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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

COMMISSION
CLERK

In re: Case No. 6:11-bk-06493-KSJ
through 6:11-bk-06497-KSJ
Cordia Communications Corp, et al.
Debtors. CHAPTER 7

MOTION FOR APPROVAL OF SETTLEMENT
BY AND BETWEEN THERMO CREDIT, LLC,
AND RICHARD B. WEBBER, II, AS CHAPTER 7 TRUSTEE
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider this Motion without further notice or hearing unless a party in interest files an objection within twenty-one (21) days from the date this paper is entered on the docket. If you object to the relief requested in this paper, you must (i) file your Objection with the Clerk of the Court so that it arrives on or before the objection deadline at the Clerk of Court, United States Bankruptcy Court, George C. Young Courthouse, 400 W. Washington Street, Suite 5100, Orlando, FL 32801, (ii) serve a copy on the Chapter 7 Trustee, Richard B. Webber, II, Esq., Zimmerman, Kiser & Sutcliffe, P.A., 315 East Robinson Street, Suite 600, Orlando, Florida 32801, and (iii) Counsel for Thermo Credit, LLC, Tiffany D. Payne, Esq., Baker & Hostetler LLP, 200 S. Orange Avenue, Suite 2300, Orlando, FL 32801.

If you file and serve an objection within the time permitted, the Court has scheduled a final hearing to consider only timely filed objections on **October 30, 2013 at 2:00 PM**, in Courtroom 6A, 6th Floor, George C. Young Courthouse, 400 West Washington Street, Orlando, FL 32801. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the relief requested in this Motion, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

You are reminded that Local Rule 5072-1(b)(16) requires that all persons appearing in Court should dress in business attire consistent with their financial abilities. Shorts, sandals, shirts without collars, including tee shirts and tank tops, are not acceptable. Avoid delays at Courthouse security checkpoints. You are reminded that Local Rule 5073-1 restricts the entry of cellular telephones and, except in Orlando, computers into the Courthouse absent a specific order of authorization issued beforehand by the presiding judge. Please take notice that as an additional security measure a photo ID is required for entry into the Courthouse.

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COMES NOW, Thermo Credit, LLC, ("Thermo") and the Chapter 7 Trustee, Richard B. Webber, II (the "Cordia Trustee") for the Chapter 7 estates of: (i) Cordia Communications Corporation ("Cordia Communications"), Case No. 6:11-bk-06493-KSJ; (ii) Cordia Communications Corp. of VA ("Cordia VA"), Case No. 6:11-bk-06494-KSJ; (iii) Midwest Marketing Group, Inc. ("Midwest"), Case No. 6:11-bk-06497-KSJ; (iv) My Tel Co., Inc. ("My Tel"), Case No. 6:11-bk-06496-KSJ; and (v) Northstar Telecommunication Inc. ("Northstar"), Case No. 6:11-bk-06495-KSJ ("Cordia Communications", "Cordia VA", "My Tel", "Midwest" and "Northstar" are collectively referred to as the "Cordia Debtors"), to request the entry of an order, pursuant to Federal Rule of Bankruptcy Procedure 9019(a), approving a Settlement and Mutual Release Agreement, attached hereto as Exhibit "A" ("Settlement"¹) reached by and between the "Settling Parties" as defined therein.

No statement of fact herein constitutes an admission. Rather, the information provided is only as necessary to supply a general background to the Court and any party interested in the Settlement. Approval of the Settlement will, among other benefits, prevent the Cordia Trustee from expending further estate funds litigating multiple contested issues with Thermo. Pursuant to the Federal Rules of Bankruptcy Procedure 2002(a)(3) and 9019(a), all interested parties will receive notice of the Settlement as such is summarized below and attached hereto.

SUMMARY OF THE ISSUES
TO BE RESOLVED IN THE SETTLEMENT

1. Thermo alleges that, as of the Petition Date, some combination of the Cordia Debtors owe Thermo an amount not less than \$2,783,591, plus Thermo's fees and expenses incurred in connection with the Cordia Debtors' bankruptcy cases, including attorneys' fees and

¹ All capitalized terms are as defined herein and, if not defined herein, then are as defined in the Settlement attached hereto as Exhibit A. In the event of any discrepancy, all terms and definitions in the Settlement attached as Exhibit A are controlling.

expenses, and post-petition fees and interest which continue to accrue. The \$2,783,591 amount represents funds advanced by Thermo to some combination of the Cordia Debtors for which Thermo remains unpaid.

2. Thermo contends it either owns, or has a perfected first priority security interest, in the receivables in the Cordia Debtors' estates being administered by the Cordia Trustee in an amount not less than \$2,783,591. The Cordia Trustee disputes Thermo's position and argues instead that Thermo is merely an unsecured creditor in some combination of the Cordia Debtors' estates.

A. Thermo's proofs of claim and the Cordia Trustee's objections.

3. To protect its interests, Thermo timely filed a proof of claim (Claim No. 367) in the bankruptcy case of Cordia Communications, Case No. 6:11-bk-06493-KSJ ("Thermo's Cordia Communications Claim"). On June 7, 2013, the Cordia Trustee filed an Objection (Doc. No. 995) to Thermo's Cordia Communications Claim. On July 8, 2013, Thermo filed a Response in Opposition (Doc. No. 1013) to the Cordia Trustee's Objection to Thermo's Cordia Communications Claim.

4. Thermo also timely filed a proof of claim (Claim No. 50) in the bankruptcy case of Northstar, Case No. 6:11-bk-06495-KSJ ("Thermo's Northstar Claim"). On June 7, 2013, the Cordia Trustee filed an Objection (Doc. No. 131) to Thermo's Northstar Claim. On July 8, 2013, Thermo filed a Response in Opposition (Doc. No. 139) to the Cordia Trustee's Objection to Thermo's Northstar Claim.

5. Thermo also timely filed a proof of claim (Claim No. 26) in the bankruptcy case of MyTel, Case No. 6:11-bk-06496-KSJ ("Thermo's MyTel Claim"). On June 7, 2013, the Cordia Trustee filed an Objection (Doc. No. 125) to Thermo's MyTel Claim. On July 8, 2013, Thermo

filed a Response in Opposition (Doc. No. 132) to the Cordia Trustee's Objection to Thermo's MyTel Claim.

6. Thermo also timely filed a proof of claim (Claim No. 9) in the bankruptcy case of Midwest, Case No. 6:11-bk-06497-KSJ ("Thermo's Midwest Claim"). On June 7, 2013, the Cordia Trustee filed an Objection (Doc. No. 57) to Thermo's Midwest Claim. On July 8, 2013, Thermo filed a Response in Opposition (Doc. No. 58) to the Cordia Trustee's Objection to Thermo's Midwest Claim.

7. To date, Thermo's proofs of claim and the Cordia Trustee's objections thereto as listed above are unresolved.

B. The Thermo Adversary Case.

8. Thermo also filed an adversary proceeding in the Orlando Bankruptcy Court (Case No. 6:11-ap-00107) against the Cordia Debtors, the Cordia Trustee, as well two non-debtor affiliates of the Cordia Debtors, Cordia Corp. and Cordia Prepaid, for among other things, declaratory relief regarding Thermo's ownership or, pled in the alternative, Thermo's perfected security interest in certain property of the Cordia Debtors (the "Thermo Adversary Case"). Thermo obtained Clerk defaults against Cordia Corp. and Cordia Prepaid. Motions for Final Judgment by Default are pending against Cordia Corp. and Cordia Prepaid which are presently abated. The Cordia Trustee on behalf of the Cordia Debtors filed his answer and affirmative defenses contesting Thermo's perfected security interest under the Uniform Commercial Code and brought counterclaims.

9. To date, the issues in the Thermo Adversary Case are unresolved.

C. The Thermo Louisiana Case.

10. On April 18, 2012, Thermo filed suit against Cordia Corp. and Maria Abbagnaro ("Abbagnaro") in the Civil District Court for the Parish of Orleans, State of Louisiana, entitled

"Thermo Credit, LLC versus Cordia Corporation and Maria A. Abbagnaro," Case No. 2012-3811, Division H.

11. Abbagnaro subsequently removed this suit to the United States District Court for the Eastern District of Louisiana on June 6, 2012, where it was assigned Civil Action No. 2:12-cv-04145-NJB-SS (hereinafter referred to as the "Thermo Louisiana Case"). Thermo was subsequently granted leave and filed a First Supplemental and Amended Complaint that, *inter alia*, added Illinois National Insurance Company ("Illinois") as an additional named defendant pursuant to the Louisiana Direct Action Statute.

12. Thermo asserts claims against Abbagnaro and Cordia Corp. for, among other things, negligent misrepresentation and related acts or omissions in connection with transactions funded by Thermo pursuant to a September 21, 2007 Factoring and Security Agreement (the "Cordia FSA") that Thermo contends it entered into with Cordia Corp. based in part upon a September 13, 2007 Form of Opinion of Counsel of Seller ("Opinion") issued by Abbagnaro in her capacity as general counsel for Cordia Corp. The Opinion addressed Thermo's purchase of and/or extension of loans secured by receivables. Thermo alleges, among other things, that the Opinion incorrectly indicated that Cordia Corp. could properly execute and perform under the Cordia FSA and that Thermo relied on the Opinion to its detriment. Abbagnaro and Illinois deny the allegations and raised various affirmative defenses to the claims interposed against them.

THE SETTLEMENT

13. Upon entry of a final and non-appealable order approving the Settlement, the Cordia Trustee shall pay to Thermo the sum of \$1,337,500.00 (One Million Three Hundred and Thirty Seven Thousand Five Hundred Dollars and No Cents) by wire transfer of immediately available funds to a bank account designated by Thermo (the "Thermo Settlement Payment").

14. Within three (3) business days *after* Thermo receives the Thermo Settlement Payment (such date on which Thermo receives the Thermo Settlement Payment shall hereinafter be referred to as the "Effective Date"):

- a) Thermo shall file an Agreed Motion to Dismiss the Thermo Adversary Case seeking to dismiss with prejudice the Thermo Adversary Case against all defendants, including the pending counterclaims of the Cordia Trustee, with each party to bear its own fees and costs.
- b) Upon execution and delivery of the Louisiana Case Releases (defined below), Thermo shall file an Agreed Notice and Stipulation of Dismissal with Prejudice in the Thermo Louisiana Case including a stipulation by Thermo, Cordia Corp., Abbagnaro, and Illinois to the dismissal of all claims between them in the Thermo Louisiana Case in their entirety and with prejudice. Thermo agrees to file such other or additional filing(s) which may be necessary to effect the full and complete dismissal of any and all claims and actions, including any counterclaims, asserted by or between the parties to the Thermo Louisiana Case in their entirety and with prejudice, with each party to bear her/its own fees and costs.
- c) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 995) to Thermo's Cordia Communications Claim in Case No. 6:11-bk-06493-KSJ because Thermo shall waive distribution on Thermo's Cordia Communications Claim upon receipt of the Thermo Settlement Payment.
- d) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 50) to Thermo's Northstar Claim in Case No. 6:11-bk-06495-KSJ because Thermo shall waive distribution on Thermo's Northstar Claim upon receipt of the Thermo Settlement Payment.
- e) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 26) to Thermo's My Tel Claim in Case No. 6:11-bk-06496-KSJ because Thermo shall waive distribution on Thermo's My Tel Claim upon receipt of the Thermo Settlement Payment.
- f) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 9) to Thermo's Midwest Claim in Case No. 6:11-bk-06497-KSJ because Thermo shall waive distribution on Thermo's Midwest Claim upon receipt of the Thermo Settlement Payment.
- g) The Settling Parties, Abbagnaro and Illinois shall execute and exchange separate, mutually satisfactory releases of all claims or causes of action that were or could have been asserted in the Thermo Louisiana Case (the

“Louisiana Case Releases”) within three [3] business days after the Effective Date.

LEGAL STANDARD FOR APPROVAL OF A COMPROMISE

15. The Cordia Trustee seeks approval of the Settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. Rule 9019(a) provides that, after notice and a hearing, a court may approve a proposed settlement of a claim. The decision of a trustee in bankruptcy to enter a settlement is made within his or her business judgment. See *In re Simmonds*, 2010 U.S. Dist. LEXIS 87739 (S.D. Fla. 2010). “Compromises are generally approved if they meet the business judgment of the trustee.” *Id.* (citation omitted). The decision of whether or not to approve a compromise is within the sound discretion of the court. See *Id.*; and see *In re Chira*, 367 B.R. 888, 896 (S.D. Fla. 2007) citing *In re Air Safety Intern., L.C.*, 336 B.R. 843, 852 (S.D. Fla. 2005); *In re Arrow Air, Inc.*, 85 B.R. 886 (Bankr. S.D. Fla. 1988).

16. In passing on proposed settlements, the Court must determine whether a proposed settlement is fair and equitable. *In re Chira*, 367 B.R. at 896 (S.D. Fla. 2007). The Court must evaluate whether the compromise falls below the “lowest point in the range of reasonableness.” *In re S&I Investments*, 421 B.R. 569, 583 (Bankr. S.D. Fla. 2009) citing *In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993); *In re Arrow Air, Inc.*, 85 B.R. at 886 (Bankr. S.D. Fla. 1988); and see *In re: Rothstein Rosenfeldt Adler, P.A.*, 2010 Bankr. LEXIS 3001 (S.D. Fla. 2010).

17. The Eleventh Circuit, in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549, provided additional guidance regarding whether a settlement should be approved and established a four part test:

- i. The probability of success in litigation;
- ii. The difficulties, if any, to be encountered in the matter of collection;

- iii. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- iv. The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

18. An analysis of each *Justice Oaks* factor supports approval of the Settlement:

1. The probability of success in litigation. Thermo has informed the Cordia Trustee in detail of the merits of the Thermo Adversary Proceeding and the Cordia Trustee is well aware of the merits of the Thermo Louisiana Case. Given the scope and complexity of the issues involved, the Cordia Trustee cannot be certain of a favorable outcome.
2. The difficulties, if any, to be encountered in the matter of collection. Because a significant question exists regarding whether the Cordia Trustee could prevail in the Thermo Adversary Case or obtain any benefit from the Thermo Louisiana Case, if fully litigated, and the high expense of litigation, it is the Cordia Trustee’s business judgment that this Settlement is in the best interest of the estate and its creditors.
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it. The issues involved in the Thermo Adversary Case in particular are complex, and will cause the estate to incur significant expense, inconvenience and delay should the Cordia Trustee be required to litigate this adversary proceeding to its conclusion. If the Cordia Trustee litigated the Thermo Adversary Case and did not prevail, the Cordia Trustee / the Cordia Debtors’ estates could be ordered to pay Thermo an amount not less than \$2,783,591. As such, the Thermo Settlement Payment in the amount of \$1,337,500.00 is, in the Cordia Trustee’s business judgment, very reasonable, equitable, and fair.
4. The paramount interest of the creditors and a proper deference to their reasonable views in the premises. The paramount interest of the creditors and a proper deference to their reasonable views in the premises will be substantially furthered by approval of the Settlement, without any further risk, expense or delay to the estate.

19. Based upon the foregoing, the Settlement is in the best interest of the estate and its creditors. If the Cordia Trustee did not prevail in the pending litigation, the Cordia Debtors’ estates could be ordered to pay Thermo an amount not less than \$2,783,591. The Settlement will also save the estate considerable resources by avoiding a trial with possible appeals.

WHEREFORE, Thermo and the Cordia Trustee respectfully request that the Court enter an order approving this Motion and the Settlement attached hereto as Exhibit "A".

RESPECTFULLY SUBMITTED on this 2nd day of October, 2013.

/s/ Tiffany D. Payne
Tiffany D. Payne, Esquire
Florida Bar No. 0421448
BAKER & HOSTETLER LLP
200 S. Orange Ave.
SunTrust Center, Suite 2300
Orlando, FL 32801-3432
Telephone: (407) 649-4000
Facsimile: (407) 841-0168
Email: tpayne@bakerlaw.com
Attorney for Thermo Credit, LLC

EXHIBIT A

SETTLEMENT AND MUTUAL RELEASE AGREEMENT

This Settlement and Mutual Release Agreement ("Settlement")¹ is made between Richard B. Webber, II, not individually, but as the duly appointed Chapter 7 Trustee ("Cordia Trustee") for the foregoing debtors and their respective bankruptcy estates: Cordia Communications Corp. ("Cordia Communications"), Cordia Communications Corp. of Va. ("Cordia VA"), My Tel Co., Inc. ("My Tel"), Midwest Marketing Group, Inc. ("Midwest"), and Northstar Telecom, Inc. ("Northstar") ("Cordia Communications", "Cordia VA", "My Tel", "Midwest" and "Northstar" are collectively referred to as the "Cordia Debtors"); and Thermo Credit, LLC, ("Thermo", and together with the Cordia Trustee and the Cordia Debtors, the "Settling Parties" or in the singular case, as a "Settling Party").

I. GENERAL STATEMENTS

1. The Settling Parties are executing this Settlement to fully, finally and forever resolve all pending claims, actions or proceedings that have been initiated or that could have been initiated in case(s), actions, proceedings or claim(s) referenced in this Settlement whether raised or filed, previously adjudicated or still pending, or as more fully set forth below in order to avoid the attendant time, the protracted expense, and inherent uncertainty of litigation.

2. Nothing herein shall constitute an admission by any of the Settling Parties. Any statements or admissions contained herein are made solely as an accommodation by a Settling Party to another Settling Party to facilitate and implement this Settlement.

¹ All capitalized terms are as defined herein and, if not defined herein, then as defined in 11 U.S.C. §101, the Thermo Adversary Case (as such is defined *infra*, herein), or shall be given their plain and ordinary meaning.

II. BACKGROUND

A. The Cordia Bankruptcy Filings²

3. On May 1, 2011, Cordia Communications filed a voluntary petition for relief under Chapter 11 in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division ("Orlando Bankruptcy Court"), and was assigned Case No. 6:11-bk-06493-KSJ.

5. On May 1, 2011, Cordia VA filed a voluntary petition for relief under Chapter 11 in the Orlando Bankruptcy Court and was assigned Case No. 6:11-bk-06494-KSJ.

6. On May 1, 2011, Northstar filed a voluntary petition for relief under Chapter 11 in the Orlando Bankruptcy Court and was assigned Case No. 6:11-bk-06495-KSJ.

7. On May 1, 2011, My Tel filed a voluntary petition for relief under Chapter 11 in the Orlando Bankruptcy Court and was assigned Case No. 6:11-bk-06496-KSJ.

8. On May 1, 2011, Midwest filed a voluntary petition for relief under Chapter 11 in the Orlando Bankruptcy Court and was assigned Case No. 6:11-bk-06497-KSJ.

9. On May 6, 2011, the Orlando Bankruptcy Court entered its *Order Granting Motion for Joint Administration of Cases* (Doc. No. 40).

10. On February 1, 2012, the Orlando Bankruptcy Court entered its *Order Converting Case to Chapter 7* (Doc. No. 389), converting the Cordia Debtor cases to liquidation cases under Chapter 7, which cases were subsequently assigned to the Cordia Trustee by utilizing the panel of private trustees established by the United States Trustee pursuant to 28 U.S.C §586(a)(1).

² Two Cordia-related entities did not seek bankruptcy protection: Cordia Corporation ("Cordia Corp") and Cordia Prepaid Corporation ("Cordia Prepaid").

B. The Thermo Louisiana Case

11. On April 18, 2012, Thermo filed suit against Cordia Corp. and Maria Abbagnaro ("Abbagnaro") in the Civil District Court for the Parish of Orleans, State of Louisiana, entitled "Thermo Credit, LLC versus Cordia Corporation and Maria A. Abbagnaro," Case No. 2012-3811, Division H.

12. Abbagnaro subsequently removed this suit to the United States District Court for the Eastern District of Louisiana on June 6, 2012, where it was assigned Civil Action No. 2:12-cv-04145-NJB-SS (hereinafter referred to as the "Thermo Louisiana Case"). Thermo was subsequently granted leave and filed a First Supplemental and Amended Complaint that, *inter alia*, added Illinois National Insurance Company ("Illinois") as an additional named defendant pursuant to the Louisiana Direct Action Statute.

13. Thermo asserts claims against Abbagnaro and Cordia Corp. for, among other things, negligent misrepresentation and related acts or omissions in connection with transactions funded by Thermo pursuant to a September 21, 2007 Factoring and Security Agreement (the "Cordia FSA") that Thermo contends it entered into with Cordia Corp. based in part upon a September 13, 2007 Form of Opinion of Counsel of Seller ("Opinion") issued by Abbagnaro in her capacity as general counsel for Cordia Corp. The Opinion addressed Thermo's purchase of and/or extension of loans secured by receivables. Thermo alleges, among other things, that the Opinion incorrectly indicated that Cordia Corp. could properly execute and perform under the Cordia FSA and that Thermo relied on the Opinion to its detriment. Abbagnaro and Illinois deny the allegations and raised various affirmative defenses to the claims interposed against them.

C. The Thermo Adversary Case

14. Thermo also filed an adversary proceeding in the Orlando Bankruptcy Court (Case No. 6:11-ap-00107) against the Cordia Debtors, the Cordia Trustee, as well as Cordia Corp. and Cordia Prepaid for, among other things, declaratory relief regarding Thermo's ownership or, pled in the alternative, Thermo's perfected security interest in certain property of the Cordia Debtors (the "Thermo Adversary Case"). Thermo obtained Clerk defaults against Cordia Corp. and Cordia Prepaid. Motions for Final Judgment by Default are pending against Cordia Corp. and Cordia Prepaid which are presently abated. The Cordia Trustee on behalf of the Cordia Debtors filed his answer and affirmative defenses contesting Thermo's perfected security interest under the Uniform Commercial Code and brought counterclaims.

III. THE SETTLEMENT

15. The Settlement resolves the following litigation, adversary proceeding and contested matters (collectively, the "Pending Actions"):

- a) The Thermo Louisiana Case.
- b) The Thermo Adversary Case.
- c) The Objection (Doc. No. 995) filed by the Cordia Trustee to Thermo's proof of claim no. 367 filed in the bankruptcy case of Cordia Communications, Case No. 6:11-bk-06493-KSJ.
- d) The Objection (Doc. No. 131) filed by the Cordia Trustee to Thermo's proof of claim no. 50 filed in the bankruptcy case of Northstar, Case No. 6:11-bk-06495-KSJ.
- e) The Objection (Doc. No. 125) filed by the Cordia Trustee to Thermo's proof of claim no. 26 filed in the bankruptcy case of My Tel, Case No. 6:11-bk-06496-KSJ.
- f) The Objection (Doc. No. 57) filed by the Cordia Trustee to Thermo's proof of claim no. 9 filed in the bankruptcy case of Midwest, Case No. 6:11-bk-06497-KSJ.

IV. THE THERMO SETTLEMENT PAYMENT

16. Upon entry of a final and non-appealable Order by the Orlando Bankruptcy Court approving this Settlement, the Cordia Trustee shall pay to Thermo the sum of \$1,337,500.00 (One Million Three Hundred and Thirty Seven Thousand Five Hundred Dollars and No Cents) by wire transfer of immediately available funds to a bank account designated by Thermo (the "Thermo Settlement Payment").

17. Within three (3) business days *after* Thermo receives the Thermo Settlement Payment (such date on which Thermo receives the Thermo Settlement Payment shall hereinafter be referred to as the "Effective Date"):

- a) Thermo shall file an Agreed Motion to Dismiss the Thermo Adversary Case seeking to dismiss with prejudice the Thermo Adversary Case against all defendants, including the pending counterclaims of the Cordia Trustee, with each party to bear its own fees and costs.
- b) Upon execution and delivery of the Louisiana Case Releases (defined below), Thermo shall file an Agreed Notice and Stipulation of Dismissal with Prejudice in the Thermo Louisiana Case including a stipulation by Thermo, Cordia Corp., Abbagnaro, and Illinois to the dismissal of all claims between them in the Thermo Louisiana Case in their entirety and with prejudice. Thermo agrees to file such other or additional filing(s) which may be necessary to effect the full and complete dismissal of any and all claims and actions, including any counterclaims, asserted by or between the parties to the Thermo Louisiana Case in their entirety and with prejudice, with each party to bear her/its own fees and costs.
- c) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 995) to Thermo's Cordia Communications Claim in Case No. 6:11-bk-06493-KSJ because Thermo shall waive distribution on Thermo's Cordia Communications Claim upon receipt of the Thermo Settlement Payment.
- d) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 50) to Thermo's Northstar Claim in Case No. 6:11-bk-06495-KSJ because Thermo shall waive distribution on Thermo's Northstar Claim upon receipt of the Thermo Settlement Payment.

- e) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 26) to Thermo's My Tel Claim in Case No. 6:11-bk-06496-KSJ because Thermo shall waive distribution on Thermo's My Tel Claim upon receipt of the Thermo Settlement Payment.
- f) The Cordia Trustee shall upload a proposed order denying as moot the Objection (Doc. No. 9) to Thermo's Midwest Claim in Case No. 6:11-bk-06497-KSJ because Thermo shall waive distribution on Thermo's Midwest Claim upon receipt of the Thermo Settlement Payment.
- g) The Settling Parties, Abbagnaro and Illinois shall execute and exchange separate, mutually satisfactory releases of all claims or causes of action that were or could have been asserted in the Thermo Louisiana Case (the "Louisiana Case Releases") within three [3] business days after the Effective Date.

V. MUTUAL RELEASES

18. On the Effective Date, the Settling Parties, anyone acting by, on behalf of or through the Settling Parties, their affiliates, and each of their respective officers, directors, executives, employees, attorneys, agents, representatives, distributors, predecessors, subsidiaries, successors, heirs, administrators, executors and assigns for and in consideration of the mutual promises and consideration given herein, the receipt and sufficiency of which is hereby acknowledged and confessed, shall be deemed to have fully and MUTUALLY RELEASED, ACQUITTED, AND FOREVER DISCHARGED each other and each of their respective attorneys, agents, representatives, distributors, predecessors, subsidiaries, affiliates, successors, heirs, administrators, executors and assigns of and from any and all legal claims, counterclaims, demands, rights, setoffs, defenses, contracts, accounts, suits, debts, outstanding notes, claims, agreements, actions, causes of action, sums of money, bills, specialties, covenants, promises, damages, executions, judgments, findings, controversies and disputes, whether known or unknown, in law or in equity, and any past, present or future duties, responsibilities, or obligations, of whatever kind or nature, asserted or unasserted, suspected or claimed, and whether based in tort, contract, common law, statute or other theory of recovery, arising from,

related to or connected in any way with the Pending Actions and any claims or causes of action that were or could have been raised in the Pending Actions, including in the case of the Cordia Trustee and the Cordia Debtors any claims or causes of action against Thermo arising under Chapter 5 of the Bankruptcy Code or analogous non-bankruptcy law. This Release does not apply to the rights and obligations of the Settling Parties set forth in and under this Settlement.

IV. MISCELLANEOUS PROVISIONS

19. Filing. Upon approval of this Settlement by the Settling Parties, the Cordia Trustee shall file and serve a Motion to Approve a Rule 9019 Compromise of Controversy ("Compromise Motion") highlighting and outlining the terms and conditions of this Settlement and attaching this Settlement as Exhibit "A" and serving it on a timely basis pursuant to Rule 2002(a)(3) of the Federal Rules of Bankruptcy Procedure so it will be heard at the next scheduled hearing on October 30, 2013.

20. Binding Settlement. The Settling Parties are bound by the terms set forth herein unless this Settlement is not approved by the Orlando Bankruptcy Court by the entry of a final and non-appealable order approving the Compromise Motion.

21. Jurisdiction. The Settling Parties agree that the Orlando Bankruptcy Court shall have jurisdiction to enforce the terms and conditions, and address any interpretation for application, of the Settlement.

22. Execution in Counterparts. The Settling Parties may execute this Settlement in counterpart originals. Each executed counterpart will be considered an original, and all of them together will constitute a singular Settlement. No counterpart shall be altered or interlined and all of them together shall constitute but one and the same instrument. Each party may secure the signature of the attorney and client or just the client. However, if the executing party is just the

attorney, then the attorney's signature is an affirmative representation that he/she has reviewed the Settlement terms with their client; that the client has ratified this Settlement and the attorney has been duly authorized to execute and legally bind his/her client to this Settlement.

23. Ownership of Claims Subject To Release. The Settling Parties hereby warrant and represent that they are the lawful owner of all rights, title, and interest in and to all matters released herein, and that they have not heretofore assigned or transferred, or purported to assign or transfer, any of such released matters, in whole or in part, to any other person or entity, and that they have the authority to enter into this Settlement and bind the Settling Parties to its terms.

24. Representation by Counsel. The Settling Parties acknowledge that they have either been represented by counsel in the negotiation and execution of this Settlement, or have voluntarily elected to proceed without the assistance of counsel and that they have had a full and complete opportunity and have availed themselves of such opportunity for the advice of counsel in regard to all matters addressed herein. The Settling Parties have entered into this Settlement freely and voluntarily and after consultation with their respective counsel, if applicable.

25. Construction. This Settlement is the product of negotiation and mutual draftsmanship. Any rule of contract construction under which this Settlement would be construed against the drafter shall have no application.

26. Successors and Assigns. This Settlement shall inure to the benefit of, and shall be binding upon, the Settling Parties hereto and their respective heirs, executors, administrators, principals, parent and affiliated companies, successors and assigns.

27. Amendments and Waivers. Any amendment to this Settlement shall be in writing and shall conform to the same formalities as exhibited in this Settlement. No failure to exercise, nor delay in exercising, any right, remedy or power under this Settlement shall operate as a

waiver thereof, nor shall any single or partial exercise of any right, remedy or power under this Settlement preclude any other or further exercise thereof, or the exercise of any other right, remedy or power provided herein or by law or in equity.

28. Authority. Thermo hereby certifies, and upon entry of an Order by the Orlando Bankruptcy Court approving this Settlement the Cordia Trustee on behalf of the Cordia Debtors certifies that they each have the full power and authority to execute this Settlement and that they have obtained any necessary authorization to enter into this Settlement.

29. Compromise. This Settlement implements the compromise and settlement of the disputed and contested Pending Actions, and is entered into by the Settling Parties to avoid the expense and inconvenience of litigation. Nothing contained herein shall be construed as an admission by any party of any liability of any kind whatsoever.

30. Further Assurances. The Settling Parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Settlement.

31. Governing Law. This Settlement shall be construed and interpreted according to the laws of the State of Florida.

32. Entire Agreement. This Settlement constitutes the entire agreement between the Settling Parties hereto with respect to the subject matter hereof and supersedes any and all prior oral or written agreements and understandings between the parties relating to the subject matter hereof. No variations, amendments or modifications shall be binding upon the parties unless set forth in a writing fully executed by all Settling Parties to the Settlement. No party has relied on any representation or promise of another party or his/its agent not expressly set forth or referenced in this Settlement. This Settlement is not contingent upon anything other than the

entry of final and non-appealable order by the Orlando Bankruptcy Court approving the Compromise Motion and the Settlement.

33. Attorney Fees. Each Party shall be responsible for paying its own attorneys' fees and costs incurred in connection with this Settlement.

34. Prevailing Party Attorney Fees. In any future proceeding that may be brought to enforce this Settlement, the Orlando Bankruptcy Court shall award to the prevailing party and against the non-prevailing party its reasonable attorneys' fees and costs. The Settling Parties agree that no party may challenge the enforceability or validity of this Settlement or any provision herein, or induce any third party to challenge the enforceability or validity of this Settlement, or any provisions herein. Any party who challenges the enforceability of this Settlement (or any provision hereof) or induces a third party to make a challenge to the enforceability of any portion of this Settlement, shall be liable to all other Settling Parties for their reasonable and necessary attorneys' fees and expenses in defending the enforceability of the Settlement, or any part thereof, regardless of the outcome of the litigation.

35. RESERVED.

36. No Third Party Beneficiaries. This Settlement Agreement does not create any rights in any third parties and nothing contained herein shall be deemed to establish any rights or benefits for any third person. No person not a party to this Settlement Agreement has any "third party beneficiary" or other rights hereunder. Notwithstanding the foregoing, this Settlement Agreement is enforceable by, and against, the Settling Parties and their successors and assigns.

37. Parties Fully Informed. Each of the Settling Parties to this Settlement separately represents and warrants that before signing this Settlement it or he has fully informed

itself/himself of the terms, contents, conditions and effects of the Settlement and in making this Settlement had the benefit and advice of legal counsel of its/his own choosing.

38. Execution by Client or Counsel. By execution below, each Settling Party agrees and affirmatively represents and warrants that they have full capacity and authority to execute, perform, and be bound by each and every term of this Settlement; and that if their undersigned counsel are executing this Settlement on behalf of a particular Settling Party, that such counsel are qualified and have the authority to do so and to bind their client to the terms of this Settlement as if their client had actually signed the Settlement.

IN WITNESS WHEREOF, the Settling Parties have caused this Settlement to be approved as of the last date of its full execution.

[Executed Settlement counterparts to be filed separately with the Court]

RICHARD B. WEBBER II
not individually but in his capacity
as the Chapter 7 Trustee for the
Cordia Debtors

Signature: _____

Print Name: _____

Title: _____

Date: _____

Thermo Credit, LLC.

Signature: _____

Print Name: _____

Title: _____

Date: _____