoidance Causes of Action exist. As described above on the Effective Date the Debtor will assign the rights to pursue any Avoidance and D&O Causes of Action to the OCC. However, the professional fees and expenses incurred from the pursuit of any Avoidance and D&O Causes of Action would need to be</p>
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			<p>paid from the Class 3 Fund and/or from the recoveries obtained from the pursuit of such Avoidance and D&O Causes of Action. The Reorganized Debtor will have no obligation to pay any fees or expenses incurred after the Effective Date by any professional employed during the Debtor's Chapter 11 bankruptcy case unless the Reorganized Debtor enters into a separate written retention agreement with that professional.</p> <p>All Avoidance and D&O Causes of Action are strictly preserved by this Plan, and, as described above, if the OCC so desires, the OCC shall have the full power, standing and authority to prosecute, settle, adjust, retain, enforce or abandon any Avoidance and D&O Causes of Action, as the representative of the Debtor's estate under section 1123(b) of the Bankruptcy Code or otherwise, whether such Avoidance and D&O Cause of Action was commenced prior to or subsequent to the Effective Date, and the Bankruptcy Court shall retain jurisdiction over the Debtor and the Reorganized Debtor with respect to all such matters.</p>
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d. Class of Interest Holders

Interest holders are the parties who hold an ownership interest (i.e., equity interest) in the Debtor. The following chart describes this Plan's treatment of the class of interest holders:

<u>CLASS #</u>	<u>DESCRIPTION</u>	<u>IMPAIRED (Y/N)</u>	<u>TREATMENT</u>
4	All holders of equity interests in the Debtor, including holders of common stock, preferred stock, stock options, warrants, etc.	Yes – Impaired - holders of Class 4 interests are <u>not</u> entitled to vote on this Plan because they are deemed to have rejected	On the Effective Date, all Class 4 interests will be deemed cancelled, terminated, rejected and of no further force and effect and will no longer constitute an equity interest in the Debtor or the Reorganized Debtor without

		this Plan pursuant to Section 1126(g) of the Bankruptcy Code.	the need for either the Debtor, the Reorganized Debtor or the Class 4 interest holders to take any further action. Interest holders will not receive any distribution or retain any property under this Plan, or acquire any ownership interest in the Reorganized Debtor, on account of their equity interests in the Debtor.
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B. Means of Effectuating this Plan and Implementation of this Plan

1. Funding for this Plan

This Plan will be funded by a post-confirmation loan from Berg and the Note Purchasers to the Reorganized Debtor, which is expected to be in the aggregate amount of approximately \$8.1 million est. (the "Post-Confirmation Loan"), coupled with the operating revenue to be generated by the Reorganized Debtor's business operations. The Post-Confirmation Loan will (i) accrue interest following the Effective Date at the rate of 8% per annum until repaid, (ii) be treated on a para passu basis with the remaining class 1A claims and class 2A claims (i.e., those claims which are not converted into the equity of the Reorganized Debtor) as described above, (iii) have a maturity date of January 1, 2011, and (iv) prior to maturity be repaid out of any funds received by the Reorganized Debtor in excess of the funds needed by the Reorganized Debtor to operate its business, pay all of its debts and expenses, and provide for sufficient working capital and reserves, whether such funds are obtained from the operation of the Reorganized Debtor's business, the sale of the Reorganized Debtor's assets, or otherwise. The Reorganized Debtor shall have the right, but not the obligation, to prepay all or any portion of the Post-Confirmation Loan with no prepayment penalty. Based upon the Debtor's cash flow projections attached as Exhibit "1" to the Disclosure Statement, the Debtor believes that the

1 Post-Confirmation Loan will provide the Reorganized Debtor with sufficient working capital to
2 enable the Reorganized Debtor to grow its business and pay its operating expenses.⁵

3 **2. Composition of the Reorganized Debtor and Post-Confirmation**
4 **Management**

5 100% of the stock of the Reorganized Debtor will be owned by Berg and the Note
6 Purchasers in exchange for \$2.5 million of the DIP Financing. On the Effective Date, the
7 Debtor will cease to be a public company. The Reorganized Debtor will be a privately held
8 company. In accordance with Section 1123(a)(6) of the Bankruptcy Code, the charter of the
9 Reorganized Debtor shall include a provision prohibiting the issuance of any nonvoting equity
10 securities. The Debtor anticipates that the initial officers of the Reorganized Debtor will be the
11 same as the Debtor's current officers which are as follows: Brett A. Moyer will be the President
12 and Chief Executive Officer of the Reorganized Debtor; Gary Williams will be the Chief
13 Financial Officer of the Reorganized Debtor; and Michael Conway will be the Systems Group
14 Senior Vice President of Business Development and Chief Technical Officer of the Reorganized
15 Debtor. The Debtor anticipates that the initial members of the Reorganized Debtor's Board of
16 Directors will be Carl E. Berg and Brett A. Moyer. The Debtor anticipates that the starting
17 salary for Mr. Moyer will be \$335,000 per year; the starting salary for Mr. Williams will be
18 \$222,000; and the starting salary for Mr. Conway will be \$196,000.

21 **3. Disbursing Agent**

22 The Reorganized Debtor shall serve as the disbursing agent for purposes of making all
23 distributions required to be made under this Plan.

24 **4. Objections to Claims**
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26 ⁵ The cash flow projections do not provide for the payment of any income tax by the Reorganized Debtor
27 because the Debtor believes that the Reorganized Debtor will be able to offset any such income against
28 the Debtor's current net operating loss carry forward.

1 The Debtor or the Reorganized Debtor, as the case may be, will file objections to all
2 claims which are inconsistent with the Debtor's books and records or otherwise invalid or
3 improperly classified, unless the Debtor deems the inconsistency to be insignificant. With
4 respect to disputed claims which are not resolved prior to the Effective Date, the Reorganized
5 Debtor will have the authority, in its sole discretion, in the reasonable exercise of its business
6 judgment and subject to the approval of the Court, to settle or compromise any claim. As
7 provided by Section 502(c) of the Bankruptcy Code, the Court may estimate any contingent or
8 unliquidated disputed claim for purposes of confirmation of this Plan. The Debtor or the
9 Reorganized Debtor, as the case may be, will have the authority to file any objections to claims
10 following the confirmation of this Plan or to continue with the prosecution of objections to
11 claims which were commenced but not completed prior to the confirmation of this Plan, and the
12 Court shall retain jurisdiction over the Debtor, the Reorganized Debtor and this case to resolve
13 such objections to claims following the confirmation of this Plan. Nothing contained in this
14 Plan shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any rights
15 of setoff or recoupment, or of any defense, the Debtor or the Reorganized Debtor may have with
16 respect to any claim. Prior to the Plan Confirmation Hearing, the Debtor will file objections to
17 all disputed claims which were filed on or before the January 20, 2009 claims bar date. The
18 Debtor reserves the right to file objections after the Plan Confirmation Hearing to all disputed
19 claims which were filed after January 20, 2009, including any disputed claims filed by any
20 governmental units. Any objections to claims by the Debtor shall be filed within 60 days of the
21 Effective Date. If the Debtor refuses to file and prosecute an objection to any Class 3 claim
22 which the OCC disputes and desires to have the Debtor object to, the OCC shall have the
23 standing to file and prosecute such objection to claim, and the fees and expenses of counsel to
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1 the OCC incurred in connection with the prosecution of such objections to claim, to the extent
2 allowed by the Court, will be paid from the Class 3 funds. Any objection to Class 3 claims by
3 the OCC must be filed within 180 days of the Effective Date .

4 **5. Investigation and Prosecution of Claims and Avoidance Actions**

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6 As described above, all Avoidance and D&O Causes of Action are strictly preserved by
7 this Plan, and, as described above, if the OCC so desires, the OCC shall have the full power,
8 standing and authority to prosecute, settle, adjust, retain, enforce or abandon any Avoidance or
9 D&O Cause of Action as the representative of the Debtor's estate under section 1123(b) of the
10 Bankruptcy Code or otherwise, whether such Avoidance or D&O Cause of Action was
11 commenced prior to or subsequent to the Effective Date, and the Bankruptcy Court shall retain
12 jurisdiction over the Debtor and the Reorganized Debtor with respect to all such matters. The
13 Debtor is not currently aware of any Avoidance or D&O Causes of Action to be pursued.

14
15 Professional fees incurred by counsel to the OCC after confirmation of the Plan, whether
16 incurred in claims objections, investigation, prosecution or settlement of Avoidance or D&O
17 Causes of Action, or otherwise, shall be paid as follows: counsel to the OCC shall provide its
18 actual invoice for fees and expenses for one or more month's time to the members of the OCC
19 and the UST. At the same time, counsel shall serve a notice of compensation request with the
20 total amounts of fees and expenses stated therein, in a notice to all Class 3 creditors, with
21 language in the notice instructing such creditors that they may request the counsel's actual
22 invoice to the OCC upon request, and that such amounts shall be paid, from the Class 3 funds or
23 from Avoidance or D&O Cause of Action recoveries, after 15 days from the date of service of
24 the notice, unless an objection thereto is served on the OCC counsel before the end of such
25 notice period. In the absence of objection thereto, such fee request shall be due and shall be
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1 paid without any further action. If such an objection is served, counsel for the OCC may set its
2 request for hearing on the Court's calendar and file written evidence or memoranda in support
3 thereof.

4 **6. Payment of Professional Fees and Expenses Incurred Before and After the**
5 **Effective Date**

6 The Reorganized Debtor shall be entitled to pay the fees and expenses incurred by
7 professionals employed in the Debtor's Chapter 11 case prior to the Effective Date only after
8 such fees and expenses have been approved by the Court. The Reorganized Debtor shall be
9 entitled to employ and compensate professionals after the Effective Date without any further
10 order of the Court but shall be obligated to pay for fees and expenses incurred after the Effective
11 Date only in accordance with the terms of written retention agreements entered into by the
12 Reorganized Debtor.
13

14 **7. Distributions to be Made Pursuant to this Plan**

15 Except as otherwise agreed to by the Reorganized Debtor in writing, distributions to be
16 made to holders of allowed claims pursuant to this Plan may be delivered by regular mail,
17 postage prepaid, to the address shown in the Debtor's schedules, as they may from time to time
18 be amended in accordance with the Bankruptcy Rules, or, if a different address is stated in a
19 proof of claim duly filed with the Bankruptcy Court, to such address. Checks issued to pay
20 allowed claims shall be null and void if not negotiated within sixty (60) days after the date of
21 issuance thereof.
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24 **C. Other Provisions of this Plan**

25 **1. Executory Contracts and Unexpired Leases**

26 Attached as Exhibit "3" to the Disclosure Statement is a schedule of unexpired leases
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1 and executory contracts to be assumed in conjunction with confirmation of the Plan (the
2 “Assumed Contracts”), along with what the Debtor contends are the cure amounts which must
3 be paid in connection with such assumption. Cure amounts shall be paid on the later of the
4 Effective Date with respect to cure amounts to which there is no objection, or 10 days after entry
5 of a final order resolving any cure amount to which there is a timely objection. Any party who
6 disputes the cure amounts asserted by the Debtor must, by the deadline to object to Plan
7 confirmation, file an opposition to the cure amounts and explain what the opposing party
8 contends should be the correct cure amount. Any party who fails to file a timely opposition to
9 the cure amounts asserted by the Debtor shall be deemed to consent to such cure amounts. Any
10 unexpired leases and executory contracts other than the Assumed Contracts which are not
11 assumed in conjunction with confirmation of this Plan or which have not previously been
12 assumed or rejected shall be deemed to be rejected on the Effective Date.
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14

15 THE BAR DATE FOR FILING A PROOF OF CLAIM BASED ON A CLAIM
16 ARISING FROM THE REJECTION OF AN UNEXPIRED LEASE OR EXECUTORY
17 CONTRACT WHICH IS REJECTED ON THE EFFECTIVE DATE WILL BE THIRTY (30)
18 DAYS AFTER THE DATE OF ENTRY OF THE PLAN CONFIRMATION ORDER. ANY
19 CLAIM BASED ON THE REJECTION OF AN UNEXPIRED LEASE OR EXECUTORY
20 CONTRACT WILL BE BARRED IF THE PROOF OF CLAIM IS NOT TIMELY FILED,
21 UNLESS THE COURT ORDERS OTHERWISE.
22

23 **2. Changes in Rates Subject to Regulatory Commission Approval.**

24 The Debtor is not subject to governmental regulatory commission approval of its rates.
25

26 **3. Retention of Jurisdiction.**
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1 After confirmation of this Plan and occurrence of the Effective Date, in addition to
2 jurisdiction which exists in any other court, the Bankruptcy Court will retain such jurisdiction as
3 is legally permissible including for the following purposes:

4 a. to resolve any and all disputes regarding the operation and interpretation
5 of this Plan and the Plan Confirmation Order;

6 b. to determine the allowability, classification, or priority of claims and
7 interests upon objection by the Debtor, the Reorganized Debtor or by other parties in interest
8 with standing to bring such objection or proceeding;

9 c. to determine the extent, validity and priority of any lien asserted against
10 property of the Debtor or property of the Debtor's estate;

11 d. to construe and take any action to enforce this Plan, the Plan
12 Confirmation Order, and any other Court order, issue such orders as may be necessary for the
13 implementation, execution, performance, and consummation of this Plan, the Plan Confirmation
14 Order, and all matters referred to in this Plan and the Plan Confirmation Order, and to determine
15 all matters that may be pending before the Court;

16 e. to determine (to the extent necessary) any and all applications for
17 allowance of compensation and reimbursement of expenses of professionals for the period on or
18 before the Effective Date;

19 f. to determine any request for payment of administrative expenses;

20 g. to determine motions for the rejection, assumption, or assignment of
21 executory contracts or unexpired leases filed before the Effective Date and the allowance of any
22 claims resulting therefrom;

23 h. to determine all applications, motions, adversary proceedings, contested
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1 matters, and any other litigated matters instituted during the pendency of this case whether
2 before, on, or after the Effective Date;

3 i. to determine such other matters and for such other purposes as may be
4 provided in the Plan Confirmation Order;

5 j. to modify this Plan under Section 1127 of the Bankruptcy Code in order
6 to remedy any apparent defect or omission in this Plan or to reconcile any inconsistency in this
7 Plan so as to carry out its intent and purpose;

8 k. except as otherwise provided in this Plan or the Plan Confirmation Order,
9 to issue injunctions, or to take such other actions or make such other orders, as may be necessary
10 or appropriate to restrain interference with this Plan or the Plan Confirmation Order, or the
11 execution or implementation by any person or entity of this Plan or the Plan Confirmation
12 Order;
13

14 l. to issue such orders in aid of consummation of this Plan or the Plan
15 Confirmation Order, including approval of distributions under this Plan, notwithstanding any
16 applicable nonbankruptcy law, with respect to any person or entity, to the fullest extent
17 authorized by the Bankruptcy Code or Bankruptcy Rules; and
18

19 m. to enter a final decree closing this Chapter 11 case.
20

21 **4. Administrative Claims Bar Date**

22 The last day for claimants to file an administrative claim, with the exception of
23 professionals who have provided services to the estate, shall be thirty (30) days following the
24 Effective Date. If any such administrative claim is not filed in a timely manner it shall be
25 deemed disallowed in its entirety.
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1 **III.**
2 **EFFECT OF CONFIRMATION OF THIS PLAN**

3 **A. Discharge**

4 This Plan provides that upon the Effective Date, the Debtor will be discharged of
5 liability for payment of debts incurred before the confirmation of this Plan, to the extent
6 specified in 11 U.S.C. § 1141. However, any liability imposed by this Plan will not be
7 discharged. This Plan shall bind the holders of all claims whether or not they accept this Plan.
8 The rights afforded in this Plan and the treatment of all claims therein shall be in complete
9 satisfaction, discharge and release of all claims against the Debtor or any of its assets or
10 properties of any nature whatsoever except as otherwise specifically provided in this Plan.
11 Except as otherwise set forth in this Plan, all claims shall be forever satisfied, discharged and
12 released in full on the Effective Date, and all holders of claims shall be forever precluded and
13 enjoined from asserting claims against the Debtor. Nothing in this Plan or the Plan
14 Confirmation Order shall affect, modify, or exonerate that certain Unconditional Guaranty dated
15 February 22, 2008 provided by Berg to Heritage and no amount paid by Heritage as a result of
16 the Committee Carveout or the Trustee Carveout or for any other purpose shall reduce the
17 amount of the indebtedness owed to Heritage as guaranteed by Berg.
18
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20 **B. Continued Corporate Existence and Revesting of Property in the Reorganized**
21 **Debtor**

22 The Reorganized Debtor will continue to exist after the Effective Date as a corporate
23 entity with all the powers of a corporation under Delaware state law. Except as may be
24 provided elsewhere in this Plan or the Plan Confirmation Order, the confirmation of this Plan
25 revests all of the property of the Debtor's estate in the Reorganized Debtor.

26 From and after the Effective Date, the Reorganized Debtor may operate its business and
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1 may use, acquire, and dispose of property, including payment of all business expenses in the
2 ordinary course of business.

3 The Reorganized Debtor shall have, retain, reserve and be entitled to assert all claims,
4 causes of action, rights of setoff and other legal or equitable defenses that the Debtor had
5 immediately prior to the Petition Date as fully as if the Debtor's bankruptcy case had not been
6 commenced; and all of the Reorganized Debtor's legal and equitable rights respecting any such
7 claim which is not specifically waived, extinguished, or relinquished by this Plan may be
8 asserted after the Effective Date.
9

10 **C. Non-Consensual Confirmation**

11 In the event that any impaired class of claims fails to accept this Plan, the Debtor intends
12 to request that the Bankruptcy Court confirm this Plan in accordance with Bankruptcy Code §
13 1129(b).
14

15 **D. Modification of this Plan**

16 The Debtor may modify this Plan at any time before confirmation. However, the
17 Bankruptcy Court may require a new disclosure statement and/or re-voting on this Plan if the
18 Debtor modifies this Plan before confirmation.

19 The Debtor may also seek to modify this Plan at any time after confirmation of this Plan
20 so long as (1) this Plan has not been substantially consummated and (2) the Court authorizes the
21 proposed modifications after notice and a hearing.
22

23 **E. Post-Confirmation Status Report**

24 Within 120 days following the entry of the Plan Confirmation Order, unless a final
25 decree closing the Debtor's Chapter 11 case is first entered, the Debtor shall file a status report
26 with the Bankruptcy Court explaining what progress has been made toward consummation of
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1 the confirmed Plan. The status report shall be served on the Office of the UST, counsel for the
2 OCC, and those parties who have requested special notice. Further status reports shall be filed
3 every 120 days and served on the same entities until a final decree is entered closing the
4 Debtor's Chapter 11 case, unless otherwise ordered by the Court.
5

6 **F. Post-Confirmation Conversion/Dismissal**

7 A creditor or any other party in interest may bring a motion to convert or dismiss this
8 case under Section 1112(b) of the Bankruptcy Code after this Plan is confirmed if there is a
9 default in performing this Plan. If the Bankruptcy Court orders this case converted to Chapter 7
10 after this Plan is confirmed, then all property that had been property of the Chapter 11 estate,
11 and that has not been disbursed pursuant to this Plan, will revert in the Chapter 7 estate, and the
12 automatic stay will be reimposed upon the revested property, but only to the extent that relief
13 from stay was not previously authorized by the Bankruptcy Court during this case.
14

15 The Plan Confirmation Order may also be revoked under very limited circumstances.
16 The Court may revoke the Plan Confirmation Order if it was procured by fraud and if a party in
17 interest brings an adversary proceeding to revoke confirmation within 180 days after the entry of
18 the Plan Confirmation Order.
19

20 **G. Payment of United States Trustee Fees**

21 The Debtor shall be responsible for the timely payment of fees incurred pursuant to 28
22 U.S.C. § 1930(a)(6) for all pre-confirmation quarters. The Reorganized Debtor shall be
23 responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6) after the
24 Effective Date. After the Effective Date, the Reorganized Debtor shall file with the Bankruptcy
25 Court and serve on the UST quarterly financial reports regarding all income and disbursements,
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1 including all Plan payments, for each quarter (or portion thereof) that this case remains open.

2 **H. Final Decree**

3 Once the Debtor's estate has been substantially consummated as referred to in 11 U.S.C.
4 § 1101(2), the Debtor, the Reorganized Debtor, or any other party as the Bankruptcy Court shall
5 designate in the Plan Confirmation Order, shall file a motion with the Bankruptcy Court to
6 obtain a final decree to close this case.
7

8 Dated: March 19, 2009

MANASIAN & ROUGEAU LLP

9
10 By: /s/ Paul E. Manasian
11 PAUL E. MANASIAN
12 Attorneys for Debtor and Debtor in
13 Possession FOCUS ENHANCEMENTS,
14 INC.
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