

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

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In re:	)	Chapter 11
	)	
FIC RESTAURANTS, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-12807 (CSS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Related Docket Nos. 18, 250, 264, 267

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**FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND ORDER CONFIRMING SECOND AMENDED COMBINED  
DISCLOSURE STATEMENT AND JOINT CHAPTER 11 PLAN OF LIQUIDATION**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”)<sup>2</sup> having:

- a. commenced, on November 1, 2020 (the “**Petition Date**”), these chapter 11 cases (collectively, the “**Chapter 11 Cases**”) by filing voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”);
- b. continued to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;
- c. filed, on November 2, 2020, the *Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* [Docket No. 18], and on December 14, 2020, filed the *Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* [Docket No. 250], and on December 16, 2020, filed the *Second Amended Combined Disclosure Statement* (as amended and including all exhibits and supplements thereto, the “**Disclosure Statement**”) and *Joint Chapter 11 Plan of Liquidation* [Docket No. 264] (as amended and including all exhibits and supplements thereto, the “**Plan**” and together with the Disclosure Statement, the “**Combined DS and Plan**”);

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<sup>1</sup> The Debtors in these chapter 11 cases, their jurisdictions of organization, and the last four digits of their U.S. taxpayer identification numbers are: (1) FIC Restaurants, Inc., a Massachusetts corporation (1388) (“FIC”); (2) FIC Holdings, LLC, a Delaware limited liability company (0204) (“FIC Holdings”); (3) Neapolitan Group Holdings, LLC, a Delaware limited liability company (7922) (“Neapolitan”); (4) Friendly’s Restaurants, LLC, a Delaware limited liability company (0696) (“Friendly’s”); and (5) Friendly’s Franchising, LLC, a Delaware limited liability company (4364) (“Franchising”). The Debtors’ corporate headquarters is located at 1855 Boston Road, Suite 300, Wilbraham, MA 01095.

<sup>2</sup> Capitalized terms used herein, but not defined herein, shall have the meanings assigned such terms in the Plan (defined below).

- d. obtained, on November 4, 2020, entry of the *Order (I) Scheduling Hearing on Approval of the Combined Disclosure Statement and Plan; (II) Fixing Deadline to Object to the Combined Disclosure Statement and Plan; (III) Waiving Solicitation of the Plan and Approving Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; and (IV) Granting Related Relief* [Docket No. 75] (the “**Plan Scheduling Order**”), that, among other things, (a) approved the notices related to the Combined DS and Plan; (b) approved the procedures for the assumption of executory contracts and unexpired leases; and (c) established a schedule for hearing on and objections to the Combined DS and Plan;
- e. caused the notice (the “**Confirmation Hearing Notice**”) of the deadline for objecting to adequacy of the Disclosure Statement and confirmation of the Plan to be distributed consistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the Plan Scheduling Order, as evidenced by, among other things, the *Affidavit of Service* [Docket No. 92] and the *Supplemental Affidavits of Service* [Docket Nos. 172, 222-226, and 239] (collectively, the “**Confirmation Notice Affidavits**”) filed by Donlin, Recano & Company, Inc. (“**DRC**”), the Debtors’ Court-approved claims and noticing agent, on November 10, 2020, November 27, 2020, December 11, 2020, and December 14, 2020, respectively;
- f. caused notice (the “**Publication Hearing Notice**”) of the hearing on confirmation of the Plan (the “**Confirmation Hearing**”) to be published in the national edition of *The New York Times* on November 9, 2020, and the following regional newspapers: the *New Hampshire Union Leader* on November 10, 2020, the *Hartford Courant* on November 10, 2020, *The Patriot-News* on November 10, 2020, the *Portland Press Harold* on November 10, 2020, and *The Boston Globe* on November 10, 2020, and the *Burlington Free Press* on November 11, 2020, as evidenced by, among other things, the *Affidavits of Publication* [Docket Nos. 127-133] (the “**Publication Affidavits**”) filed by DRC on November 16, 2020;
- g. filed, on December 3, 2020, the plan supplement [Docket No. 193] (as may be further amended, modified, or supplemented the “**Plan Supplement**”), which was comprised of the (i) Schedule of Retained Causes of Action; (ii) identification of post-confirmation management; (iii) list of assumed contracts; (iv) list of assumed and assigned contracts; and (v) the commitment letter of Sun Ice Cream Finance II, LP (the “**Plan Sponsor**”); and filed, on December 14, 2020, the Amended Plan Supplement [Docket No. 254]; and on December 16, 2020, filed the Second Amended Plan Supplement [Docket No. 263];
- h. scheduled, on December 17, 2020, a hearing on the *Debtors' Motion for Entry of (I) an Order (A) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Private Sale of the Debtors' Assets; (B) Scheduling a Sale Hearing; (C) Approving the Form and Manner and Notice Thereof; and (D) Granting Related Relief; and (II)*

*an Order Authorizing and Approving (A) the Private Sale of Substantially All of the Debtors' Assets to Purchaser Free and Clear of Liens, Claims, and Interests Thereunder, (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* [Docket No. 19] (the “**Sale Motion**”), that, among other things, seeks an order (the “**Sale Order**”) approving the sale of substantially all assets of the Debtors (the “**Sale Transaction**”) to Amici Partners Group, LLC (the “**Purchaser**”);

- i. filed, on December 14, 2020, the *Debtors' (A) Memorandum of Law in Support of Confirmation of the Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation and (B) Omnibus Reply to Objections to Confirmation* [Docket No. 255] (the “**Confirmation Brief**”); and
- j. filed the *Declaration of Marc Pfefferle in Support of Confirmation of Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* [Docket No. 266] (the “**Confirmation Declaration**”).

This Bankruptcy Court having:

- i. set December 17, 2020 at 1:00 p.m. (prevailing Eastern time), as the date and time for the commencement of the Confirmation Hearing pursuant to Bankruptcy Rules 3017 and 3018 and sections 1126, 1128, and 1129 of the Bankruptcy Code;
- ii. reviewed the Combined DS and Plan, the Confirmation Declaration, the Confirmation Brief, and all pleadings, exhibits, statements, responses, and comments regarding adequacy of the Disclosure Statement and confirmation of the Plan (“**Confirmation**”), including all objections, statements, and reservations of rights filed by parties in interest on the docket of the Chapter 11 Cases;
- iii. held the Confirmation Hearing and heard the statements, arguments, and objections made by counsel in respect of Confirmation;
- iv. considered all oral representations, documents, filings, and evidence regarding Confirmation;
- v. taken judicial notice of all papers and pleadings filed in the Chapter 11 Cases, all evidence proffered or adduced, and all arguments made at the hearings held before the Bankruptcy Court during the pendency of the Chapter 11 Cases; and
- vi. overruled all objections to the Combined DS and Plan and to Confirmation and all statements and reservations of rights not consensually resolved or withdrawn, except as expressly provided herein.

**NOW, THEREFORE**, the Bankruptcy Court having found that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation having been

adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby; and the record of the Chapter 11 Cases and the legal and factual bases set forth in the documents filed in support of Confirmation and presented at the Confirmation Hearing including, but not limited to, the Confirmation Declaration, having established just cause for the relief granted in this Confirmation Order; and after due deliberation thereon and good cause appearing therefor, the Bankruptcy Court hereby makes and issues the following findings of fact, conclusions of law, and order:<sup>3</sup>

## **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **A. JURISDICTION, CORE PROCEEDING, APPLICABLE LAW**

1. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Bankruptcy Court may enter a final order in connection with this proceeding in accordance with Article III of the United States Constitution. The Debtors were and are qualified to be debtors in chapter 11 cases under section 109(a) and (d) of the Bankruptcy Code.

### **B. VENUE**

2. Venue in the District of Delaware of the Chapter 11 Cases was proper as of the Petition Date and continues to be proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>3</sup> This Confirmation Order constitutes the Bankruptcy Court's findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable herein by Bankruptcy Rules 7052 and 9014. Any finding of fact shall constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law shall constitute a conclusion of law even if it is stated as a finding of fact.

**C. COMMENCEMENT AND JOINT ADMINISTRATION OF THE CHAPTER 11 CASES**

3. On the Petition Date, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On November 3, 2020, the Bankruptcy Court entered the *Order Authorizing Joint Administration of Chapter 11 Cases* [Docket No. 43] authorizing the joint administration and procedural consolidation of the Chapter 11 Cases in accordance with Bankruptcy Rule 1015(b). Since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases.

**D. JUDICIAL NOTICE**

4. The Bankruptcy Court takes judicial notice of, and deems admitted into evidence for purposes of Confirmation, the docket of the Chapter 11 Cases maintained by the Clerk of the Bankruptcy Court or its duly appointed agent, including all pleadings and other documents on file, all orders entered, all hearing transcripts, and all evidence and arguments made, proffered, or adduced at the hearings held before the Bankruptcy Court during the Chapter 11 Cases.

**E. PLAN SUPPLEMENT**

5. On December 3, 2020, the Debtors filed the Plan Supplement and amended the Plan Supplement on December 14, 2020 and December 16, 2020. The Plan Supplement complies and is consistent with the Bankruptcy Code and the terms of the Combined DS and Plan, and the filing and notice of such documents were good and proper and in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan Scheduling Order, and the facts and circumstances of the Chapter 11 Cases. No other or further notice is or will be required with respect to the Plan Supplement, including, for the avoidance of doubt, any amendment, modification, or supplement thereto. All

documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Combined DS and Plan. All Holders of Claims who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified and supplemented by the Plan Supplement. Subject to the terms of the Plan, the Debtors reserve the right to alter, amend, update, or modify the Plan Supplement before the Effective Date subject to compliance with the Bankruptcy Code and the Bankruptcy Rules, provided that no such alteration, amendment, update, or modification shall be inconsistent with the terms of this Confirmation Order or the terms of the Plan.

#### **F. CASH COLLATERAL ORDERS**

6. On November 3, 2020, the Bankruptcy Court entered the *Interim Order (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief* [Docket No. 57].

7. On November 17, 2020, the Bankruptcy Court entered the *Final Order (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief* [Docket No. 150] (the “**Final Cash Collateral Order**”).

#### **G. PLAN SCHEDULING ORDER**

8. On November 4, 2020, the Bankruptcy Court entered the Plan Scheduling Order, which, among other things: (a) approved forms of notices with respect to Confirmation; (b) set December 10, 2020, at 4:00 p.m. (prevailing Eastern time) as the deadline for objecting to the Combined DS and Plan (the “**Plan Objection Deadline**”); and (c) set December 17, 2020, at 1:00 p.m. (prevailing Eastern time) as the date and time for the Confirmation Hearing.

**H. TRANSMITTAL AND MAILING OF MATERIALS; NOTICE**

9. As evidenced by the Confirmation Notice Affidavits and Publication Affidavits, due, adequate, and sufficient notice of the Combined DS and Plan, and notice of the assumptions of Executory Contracts and Unexpired Leases to be assumed and assigned by the Debtors (such executory contracts and unexpired leases, the “**Assumed Contracts**”) and related cure amounts and the procedures for objecting thereto and resolution of disputes by the Bankruptcy Court thereof has been given to, as applicable: (a) all known Holders of Claims or Interests; (b) parties that requested notice in accordance with Bankruptcy Rule 2002; (c) all non-Debtor counterparties to executory contracts and unexpired leases; and (d) all taxing authorities listed on the Debtors’ Schedules or the claims register in the Chapter 11 Cases; each in substantial compliance with the Plan Scheduling Order and Bankruptcy Rules 2002(b), 3017, 3019, and 3020(b), and no other or further notice is or shall be required. Due, adequate, and sufficient notice of the deadline and procedures for objecting to the assumption of executory contracts, the Plan Objection Deadline, the Confirmation Hearing, and any other applicable dates and hearings described in the Plan Scheduling Order was given in compliance with the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the Scheduling Order, and no other or further notice is or shall be required.

**I. NO SOLICITATION**

10. Pursuant to section 1126(f) of the Bankruptcy Code, each holder of a Claim or Interest under the Plan is an Unimpaired class and is conclusively presumed to have accepted the Plan, and therefore, solicitation of acceptances with respect to classes under the Plan was not required.

**J. BANKRUPTCY RULE 3016**

11. The Plan is dated and identifies the Debtors as the Entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The Debtors filed the Disclosure Statement and the Plan in the form of the Combined DS and Plan with the Bankruptcy Court, thereby satisfying Bankruptcy Rule 3016(b).

**K. BURDEN OF PROOF**

12. The Debtors, as proponents of the Plan, have met their burden of proving the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by a preponderance of the evidence, the applicable evidentiary standard for Confirmation. Further, the Debtors have proven the elements of sections 1129(a) and 1129(b) of the Bankruptcy Code by clear and convincing evidence.

**L. MODIFICATIONS TO THE PLAN**

13. Subsequent to the filing of the Plan, the Debtors made certain modifications thereto. Such modifications to the Plan (collectively, the “**Modifications**”) implement changes made to resolve specific objections raised to the Plan or otherwise constitute technical changes and do not materially and adversely affect or change the treatment of any Claims against, or Interests in, the Debtors and comply in all respects with section 1127 of the Bankruptcy Code. Accordingly, pursuant to Bankruptcy Rule 3019, no other or further disclosure with respect to the Modifications is required under section 1125 of the Bankruptcy Code.

**M. COMPLIANCE WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE**

14. The Plan complies with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(1) of the Bankruptcy Code, including sections 1122 and 1123 of the Bankruptcy Code.



**1. Sections 1122 and 1123(a)(1)-(4) - Classification and Treatment of Claims and Interests**

15. Pursuant to sections 1122(a) and 1123(a)(1) of the Bankruptcy Code, Articles II and VIII of the Plan designates Classes of Claims and Interests, other than for Administrative Claims, Professional Claims, and Priority Tax Claim.<sup>4</sup> As required by section 1122(a), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. The Plan contains seven Classes of Claims and Interests, designated as Classes 1, 2A-C, 3, 4, and 5. Such classification is proper under section 1122(a) of the Bankruptcy Code, because such Classes of Claims and Interests have differing rights among each other and against the Debtors' assets or differing interests in the Debtors. Pursuant to section 1123(a)(2) of the Bankruptcy Code, Article VIII of the Plan specifies that all Classes of Claims and Interests that are not Impaired. Pursuant to section 1123(a)(4) of the Bankruptcy Code, Article VIII of the Plan also provides the same treatment for each Claim or Interest within a particular Class, unless the Holder of a Claim or Interest agrees to less favorable treatment of its Claim or Interest. The Plan therefore complies with sections 1122 and 1123(a)(1), (2), and (4)<sup>5</sup> of the Bankruptcy Code.

**2. Section 1123(a)(5) - Adequate Means for Implementation of the Plan**

16. Article IX and various other provisions of the Plan provide adequate means for the Plan's implementation. Those provisions relate to, among other things: (a) the good-faith compromise and settlement of Claims, Interests, and controversies relating thereto; (b) vesting of assets in FIC; (c) cancellation of instruments, certificates and other documents; (d) authority to

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<sup>4</sup> Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Claims, and Priority Tax Claims are not required to be classified. Articles 7.1, 7.2, and 7.3 of the Plan describe the treatment under the Plan of Administrative Claims, Professional Claims, and Priority Tax Claims, respectively.

<sup>5</sup> Section 1123(a)(3) is not applicable because none of the Classes under the Plan is Impaired.

undertake corporate actions necessary to effectuate the Plan; (e) post-confirmation management; and (e) an exemption pursuant to section 1146(a) of the Bankruptcy Code. Moreover, the Plan Sponsor has committed an aggregate amount not to exceed \$7,900,000, which constitutes sufficient Cash to make all payments required under the Plan or otherwise on the Effective Date or thereafter to Allowed Claims. The Plan therefore complies with section 1123(a)(5) of the Bankruptcy Code.

**3. Section 1123(a)(6) - Prohibition Against the Issuance of Nonvoting Equity Securities and Adequate Provisions for Voting Power of Classes of Securities**

17. This section is not applicable to the Plan.

**4. Section 1123(a)(7) – Directors, Officers, and Insiders**

18. The Debtors disclosed the identity of the post-confirmation management in the Plan Supplement. The post-confirmation management will consist of a subset of the Debtors' existing management and professionals. The manner of selection of the post-confirmation management is consistent with the interests of the creditors and other stakeholders and with public policy. Accordingly, the Debtors have satisfied section 1123(a)(7) of the Bankruptcy Code.

**5. Section 1123(b)(1)-(2) - Impairment of Claims and Interests and Assumption, Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases**

19. In accordance with section 1123(b)(1) of the Bankruptcy Code, Article VIII of the Plan leaves Unimpaired all Classes of Claims and Interests. In accordance with section 1123(b)(2) of the Bankruptcy Code, Article X of the Plan provides that, as of and subject to the occurrence of the Effective Date any Executory Contract or Unexpired Lease shall be deemed rejected unless such Executory Contract or Unexpired Lease (1) is specifically described in the Plan as to be assumed in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending

motion to assume such Executory Contract or Unexpired Lease as of the Effective Date; (3) is to be or has been assumed by the Debtors or assumed by the Debtors and assigned to the Purchaser in connection with the Sale as approved by the Sale Order; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy.

20. The Debtors have provided notice to each non-Debtor counterparty to each Executory Contract and Unexpired Lease of the treatment of such non-Debtor counterparty's contract(s) pursuant to the Plan and, with respect to Executory Contracts and Unexpired Leases being assumed under the Plan, the proposed cure cost for such contracts and leases, as evidenced by the Affidavit of Service [Docket No. 235]. The Debtors, in assuming the Assumed Contracts under the Plan, (a) utilized their sound business judgment, (b) provided adequate assurance of future performance (within the meaning of section 365 of the Bankruptcy Code) and no further adequate assurance is or shall be required, and (c) complied with section 365 of the Bankruptcy Code, as contemplated by section 1123(b)(2) of the Bankruptcy Code. The Plan is, therefore, consistent with section 1123(b)(1)-(2) of the Bankruptcy Code.

**6. Section 1123(b)(3) - Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action**

21. **Compromise and Settlement.** Pursuant to section 1123 of the Bankruptcy Code and in consideration for the distributions, releases, and other benefits provided under the Plan, the provisions of the Plan constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to any Allowed Claim or Interest or any distribution to be made on account thereof or otherwise resolved under the Plan. Such compromise and settlement is fair, equitable, and reasonable and in the best interests of the Debtors and their Estates.

22. In accordance with the provisions of the Plan, including, without limitation, Article 9.10 of the Plan, on and after the Effective Date, and to the extent not transferred to the Purchaser pursuant to the Sale Order or released pursuant to Article 13.1 or any other provision of the Plan, the Reorganized Debtors shall retain and may enforce, sue on, settle, compromise, otherwise resolve, discontinue, abandon, or dismiss all retained Causes of Actions, without any further notice to or action, order, or approval of the Bankruptcy Court, *provided, however*, that upon the Effective Date, notwithstanding any other provision in the Plan or any order entered in these Chapter 11 Cases, the Debtors and the Reorganized Debtors shall forever waive, relinquish, and release any and all Avoidance Actions other than those identified in the Plan Supplement on the Schedule of Retained Causes of Action, provided that, except as expressly provided in Articles 12.1 and 13.12 of the Plan or otherwise in the Plan, or the Confirmation Order, the Reorganized Debtors shall retain the right to assert any Claims or Causes of Action (any other rights or defenses), including any Claims assertable in any Avoidance Action, as defenses or counterclaims in any Claim or Cause of Action brought by any Person.

23. **Releases by the Debtors.** The releases set forth in Article 13.1 of the Plan (collectively, the “**Debtor Release**”) constitute an essential and critical provision of the Plan and formed an integral part of the agreement with the Plan Sponsor and all other parties in interest embodied in the Plan. The Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, is: (a) within the jurisdiction of the Bankruptcy Court pursuant to 28 U.S.C. § 1334; (b) in exchange for the good and valuable consideration provided by the Plan Sponsor and other Released Parties; (c) a good faith settlement and compromise of the Claims and Causes of Action released by such releases; (d) in the best interests of the Debtors and their creditors; (e) fair, equitable, and reasonable; (f) given and made after due

notice and opportunity for hearing; (g) appropriate in scope; and (h) a bar to any of the Debtors or their Estates asserting any Claim or Cause of Action released pursuant to such releases.

24. The Debtor Release appropriately offers protection to parties that constructively participated in the Debtors' restructuring efforts. The scope of the Debtor Release is appropriately tailored under the facts and circumstances of the Chapter 11 Cases. In light of, among other things, the value provided by the Released Parties to the Debtors' Estates and the critical nature of the Debtor Release to the Plan, the Debtor Release is approved.

25. **Third-Party Release.** The releases set forth in Article 13.2 of the Plan (collectively, the "**Third-Party Release**") constitute an essential and critical provision of the Plan and formed an integral part of the agreement among all parties in interest embodied in the Plan. The Third-Party Release is: (a) within the jurisdiction of the Bankruptcy Court pursuant to 28 U.S.C. § 1334; (b) in exchange for the good and valuable consideration provided by the Plan Sponsor and the other Released Parties; (c) a good-faith settlement and compromise of the Claims or Causes of Action released by such releases; (d) in the best interests of the Debtors and their creditors; (e) fair, equitable, and reasonable; (f) given and made after due notice and opportunity for hearing; (g) appropriate in scope; and (i) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to such releases.

26. Like the Debtor Release, the Third-Party Release and its protections were necessary inducements to the participation of the Plan Sponsor in the negotiations and compromises that led to the Plan and the structure for the Debtors' orderly liquidation, and the Unimpairment of Allowed Claims. Specifically, the Released Parties, individually and collectively, made significant contributions to the Chapter 11 Cases, including providing funding for the Chapter 11 Cases, permitting use of their collateral during these Chapter 11 Cases, and otherwise actively supporting

the Debtors' liquidation efforts. The Third-Party Release therefore appropriately offers protection to parties who actively and constructively participated in and contributed to the Plan and without whom the sale could not have been achieved.

27. The scope of the Third-Party Release in the Plan is appropriate to the facts and circumstances of the Chapter 11 Cases, and parties received due and adequate notice of the Third-Party Release, and the opportunity to object to the Third-Party Release. In light of, among other things, the value provided by the Released Parties to the Debtors' Estates and the critical nature of the Third-Party Release to the Plan, the Third-Party Release is approved.

28. **Exculpation.** The exculpation provisions set forth in Article 13.3 of the Plan (collectively, the "**Exculpation**") are approved. The Exculpation is appropriate under applicable law because it was proposed in good faith, was formulated following extensive good-faith, arm's-length negotiations with key constituents, and is appropriately limited in scope, as it will have no effect on the liability of any Person or Entity that results from any such act or omission that is determined by a Final Order to have constituted actual fraud or willful misconduct. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing distributions made pursuant to the Plan.

29. **Injunction.** The injunctive provisions set forth in Article 13.4 of the Plan (collectively, the "**Injunction**") are essential to the Plan and are necessary to implement the Plan and to preserve and enforce the Debtor Release, the Third-Party Release, and the Exculpation in Article XIII of the Plan. Such Injunction is appropriately tailored to achieve those purposes. Accordingly, the Injunction is approved.

30. **Retained Causes of Action.** The provisions regarding the retention of Causes of Action in the Plan, including Article 9.10 of the Plan, are appropriate and are in the best interests of the Debtors, their respective Estates, and their creditors. The Schedule of Retained Causes of Action filed as part of the Plan Supplement adequately specifies the retained Causes of Actions under the Plan.

31. In light of the foregoing, the Plan is consistent with section 1123(b)(3) of the Bankruptcy Code.

**7. Section 1123(b)(5) - Modification of the Rights of Holders of Claims**

32. Article VIII of the Plan leaves unaffected the rights of Holders of each Class of Claims, and therefore, the Plan is consistent with section 1123(b)(5) of the Bankruptcy Code.

**8. Section 1123(b)(6) - Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code**

33. The Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code, including: (a) the provisions of Article IX of the Plan regarding the means for executing and implementing the Plan; (b) the provisions of Article X of the Plan governing the treatment of Executory Contracts and Unexpired Leases; (c) the provisions of Article XI of the Plan governing distributions on account of Allowed Claims, particularly as to the timing and calculation of amounts to be distributed; (d) the provisions of Articles 13.1 and 13.2 of the Plan regarding the releases with respect to the Released Parties; (e) the provisions of Article 13.4 of the Plan regarding the injunction with respect to Claims and Interests treated under the Plan; and (f) the provisions of Article XVI of the Plan regarding retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date. The Plan is therefore consistent with section 1123(b)(6) of the Bankruptcy Code.

**9. Section 1129(a)(2) - Compliance with Applicable Provisions of the Bankruptcy Code**

34. The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically: (i) each of the Debtors is eligible to be a debtor under section 109 of the Bankruptcy Code and is a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code; (ii) the Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of the Bankruptcy Court; and (iii) because all Classes of Claims and Interests are Unimpaired under the Plan, and therefore deemed to accept the Plan and not entitled to vote, the solicitation requirements of sections 1125 and 1126 of the Bankruptcy Code do not apply to the Debtors.

**10. Section 1129(a)(3) - Proposal of the Plan in Good Faith**

35. The Debtors proposed the Plan (including the Plan Supplement and all other documents necessary to effectuate the Plan) in good faith and not by any means forbidden by law. In determining that the Plan has been proposed in good faith, the Bankruptcy Court has examined the totality of the circumstances surrounding the formulation of the Plan. The Debtors' good faith is evident from the facts and record of the Chapter 11 Cases, the Disclosure Statement, and the record of the Confirmation Hearing. Based on the Disclosure Statement and the evidence presented at the Confirmation Hearing, the Bankruptcy Court finds and concludes that the Plan has been proposed with the legitimate and honest purpose of maximizing the returns available to creditors of the Debtors. Accordingly, the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied.

36. The Plan has been proposed in good faith to achieve a result consistent with the objectives and purposes of the Bankruptcy Code and the Debtors (and all of their respective officers, managers, directors, agents, independent contractors, financial advisors, consultants,



attorneys, employees, partners, Affiliates, and representatives) have been, are, and will continue to act in good faith within the meaning of sections 1125(e) and 1126(e) the Bankruptcy Code if they proceed to: (a) consummate the Plan and the agreements, settlements, transactions, and transfers contemplated thereby and (b) take the actions authorized and directed or contemplated by this Confirmation Order.

**11. Section 1129(a)(4) - Bankruptcy Court Approval of Certain Payments as Reasonable**

37. Except as otherwise provided or permitted by the Plan, or by orders of this Court, any payment made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable. Article XVI of the Plan expressly provides for the retention of the Bankruptcy Court's exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan, including jurisdiction to "hear and determine all applications for allowance of compensation and reimbursement of Professional Fee Claims under this Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code[.]" Accordingly, the Plan satisfies section 1129(a)(4) of the Bankruptcy Code.

**12. Section 1129(a)(5) – Directors, Officers, and Insiders.**

38. The Debtors disclosed the identity and material terms of engagement of the post-confirmation management in the Plan Supplement. The Plan complies with section 1129(a)(5) of the Bankruptcy Code because the continuation of management by certain pre-confirmation management and pre-confirmation retained Professionals post-confirmation and disclosure thereof is consistent with the interests of the creditors and with public policy. Specifically, the retention of certain of the Debtors' pre-confirmation management team will allow the Reorganized Debtors to benefit from such management's familiarity with the Debtors' business and industry going

forward in the current difficult climate, and will also facilitate prompt distributions to creditors pursuant to the Plan.

**13. Section 1129(a)(6) - Approval of Rate Changes**

39. Section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Chapter 11 Cases. The Plan proposes no rate change subject to the jurisdiction of any governmental regulatory commission.

**14. Section 1129(a)(7) - Best Interests of Holders of Claims and Interests**

40. Section 1129(a)(7) of the Bankruptcy Code specifies that the liquidation analysis of the “best interests of creditors test” only applies to nonaccepting Impaired Claims or Interests. As the Plan provides that each Class of Claims and Interests is Unimpaired and thus are not entitled to vote, the “best interests of creditors test” does not apply to any Classes. Having no applicability to the Plan, it follows that the requirements of section 1129(a)(7) of the Bankruptcy Code have been met.

**15. Section 1129(a)(8) - Acceptance of Plan by Impaired Classes.**

41. No class of Claims or Interests is Impaired under the Plan. Having no applicability to the Plan, it follows that the requirements of section 1129(a)(8) of the Bankruptcy Code have been met.

**16. Section 1129(a)(9) - Treatment of Claims Entitled to Priority Pursuant to Section 507(a) of the Bankruptcy Code**

42. Article VII of the Plan provides for treatment of Administrative Claims, Professional Claims, Priority Tax Claims, and Statutory Fees and Article VIII provides for treatment of Other Priority Claims, subject to certain bar date provisions consistent with Bankruptcy Rules 3002 and 3003, in the manner required by section 1129(a)(9) of the Bankruptcy Code.

**17. Section 1129(a)(10) - Acceptance by at Least One Impaired Non-Insider Class**

43. All Classes of Claims and Interests are Unimpaired under the Plan and thus are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, no Holders of any of Claims or Interests are entitled to vote on the Plan. Having no applicability to the Plan, the requirements of section 1129(a)(9) of the Bankruptcy Code have been met.

**18. Section 1129(a)(11) - Feasibility of the Plan**

44. The Plan satisfies section 1129(a)(11) of the Bankruptcy Code. For the reasons provided at the Confirmation Hearing, the Confirmation Brief, and the commitment letter from the Plan Sponsor submitted with the Plan Supplement, the Plan is feasible and the Reorganized Debtors will have sufficient funds available to meet their obligations under the Plan.

**19. Section 1129(a)(12) - Payment of Bankruptcy Fees**

45. The Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code. Article 7.4 of the Plan provides for the payment of all fees due and payable pursuant to 28 U.S.C. § 1930 by the Debtors or the Reorganized Debtors, as applicable.

**20. Section 1129(a)(13) - Retiree Benefits**

46. The Debtors do not have any obligation to pay any retiree benefits as such term is defined in section 1114 of the Bankruptcy Code. Having no applicability to the Plan, the requirements of section 1129(a)(13) of the Bankruptcy Code have been met.

**21. Sections 1129(a)(14), (a)(15), and (a)(16) of the Bankruptcy Code are Inapplicable**

47. The Debtors are not (i) required to pay any domestic support obligations, (ii) individuals, or (iii) nonprofit corporations or trusts. Accordingly, sections 1129(a)(14) through (16) of the Bankruptcy Code are not applicable.

**22. Section 1129(c) - Only One Plan**

48. The Plan satisfies the requirements of section 1129(c) of the Bankruptcy Code. The Plan (including previous versions thereof) is the only chapter 11 plan filed in the Chapter 11 Cases.

**23. Section 1129(d) - Purpose of Plan**

49. The primary purpose of the Plan is not avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933, 15 U.S.C. § 77e, and there has been no objection filed by any governmental unit asserting such avoidance. The Plan therefore complies with section 1129(d) of the Bankruptcy Code.

**24. Satisfaction of Confirmation Requirements**

50. As set forth above, the Plan complies in all respects with the applicable requirements of section 1129 of the Bankruptcy Code.

**N. GOOD-FAITH PARTICIPATION**

51. The Debtors and their principal constituencies, including, without limitation, the Plan Sponsor (and their professionals and representatives) have been and are continuing to act in good faith. Therefore, they are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and by the releases and the exculpatory and injunctive provisions set forth in Article XIII of the Plan.

**O. AGREEMENTS AND OTHER DOCUMENTS**

52. The Debtors have disclosed all material facts regarding: (a) the method and manner of distributions under the Plan; (b) the identity of and details with respect to post-confirmation management; (c) the adoption, execution, and implementation of the other matters provided for under the Plan, including those involving corporate or limited liability company (as applicable) action to be taken by or required of the Debtors or the Reorganized Debtors; (d) the exemption under section 1146(a) of the Bankruptcy Code; (e) the rejection, assumption, or assumption and

assignment of Executory Contracts or Unexpired Leases; and (f) the adoption, execution, and delivery of all contracts, leases, instruments, securities, releases, indentures, and other agreements related to any of the foregoing.

**P. REJECTIONS OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

53. Each rejection of an Executory Contract or Unexpired Lease pursuant to Article X of the Plan shall be legal, valid, and binding upon the applicable Debtor and all non-Debtor parties to such Executory Contract or Unexpired Lease, all to the same extent as if such rejection had been effectuated pursuant to an appropriate authorizing order of the Bankruptcy Court entered prior to the Confirmation Date under section 365 of the Bankruptcy Code.

**Q. LIKELIHOOD OF SATISFACTION OF CONDITIONS PRECEDENT TO EFFECTIVE DATE**

54. Without limiting or modifying the rights of the Debtors or the Plan Sponsor under the Plan, each of the conditions precedent to the Effective Date, as set forth in Article XIV of the Plan, has been or is reasonably likely to be satisfied or waived in accordance with Article XIV of the Plan.

**R. IMPLEMENTATION**

55. All documents and agreements necessary to implement the Plan, including those contained in the Plan Supplement that are necessary to implement the Plan, and all other relevant and necessary documents have been negotiated in good faith and at arm's length, are in the best interests of the Debtors, and shall, upon completion of documentation and execution, be valid, binding, and enforceable documents and agreements not in conflict with any federal, state, or local law. The Debtors have exercised reasonable business judgment in determining which agreements to enter into and have provided sufficient and adequate notice of such documents and agreements. The terms and conditions of such documents and agreements have been and are continuing to be

negotiated in good faith, at arm's length, are fair and reasonable, and are approved. The Debtors and Reorganized Debtors, as applicable, are authorized, without any further notice to or action, order, or approval of this Bankruptcy Court, to finalize and execute and deliver all agreements, documents, instruments, and certificates relating thereto and perform their obligations thereunder in accordance with the Plan so long as such documents are consistent with the Plan.

## **II. ORDER.**

**BASED ON THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

### **A. DISCLOSURE STATEMENT**

56. Under the facts of the Chapter 11 Cases, no solicitations of acceptances of the Plan were required under the Plan. The Disclosure Statement contains adequate information in accordance with section 1125 of the Bankruptcy Code and is hereby approved.

### **B. CONFIRMATION OF THE PLAN**

57. The Plan, a copy of which is attached hereto as Exhibit A, along with each of its provisions (whether or not specifically approved herein) and all operative exhibits, supplements, and schedules thereto, is confirmed in each and every respect pursuant to section 1129 of the Bankruptcy Code and all of the provisions of the Plan (except to the extent any such provisions conflict with or are in any way inconsistent with an express term of this Confirmation Order, in which instance the Confirmation Order shall control and supersede such conflicting or inconsistent provisions of the Plan) are incorporated by reference into this Order, whether or not expressly set forth herein. All documents included in the Plan Supplement that are necessary to implement the Plan are integral to, part of, and incorporated by reference into the Plan and are hereby approved. Subject to the terms of the Plan, the Debtors are authorized to alter, amend, update, or modify the Plan Supplement before the Effective Date in accordance with section 1127(b) of the Bankruptcy

Code or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan and this Confirmation Order. The terms of the Plan, the Plan Supplement, and the exhibits and schedules thereto are incorporated by reference into this Confirmation Order, and the provisions of the Plan and this Confirmation Order are non-severable and mutually dependent. Notwithstanding the foregoing, if there is any direct conflict between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. All objections and other responses to, and statements and comments regarding, the Plan, other than those withdrawn with prejudice in their entirety prior to, or on the record at, the Confirmation Hearing are either (a) resolved or sustained on the terms set forth herein or (b) overruled.

58. The failure specifically to identify or refer to any particular provision of the Plan or any other agreement in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court that the Plan and all other agreements approved by this Confirmation Order are approved in their entirety.

### **C. BINDING NATURE OF PLAN TERMS**

59. Notwithstanding any otherwise applicable law, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, the terms of this Confirmation Order and the Plan, including the compromises, releases, waivers, and injunctions described in Article XIII of the Plan, shall be deemed binding upon (i) the Debtors, (ii) the Reorganized Debtors, (iii) all parties in interest, Holders of Claims against and Interests in the Debtors, (iv) each Person acquiring property under the Plan, (v) the Purchaser, (vi) each counterparty to an Executory Contract or Unexpired Lease of the Debtors, (vii) any Person or Entity making an appearance in the Chapter 11 Cases or any other Person in the Chapter 11 Cases and (viii) the successors and assigns of all of the above-listed Entities.

**D. PLAN CLASSIFICATION CONTROLLING**

60. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan.

**E. GENERAL SETTLEMENT OF CLAIMS**

61. In consideration for the Plan distributions, releases, and other benefits provided under the Plan, upon the Effective Date (or such later date as provided in the Plan), the provisions of the Plan constitute a good-faith compromise and settlement of all Claims and controversies relating to any Allowed Claim or Interest or any Plan distribution to be made on account thereof or otherwise resolved under the Plan. The entry of this Confirmation Order constitutes the Bankruptcy Court's approval of the compromise and settlement of all such Claims and controversies, as well as a finding by the Bankruptcy Court that such compromise and settlement is fair, equitable, and reasonable and in the best interests of the Debtors and their Estates. All Plan distributions made in accordance with the Plan are intended to be, and shall be, final.

**F. VESTING OF ASSETS IN THE REORGANIZED DEBTORS;  
CONTINUED CORPORATE EXISTENCE**

62. On the Effective Date, except as otherwise provided in the Plan and except to the extent sold pursuant to the Sale Order, pursuant to sections 1141(b) and 1141(c) of the Bankruptcy Code, all property of each Estate, including all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall be consolidated and vest in Reorganized Debtor FIC free and clear of all Claims, Liens, encumbrances, charges, and other interests; provided that, in accordance with Articles 9.3 and 13.2 of the Plan and notwithstanding any other provision in the Plan or any order entered in these Chapter 11 Cases, on the Effective Date, the Debtors and the Reorganized Debtors shall forever waive, relinquish, and release any and all Avoidance Actions other than those retained and identified in the Plan Supplement that the Debtors and their Estates



had, have, or may have against any Person (irrespective of whether such Person is a Released Party), provided, however that the Reorganized Debtors shall retain the right to assert any Claims or Causes of Action, including any Claims assertable in any Avoidance Action, as defenses or counterclaims in any Claim or Cause of Action brought or asserted by any Person. On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor shall be authorized to operate their respective businesses and to use, acquire, or dispose of assets, without supervision or approval by the Bankruptcy Court and free from any restrictions of the Bankruptcy Code or the Bankruptcy Rules, including for the avoidance of doubt any restrictions on the use, acquisition, sale, lease, or disposal of property under section 363 of the Bankruptcy Code. Except as otherwise provided in the Plan, each of the Debtors, as a Reorganized Debtor, shall continue to exist on and after the Effective Date as a separate legal entity with all of the powers available to such legal entity under applicable law and pursuant to the applicable organizational documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with the Plan and such applicable law.

**G. CANCELLATION OF NOTES, INSTRUMENTS, AND EQUITY INTERESTS**

63. Except for the purpose of evidencing a right to a Plan distribution and except as otherwise set forth in the Plan or the Sale Order, on the Effective Date, all agreements, instruments, and other documents evidencing or governing any Claims or Interests and any rights of any Holder in respect thereof (including all registration rights, preemptive rights, rights of first refusal, rights of first offer, co-sale rights and other investor rights governing or relating to any Claims or Interests), except for the avoidance of doubt, any agreements, instruments, or documents transferred under the Purchase Agreement, shall be deemed cancelled, discharged, and of no force or effect and the obligations of the Debtors thereunder shall be deemed fully discharged.

Notwithstanding the foregoing, any provision in any document, instrument, lease, or other agreement that causes or effectuates, or purports to cause or effectuate, a default, termination, loss, waiver, or other forfeiture of, or by, the Debtors or their interests, or any increase or acceleration of any of their obligations, in any such case as a result of the cancellations, terminations, satisfaction, releases, or discharges provided for in Article 9.5 shall be deemed null and void and shall be of no force and effect.

#### **H. RELEASE OF LIENS**

64. Except as provided otherwise under the Plan, the Plan Supplement, the Credit Agreements, the Letters of Credit (if applicable), or any contract, instrument, release, or other agreement or document created pursuant to the Plan or the Confirmation Order, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, compromised, and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Reorganized Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or

with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

**I. CORPORATE ACTION**

65. On and after the Effective Date, all actions contemplated by the Plan shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without the need for any further corporate or limited liability company action, or any further action by any stockholders, directors, managers, or members of the Debtors or the Reorganized Debtors, including, the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases. On and after the Effective Date, the Reorganized Debtors shall be authorized and directed to issue, execute, file, record, and deliver the agreements, documents, securities, deeds, bills of sale, conveyances, releases, and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan). The authorizations and approvals contemplated in this paragraph shall be effective notwithstanding any requirements under any applicable non-bankruptcy law.

**J. RELEASES BY THE DEBTORS**

66. The provisions of Article 13.1 of the Plan are hereby approved in their entirety. Entry of this Confirmation Order shall constitute the Bankruptcy Court's approval of the Debtors' releases, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtors' releases are: (a) in exchange for good and valuable consideration provided by the Plan Sponsor and other Released Parties; (b) a good faith settlement and compromise of the Claims and Causes of Action released by the Debtor Release; (c) in the best interests of the Debtors and all Holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and

opportunity for hearing; and (f) a bar to any of the Debtors, the Reorganized Debtors, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

**K. THIRD-PARTY RELEASES**

67. The provisions of Article 13.2 of the Plan are hereby approved in their entirety. Entry of this Confirmation Order shall constitute the Bankruptcy Court's approval of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (a) essential to the Confirmation of the Plan; (b) given in exchange for good and valuable consideration provided by the Plan Sponsor and the other Released Parties; (c) a good-faith settlement and compromise of the Claims and Causes of Action released by the Third-Party Release; (d) in the best interests of the Debtors and their Estates; (e) fair, equitable, and reasonable; (f) given and made after due notice and opportunity for hearing; and (g) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to this Third-Party Release.

**L. EXCULPATION**

68. The provisions of Article 13.3 of the Plan are hereby approved in their entirety. The Exculpated Parties have, and upon completion of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of, and distribution of, consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

**M. INJUNCTION**

69. The provisions of Article 13.4 of the Plan are hereby approved in their entirety.

**N. ASSUMED CONTRACTS AND ASSUMED LIABILITIES; CURE COST;  
“ADEQUATE ASSURANCE”**

70. The provisions governing the treatment of Executory Contracts and Unexpired Leases set forth in Article X of the Plan shall be, and hereby are, approved in their entirety. Except as otherwise agreed by the Debtors and the applicable counterparty or counterparties, the cure cost under each Executory Contract or Unexpired Lease shall be as set forth in the Plan Supplement.

71. Entry of this Confirmation Order shall constitute an order approving the assumptions or rejections of the Executory Contracts and Unexpired Leases pursuant to sections 365(a) and 1123 of the Bankruptcy Code and effective on the occurrence of the Effective Date. Each Executory Contract and Unexpired Lease assumed pursuant to the Plan or by Bankruptcy Court order, and not assigned to a third party (including the Purchaser) on or prior to the Effective Date, shall re-vest in and be fully enforceable by the applicable Reorganized Debtor in accordance with its terms, except as such terms may have been modified by order of the Bankruptcy Court. Each Executory Contract and Unexpired Lease assumed pursuant to the Plan or Bankruptcy Court Order, including but not limited to the Sale Order, and assigned to the Purchaser shall be the sole responsibility of the Purchaser, and neither the Debtors nor the Reorganized Debtors shall have any obligation with respect thereto except as otherwise provided in an applicable Bankruptcy Court Order authorizing such assumption and assignment. To the maximum extent permitted by law, assumption of any Executory Contract or Unexpired Lease under the Plan shall not constitute a breach or default as the result of any provision in any Executory Contract or Unexpired Lease that restricts or prevents, or purports to restrict or prevent, or would otherwise be breached or deemed breached by, the assumption of such Executory Contract or Unexpired Lease (including any “change of control” provision).

72. For the avoidance of doubt, notwithstanding any provision to the contrary in the Plan, the Plan Supplement, this Confirmation Order or any implementing Plan documents, including any releases, injunctions and related provisions under Article XIII of the Amended Plan, the assumption and assignment of Assumed Contracts that were or will be assumed and assigned under the terms of the Sale Order and related documents is governed by the terms of the Sale Order and related documents and such contracts assumed pursuant to the sale are not subject to assumption under the Plan; and, for the avoidance of doubt, nothing in the Plan, the Plan Supplement, this Confirmation Order or any implementing Plan documents shall release, enjoin, or otherwise bar any obligations or liabilities set forth in the Sale Order.

**O. PROVISIONS GOVERNING DISTRIBUTIONS AND RESOLVING DISPUTED CLAIMS AND INTERESTS**

73. The distribution provisions of Articles XI and the Claims reconciliation provisions of Article XII of the Plan shall be, and hereby are, approved in their entirety.

**P. POST-CONFIRMATION NOTICES, PROFESSIONAL COMPENSATION, AND BAR DATES**

**1. Notice of Entry of this Confirmation Order and Occurrence of Effective Date**

74. In accordance with Bankruptcy Rules 2002 and 3020(c), within three business days of the Effective Date, the Debtors shall serve a notice (substantially in the form attached hereto as Exhibit B) (the: **Notice of Confirmation and Effective Date**) by United States mail, by first-class postage prepaid, by hand, or by overnight courier service to all parties served with the Confirmation Hearing Notice; provided that no notice or service of any kind shall be required to be mailed or made upon any Person to whom the Debtors mailed a Confirmation Hearing Notice but received such notice returned marked “undeliverable as addressed,” “moved, left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtors have been informed in writing by such Entity, or are otherwise aware, of that Entity’s new address. To

supplement the notice described in the preceding sentence, within ten (10) days of the Effective Date, or as soon as practicable thereafter, the Debtors shall submit for publication a notice (substantially in the form attached hereto as Exhibit C) (the “**Publication Effective Date Notice**”) once in *The New York Times* (national editions). Mailing and publication of the Notice of Confirmation and Effective Date and Publication Effective Date Notice in the time and manner set forth in this paragraph shall be good and sufficient notice under the particular circumstances and in accordance with the requirements of Bankruptcy Rules 2002 and 3020(c), and no further notice is necessary.

75. The Notice of Confirmation and Effective Date and Publication Effective Date Notice shall constitute sufficient notice of the entry of this Confirmation Order and the effectiveness of the Plan to filing and recording officers and shall be a recordable instrument notwithstanding any contrary provision of applicable non-bankruptcy law.

## **2. Bar Date for Administrative Expense Claims**

76. The provisions governing the treatment of Allowed Administrative Expense Claims set forth in Article 7.1 of the Plan are approved in their entirety.

77. All requests for payment of Administrative Claims (including all Professional Claims) arising prior to the Effective Date must be filed no later than the Administrative Claims Bar Date.

## **3. Professional Compensation**

78. The provisions governing Professional compensation set forth in Article 7.2 of the Plan are approved in their entirety.

## **4. Rejection Damage Claims**

79. Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of an Executory Contract and Unexpired Lease pursuant

to the Plan must be filed by the later to occur of: (1) 30 days after the Effective Date and (2) 30 days after the applicable Debtor surrenders possession to a landlord of a rejected lease where surrender occurs after entry of an order approving such rejection. Any Holders of Rejection Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not Filed shall not (1) be treated as a creditor with respect to such Rejection Claim, (2) participate in any distribution in the Chapter 11 Cases on account of such Rejection Claim. Allowed Rejection Claims shall be classified as General Unsecured Claims in Class 4 and, if Allowed, shall be treated in accordance with Article 8.2(f) of the Plan.

**Q. EXEMPTIONS FROM CERTAIN TRANSFER TAXES**

80. Pursuant to section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (1) the Sale to the Purchaser pursuant to the terms of the Sale Order; (2) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; or (5) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the



collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

**R. PRESERVATION OF CAUSES OF ACTION**

81. In accordance with section 1123(b) of the Bankruptcy Code, but subject to the releases set forth in Article 13.1 and Article 13.12 of the Plan, and subject further the retention of all rights and defenses of the Debtors with respect to any Claim asserted against the Debtors in accordance with Article 12.1, all Claims and Causes of Action that a Debtor may hold against any Person shall vest in the applicable Reorganized Debtor on the Effective Date. Thereafter, except as otherwise specifically provided in the Plan, the Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Claim or Causes of Action, whether arising before or after the Petition Date, and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court. No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any specific Claim or Cause of Action as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Claims or Causes of Action. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Claims or Causes of Action against any Person, except as otherwise expressly

provided in the Plan, and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to any Claim or Cause of Action upon, after, or as a consequence of the Confirmation or the occurrence of the Effective Date.

82. Notwithstanding any provision in the Plan or any order entered in these Chapter 11 Cases, as of the Effective Date, the Debtors and Reorganized Debtors forever waive, relinquish, and release any and all Causes of Action the Debtors and their Estates had, have, or may have against any Released Party. Notwithstanding any provision in the Plan or any order entered in these Chapter 11 Cases, as of the Effective Date, the Debtors and Reorganized Debtors forever waive, relinquish, and release any and all Avoidance Actions the Debtors and their Estates had, have, or may have, against any Person (irrespective of whether such Person is a Released Party), unless such Avoidance Action is a retained Cause of Action, and provided that the Reorganized Debtors shall retain the right to assert any Claim or Cause of Action, including Claims assertable in any Avoidance Action, as defenses or counterclaims in any Claim or Cause of Action brought by any Person.

#### **S. FEDERAL AND STATE INTERESTS**

83. Notwithstanding any provision to the contrary in the Plan, the Plan Supplement, this Confirmation Order or any Plan Documents (collectively, the “**Documents**”), nothing in the Documents discharges or releases the Debtors, the Reorganized Debtors, or any non-debtor from any right, claim, liability or cause of action of the United States or any State, or impairs the ability of the United States or any State to pursue any claim, liability, right, defense, or cause of action against any Debtor, Reorganized Debtor or non-debtor. Contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements or other interests of or with the United States or any State shall be, subject to any applicable legal or equitable rights

or defenses of the Debtor or Reorganized Debtor under applicable nonbankruptcy law, paid, treated, determined and administered in the ordinary course of business as if the Debtor's bankruptcy case was never filed and the Debtor and Reorganized Debtor shall comply with all applicable non-bankruptcy law. All claims, liabilities, rights, causes of action, or defenses of or to the United States or any State shall survive the Chapter 11 Cases as if it had not been commenced and be determined in the ordinary course of business, including in the manner and by the administrative or judicial tribunals in which such rights, defenses, claims, liabilities, or causes of action would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced; provided, that nothing in the Plan or this Confirmation Order shall alter any legal or equitable rights or defenses of the Debtors or the Reorganized Debtors under non-bankruptcy law with respect to any such claim, liability, or cause of action. Without limiting the foregoing, for the avoidance of doubt: (i) the United States and any State shall not be required to file any proofs of claim or administrative expense claims in the Chapter 11 Cases for any right, claim, liability, defense, or cause of action; (ii) nothing shall affect or impair the exercise of the United States' or any State's police and regulatory powers against the Debtors, the Reorganized Debtors or any non-debtor; (iii) nothing shall be interpreted to set cure amounts or to require the United States or any State to novate or otherwise consent to the transfer of any federal or state contracts, purchase orders, agreements, leases, covenants, guaranties, indemnifications, operating rights agreements or other interests; (iv) nothing shall affect or impair the United States' or any State's rights and defenses of setoff and recoupment, or ability to assert setoff or recoupment against the Debtors or the Reorganized Debtors and such rights and defenses are expressly preserved; (v) nothing shall constitute an approval or consent by the United States without compliance with all applicable legal

requirements and approvals under non-bankruptcy law, (vi) nothing shall relieve any party from compliance with all licenses and permits in accordance with non-bankruptcy law.

#### **T. RESOLUTION WITH CERTAIN LANDLORDS**

84. Nothing in the Sale Order, Plan, Plan Supplement, Confirmation Order, or any implementing Plan documents shall authorize the assumption or assumption and assignment of any real estate property or any nonresidential real property lease free and clear of any interests, covenants, or rights applicable to such real estate assets that limit or condition the permitted use of the property such as easements, reciprocal easement agreements, construction operating and reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, or permits (collectively, “**Restrictive Covenants**”), or otherwise extinguish or otherwise diminish such rights or agreements. Any assumption or assumption and assignment is subject to all such Restrictive Covenants, and any amounts due and owing or that become due in the ordinary course of business on account of any reciprocal easement agreements, construction operating and reciprocal easement agreements or operating or redevelopment agreements shall be paid by the Debtors and Purchaser in the ordinary course.

#### **U. ESIS AGREEMENTS AND CHUBB INSURANCE CONTRACTS**

85. Notwithstanding anything to the contrary in the Plan (including sections 9.5, 10.3 and 13.9), the Plan Supplement, the Plan Documents, the Purchase Agreement, the Sale Order, the Confirmation Order, or any other document related to any of the foregoing or any other order of the Bankruptcy Court:

i. other than the rejection as of the Effective Date of all of the agreements (collectively, the “**ESIS Agreements**”) entered into by any of the Debtors and ESIS Inc. (“**ESIS**”) and the effects of such rejection including the right of any party thereto not to perform thereunder, nothing shall otherwise alter, modify, amend, affect, impair or prejudice the legal, equitable or contractual rights, obligations, and defenses of ESIS, the Debtors (or, after the Effective Date, the Reorganized Debtors), or any other individual or

entity, as applicable, under any of the ESIS Agreements, and any such rights and obligations shall be determined under the ESIS Agreements;

ii. nothing permits or otherwise effects, or shall permit or otherwise effect an assignment or any other transfer of the ESIS Agreements and, other than, with respect to the Reorganized Debtors, any proceeds, rights, benefits, claims, and/or recoveries thereunder or relating thereto without the prior express written consent of ESIS;

iii. nothing releases, discharges, modifies or otherwise alters ESIS' security interests in and liens on any and all collateral or security provided by or on behalf of the Debtors and held by ESIS as of the Petition Date (including any credits held at any time by ESIS, the "**ESIS Collateral**");

iv. other than with respect to documents to be destroyed or transferred before March 1, 2021, for which ESIS shall be notified in accordance with the terms of the *Order Authorizing The Debtors To Abandon And/Or Destroy Certain Documents And Records* [Docket No. 232], with respect to (a) any documents, books and records relevant to claims handled by ESIS that are maintained by the Reorganized Debtors, the Reorganized Debtors shall not transfer outside the Reorganized Debtors' control or destroy such documents, books and records without providing ESIS no less than thirty (30) days' notice along with any required authorizations to take possession of all or any portion of such records; provided that nothing herein requires the Debtors or Reorganized Debtors to itemize or inventory any documents, books and records in providing such notice to ESIS or (b) any documents, books and records relevant to claims handled by ESIS that have been or will be transferred to the Purchaser or its assignee, the Debtors shall be deemed to authorize the Purchaser to provide ESIS, upon request from ESIS, with such documents, books and records;

v. the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in the Plan, if and to the extent applicable, shall be deemed lifted without further order of this Bankruptcy Court, solely to permit, but not require: (I) ESIS to (A) administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of this Bankruptcy Court, any claims subject to the ESIS Agreements that proceed under applicable non-bankruptcy law or for which an order has been entered by this Bankruptcy Court granting relief from the automatic stay or the injunctions set forth in the Plan permitting the claimant to proceed with its claim, and (B) pay all costs in relation to each of the foregoing; (II) ESIS to draw against any or all of the ESIS Collateral at any time and/or apply such proceeds to the obligations of the Debtors (and the Reorganized Debtors, as applicable) under and pursuant to the applicable ESIS Agreements, and (III) to the extent permissible under applicable non-bankruptcy law, and in accordance with the terms of the ESIS Agreements, ESIS to cancel or terminate any ESIS Agreement and take other actions relating to the ESIS Agreements; and

vi. for the avoidance of doubt, nothing releases, discharges, modifies or otherwise alters the terms and conditions of, or obligations of Sun Capital (other than the Debtors or the Reorganized Debtors) under, the insurance policies or any related agreements (collectively, the "**Chubb Insurance Contracts**") issued at any time by ACE

American Insurance Company, Federal Insurance Company and each of their U.S.-based affiliates and successors to Sun Capital (other than the Debtors or the Reorganized Debtors).

**V. CIGNA INSURANCE PROGRAM**

86. Notwithstanding anything to the contrary in the Plan, or in any notice related thereto, the Employee Benefits Agreements (as defined in the *Protective Objection of Cigna to Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases of Nonresidential Real Property in Connection With the Sale* [Docket No. 212] and the *Objection of Cigna to Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation* [Docket No. 214] (jointly, “**Cigna Objections**”)) through which Cigna Life Insurance Company of New York and Life Insurance Company of North America provide administrative, insurance, and insurance-related services for Debtors' employee benefits plan, shall be deemed terminated as of the Effective Date of the Plan. This fully resolves the Cigna Objections.

**W. EFFECTIVENESS OF ALL ACTIONS**

87. All actions authorized to be taken pursuant to the Plan shall be effective on, prior to, or after the Effective Date pursuant to this Confirmation Order, without further application to, or order of the Bankruptcy Court, or further action by the respective officers, directors, managers, members, or stockholders of the Debtors prior to the Effective Date or Reorganized Debtors after the Effective Date, all with the effect that such actions had been taken by unanimous action of such officers, directors, managers, members, or stockholders.

88. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules, and regulations of all states and any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments, or agreements, and any amendments or modifications thereto, and any other acts and transactions referred to in or contemplated by the Plan, the Plan Supplement, the Disclosure Statement, and

any other documents, instruments, securities, or agreements, and any amendments or modifications thereto.

**X. CONFLICTS**

89. To the extent that any provision of the Disclosure Statement, or any order entered prior to Confirmation (for the avoidance of doubt, not including this Confirmation Order) referenced in the Plan (or any exhibits, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. To the extent that any provision of the Plan conflicts with or is in any way inconsistent with any provision of this Confirmation Order, this Confirmation Order shall govern and control.

**Y. RESERVATION OF RIGHTS**

90. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor or Reorganized Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

**Z. TERM OF INJUNCTIONS OR STAYS**

91. Unless otherwise provided in the Plan or in this Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court and existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or this Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or this Confirmation Order shall remain in full force and effect in accordance with their terms.

**AA. NONSEVERABILITY OF PLAN PROVISIONS UPON CONFIRMATION**

92. This Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the consent of the Debtors and the Plan Sponsor prior to the Effective Date and the Reorganized Debtors and the Plan Sponsor after the Effective Date; and (c) nonseverable and mutually dependent.

**BB. AUTHORIZATION TO CONSUMMATE**

93. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to the satisfaction or waiver of the conditions precedent to the Effective Date pursuant to the terms of Article 14.3 of the Plan.

94. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated or stayed by subsequent order of the Bankruptcy Court or any other court of competent jurisdiction, such reversal, modification or vacatur shall not affect the validity or enforceability of any acts, or obligations, indebtedness, liability, priority or lien incurred or undertaken by the Debtors and the Reorganized Debtors under or in connection with the Plan prior to the Debtors' or the Reorganized Debtors' (as applicable) receipt of written notice of any such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this Confirmation Order prior to the Debtors' or Reorganized Debtors', as applicable, receipt of written notice of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order and the Plan and all Plan Documents or any amendments or modifications thereto in effect prior to the date the Debtors or Reorganized Debtors, as applicable, received such actual written notice.



**CC. EFFECT OF NON-OCCURRENCE OF CONDITIONS TO THE EFFECTIVE DATE**

95. If the Effective Date does not occur or the Confirmation Order is vacated pursuant to a Final Order, then, except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Person; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Person.

**DD. RETENTION OF JURISDICTION**

96. Notwithstanding the entry of this Confirmation Order and the occurrence of the Effective Date, except to the extent set forth herein and in the Plan, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including those matters set forth in Article XVI of the Plan.

**EE. CLOSING OF CASES**

97. On and after the Effective Date, the Reorganized Debtors shall be authorized, subject to compliance with Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court, at any time to seek closure of the Chapter 11 Cases of Debtor Neapolitan, FIC Holdings, Friendly's and Franchising with all outstanding Statutory Fees, if any, paid in conjunction with such Debtor's Filing of the respective proposed Final Decrees closing such cases. All Claims against Neapolitan, FIC Holdings, Friendly's and Franchising shall be consolidated for administrative purposes with the Claims of Reorganized Debtor FIC for the Claims reconciliation, resolution and distribution process.

98. On and after the Effective Date, the Reorganized Debtors shall (1) continue in existence for the purposes of (a) winding down the Debtors' businesses and affairs as expeditiously as reasonably possible, (b) resolving Disputed Claims as provided in the Plan, (c) paying Allowed Claims as provided in the Plan, (d) filing appropriate tax returns, (e) complying with the continuing obligations, if any, to the Purchaser, and (f) administering the Plan in an efficacious manner; and (2) thereafter liquidate as set forth in the Plan.

**FF. SUBSTANTIAL CONSUMMATION**

99. Substantial consummation of the Plan under section 1101(2) of the Bankruptcy Code shall be deemed to occur on the Effective Date.

**GG. FINAL ORDER**

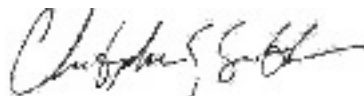
100. This Confirmation Order is a Final Order and the period in which an appeal or any motion seeking to stay or alter the effectiveness hereof must be filed shall commence upon entry hereof.

**HH. WAIVER OF STAY; BINDING EFFECT**

101. Any applicable stay of effectiveness provided in Bankruptcy Rules 3020(e), 6004(h), and 7062, Federal Rule of Civil Procedure 62(a), or otherwise shall not apply to this Confirmation Order and (a) this Confirmation Order shall be effective and enforceable immediately upon its entry and (b) subject to the occurrence of the Effective Date, the provisions of the Plan shall be immediately effective and enforceable and deemed binding upon any Holder of a Claim against or Interest in the Debtors, such Holder's respective successors and assigns, all Entities that are party or subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Person acquiring property under the Plan, and any and all non-Debtor counterparties to executory contracts, unexpired leases, and any other prepetition agreements. The Debtors are authorized to consummate the Plan at any time after the entry of this

Confirmation Order, subject to satisfaction or waiver of the conditions precedent to the Effective Date set forth in Article 14.3 of the Plan. Pursuant to section 1142(a) of the Bankruptcy Code, the Plan, the Plan Supplement, and this Confirmation Order shall apply and be enforceable notwithstanding any otherwise applicable nonbankruptcy law.

**Dated: December 17th, 2020**  
**Wilmington, Delaware**

A handwritten signature in black ink, appearing to read "Christopher S. Sontchi", written over a horizontal line.

**CHRISTOPHER S. SONTCHI**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT A**

**(Second Amended Combined DS and Plan)**

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

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In re:

FIC RESTAURANTS, INC., *et al.*,<sup>1</sup>

Debtors.

---

)  
) Chapter 11  
)

) Case No. 20-12807 (CSS)  
)

) (Jointly Administered)  
)

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**SECOND AMENDED COMBINED DISCLOSURE STATEMENT AND  
JOINT CHAPTER 11 PLAN OF LIQUIDATION**

---

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*Counsel for Debtors and Debtors-in-  
Possession*

Dated: December 16, 2020

---

<sup>1</sup> The Debtors in these chapter 11 cases, their jurisdictions of organization, and the last four digits of their U.S. taxpayer identification numbers are: (1) Neapolitan Group Holdings, LLC, a Delaware limited liability company (7922) (“Neapolitan”); (2) FIC Holdings, LLC, a Delaware limited liability company (0204) (“FIC Holdings”); (3) FIC Restaurants, Inc., a Massachusetts, corporation (1388) (“FIC”); (4) Friendly’s Restaurants, LLC, a Delaware limited liability company (0696) (“Friendly’s”); and (5) Friendly’s Franchising, LLC, a Delaware limited liability company (4364) (“Franchising”). The Debtors’ corporate headquarters is located at 1855 Boston Road, Suite 300, Wilbraham, MA 01095.

**THIS COMBINED DISCLOSURE STATEMENT AND PLAN IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. AS DISCLOSED HEREIN, ALL ALLOWED CLAIMS AND INTERESTS UNDER THE PLAN ARE UNIMPAIRED AND WILL BE PAID IN FULL, AND THEREFORE THIS COMBINED DISCLOSURE STATEMENT AND PLAN WILL NOT BE SOLICITED TO CREDITORS OR INTEREST HOLDERS FOR THE PURPOSE OF VOTING TO ACCEPT OR REJECT THE PLAN. INSTEAD, THIS COMBINED DISCLOSURE STATEMENT AND PLAN IS BEING PROVIDED FOR INFORMATION PURPOSES ONLY TO ENABLE HOLDERS OF ALLOWED CLAIMS AND INTERESTS TO DETERMINE WHETHER TO OBJECT TO THE UNIMPAIRED PLAN CONTAINED AND DESCRIBED HEREIN. THE BANKRUPTCY COURT HAS SCHEDULED A COMBINED HEARING TO CONSIDER (I) THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, AND (II) CONFIRMATION OF THE PLAN, FOR DECEMBER 17, 2020 AT 1:00 P.M. (ET). AS NOTED HEREIN, ALL OBJECTIONS TO THE ADEQUACY OF INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN MUST BE FILED ON OR BEFORE DECEMBER 10, 2020 AT 4:00 P.M. (ET). THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

**IMPORTANT DISCLAIMER ABOUT THIS  
COMBINED DISCLOSURE STATEMENT AND PLAN**

THIS COMBINED DISCLOSURE STATEMENT AND PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION, AND BELIEF. HOWEVER, THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN EXCEPT AS EXPRESSLY INDICATED HEREIN. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE (I) DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, (II) ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY, OR (III) DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN AS PROVIDING ANY LEGAL, BUSINESS,

FINANCIAL OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THIS COMBINED DISCLOSURE STATEMENT AND PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THIS COMBINED DISCLOSURE STATEMENT AND PLAN. ANY INFORMATION, REPRESENTATIONS, OR INDUCEMENTS MADE IN CONNECTION WITH THIS COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THE COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH BANKRUPTCY CODE SECTIONS 1125 AND 1129 AND BANKRUPTCY RULES 3016(b) AND 3017 AND DEL. BANKR. L.R. 3017-2 AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-APPLICABLE BANKRUPTCY LAWS.

THIS COMBINED DISCLOSURE STATEMENT AND PLAN MAY CONTAIN “FORWARD LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE,” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT WOULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM THOSE REFERRED TO IN SUCH FORWARD LOOKING STATEMENTS. SEE ARTICLE V HEREIN, ENTITLED “CERTAIN PLAN-RELATED RISK FACTORS,” FOR A DISCUSSION OF CERTAIN CONSIDERATIONS IN CONNECTION WITH CONFIRMATION OF THE PLAN.

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## INTRODUCTION AND SUMMARY OF THE PLAN

FIC Restaurants, Inc. and its Debtor Affiliates in the above-captioned Chapter 11 Cases jointly propose this combined Disclosure Statement and Plan for the liquidation of the Debtors' assets and distributions to Holders of Allowed Claims against the Debtors as set forth herein. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding claims against and interests in each Debtor pursuant to the Bankruptcy Code. Along with the Plan Sponsor, each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The Plan contemplates no substantive consolidation of any of the Debtors prior to the Effective Date.

This combined Disclosure Statement and Plan contains, among other things, a brief discussion of the Debtors' history, businesses, properties, operations, the Chapter 11 Cases, risk factors, summary and analysis of the Plan, and certain other related matters.

The Plan represents the Debtors' proposal in these Chapter 11 Cases for the sale of substantially all assets and liquidation of all or substantially all of their remaining assets pursuant to a (i) concurrent private sale process under section 363 of the Bankruptcy Code, with the closing contingent upon the Effective Date of the Plan; and (ii) a Plan process sponsored by the Plan Sponsor that, in conjunction with the proceeds from the private sale to the Purchaser, **will leave all Classes of Claims Unimpaired**, other than Secured Claims held by the Secured Lenders, which are non-Debtor affiliated entities (and include the Plan Sponsor), that are waived and released by express consent as substantial contributions to the Plan. The following provides a summary of the key economic terms and mechanics of the Plan:<sup>2</sup>

- All General Unsecured Claims that are Allowed will be Unimpaired under the Bankruptcy Code and paid in full in Cash.
- To the extent not assumed and assigned to the Purchaser, all Executory Contracts and Unexpired Leases will be rejected through the Plan or during the course of the Chapter 11 Cases pursuant to section 365 of the Bankruptcy Code. The non-Debtor counterparties to the rejected Executory Contracts and Unexpired Leases will also be Unimpaired as their Allowed Rejection Claims will be paid in full in cash in accordance with the relevant provisions of the Bankruptcy Code.
- The Debtors will fund distributions under the Plan from (i) Cash generated by continued operations, and cash collateral in connection with the Cash Collateral Orders; (ii) proceeds from the concurrent private sale of substantially all assets to the Purchaser; (iii) borrowing under the Credit Agreements prior to the Petition Date; and (iv) commitments obtained from the Plan Sponsor to fund additional amounts after the Effective Date pursuant to existing availability

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<sup>2</sup> Any summaries or descriptions of the Plan are qualified in their entirety by reference to the provisions of the Plan as stated herein.

under the Senior 2019 Credit Facility (and prior to the waiver and release of the senior credit facility).

- As noted, all Secured Lender Claims under the Credit Agreements will be waived and released under Class 2A, 2B and 2C after the Effective Date of the Plan as part of the comprehensive settlements and, in addition, substantial contributions made by the other Released Parties under the Plan. This includes, without limitation, the waiver and release of over \$430,000 in deferred rent claims held by indirectly affiliated SIC Property, LLC related to corporate-owned restaurant locations, and a similar waiver of substantial management fees owed to the Debtors' parent entities.

On November 1, 2020, the Debtors Filed that certain *Debtors' Motion for Entry of an Order (I) Scheduling Hearing on Approval of the Combined Disclosure Statement and Chapter 11 Plan; (II) Fixing Deadline to Object to the Combined Disclosure Statement and Plan; (III) Waiving Solicitation of the Plan and Approving Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; and (IV) Granting Related Relief* (the "Combined Hearing Motion"). The Combined Hearing Motion seeks, among other things:

- to schedule a combined hearing (the "Combined Confirmation Hearing") on December 17, 2020 at 1:00 p.m. (ET) to consider approval of the Disclosure Statement and Confirmation of the Plan as set forth herein;
- to establish procedures for objecting to the combined Disclosure Statement and Plan;
- approving notice and objection procedures for the rejection of Executory Contracts and Unexpired Leases through the Plan; and
- approval of the form, manner, and sufficient of notice of the Combined Confirmation Hearing (the "Combined Hearing Notice"), which would set forth (i) the deadline and procedures for filing objections to the adequacy of this Disclosure Statement and Confirmation of this Plan; (ii) the manner in which the combined Disclosure Statement and Plan, and other material pleadings filed in the Chapter 11 Cases, can be obtained or viewed electronically; (iii) a summary of the treatment of each Class of Claims under the Plan; and (iv) a summary of releases or injunctions contained in the Plan.

**ALL CLASSES OF CLAIMS ARE UNIMPAIRED AND THEREFORE DEEMED TO ACCEPT THE PLAN. ACCORDINGLY, THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF ANY CHAPTER 11 PLAN DESCRIBED HEREIN. THIS COMBINED DISCLOSURE STATEMENT AND PLAN IS PROVIDED FOR INFORMATION PURPOSES ONLY TO ENABLE HOLDERS OF CLAIMS AND INTERESTS TO DETERMINE WHETHER TO OBJECT TO THE PLAN CONTAINED AND DESCRIBED HEREIN.**

**ALL HOLDERS OF CLAIMS AGAINST THE DEBTORS ARE ENCOURAGED TO READ THE COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY, AND TO CONSULT WITH AN ATTORNEY. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN BANKRUPTCY CODE SECTION 1127, BANKRUPTCY RULE 3019, AND IN THE PLAN, THE DEBTORS OR PLAN SPONSOR RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN, OR ANY PART THEREOF, PRIOR TO ITS SUBSTANTIAL CONSUMMATION.**

## **ARTICLE I**

### **DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, GOVERNING LAW, AND OTHER REFERENCES**

#### **1.1 Defined Terms**

1. “*2018 Credit Facility*” means that certain secured credit line dated as of January 16, 2018 (as modified, amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof), by and among FIC, as borrower, FIC Holdings, Friendly’s and Franchising, as guarantors, and Sun Ice Cream Finance II, LP, as lender, and all other documents evidencing or relating to the foregoing.

2. “*2011 Credit Facility*” means that certain secured credit line dated as of January 3, 2012 (as modified, amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof), by and among FIC Holdings, as borrower, FIC, Friendly’s and Franchising, as guarantors, and Sun Ice Cream Finance, LP, as lender, and all other documents evidencing or relating to the foregoing.

3. “*Administrative Claim*” means any Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating the business of the Debtors; (b) Allowed Professional Claims; and (c) all other claims entitled to administrative claim status pursuant to an order of the Bankruptcy Court.

4. “*Administrative Claims Bar Date*” means, unless extended by a Final Order or with the written agreement of the Plan Sponsor, the first Business Day that is thirty (30) calendar days after the Effective Date.

5. “*Administrative Claims Objection Deadline*” means, unless extended by a Final Order, the earlier of (i) the first Business Day that is sixty (60) calendar days after the Administrative Claims Bar Date or (ii) in the case of a Professional Claim, the objection deadline established in connection with the Professional’s final fee application.

6. “*Affiliate*” means “affiliate”, as defined in section 101(2) of the Bankruptcy Code.

7. “*Allowance Date*” means, with respect to any Allowed Claim or Allowed Interest, the date upon which such Claim or Interest becomes Allowed.

8. “*Allowed*” means, with reference to any Claim or Interest, any portion thereof that: (a) has been listed in the Schedules and not listed as contingent, unliquidated or disputed; (b) as to which a Proof of Claim has been filed and as to which no objection has been or subsequently is filed by the Debtors, the Reorganized Debtors or any other party in interest with standing prior to the Claims Objection Deadline; (c) an Administrative Claim as to which a request for payment has been filed and as to which no objection has been or subsequently is filed by the Debtors, the Reorganized Debtors or any other party in interest with standing prior to the Administrative Claims Objection Deadline; (d) has been allowed pursuant to a Final Order of the Bankruptcy Court, including without limitation in any stipulation that is executed by the Debtors, with the consent of the Plan Sponsor, and the Holder of such Claim or Interest prior to the Effective Date and approved by the Bankruptcy Court in a Final Order. For purposes of computing distributions under the Plan, a Claim or Interest that has been deemed “Allowed” shall not include costs, fees or charges on such Claim or Interest from and after the Petition Date, except as expressly set forth in the Plan.

9. “*Avoidance Actions*” means any and all actual or potential avoidance, recovery, subordination, or other Causes of Action or remedies that may be brought by or on behalf of the Debtors or their Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including Causes of Action or remedies under sections 502, 510, 542, 544, 545, 547–553, and 724(a) of the Bankruptcy Code or under other similar or related local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

10. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as may be amended from time to time.

11. “*Bankruptcy Court*” means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

12. “*Bankruptcy Rules*” means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of Title 28 of the United States Code, (b) the Local Bankruptcy Rules and (c) any general or chamber rules, or standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, and each of the foregoing together with all amendments and modifications thereto that are subsequently made and as applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

13. “*Bar Date*” means the General Bar Date, the Rejection Claims Bar Date, the Administrative Claims Bar Date, or the Governmental Unit Claims Bar Date, as applicable.

14. “*Bar Date Order*” means the *Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* [Docket No. 152], entered on November 17, 2020.

15. “*BMO Letter of Credit*” means that certain letter of credit issued by BMO Harris Bank N.A. for the benefit of the Debtors’ insurer, National Union Fire Insurance Co.

16. “*Business Day*” means any day, other than a Saturday, Sunday, or a legal holiday, as defined in Bankruptcy Rule 9006(a).

17. “Cash” means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

18. “Cash Collateral Motion” means the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors’ Use of Cash Collateral, (II) Providing Adequate Protection Thereof, and (III) Scheduling a Final Hearing* [Docket No. 13], Filed on November 2, 2020.

19. “Cash Collateral Orders” means the Final Cash Collateral Order and the Interim Cash Collateral Order.

20. “Causes of Action” means any action, claim, cross-claim, third-party claim, cause of action, controversy, demand, right, Lien, indemnity, interest, guaranty, suit, obligation, liability, debt, damage, remedy, judgment, account, defense, offset, power, privilege, license, or franchise of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, choate or inchoate, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, at law or in equity, or pursuant to any other theory of law or otherwise. For the avoidance of doubt, “Causes of Action” include: (a) any right of setoff, counterclaim, or recoupment and any claim for breach of contract or for breach of duties imposed by law or in equity; (b) any claim based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of local, state, federal, or foreign law, or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any right to object to or otherwise contest Claims or Interests; (d) any Claim pursuant to section 362 or chapter 5 of the Bankruptcy Code; (e) any claim or defense, including fraud, mistake, duress, usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (f) any Avoidance Action.

21. “Chapter 11 Cases” means the jointly administered Chapter 11 cases for the Debtors in the Bankruptcy Court.

22. “Claim” has the meaning set forth in section 101(5) of the Bankruptcy Code.

23. “Claims Objection Deadline” means, unless extended by the Bankruptcy Court, for all Claims other than Administrative Claims, the first Business Day that is one hundred eighty (180) calendar days after the Effective Date, or such later date as may be ordered by the Bankruptcy Court.

24. “Claims Register” means the official register of Claims against and Interests in the Debtors maintained by the Clerk of the Bankruptcy Court or the Claims and Noticing Agent.

25. “Claims and Noticing Agent” means Donlin, Recano & Company, in its capacity as the claims, noticing, and solicitation agent in the Chapter 11 Cases and any successors appointed by an order of the Bankruptcy Court.

26. “Class” means a category of Holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.



27. “*Class Action*” means that certain employee wage and hour class action lawsuit filed against Debtor FIC and styled as *Brittani Kirby and Kareem Sullivan, individually and on behalf of all other persons similarly situated, vs. FIC Restaurants, Inc.*, (N.D.N.Y., Case 5:19-cv-01306-FJS-ML).

28. “*Class Action Settlement*” means that certain settlement of the Class Action approved on a final basis by the United States District Court for the North District of New York, and the related posting of the M&T Letter of Credit on May 7, 2020.

29. “*Closing*” shall have the meaning set forth in the Sale Order.

30. “*Combined Confirmation Hearing*” means, as defined in the Introduction of this combined Disclosure Statement and Plan, that certain Bankruptcy Court hearing to consider approval of the adequacy of the Disclosure Statement and Confirmation of the Plan.

31. “*Combined Hearing Order*” means that certain order from the Bankruptcy Court granting the Combined Hearing Motion (as such term is defined in the Introduction to the Disclosure Statement).

32. “*Confirmation*” means the entry of the Confirmation Order on the docket of the Chapter 11 Cases.

33. “*Confirmation Date*” means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

34. “*Confirmation Order*” means the order of the Bankruptcy Court approving the adequacy of the Disclosure Statement and Confirming the Plan under section 1129 of the Bankruptcy Code, which order (and any exhibits, appendices and related documents) shall be in form and substance reasonably acceptable to the Debtors and the Plan Sponsor.

35. “*Consummation*” means the occurrence of the Effective Date. For the avoidance of doubt, “Consummation” is distinct from “substantial consummation,” which is defined in section 1101(2) of the Bankruptcy Code.

36. “*Credit Agreements*” means, collectively, (a) the Senior 2019 Credit Facility, dated January 28, 2019, between FIC as borrower, FIC Holdings, Friendly’s, and Franchising as guarantors, and Sun Ice Cream Finance II, LP as lender; (b) the 2018 Credit Facility, dated January 16, 2018, between FIC as borrower, FIC Holdings, Friendly’s and Franchising as guarantors, and Sun Ice Cream Finance II, LP as lender; (c) the 2011 Credit Facility, dated January 3, 2012, between FIC Holdings as borrower, FIC, Friendly’s and Franchising as guarantors, and Sun Ice Cream Finance, LP as lender; and (e) all other documents evidencing or relating to the foregoing, all of the foregoing as may be amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

37. “*D&O Liability Insurance Policies*” means all insurance policies (including any “tail policy”) of any of the Debtors for liability of any current or former directors, managers, officers, and members.

38. “*Debtors*” means, collectively, FIC, Neapolitan, FIC Holdings, Friendly’s, and Franchising.

39. “*Disallowed*” means with respect to any Claim, or any portion thereof, that such Claim, or such portion thereof, is not Allowed or Disputed.

40. “*Disclosure Statement*” means the disclosure statement contained herein as part of the combined Disclosure Statement and Plan, as such disclosure statement may be amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan, that is prepared in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable law and subject to approval by the Bankruptcy Court at the Combined Confirmation Hearing pursuant to section 1125 of the Bankruptcy Code.

41. “*Disputed*” means a Claim or any portion thereof that is neither an Allowed Claim nor a Disallowed Claim and shall include, without limitation, any Claim that either (a) was listed in the Schedules as disputed, contingent and/or unliquidated, (b) was filed after the applicable Bar Date without (x) Bankruptcy Court approval or (y) the written consent of the Reorganized Debtors and Plan Sponsor, or (c) is the subject of a timely objection Filed before the Administrative Claims Objection Deadline or the Claims Objection Deadline, as applicable.

42. “*Distribution Date*” means, except as otherwise set forth herein, the date or dates determined by the Reorganized Debtor FIC, on or after the Effective Date, upon which Reorganized Debtor FIC or its duly appointed disbursing agent shall make distributions to Holders of Allowed Claims and Interests entitled to receive distributions under the Plan.

43. “*Effective Date*” means the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Article 14.2 have been satisfied or waived in accordance with Article 14.3.

44. “*Entity*” has the meaning set forth in section 101(15) of the Bankruptcy Code.

45. “*Estate*” means the bankruptcy estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

46. “*Exculpated Party*” means each of the following: (a) the Debtors and their Estates, (b) the Reorganized Debtors, and (c) with respect any Person in clauses (a) and (b), such Person’s officers, directors, members, managers, financial advisors, attorneys, accountants, investment bankers, consultants and other Estate-retained professionals, each in their capacity as such.

47. “*Executory Contract*” means a contract or lease to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

48. “*FIC*” means FIC Restaurants, Inc., a Massachusetts corporation.

49. “*FIC Holdings*” means FIC Holdings, LLC, a Delaware limited liability company.

50. “*File*,” “*Filed*,” or “*Filing*” means, respectively, file, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

51. “*Final Cash Collateral Order*” means that certain *Final Order (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief* [Docket No. 150], entered on November 17, 2020.

52. “*Final Decree*” means the decree contemplated under Bankruptcy Rule 3022.

53. “*Final Order*” means: (a) an order or judgment of the Bankruptcy Court, as entered on the docket in any Chapter 11 Case (or any related adversary proceeding or contested matter) or the docket of any other court of competent jurisdiction; or (b) an order or judgment of any other court having jurisdiction over any appeal from (or petition seeking certiorari or other review of) any order or judgment entered by the Bankruptcy Court (or any other court of competent jurisdiction, including in an appeal taken) in the Chapter 11 Case (or in any related adversary proceeding or contested matter), in each case that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired according to applicable law and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided* that the possibility a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or the Local Bankruptcy Rules of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order.

54. “*Friendly’s*” means Friendly’s Restaurants, LLC, a Delaware limited liability company.

55. “*Franchising*” means Friendly’s Franchising, LLC, a Delaware limited liability company.

56. “*GAAP*” means generally accepted accounting principles in the United States consistently applied.

57. “*General Bar Date*” means the deadline established in the Bar Date Order for parties other than Governmental Units to file Proofs of Claim that include Holders of General Unsecured Claims, unless extended by an order of the Bankruptcy Court with the agreement of the Plan Sponsor.

58. “*General Unsecured Claim*” means any Claim against a Debtor other than an Administrative Claim (including without limitation Professional Claims), a Priority Tax Claim, an Other Priority Claim, a Secured Claim, Other Secured Claims, or Interests.

59. “*Governmental Unit*” has the meaning set forth in section 101(27) of the Bankruptcy Code.

60. “*Governmental Unit Claims Bar Date*” means the deadline established in the Bar Date Order for Governmental Units to file Proofs of Claim for General Unsecured Claims, Priority Claims, and Secured Claims, unless extended by an order of the Bankruptcy Court or by the written agreement of the Plan Sponsor.

61. “*Holder*” means a Person holding a Claim against or an Interest in any Debtor, as applicable.

62. “*Impaired*” means “impaired”, as defined in section 1124 of the Bankruptcy Code.

63. “*Insider*” has the meaning set forth in section 101(31) of the Bankruptcy Code.

64. “*Interest*” means any membership (including limited liability company membership interests), stock or other equity ownership interest in a Debtor and all dividends and distributions with respect to such membership, stock or other equity ownership interest and all rights, options, warrants (regardless of when exercised) and other rights to acquire any membership, stock or other equity ownership interest in a Debtor existing immediately prior to the Effective Date.

65. “*Interim Cash Collateral Order*” means the *Interim Order (I) Authorizing Debtors’ Use of Cash Collateral, (II) Providing Adequate Protection Thereof and (III) Scheduling a Final Hearing* [Docket No. 57], entered on November 3, 2020.

66. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001 and the rules and regulations promulgated thereunder, as applicable to the Chapter 11 Cases.

67. “*Letters of Credit*” means, together, that certain (a) BMO Letter of Credit and (b) M&T Letter of Credit.

68. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

69. “*Local Bankruptcy Rules*” means the Local Bankruptcy Rules for the District of Delaware.

70. “*M&T Letter of Credit*” means that letter of credit issued by M&T Bank for the benefit of A.B. Data, Ltd., in connection with wage and hour Class Action and Class Action Settlement.

71. “*Neapolitan*” means Neapolitan Group Holdings, LLC, a Delaware limited liability company.

72. “*Other Priority Claim*” means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

73. “*Other Secured Claim*” means a claim against the Debtors, other than the Secured Lender Claims, that is (a) secured by a Lien on property in which the Debtors’ Estates have an interest, which lien is valid, perfected, and enforceable pursuant to applicable law or by reason of

a Bankruptcy Court order, or (b) subject to setoff pursuant to section 553 of the Bankruptcy Code, in either case, to the extent of the value of the creditor's interest in the Estates' interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code.

74. "*Person*" means an individual, a partnership, limited partnership, a joint venture, a limited liability company, a corporation, a trust, an unincorporated organization, a group, a Governmental Unit, or any Entity or association.

75. "*Petition Date*" means November 1, 2020.

76. "*Plan*" means this Chapter 11 plan (as part of the combined Disclosure Statement and Plan), including the Plan Supplement, all exhibits, appendices and schedules hereto, which are incorporated herein by reference, in either present form or as may be further amended, restated, supplemented or otherwise modified from time to time in accordance with the Bankruptcy Code and the Bankruptcy Rules, in each case reasonably acceptable to the Debtors and the Plan Sponsor; provided, however, that such amendments, restatements, supplements, or other modifications shall not alter the consent rights provided to the Plan Sponsor.

77. "*Plan Documents*" means all agreements, instruments, pleadings, orders, forms, questionnaires, or other related documents that are utilized to implement, or effectuate, or that otherwise relate to, the Plan, the Purchase Agreement, the Plan Supplement, the Sale Order, and the Confirmation Order.

78. "*Plan Sponsor*" means Sun Ice Cream Finance II, LP.

79. "*Plan Supplement*" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, to be Filed by the Debtors in accordance with the Combined Hearing Order or such later date as may be approved by the Bankruptcy Court (as it may thereafter be amended, supplemented or otherwise modified from time to time in accordance with the terms of the Plan, the Bankruptcy Code, the Bankruptcy Rules, and applicable law) on notice to parties in interest, and additional documents Filed with the Bankruptcy Court before the Effective Date as amendments to the Plan Supplement. The Plan Supplement shall be comprised of, among other documents, the following: (a) the Schedule of Retained Causes of Action; (b) the identification of the Debtors' post-Confirmation (or post-Effective Date) management; (c) the commitment letter from the Plan Sponsor; and (d) any additional documents Filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement.

80. "*Priority Tax Claim*" means a claim described in section 507(a)(8) of the Bankruptcy Code, including a Secured Tax Claim.

81. "*Professional*" means a Person: (a) employed in the Chapter 11 Cases pursuant to an order of the Bankruptcy Court in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred pursuant to sections 327, 328, 329, 330, 331, and 363 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been Allowed by Final Order of the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

82. “*Professional Claim*” means a Claim by a Professional for services rendered in connection with the Chapter 11 Cases from the Petition Date through and including the Effective Date.

83. “*Proof of Claim*” means a proof of Claim Filed against the Debtors in the Chapter 11 Cases.

84. “*Purchase Agreement*” means that certain Purchase and Sale Agreement among the Purchaser and the Debtors, dated November 1, 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof).

85. “*Purchaser*” means the Amici Partners Group, LLC as the purchaser of all or substantially all of the Debtors’ assets pursuant to the Purchase Agreement and the Sale Order.

86. “*Rejection Claim*” means any Claim against a Debtor for damages arising as a proximate result of the rejection of an Executory Contract or an Unexpired Lease to which a Debtor is a party under section 365 of the Bankruptcy Code pursuant to the Plan or separate motion Filed in the Chapter 11 Cases.

87. “*Rejection Claims Bar Date*” means, unless otherwise extended by a Final Order or by written agreement of the Plan Sponsor, the later to occur of: (1) 30 days after the Effective Date for Executory Contracts and Unexpired Leases rejected pursuant to the Plan and (2) 30 days after the Debtors surrender possession to a landlord of a rejected lease where surrender occurs after entry of an order approving such rejection.<sup>3</sup>

88. “*Released Parties*” means each of the following: (a) the Debtors and their Estates, (b) the Reorganized Debtors, (c) the Plan Sponsor, (d) Sun Capital, (e) the Purchaser, and (f) with respect any Person in clauses (a) through (e), such Person’s current and former affiliates, parents, equity holders (regardless of whether such equity interests are held directly or indirectly), shareholders, stockholders, subsidiaries, coinvestors, partners, limited partners, general partners, and each of their respective officers, directors, members, managers, management companies, managed accounts or funds, principals, successors, assigns, predecessors, participants, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, fund advisors, insurers and other professionals, each in their capacity as such.

89. “*Releasing Parties*” means, collectively, each of the following in their respective capacity as such: (a) each of the Debtors; (b) each of the Reorganized Debtors; (c) the Purchaser; (d) each Holder of Claims or Interests that is Unimpaired and presumed to accept the Plan; and (e) with respect any Person in clauses (a) through (d), such Person’s current and former affiliates, parents, equity holders (regardless of whether such equity interests are held directly or indirectly), shareholders, stockholders, subsidiaries, coinvestors, partners, limited partners, general partners, and each of their respective officers, directors, members, managers, management companies,

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<sup>3</sup> Certain Rejection Claims not rejected pursuant to the Plan, but by separate order of the Bankruptcy Court, may have been subject to the General Bar Date. Nothing herein, extends any prior deadline established by the Bankruptcy Court to File Claims.

managed accounts or funds, principals, successors, assigns, predecessors, participants, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, fund advisors, insurers and other professionals, each in their capacity as such.; provided, however, that notwithstanding anything to the contrary herein, Sun Capital shall not be deemed a Releasing Party under the Plan other than each of the Debtors and each of the Reorganized Debtors.

90. “*Reorganized*” means, as to any Debtor or the Debtors, the Debtor or Debtors and any successor thereto, by merger, consolidation, or otherwise, on or after the Effective Date.

91. “*Sale Order*” means the order approving the Purchase Agreement and granting related relief.

92. “*Schedules*” means the schedules of assets and liabilities and statements of financial affairs Filed by each of the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial accordance with the Official Bankruptcy Forms, as the same may have been amended, modified, or supplemented from time to time.

93. “*Schedule of Retained Causes of Action*” means the schedule of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors, which shall be included in the Plan Supplement, provided that such schedule shall not include any Causes of Action against any Released Party, and any such inclusion will be deemed void *ab initio*.

94. “*Secured Claim*” means a Claim to the extent it is (a) secured by a Lien on property of a Debtor’s Estate, the amount of which is equal to or less than the value of such property (i) as set forth in this Plan, (ii) as agreed to by the Holder of such Claim and the Debtors, or (iii) as determined by a Final Order in accordance with section 506(a) of the Bankruptcy Code, or (b) secured by the amount of any rights of setoff of the Holder of such Claim under section 553 of the Bankruptcy Code.

95. “*Secured Lenders*” means Sun Ice Cream Finance II, LP (the Plan Sponsor) and Sun Ice Cream Finance, LP, in connection with the Credit Agreements.

96. “*Secured Lender Claims*” means any and all Secured Claims against the Debtors held by Sun Ice Cream Finance II, LP and Sun Ice Cream Finance, LP arising under the Credit Agreements.

97. “*Secured Tax Claim*” means any Secured Claim which, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

98. “*Security*” has the meaning set forth in section 2(a)(1) of the Securities Act.

99. “*Securities Act*” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

100. “*Senior 2019 Credit Facility*” means that certain \$54 million secured credit line dated as of January 28, 2019 (as modified, amended, restated, supplemented or otherwise modified

from time to time in accordance with the terms thereof), by and among FIC, as borrower, FIC Holdings, Friendly's and Franchising, as guarantors, and Sun Ice Cream Finance II, LP, as lender, and all other documents evidencing or relating to the foregoing.

101. “*Statutory Fees*” means all fees payable pursuant to 28 U.S.C. § 1930(a), together with interest, if any, under 31 U.S.C. § 3717.

102. “*Sun Capital*” means Sun Capital Partners, Inc., Sundae Group Holdings I, LLC, Sun Ice Cream Finance II, LP, Sun Ice Cream Finance, LP, Sun Capital Partners IV, LP, Sun Capital Partners V, LP, Sun Capital Advisors V, L.P., Sun Capital Advisors IV, LP, Sun Capital Partners V, Ltd., Sun Capital Partners IV, LLC, Sun Capital Partners Management V, LLC, and Sun Capital Partners Management IV, LLC, and each of their current and former affiliates, parents, equity holders (regardless of whether such equity interests are held directly or indirectly), shareholders, stockholders, subsidiaries, coinvestors, partners, limited partners, general partners, and each of their respective officers, directors, members, managers, management companies, managed accounts or funds, principals, successors, assigns, predecessors, participants, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, fund advisors, insurers and other professionals, each in their capacity as such.

103. “*Third Party Release*” means the release provided by the Releasing Parties in favor of the Released Parties as set forth in Article 13.2 of the Plan.

104. “*Unexpired Lease*” means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under sections 365 or 1123 of the Bankruptcy Code.

105. “*Unclaimed Distribution*” means any distribution under the Plan on account of an Allowed Claim or Interest to a Holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Debtors or Reorganized Debtors of an intent to accept a particular distribution; (c) responded to the Debtors’ or Reorganized Debtors’ requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

106. “*Unimpaired*” means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

## 1.2 **Rules of Interpretation**

For purposes of the Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (b) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (c) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (d) unless otherwise specified, all references herein to



“Articles” are references to Articles hereof or hereto; (e) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to any particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (g) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (i) references to one gender include all genders; (j) all financial statement accounting terms not defined in the Plan shall have the meanings determined by GAAP; and (k) references to any Governmental Unit in any jurisdiction shall include any successor to such Governmental Unit.

### 1.3 **Computation of Time**

Except as otherwise provided, Bankruptcy Rule 9006(a) applies in computing periods of time prescribed or allowed herein.

### 1.4 **Governing Law**

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into or to be entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without giving effect to conflict of laws principles.

### 1.5 **Reference to Monetary Figures**

All references in the Plan to monetary figures refer to currency of the United States of America, unless otherwise expressly provided.

### 1.6 **Reference to the Debtors or the Reorganized Debtors**

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or to the Reorganized Debtors mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

## ARTICLE II

### **CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES**

#### 2.1 **Classification**

The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including those related to the Claims reconciliation process, and are qualified in their entirety by reference to the provisions of the Plan (as provided herein). The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors’ estimates as of the date hereof only.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

All Claims and Interests, except Administrative Claims, Professional Claims, and Priority Tax Claims, are placed in the Classes set forth below. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Professional Claims), and Priority Tax Claims, as described herein, have not been classified, and the respective treatment of such unclassified Claims is set forth below in Article VII of the Plan. The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including Confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code.

<b>Class/ Designation</b>	<b>Plan Treatment</b>	<b>Estimated Amount of Claims</b>	<b>Status</b>	<b>Estimated Recovery</b>
<b>Class 1:</b> Other Priority Claims	Each Holder of an Allowed Class 1 Other Priority Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 1 Claim: (A) Cash equal to the amount of such Allowed Other Priority Claim; or (B) such other, less favorable treatment which the Debtors, the Plan Sponsor and the Holder of such Allowed Other Priority Claim have agreed upon in writing.	\$0	<b>Unimpaired /Deemed to accept Plan</b>	100%
<b>Class 2A:</b> Senior 2019 Credit Facility Secured Claims	As part of the comprehensive settlements and substantial contributions under the Plan, the Holder of the Allowed Senior 2019 Credit Facility Secured Claim shall, after the Effective Date of the Plan, (i) fund all binding commitments as Plan Sponsor to the Plan pursuant to availability under the Senior 2019 Credit Facility, and then waive and release such Claim and all Liens on the Debtors' assets pursuant to the Senior 2019 Credit Facility; and (ii) except as otherwise provided in the Plan, forgo any and all distributions under the Plan on account of such Claim.  Notwithstanding anything to the contrary herein, in the event all Allowed (i) Claims in Classes 1, 3; and 4; and (ii) Administrative Claims and Priority Tax Claims, have in each case been satisfied in full under the Plan, and all other obligations under the Plan (including Statutory Fees) have been satisfied, any	\$43.38 million	<b>Unimpaired by Consent</b>	N/A

<b>Class/ Designation</b>	<b>Plan Treatment</b>	<b>Estimated Amount of Claims</b>	<b>Status</b>	<b>Estimated Recovery</b>
	remaining funds and/or other assets, including, without limitation all Causes of Action (including those identified on the Schedule of Retained Causes of Action), held by the Debtors or Reorganized Debtors shall vest in and be transferred to the Plan Sponsor.			
<b>Class 2B:</b> 2018 Credit Facility Secured Claims	As part of the comprehensive settlements and substantial contributions under the Plan, the Holder of the Allowed 2018 Credit Facility Secured Claim shall, after the Effective Date of the Plan, (i) waive and release such Claim and all Liens on the Debtors' assets pursuant to the 2018 Credit Facility; and (ii) forgo any and all distributions under the Plan on account of such Claim.	\$32.1 million	<b>Unimpaired by Consent</b>	N/A
<b>Class 2C:</b> 2011 Credit Facility Secured Claims	As part of the comprehensive settlements and substantial contributions under the Plan, the Holder of the Allowed 2011 Credit Facility Secured Claim shall, on the Effective Date of the Plan, (i) waive and release such Claim and all Liens on the Debtors' assets pursuant to the 2011 Credit Facility; and (ii) forgo any and all distributions under the Plan on account of such Claim.	\$12.4 million	<b>Unimpaired by Consent</b>	N/A
<b>Class 3:</b> Other Secured Claims	Each Holder of an Allowed Class 3 Other Secured Claim shall receive in full and final satisfaction, settlement, and release of and in exchange for such Allowed Class 3 Claim: (A) return of the collateral securing such Allowed Other Secured Claim; or (B) Cash equal to the amount of such Allowed Other Secured Claim; or (C) such other, less favorable treatment which the Debtors, the Plan Sponsor, and the Holder of such Allowed Other Secured Claim have agreed upon in writing.	\$7.12 million <sup>4</sup>	<b>Unimpaired /Deemed to accept Plan</b>	100%
<b>Class 4:</b> General Unsecured Claims	Except to the extent that a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall, in exchange for full and final satisfaction, settlement, and	\$3.83 million <sup>5</sup>	<b>Unimpaired /Deemed to accept Plan</b>	100%

<sup>4</sup> This reflects the BMO Letter of Credit, which is fully cash collateralized.

<sup>5</sup> This includes an estimated amount of currently unliquidated and contingent claims that may arise pursuant to the rejection of Executory Contracts and Unexpired Leases.

<b>Class/ Designation</b>	<b>Plan Treatment</b>	<b>Estimated Amount of Claims</b>	<b>Status</b>	<b>Estimated Recovery</b>
	release of such Claim, receive at the sole option of the Debtors and the Plan Sponsor either:  A. Payment in Cash in the full amount of its Allowed General Unsecured Claim; or  B. Such other treatment as would render such Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code.			
<b>Class 5: Interests</b>	All Holders of Interests shall retain their Interests.	N/A	<b>Unimpaired /Deemed to accept Plan</b>	100%

### ARTICLE III

#### **BACKGROUND AND DISCLOSURES**

##### 3.1 **General Background**<sup>6</sup>

###### **1. *The Debtors' Business***

Founded in 1935 as a single ice cream shop in Springfield, Massachusetts, the Debtors grew to a chain of casual dining restaurants that is widely regarded as an authentic, yet affordable, dining experience, with a broad menu offering and hallmark ice cream dessert selection catering to all family members. In its 85-year history, the iconic Friendly's Restaurants brand name became associated with high quality food, customer service, good times and great memories.

The Debtors' restaurants hallmark high-quality desserts, including its iconic premium ice cream product offerings. To differentiate itself from other family casual restaurants, the Debtors' premium ice cream products have always been a focal point of the Friendly's menu as the highlight of any meal. Customers have cited the Debtors' ice cream products as the key reason for choosing to dine at Friendly's.

On a go forward basis, the Debtors will have approximately 50 corporate restaurants and serve as franchisor on another approximately 80 locations. They currently employ approximately 34 full-time employees at the Debtors' Wilbraham, Massachusetts headquarters and 1,664 other part-time and full-time restaurant employees and restaurant and regional managers. None of the Debtors' employees unionized or are covered by a collective bargaining agreement.

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<sup>6</sup> Additional information regarding the Debtors' business, assets, capital structure, and the circumstances leading to the filing of the Chapter 11 Cases is set forth in detail in the *Declaration of Marc L. Pfefferle in Support of the Debtors' First Day Motions and Applications*, which is incorporated herein by reference (the "First Day Declaration").

### 3.2 **The Debtors' Prepetition Capital Structure**

As of the Petition Date, the Debtors' capital structure consists of outstanding funded-debt obligations in the aggregate amount of approximately \$87.88 million, and unsecured trade indebtedness of \$1.08 million.

#### **1. *Secured Debt Under the Credit Agreements***

As of the Petition Date, the Debtors are jointly and severally indebted to the Secured Lenders under the Credit Agreements in the aggregate amount of approximately \$87.88 million (principal and interest). The Debtors are also obligated to the Secured Lenders for additional fees, costs, expenses and obligations under the Credit Agreements as of the Petition Date that include attorneys', financial advisors' and other professionals' fees and expenses, but have not yet been liquidated in amount.

The Credit Agreements consist of three facilities. The first, the Senior 2019 Credit Facility (with the Plan Sponsor as the lender), is secured by substantially all of the assets of FIC, FIC Holdings, Friendly's and Franchising, and is senior to both the 2018 Credit Facility and the 2011 Credit Facility. As of the Petition Date, approximately \$43.38 million in principal and accrued interest is outstanding under the Senior 2019 Credit Facility.

The 2018 Credit Facility (with the Plan Sponsor as the lender) is secured by substantially all of the assets of FIC, FIC Holdings, Friendly's and Franchising, and is senior to the 2011 Credit Facility. As of the Petition Date, approximately \$32.1 million in principal and accrued interest is outstanding under the 2018 Credit Facility.

Finally, the 2011 Credit Facility (with Sun Ice Cream Finance, LP as the lender) is secured by substantially all of the assets of FIC Holdings, FIC, Friendly's and Franchising, and is junior to both the Senior 2019 Credit Facility and the 2018 Credit Facility. As of the Petition Date, approximately \$12.4 million in principal and accrued interest is outstanding under the 2011 Credit Facility.

#### **2. *Other Secured Debt—Letters of Credit***

BMO Harris Bank N.A. is the issuer of the BMO Letter of Credit in the amount of \$7,120,000, for the benefit of National Union Fire Insurance Co., the Debtors' insurer under certain policies for workers' compensation, general liability, and other coverages that have self-insured retention requirements. The BMO Letter of Credit is fully cash collateralized with borrowings that now reside under the Senior 2019 Credit Facility. The issuer is fully secured.

M&T Bank is the issuer of the M&T Letter of Credit in the amount of \$750,000, for the benefit of A.B. Data, Ltd. The amount reflects the total amount owed by Debtor FIC under the Class Action Settlement in connection with the employee wage and hour Class Action. The Class Action has been fully settled and approved on a final basis pursuant to an order of the United States District Court for the Northern District of New York. The M&T Letter of Credit is fully cash collateralized with borrowings under the Senior 2019 Credit Facility and thus the issuer is fully secured.

(a) Equity Interests

Debtor Neapolitan is a holding company that holds 100% of the equity interests of FIC Holdings, which in turn owns 100% of the interests in FIC and 100% of the voting interests in Friendly's and Franchising. Non-Debtor Sundae Group Holdings I, LLC (an affiliate of Sun Capital Partners, Inc.) holds 100% of the equity of Debtor Neapolitan.

### 3.3 **Events Leading to Chapter 11**

#### **1. *Friendly's Restaurant Operating Performance and COVID-19 Pandemic***

The Debtors in recent years encountered many of the same performance issues faced by fast-casual dining sector as a whole, including substantial headwinds caused by shifting demographics, increased competition and rising costs. The business, which consistently lost money, relied on borrowings under the Credit Facilities as the only way to sustain operations. The Debtors recognized that there was an urgent need to stem cash burn and restore the beloved Friendly's Restaurant brand to profitability, especially as availability of continued credit was not guaranteed.

First commenced several years ago, the Debtors implemented restructuring initiatives focused on closing unprofitable locations, reducing occupancy and other fixed costs and improving the business at the remaining restaurants by delivering menu innovation, re-energized marketing, and a better overall experience for customers. To this end, the Debtors periodically engaged Marc L. Pfefferle, a partner at Carl Marks Advisory Group LLC and the Debtors' Chief Restructuring Officer in these Chapter 11 Cases, to assist with initiatives that (i) analyzed the Debtors' business model and operations; (ii) prepared financial analyses and models; (iii) implemented strategies to reduce cash burn; and (iv) developed and implemented other financial restructuring strategies.

The Debtors' initiatives produced some promising results and helped to partially stabilize the business. But it soon became apparent to the Debtors and their advisors that a sale of the business was the only long-term viable path forward to preserve the Friendly's Restaurant brand, save jobs, protect franchisees, and mitigate the negative impact of the Debtors' distressed financial condition on creditors. And the Debtors' decision to pursue a strategic restructuring in the form of a sale was only affirmed when, like many restaurant businesses, the Debtors' incremental progress was sharply interrupted, or better stated halted, by the catastrophic impact of COVID-19 that has caused a dramatic decline in revenue due to the need to close dine-in operations for several months at all franchise and corporate-owned locations.

#### **2. *Marketing and Sale Efforts***

Consistent with the above, on November 26, 2019, the Debtors' investment banker, Duff & Phelps Securities, LLP ("Duff & Phelps"), kicked off a marketing process by sending out one-page "teasers" to 40 potential strategic buyers and 76 potential financial buyers. This initial outreach resulted in non-disclosure agreements being entered with 11 strategic buyers and 22 financial buyers for these parties to gain access to additional information regarding the Debtors' business.

The 2019 marketing process carried over to 2020 when, on January 22, 2020, Duff & Phelps received five initial indications of interest. In February and March 2020, Duff & Phelps coordinated meetings between the Debtors' management and the remaining pool of potential buyers, and also provided these parties with access to a virtual data room. Duff & Phelps, however, briefly paused the marketing process as COVID-19 began to spread rapidly and the Debtors' restaurants were forced to close and shelter-in-place orders were issued. When discussions resumed only one of the parties, Brix Holdings, LLC (which was later designated the Purchaser as the buyer of the Debtors' assets), submitted a letter of intent for the purchase of the Debtors' assets subject to a bankruptcy filing of the sellers and approval of the transaction on a free and clear basis pursuant to section 363 of the Bankruptcy Code.

Duff & Phelps and the Debtors spent several months in late Spring and Summer 2020 negotiating the Purchaser's letter of intent, which was ultimately executed on August 10, 2020. Negotiations then continued apace on the Purchase Agreement. On November 1, 2020, the Purchase Agreement was executed by the Purchaser.

While the purchase price is not substantial, the Sale if approved in these Chapter 11 Cases allows the business to continue, the Friendly's Restaurants brand and thousands of jobs across the corporate-owned and franchised locations to be saved, the franchisees to be protected and served, and the overall claims pool to be dramatically reduced by virtue of the Purchaser's assumption of numerous key contracts and the overwhelming majority of the restaurant leases.

### **3. *Substantial Contributions by the Secured Lenders (Including Plan Sponsor) and Other Affiliated Entities***

The Unimpaired Plan is largely made possible by substantial contributions from the Secured Lenders, which includes the Plan Sponsor. Pursuant to binding commitments, each of the Secured Lenders have agreed to waive and release the full amount of their secured debt held by the Debtors (approximately \$87.88 million) after the Effective Date of the Plan. In addition, the Plan Sponsor has agreed to advance up to \$7.5 million in cash under the 2019 Senior Credit Facility to assist in the funding of Plan distributions prior to the waiver of all obligations under such facility after the Effective Date.

Other indirectly affiliated entities to the Debtors are also waiving and releasing substantial claims after the Effective Date, including over \$430,000 in claims held by SIC Property, LLC for deferred rent related to corporate-owned locations, and substantial management fees owed to the Debtors' parent entities. The Debtors believe that the forgoing commitments from the Secured Lenders, including the Plan Sponsor, and other affiliated entities of the Debtors will be sufficient, together with the Sale proceeds (and related assumption of liabilities), to fund the Plan and pay all creditors in full on account of allowed claims.

## **3.4 The Chapter 11 Cases**

### **1. *Generally***

Pursuant to Chapter 11 of the Bankruptcy Code, a debtor may reorganize for its benefit and the benefit of its creditors and interest holders. In a Chapter 11 case, the debtor typically remains in control of the estate as a "debtor-in-possession." Upon filing a petition for Chapter 11 relief

and during the pendency of a case, the Bankruptcy Code imposes an automatic stay against creditors' attempts to collect or enforce, through litigation or otherwise, claims against the debtor. The automatic stay provisions of section 362 of the Bankruptcy Code, unless modified by court order, will generally prohibit or restrict attempts by creditors to collect or enforce any claims against the debtor that arose prior to the commencement of the Chapter 11 case.

A Chapter 11 plan is the vehicle for implementing the reorganization (or liquidation, as is the case here) and satisfying or otherwise addressing the claims against and interests in a debtor. After the Chapter 11 plan has been filed, the holders of claims against and interests in a debtor, whose claims or interests are impaired under the Chapter 11 plan, may vote to accept or reject the Chapter 11 plan. Section 1125 of the Bankruptcy Code requires that before soliciting acceptances of the proposed Chapter 11 plan, a debtor must prepare a disclosure statement containing adequate information of such kind, and in such detail, as to enable a hypothetical reasonable investor to make an informed judgment about the Chapter 11 plan. **In these Chapter 11 Cases, no Class of Claims or Interests is Impaired under the Plan and all Classes are deemed to have accepted the Plan (or, in the case of the Secured Lenders, expressly consented to the lesser treatment set forth in Classes 2A, 2B and 2C of the Plan). Therefore, there are no Classes of Claims or Interests that are entitled to vote to accept or reject the Plan. The Debtors are making this Disclosure Statement available solely for informational purposes to enable Holders of Claims and Interests to determine whether to object to the Plan.**

## 2. *"First Day" Motions and Related Applications*

Commencing on the Petition Date, the Debtors Filed the following "first-day" motions and applications designed to ease the Debtors' transition into Chapter 11, maximize the value of the Debtors' assets, and minimize the effects of the commencement of the Chapter 11 Cases:

(a) Debtors' Motion for Entry of an Order (I) Directing Joint Administration of Their Related Chapter 11 Cases and (II) Granting Related Relief [Docket No. 4] (the "Joint Administration Motion").

(b) Debtors' Application for Entry of an Order, Pursuant to 28 U.S.C. § 156(c), Authorizing the Retention and Appointment of Donlin, Recano & Company, Inc. as Claims and Noticing Agent for the Debtors, *Nunc Pro Tunc* to the Petition Date [Docket No. 5] (the "Claims and Noticing Agent Retention Application").

(c) Debtors' Motion for Entry of an Order (I) Authorizing the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for Each Debtor and (II) Granting Related Relief [Docket No. 7] ("Creditor Matrix Motion").

(d) Debtors' Motion for Entry of an Order (I) Authorizing, But Not Directing, the Debtors to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief [Docket No. 8] ("Wages Motion").

(e) Debtors' Motion for Entry of an Order (I) Scheduling Hearing on Approval of the Combined Disclosure Statement and Chapter 11 Plan; (II) Fixing Deadline to Object to the Combined Disclosure Statement and Plan; (III) Waiving Solicitation of the Plan and Approving



Manner of Notice of Commencement, Combined Hearing, and Objection Deadline; and (IV) Granting Related Relief [Docket No. 16] (the “Combined Hearing Motion”)

(f) Debtors’ Motion for Interim and Final Orders, (I) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Utility Services, (II) Determining Adequate Assurance of Payment for Future Utility Services, (III) Establishing Procedures for Determining Additional Adequate Assurance of Payment, and (IV) Granting Related Relief [Docket No. 9] (the “Utilities Motion”).

(g) Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing, But Not Directing, the Debtors to (A) Pay Their Obligations Under Insurance Policies Entered Into Prepetition, (B) Continue to Pay Brokerage Fees, (C) Renew, Supplement, Modify, or Purchase Insurance Coverage, and (D) Honor the Terms of the Financing Agreements and Pay Premiums Thereunder, and (II) Granting Related Relief [Docket No. 14] (the “Insurance Programs Motion”).

(h) Debtors’ Motion for Entry of an Interim and Final Order (I) Authorizing, But Not Directing, the Payment of Certain Prepetition Taxes and Fees and (II) Granting Related Relief [Docket No. 15] (the “Taxes Motion”).

(i) Debtors’ Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Thereto and (II) Granting Related Relief [Docket No. 10] (“Customer Programs Motion”).

(j) Debtors’ Motion for Entry of Interim and Final Orders Authorizing Debtors to Pay Certain Prepetition Claims of its Critical Vendor [Docket No. 11] (“Critical Vendor Motion”).

(k) Debtors’ Motion for Entry of an Interim and Final Order (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, and (C) Maintain Existing Business Forms, and (II) Granting Related Relief [Docket No. 12] (“Cash Management Motion”).

(l) Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing Adequate Protection, (C) Modifying the Automatic Stay, and (D) Granting Related Relief [Docket No. 13] (the “Cash Collateral Motion”).

On November 3, 2020, the Bankruptcy Court entered orders approving the relief requested in (i) the Joint Administration Motion [Docket No. 43] and the Claims and Noticing Agent Retention Application [Docket No. 59] on a final basis; and (ii) the Creditor Matrix Motion [Docket No. 55], the Utilities Motion [Docket No. 56], the Insurance Programs Motion [Docket No. 46], the Taxes Motion [Docket No. 58], the Customer Programs Motion [Docket No. 44], the Critical Vendor Motion [Docket No. 45], the Wages Motion [Docket No. 50], the Cash Management Motion [Docket No. 49], and the Cash Collateral Motion [Docket No. 57] on an interim basis.

On November 4, 2020, the Bankruptcy Court entered an order approving the relief requested in the Combined Hearing Motion [Docket No. 75].

On November 16, 2020, the Bankruptcy Court entered orders approving, on a final basis, the relief requested in the Creditor Matrix Motion [Docket No. 125], the Utilities Motion [Docket No. 123], the Insurance Programs Motion [Docket No. 119], the Taxes Motion [Docket No. 120], the Customer Programs Motion [Docket No. 121], the Critical Vendor Motion [Docket No. 122], the Wages Motion [Docket No. 124], and the Cash Management Motion [Docket No. 116].

On November 17, 2020, the Bankruptcy Court entered an order approving, on a final basis, the relief requested in the Cash Collateral Motion [Docket No. 150].

### **3. *Retention of Professional Advisors***

Pursuant to orders entered on November 29, 2020, the Bankruptcy Court authorized the Debtors to retain and employ (i) Womble Bond Dickinson (US) LLP as their bankruptcy counsel [Docket No. 176], and (ii) Carl Marks Advisory Group LLC to provide a Chief Restructuring Officer, additional personnel and restructuring related services [Docket No. 178]. The Bankruptcy Court also authorized the Debtors to retain and employ certain professionals utilized by the Debtors in the ordinary course of business prior to the Petition Date [Docket No. 179], and Donlin Recano & Company, Inc. as the Debtors' administrative advisor [Docket No. 177].

On November 6, 2020, the Debtors Filed an application to retain and employ Duff & Phelps as their financial advisor [Docket No. 79] (the "Duff & Phelps Retention Application"). On December 9, 2020, the Office of the United States Trustee Filed an objection to the Duff & Phelps Retention Application. As of the date hereof, the Duff & Phelps Retention Application is pending before the Court.

### **4. *Private Sale of the Debtors' Assets***

On November 2, 2020, the Debtors Filed a motion seeking entry of an order (i) approving that certain Purchase Agreement with the Purchaser for the sale of substantially all of the Debtors' assets free and clear of all liens, claims and interests; (ii) approving procedures for the assumption and assignment of Executory Contracts and Unexpired Leases; and (iii) granting related relief [Docket No. 19] (the "Sale Motion" or "Sale").

As described above, in November 2019, the Debtors through their investment banker, Duff & Phelps, commenced a marketing process for the sale of substantially all of the Debtors' assets. Duff & Phelps spent considerable time in a multi-year effort to successfully market the Debtors' assets by contacting 116 potential strategic and financial candidates. Of these entities, approximately 33 executed confidentiality agreements and received confidential information memorandums, with those parties who expressed continued interest receiving access to a virtual data room and the opportunity to meeting with the Debtors' management to conduct additional due diligence. The marketing process was briefly interrupted by the onset of the COVID-19 pandemic across much of the United States in the Spring of 2020. Negotiations, however, continued and a letter of intent was eventually executed with the Purchaser in early August 2020.

On November 1, 2020, and after extensive additional negotiations, the Debtors and the Purchaser executed the Purchase Agreement.

The Debtors anticipate the Bankruptcy Court entering the Sale Order at the Combined Confirmation Hearing. Critically, one of the conditions to the Effective Date of the Plan is the closing of the Sale on such Effective Date.

## **5. *Schedules and Bar Dates***

On November 3, 2020, the Debtors Filed the Schedules. Certain of the Schedules were amended on November 17, 2020 and December 1, 2020. Among other things, the Schedules set forth the Claims of known or putative creditors against the Debtors as of the Petition Date, based upon the Debtors' books and records.

On November 17, 2020, the Bankruptcy Court entered the Bar Date Order establishing the General Bar Date as December 15, 2020, at 11:59 p.m. (prevailing Eastern Time). The Bar Date Order also established a Governmental Unit Claims Bar Date of April 30, 2021 at 11:59 p.m. (prevailing Eastern Time). The Bar Date Order established a deadline for filing Proofs of Claim asserting Claims arising from the rejection of an Executory Contract or Unexpired Lease, of the later of (i) the General Bar Date and (ii) the date that is thirty (30) days from entry of an order approving the rejection of the Executory Contract or Unexpired Lease.

As described in detail below, the Plan contemplates the establishment of an Administrative Claim Bar Date pursuant to the Confirmation Order.

## **ARTICLE IV**

### **CONFIRMATION PROCEDURES**

#### **4.1 Combined Hearing Motion and Timetable for the Chapter 11 Cases**

On November 2, 2020, the Debtors Filed the Combined Hearing Motion to consider approval of the Disclosure Statement and Confirmation of the Plan on December 17, 2020 or as soon thereafter as the Court's schedule permits. On November 4, 2020, the Bankruptcy Court entered an order approving the Combined Hearing Motion and approving the form, manner, and sufficiency of notice of the Combined Hearing Notice and the following schedule for Confirmation of the Plan:

<b>Event</b>	<b>Date/Deadline</b>
Petition Date	November 1, 2020
Publication Deadline	Within seven (7) business days of order approving the Combined Hearing Motion (or as soon as practicable thereafter)
Plan Supplement Filing Deadline	Seven (7) days prior to Confirmation Objection Deadline (December 3, 2020)

Confirmation Objection Deadline	Seven (7) days prior to Combined Hearing (December 10, 2020 at 4:00 p.m. (ET))
Deadline to file proposed Confirmation Order	Three (3) business days prior to the Combined Hearing (December 14, 2020)
Deadline to file brief in support of the adequacy of the Disclosure Statement and confirmation of the Plan, and respond to objections to the Combined DS and Plan	Three (3) business days prior to the Combined Hearing (December 14, 2020)
Combined Hearing to Consider the Adequacy of the Disclosure Statement and Confirmation of the Plan	December 17, 2020 at 1:00 p.m. (ET)

#### 4.2 **Procedures for Objections to the Combined Disclosure Statement and Plan**

Any objection to final approval of the combined Disclosure Statement and Plan as providing adequate information pursuant to Bankruptcy Code section 1125 or Confirmation of the Plan must be made in writing and filed with the Bankruptcy Court and served on (i) the Debtors, FIC Restaurants, Inc., 1855 Boston Road, Suite 300, Wilbraham, MA 01095, Attn: Todd Schwendenmann (Todd.Schwendenmann@ficrg.com); (ii) counsel to the Debtors, Womble Bond Dickinson (US) LLP, 1313 North Market Street, Suite 1200, Wilmington, Delaware, 19801 Attn: Matthew P. Ward (matthew.ward@wbd-us.com) and Nicholas T. Verna (nick.verna@wbd-us.com); (iii) counsel to Sun Ice Cream Finance II, LP, as senior secured lender and Plan Sponsor, and Sun Ice Cream Finance, LP, as secured lender, Morgan, Lewis & Bockius LLP, 101 Park Avenue, New York, New York 10178-0060 Attn: Craig A. Wolfe (craig.wolfe@morganlewis.com); (iv) counsel to Amici Partners Group, LLC, as proposed purchaser, Winstead PC, 2728 N. Harwood Street, Suite 500 Dallas, Texas 75201, Attn: Rakhee Patel (rpatel@winstead.com); (v) counsel to any statutory committee appointed in these cases; and (vi) Office of The United States Trustee, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov).. Unless an objection is timely filed and served, it may not be considered by the Bankruptcy Court at the Combined Confirmation Hearing.

#### 4.3 **Requirements for Confirmation**

Among the requirements for Confirmation are that the Plan (a) is accepted by all Impaired Classes of Claims and Interests or, if rejected by an Impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class; (b) is feasible; and (c) is in the “best interests” of Holders of Claims and Interests that are Impaired under the Plan.

The following requirements must be satisfied pursuant to section 1129(a) of the Bankruptcy Code before a bankruptcy court may confirm a plan of reorganization. **The Debtors believe that the Plan fully complies with all the applicable requirements of section 1129 of**

**the Bankruptcy Code set forth below, other than those pertaining to voting, which is unnecessary as all classes of Claims and Interests are Unimpaired under the Plan (except for the Secured Lenders, which have expressly consented to the Plan) and, thus, no Class is entitled to vote.**

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- The Debtors (or any other proponent of the Plan) has disclosed the identity and affiliations of any individual proposed to serve, after Confirmation, as a director, officer, or voting trustee of the Reorganized Debtors, any Affiliate of the Debtors Reorganized under the Plan, or any successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and equity security holders and with public policy.
- With respect to each Holder within an Impaired Class of Claims or Interests, as applicable, each such Holder (a) has accepted the Plan or (b) will receive or retain under the Plan on account of such Claim or Interest property of a value, as of the Effective Date, that is not less than the amount that such Holder would so receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on such date.
- With respect to each Class of Claims or Interests, such Class (a) has accepted the Plan or (b) is Unimpaired under the Plan (subject to the “cram-down” provisions of section 1129(b) of the Bankruptcy Code).
- The Plan provides for treatment of Claims, as applicable, in accordance with the provisions of section 507(a) of the Bankruptcy Code.
- If a Class of Claims is Impaired under the Plan, at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any Insider.
- The Debtors (or any other proponent of the Plan) has disclosed the identity of any Insider that will be employed or retained by the Reorganized Debtors and the nature of any compensation for such Insider
- Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Reorganized Debtors, or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.
- All fees payable under 28 U.S.C. § 1930 have been paid or the Plan provides for the payment of all such fees on the Effective Date.

#### 4.4 **No Need to Solicit Votes and Acceptance Requirements**

Pursuant to the Bankruptcy Code, only classes of claims against or interests of a debtor that are “impaired” (within the meaning of section 1124 of the Bankruptcy Code) under the terms and provisions of a Chapter 11 plan of reorganization or liquidation are entitled to vote to accept or reject a Chapter 11 plan. A class is “impaired” if the legal, equitable, or contractual rights attaching to the claims or interests of that class are modified, other than by curing defaults and reinstating maturity, and other than as modified by operation of the Bankruptcy Code such is the case with Rejection Claims and section 502(b)(6) of the Bankruptcy Code. Classes of claims and interests that are not impaired are not entitled to vote on a Chapter 11 plan and, under section 1126(f) of the Bankruptcy Code, are conclusively presumed to have accepted a Chapter 11 plan.

**Under the Plan, all Holders of Claims and Interests are Unimpaired (except for the Secured Lenders, which have consented to the Plan pursuant to Classes 2A, 2B and 2C of the Plan) under the Bankruptcy Code and therefore deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.**

#### 4.5 **Releases and Exculpation Under the Plan**

As set forth in Article 13.1 below, the Plan provides for releases by the Debtors and third parties of the Released Parties, and exculpation of the Exculpated Parties. The Debtors’ releases, Third Party Releases, and exculpation provisions included in the Plan are an integral part of the Debtors’ restructuring efforts as they constituted an essential element in negotiations with the Plan Sponsor to obtain its support of the Plan. In short, the Plan Sponsor would not have agreed to support the Plan or provide the material funding thereof without the direct Debtor releases, the Third Party Releases, and exculpation provisions for the Released Parties that include Sun Capital. In addition, the Secured Lenders (which includes the Plan Sponsor) would not have agreed to waive and release all Claims, and related Liens, after the Effective Date of the Plan in Class 2A, Class 2B, and Class 2C, in the absence of the Plan’s comprehensive releases and exculpation.

The Debtors firmly believe that the Plan Sponsor, Sun Capital, and the balance of the Released Parties and Exculpated Parties have unquestionably made substantial and valuable contributions to the Debtors’ restructuring through efforts to negotiate and implement the Plan, which if Confirmed will result in all Allowed Claims and Interest being paid in full. Accordingly, each of the Released Parties and the Exculpated Parties warrants the benefit of the release and exculpation provisions in exchange for the remarkable result of Allowed Claims and Interests being Unimpaired under the Plan.

#### 4.6 **Feasibility of the Plan**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a Chapter 11 plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Chapter 11 plan). Inasmuch as the Debtors’ assets have been, or will be, liquidated and all Holders of Allowed Claims will be Unimpaired under the Plan (except for the Secured Lenders, which have expressly consented to the Plan), for purposes of this test, the Debtors have analyzed the ability to meet these obligations under the Plan (which is sponsored by the Plan

Sponsor). Based on the Debtors' analysis and estimates of anticipated Allowed Claims and costs of administering these Chapter 11 Cases, the Debtors believe they will have sufficient assets to make all distributions in accordance with the Plan. Therefore, the Debtors believe that the liquidation pursuant to the Plan will meet the feasibility requirements of the Bankruptcy Code.

#### 4.7 **Best Interests Test**

As described above, section 1129(a)(7) of the Bankruptcy Code (often referred to as the "Best Interests Test") requires that each Holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. No Claims or Interests are Impaired under the Plan. Accordingly, the Best Interests Test is not applicable.

### ARTICLE V

#### **PLAN-RELATED RISK FACTORS IN CONNECTION WITH CONFIRMATION**

##### 5.1 **Generally**

The following provides a summary of important considerations and risk factors associated with the Plan. However, it is not exhaustive. **Holders of Claims against and Interests in the Debtors should read and carefully consider the factors set forth below in addition to all other information contained in this combined Disclosure Statement and Plan.**

##### 5.2 **Claim Estimations**

There can be no assurance that the Debtors' estimated Claim amounts are correct. The actual Allowed amount of Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove materially incorrect, the actual Allowed amount of Claims, and the distributions on account of such Allowed Claims, may vary from those estimated herein.

##### 5.3 **Bankruptcy-Specific Risk Factors to the Success of the Chapter 11 Cases**

**1. *The Plan sets forth the means for satisfying the Claims against and Interests in the Debtors. Allowed Claims are expected to be Unimpaired (except for the Secured Lenders, which have expressly consented to the Plan) under the Bankruptcy Code and paid in full in Cash pursuant to the terms of the Plan. Nevertheless, there are some risks to Consummation of the Plan. The Plan has been proposed after a careful consideration of all reasonable restructuring alternatives. Despite the risks inherent in the Plan, as described herein, the Debtors believe that the Plan is in the best interests of Holders of Claims and Interests when compared to all reasonable alternatives.***

**2. *The Debtors' ability to successfully prosecute these Chapter 11 Cases for the benefit of all Holders of Claims will be subject to risks and uncertainties associated with bankruptcy, including but not limited to the following:***

(a) the Debtors' ability to obtain Bankruptcy Court approval with respect to motions filed in the Chapter 11 Cases from time to time;

(b) the Debtors' ability to develop, prosecute, confirm and Consummate the proposed Disclosure Statement and Plan;

(c) the Debtors' ability to meet all conditions precedent to the Effective Date of the Plan;

(d) the ability of third parties to possibly seek and obtain Bankruptcy Court approval to terminate or shorten the exclusivity period for the Debtors to propose and confirm the proposed Plan, to appoint a Chapter 11 trustee or to convert the Chapter 11 Cases to cases under Chapter 7; and

(e) the Debtors' ability to fund and execute the Plan pursuant to the Plan Sponsor's binding commitments.

**3. *The Debtors will also be subject to risks and uncertainties with respect to actions and decisions of their creditors and other third parties who have interests in the Chapter 11 Cases that may be inconsistent with the Debtors' goals and plans. Because of the risks and uncertainties associated with the Chapter 11 Cases, the Debtors cannot predict or quantify the ultimate impact that events occurring during the Chapter 11 Cases will have on their financial condition.***

**4. *There can be no assurance that the releases (including the Third Party Releases), as provided in Article XIII of the Plan, will be granted. The failure of the Bankruptcy Court to grant such relief will result in the Plan not being Confirmed.***

**5. *If the Debtors are unable to obtain Confirmation of the Plan, they will not be able to fund the Plan as currently sponsored by the Plan Sponsor and leave Allowed Claims Unimpaired. The Plan Sponsor's agreement to fund the Plan is contingent upon, among other things, Confirmation of the Plan, the Effective Date of the Plan, and Sun Capital obtaining comprehensive releases (including the Third Party Releases) pursuant to the terms of the Plan.***

#### **5.4 Risks Associated with Forward-Looking Statements**

The financial information contained in this combined Disclosure Statement and Plan has not been audited. The Debtors and their advisors relied on financial data derived from their books and records that was available at the time the combined Disclosure Statement and Plan were prepared. Although the Debtors have used their reasonable business judgment to ensure the accuracy of the financial information provided herein, and while the Debtors believe that such financial information fairly reflects, in all material respects, the financial results of the Debtors, the Debtors are unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

## **ARTICLE VI**

### **CERTAIN TAX CONSIDERATIONS**



## 6.1 Introduction

The following discussion summarizes certain of the material United States federal income tax consequences expected to result from the implementation of the Plan. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “Tax Code”), applicable Treasury Regulations, judicial authority and current administrative rulings and pronouncements of the Internal Revenue Service (the “IRS”). There can be no assurance that the IRS will not take a contrary view, and no ruling from the IRS has been or will be sought. Legislative, judicial, or administrative changes or interpretations may be forthcoming that could alter or modify the statements and conclusions set forth herein. Any such changes or interpretations may or may not be retroactive and could affect the tax consequences to, among others, the Debtors and the Holders of Claims.

The following summary is for general information only. The federal income tax consequences of the Plan are complex and subject to significant uncertainties. This summary does not address foreign, state, or local tax consequences of the Plan, nor does it purport to address all of the federal income tax consequences of the Plan. This summary also does not purport to address the federal income tax consequences of the Plan to taxpayers subject to special treatment under the federal income tax laws, such as broker-dealers, tax exempt entities, financial institutions, insurance companies, S corporations, small business investment companies, mutual funds, regulated investment companies, foreign corporations, and non-resident alien individuals.

**IRS Circular 230 Notice: To comply with U.S. treasury regulations, be advised that any U.S. federal tax advice included in this communication (and it is not intended that any such advice be given in this combined Disclosure Statement and Plan) is not intended or written to be used, and cannot be used, to avoid any U.S. federal tax penalties or to promote, market, or recommend to another party any transaction or matter.**

## 6.2 Federal Income Tax Consequences to Creditors

Given that all Allowed Claims are Unimpaired (or, as with the Secured Lenders, expressly consented to the Plan) and are to be paid in full in Cash under the Plan, the Debtors do not anticipate that the Plan will have material income tax consequences for creditors. The Reorganized Debtors (through Reorganized Debtor FIC) and any disbursing agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements.

**THE FOREGOING TAX SUMMARY HAS BEEN PROVIDED FOR GENERAL INFORMATIONAL PURPOSES ONLY. THIS DISCUSSION DOES NOT CONSTITUTE TAX ADVICE OR A TAX OPINION CONCERNING THE MATTERS DESCRIBED. THERE CAN BE NO ASSURANCE THAT THE IRS WILL NOT CHALLENGE ANY OR ALL OF THE TAX CONSEQUENCES DESCRIBED HEREIN, OR THAT SUCH A CHALLENGE, IF ASSERTED, WOULD NOT BE UPHOLD. ACCORDINGLY, EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT WITH HIS, HER, OR ITS OWN TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, OR OTHER TAX CONSEQUENCES OF THIS PLAN.**

## ARTICLE VII

### **ADMINISTRATIVE, PROFESSIONAL AND PRIORITY CLAIMS**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Claims, and Priority Tax Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article 8.1.

#### **7.1 Administrative Claims**

Except as otherwise provided in the Plan, the Bar Date Order, or Final Order of the Bankruptcy Court, all requests for payment of Administrative Claims (including all Professional Claims) arising prior to the Effective Date must be filed no later than the Administrative Claims Bar Date. The Bankruptcy Court shall determine the Allowed amounts of such Administrative Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. Each Holder of an Allowed Administrative Claim (other than Holders of Professional Claims), to the extent such Claim has not already been paid in full during the Chapter 11 Cases, shall receive in full satisfaction, settlement, and release of, and in exchange for, such Administrative Claim, either: (a) payment in full in Cash on the later of (i) the Effective Date (or as soon as practicable thereafter) or (ii) the Allowance Date with respect to such Allowed Claim; (b) subject to the consent of the Debtors and the Plan Sponsor, such other treatment to render such Administrative Claim Unimpaired under section 1124 of the Bankruptcy Code; or (c) subject to the consent of the Debtors and the Plan Sponsor, such other treatment as such Holder may agree to as permitted by section 1129(a)(9) of the Bankruptcy Code.

#### **7.2 Professional Claims**

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be filed no later than the Administrative Claims Bar Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. The Reorganized Debtors shall pay Professional Claims in Cash in the amount the Bankruptcy Court allows. From and after the Effective Date, any requirement that Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

#### **7.3 Priority Tax Claims**

Each Holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date, to the extent such Claim has not already been paid in full during the Chapter 11 Cases, shall receive, in full satisfaction, settlement and release of, and in exchange for, such Priority Tax Claim either: (a) payment in full in Cash on the later of (i) the Effective Date (or as soon as practicable thereafter) or (ii) such other Distribution Date after the Allowance Date with respect to such Allowed Claim; (b) subject to the consent of the Debtors and the Plan Sponsor, such other treatment to render such Priority Tax Claim Unimpaired under section 1124 of the Bankruptcy

Code; or (c) subject to the consent of the Debtors and the Plan Sponsor, such other treatment as such Holder may agree to or as otherwise permitted by section 1129(a)(9)(C) of the Bankruptcy Code.

#### **7.4 Statutory Fees**

On the Effective Date, the Debtors shall pay all Statutory Fees that are then due and payable, and, thereafter as required, the Reorganized Debtors shall pay all Statutory Fees when due and payable. The obligations under this Article 7.4 shall remain for each Debtor until such time as a Final Decree is entered closing the Chapter 11 Case for such Debtor, a Final Order converting such Debtor's Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code is entered, or a Final Order dismissing such Debtor's Chapter 11 Case is entered.

### **ARTICLE VIII**

#### **CLASSIFICATION, TREATMENT, AND VOTING OF CLAIMS AND INTERESTS**

##### **8.1 Classification of Claims and Interests**

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in ARTICLE III, all Claims and Interests are classified in the Classes set forth below in accordance with section 1122 of the Bankruptcy Code. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or Interest also is classified in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

Below is a chart assigning each Class a number for purposes of identifying each separate Class.

Class	Claim or Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	Conclusively Presumed to Accept; Not Entitled to Vote
2A	Senior 2019 Credit Facility Secured Claims	Unimpaired (by Consent)	Expressly Consented to the Plan; Not Entitled to Vote
2B	2018 Credit Facility Secured Claims	Unimpaired (by Consent)	Expressly Consented to the Plan; Not Entitled to Vote
2C	2011 Credit Facility Secured Claims	Unimpaired (by Consent)	Expressly Consented to the Plan; Not Entitled to Vote
3	Other Secured Claims	Unimpaired	Conclusively Presumed to Accept; Not Entitled to Vote
4	General Unsecured Claims	Unimpaired	Conclusively Presumed to Accept; Not Entitled to Vote
5	Interests	Unimpaired	Conclusively Presumed to Accept; Not Entitled to Vote

## 8.2 **Treatment of Classes of Claims and Interests**

Except to the extent that a Holder of an Allowed Claim or Interest, as applicable, agrees to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, and release, and in exchange for, such Holder's Allowed Claim or Interest. Unless otherwise indicated, the Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the Effective Date, or as soon as practicable thereafter.

### (a) Class 1—Other Priority Claims

- (1) *Classification:* Class 1 consists of all Other Priority Claims.
- (2) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Allowed Other Priority Claim, payment in full in Cash as soon as practicable after the latest of (i) the Effective Date, (ii) such other Distribution Date after the Allowance Date with respect to such Allowed Claim or (iii) the date upon which such Allowed Claim becomes due and payable in accordance with the operative agreement between the applicable Debtor and the Holder of such Allowed Other Priority Claim, or such other, less favorable treatment which the Debtors, the Plan Sponsor and the Holder of such Allowed Other Priority Claim have agreed upon in writing.

- (3) *Voting: **Class 1 is Unimpaired.*** Holders of Class 1 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan.

(b) Class 2A—Senior 2019 Credit Facility Secured Claims

- (1) *Classification:* Class 2A consists of the Senior 2019 Credit Facility Secured Claims.
- (2) *Treatment:* As part of the comprehensive settlements and substantial contributions under the Plan, the Holder of the Allowed Senior 2019 Credit Facility Secured Claim shall, after the Effective Date of the Plan, (i) fund all binding commitments as Plan Sponsor to the Plan pursuant to availability under the Senior 2019 Credit Facility, and then waive and release such Claim and all Liens on the Debtors' assets pursuant to the Senior 2019 Credit Facility; and (ii) except as otherwise provided in the Plan, forgo any and all distributions under the Plan on account of such Claim.

Notwithstanding anything to the contrary herein, in the event all Allowed (i) Claims in Classes 1, 3; and 4; and (ii) Administrative Claims and Priority Tax Claims, have in each case been satisfied in full under the Plan, and all other obligations under the Plan (including Statutory Fees) have been paid, any remaining funds and/or other assets, including without limitation all Causes of Action (including those identified on the Schedule of Retained Causes of Action), held by the Debtors or Reorganized Debtors shall vest in and/or transferred to the Plan Sponsor.

- (3) *Voting: **Class 2A is Unimpaired.*** The Holder of the Allowed Class 2A Claim has expressly consented to the Plan. Therefore, the Holder of the Allowed Class 2A Claim, pursuant to such consent, is not entitled to vote to accept or reject the Plan.

(c) Class 2B—2018 Credit Facility Secured Claims

- (1) *Classification:* Class 2B consists of the 2018 Credit Facility Secured Claims.
- (2) *Treatment:* As part of the comprehensive settlements and substantial contributions under the Plan, the Holder of the Allowed 2018 Credit Facility Secured Claim shall, after the Effective Date of the Plan, (i) waive and release such Claim and all Liens on the Debtors' assets pursuant to the 2018 Credit Facility; and (ii) forgo any and all distributions under the Plan on account of such Claim.
- (3) *Voting: **Class 2B is Unimpaired.*** The Holder of the Allowed Class 2B Claim has expressly consented to the Plan. Therefore, the Holder of the

Allowed Class 2B Claim, pursuant to such consent, is not entitled to vote to accept or reject the Plan.

(d) Class 2C—2011 Credit Facility Secured Claims

- (1) *Classification:* Class 2C consists of the 2011 Credit Facility Secured Claims.
- (2) *Treatment:* As part of the comprehensive settlements and substantial contributions under the Plan, the Holder of the Allowed 2011 Credit Facility Secured Claim shall, after the Effective Date of the Plan, (i) waive and release such Claim and all Liens on the Debtors' assets pursuant to the 2011 Credit Facility; and (ii) forgo any and all distributions under the Plan on account of such Claim.
- (3) *Voting:* **Class 2C is Unimpaired.** The Holder of the Allowed Class 2C Claim has expressly consented to the Plan. Therefore, the Holder of the Allowed Class 2C Claim, pursuant to such consent, is not entitled to vote to accept or reject the Plan.

(e) Class 3—Other Secured Claims

- (1) *Classification:* Class 3 consists of all Other Secured Claims.
- (2) *Treatment:* Each Holder of an Allowed Other Secured Claim, shall receive, in full satisfaction, settlement, and release of, and in exchange for, such Allowed Other Secured Claim, at the option of the Debtors and the Plan Sponsor, either: (i) payment in full in Cash as soon as practicable after the latest of (x) the Effective Date, (y) the Allowance Date with respect to such Allowed Claim or (z) the date upon which such Allowed Claim becomes due and payable in accordance with the operative agreement between the applicable Debtor and the Holder of such Allowed Other Secured Claim; (ii) the return or abandonment of the collateral securing such Claim to such Holder; (iii) such other treatment to render such Allowed Other Secured Claim Unimpaired; or (iv) such other treatment as such Holder may agree to or otherwise permitted by section 1129(a)(9) of the Bankruptcy Code.
- (3) *Voting:* **Class 3 is Unimpaired.** Holders of Allowed Class 3 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 3 Claims are not entitled to vote to accept or reject the Plan.

(f) Class 4—General Unsecured Claims

- (1) *Classification:* Class 5 consists of all General Unsecured Claims.
- (2) *Treatment:* Each Holder of an Allowed General Unsecured Claim, shall receive, in full satisfaction, settlement, and release of, and in exchange for,

such Allowed General Unsecured Claim, payment in full in Cash or such other treatment that would render the claim unimpaired as soon as practicable after the latest of (i) the Effective Date; and (ii) such other Distribution Date after the Allowance Date with respect to such Allowed Claim.

- (3) *Voting: **Class 4 is Unimpaired.*** Holders of Allowed Class 4 Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 4 Claims are not entitled to vote to accept or reject the Plan.

(g) Class 5—Interests

- (1) *Classification:* Class 5 consists of all Interests in the Debtors.
- (2) *Treatment:* On the Effective Date, Allowed Interests in the Debtors shall be retained and reinstated in accordance with section 1124(1) of the Bankruptcy Code.
- (3) *Voting: **Class 5 is Unimpaired.*** Holders of Allowed Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Class 5 Interests are not entitled to vote to accept or reject the Plan.

### 8.3 **Subordination**

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Reorganized Debtors, as applicable, reserve the right to re-classify, with the consent of the Plan Sponsor, any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

### 8.4 **Intercompany Claims**

Intercompany claims shall be reinstated under the Plan and shall be owned by the same Reorganized Debtor that corresponds with the Debtor that owned such Intercompany claim prior to the Effective Date. As set forth in Article 9.3, on the Effective Date all property of the Debtors and each of their Estates and all Causes of Action (including all Avoidance Actions retained by the Debtors and identified on the Schedule of Retained Causes of Action pursuant to Article 13.12 of the Plan) shall be consolidated and vest in Reorganized Debtor FIC.

**8.5 Special Provision Governing Unimpaired Claims**

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors or the Reorganized Debtors' rights regarding any Unimpaired Claim, including all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

**8.6 Elimination of Vacant Classes**

Any Class of Claims that does not have a Holder of an Allowed Claim or a Claim temporarily Allowed by the Bankruptcy Court as of the date of the Combined Confirmation Hearing shall be deemed eliminated from the Plan for purposes of determining acceptance and rejection of the plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**ARTICLE IX**

**PROVISIONS FOR IMPLEMENTATION OF THE PLAN**

**9.1 General Settlement of Claims**

As discussed in detail in this combined Disclosure Statement and Plan and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Interests, Causes of Action, and controversies released, settled, compromised, or otherwise resolved as set forth in and pursuant to the Plan. The Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Interests, and controversies, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable and in the best interests of the Debtors and their Estates. Subject to Article XI hereof, all distributions made to holders of Allowed Claims and Allowed Interests (as applicable) in any Class are intended to be and shall be final.

**9.2 Section 1145 Exemption**

In accordance with section 1145 of the Bankruptcy Code, the retention under the Plan of the Interests is exempt from all federal, state, or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in such securities and is not deemed to be a public offer of such securities.

**9.3 Vesting of All Assets in Reorganized Debtor FIC on the Effective Date**

Except as otherwise provided herein or in the Sale Order, or in any agreement, instrument, or other document incorporated in the Plan, on the Effective Date, all property of the Debtors and each of their Estates and all Causes of Action (except Avoidance Actions, which shall be deemed released on the Effective Date solely to the extent set forth in the Plan), shall be consolidated and vest in Reorganized Debtor FIC, free and clear of all Liens, Claims, charges, or other



encumbrances. **All distributions under the Plan to Allowed Claims on and after the Effective Date shall be made by Reorganized Debtor FIC.**

As soon as practicable after the Effective Date, the Chapter 11 Cases of Debtor Neapolitan, FIC Holdings, Friendly's and Franchising shall be closed with all outstanding Statutory Fees, if any, paid in conjunction with such Debtor's Filing of the respective proposed Final Decrees closing such cases. All Claims against the four Debtors with Chapter 11 Cases closing shortly after the Effective Date, shall be consolidated for administrative purposes with the Claims of Reorganized Debtor FIC for the Claims reconciliation, resolution and distribution process.

#### **9.4 Organizational/Governance Documents**

On and after the Effective Date, the Reorganized Debtors, and the managers or officers thereof and members of the board thereof, shall be authorized to and may issue, execute, deliver, file, or record such contracts, instruments, releases, indentures, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan, or to otherwise comply with applicable law, in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, or consents except for those expressly required pursuant to the Plan.

#### **9.5 Cancellation of Instruments, Certificates, and Other Documents**

Except as otherwise set forth in the Plan or in connection with the Sale, or for the purpose of evidencing a right to a distribution under the Plan, on the Effective Date, all agreements, instruments, and other documents evidencing or governing any Claims or Interests and any rights of any Holder in respect thereof (including all registration rights, preemptive rights, rights of first refusal, rights of first offer, co-sale rights and other investor rights governing or relating to any Claims or Interests), except for the avoidance of doubt, any agreements, instruments, or documents transferred under the Purchase Agreement, shall be deemed cancelled, discharged, and of no force or effect and the obligations of the Debtors thereunder shall be deemed fully discharged. Notwithstanding the foregoing, any provision in any document, instrument, lease, or other agreement that causes or effectuates, or purports to cause or effectuate, a default, termination, loss, waiver, or other forfeiture of, or by, the Debtors or their interests, or any increase or acceleration of any of their obligations, in any such case as a result of the cancellations, terminations, satisfaction, releases, or discharges provided for in this Article 9.5 shall be deemed null and void and shall be of no force and effect.

#### **9.6 No Company Action**

Upon the Effective Date, all actions contemplated under the Plan shall be deemed authorized and approved in all respects, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, directors, managers, or officers of the Debtors, the Reorganized Debtors, or any other Person, including: (1) formation by the Debtors or such other party as contemplated in the Plan, Plan Supplement, or Confirmation Order, of the Reorganized Debtors, and any transactions related thereto; (2) selection of, and the election or appointment (as applicable) of, the directors, managers, members, and officers for the Reorganized Debtors; and (3) all other acts or actions contemplated or reasonably necessary or

appropriate to promptly Consummate the Plan (whether to occur before, on, or after the Effective Date).

All matters provided for or contemplated in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtor, as applicable, in connection with the Plan shall be deemed to have occurred and shall be in effect without any requirement of further action by the security holders, directors, managers, or officers of the Debtors or the Reorganized Debtors, as applicable.

On or (as applicable) prior to the Effective Date, the appropriate officers or managers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, securities, certificates of incorporation, certificates of formation, bylaws, operating agreements, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions contemplated under the Plan) in the name of and on behalf of the Reorganized Debtors. The authorizations and approvals contemplated by this Article 9.6 shall be effective notwithstanding any requirements under non-bankruptcy law.

#### **9.7 Effectuating Documents; Further Transactions**

On and after the Effective Date, the Reorganized Debtors are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents, and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorizations, or consents except for those expressly required under the Plan.

#### **9.8 Section 1146(a) Exemption**

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (1) the Sale to the Purchaser pursuant to the terms of the Sale Order; (2) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors or the Reorganized Debtors; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; or (5) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed,

shall comply with the requirements of section 1146(c) of the Bankruptcy Code, shall forgo the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

#### 9.9 **Post-Confirmation Management**

The Reorganized Debtors will be managed by a subset of the Debtors' existing management to be identified in the Plan Supplement, for the purpose of making distributions under the Plan and winding down each of the Debtors on and after the Effective Date as set forth in the Plan.

#### 9.10 **Preservation of Rights of Action**

Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan (including the releases set forth in Article XIII of the Plan) or by the Sale Order or another Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action of the Debtors, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement pursuant to the Schedule of Retained Causes of Action, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. **No Person may rely on the absence of a specific reference in the Plan or the Plan Supplement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan.** Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, the Reorganized Debtors expressly reserve all Causes of Action of the Debtors for later adjudication, and therefore no preclusion doctrine (including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel judicial, equitable, or otherwise) or laches shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

The Reorganized Debtors reserve and shall retain Causes of Action of the Debtors notwithstanding the rejection of any Executory Contract or Unexpired Lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Person shall vest in the Reorganized Debtors. The applicable Reorganized Debtor, through its authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action, or to decline to do any of the foregoing, without the consent or approval of any third party or any further notice to or action, order, or approval of the Bankruptcy Court.

## ARTICLE X

### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

#### **10.1 Deemed Rejection of Executory Contracts and Unexpired Leases**

On the Effective Date, except as otherwise provided herein, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned, including any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, **shall be deemed automatically rejected** pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Executory Contract or Unexpired Lease as of the Confirmation Date; (3) is to be or has been assumed by the Debtors or assumed by the Debtors and assigned to the Purchaser in connection with the Sale as approved by the Sale Order; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; or (5) is a D&O Liability Insurance Policy. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption of any Executory Contracts or Unexpired Leases as provided in the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

#### **10.2 Claims Based on Rejection of Executory Contracts or Unexpired Leases**

Proofs of Claims with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan, if any, must be Filed with the Bankruptcy Court within the later to occur of: (1) 30 days after the Effective Date and (2) 30 days after the Debtors surrender possession to a landlord of a rejected lease where surrender occurs after entry of an order approving such rejection. **Any Holders of Rejection Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claims were not Filed shall not (1) be treated as a creditor with respect to such Rejection Claim, (2) participate in any distribution in the Chapter 11 Cases on account of such Rejection Claim.** Allowed Rejection Claims shall be classified as General Unsecured Claims in Class 4 and, if Allowed, shall be treated in accordance with Article 8.2(f) of the Plan.

#### **10.3 Pre-existing Payment and Other Obligations**

Rejection of any Executory Contract or Unexpired Lease shall not constitute a termination of any pre-existing obligations owed to the Debtors or Reorganized Debtors that would continue notwithstanding rejection, as applicable, under such contract or lease. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide: (a) payment to the contracting Debtors or Reorganized Debtors, as applicable, of outstanding amounts as of the rejection owing thereto under or in connection with rejected Executory Contracts or Unexpired Leases, or (b) warranties or continued maintenance obligations

on goods previously purchased by the contracting Debtors or Reorganized Debtors, as applicable, from counterparties to rejected Executory Contracts or Unexpired Leases.

**10.4 Contracts and Leases Entered into After the Petition Date**

Contracts and leases entered into after the Petition Date by any Debtor and any Executory Contracts and Unexpired Leases assumed by any Debtor may be performed by the applicable Reorganized Debtor in the ordinary course of business.

**10.5 Nonoccurrence of the Effective Date**

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

**10.6 Reservation of Rights Regarding Contracts and Leases**

Nothing contained in this combined Disclosure Statement and Plan, or in the Plan Supplement, shall constitute an admission by the Debtors that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that any Debtor or Reorganized Debtor has any liability thereunder.

**10.7 Director and Officer Liability Insurance**

To the extent that the D&O Liability Insurance Policies are considered to be Executory Contracts, notwithstanding anything in the Plan to the contrary, effective as of the Effective Date, the Debtors shall be deemed to have assumed all D&O Liability Insurance Policies with respect to the Debtors' directors, managers, officers, and employees serving on or before the Petition Date pursuant to section 365(a) of the Bankruptcy Code, and coverage for defense and indemnity under any of the D&O Liability Insurance Policies shall remain available to all individuals within the definition of "Insured" in any of the D&O Liability Insurance Policies. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained herein, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be Filed.

**ARTICLE XI**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**11.1 Distributions on Account of Claims and Interests Allowed as of the Effective Date**

Unless otherwise provided in the Plan or the Confirmation Order, as soon as practicable after the Effective Date (or if a Claim or Interest is not an Allowed Claim or Allowed Interest on the Effective Date, on the such other Distribution Date once such Claim or Interest becomes an Allowed Claim or Allowed Interest), each Holder of an Allowed Claim or Allowed Interests (as

applicable) shall receive the full amount of the distributions that the Plan provides for Allowed Claims or Allowed Interests (as applicable) in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Interests, distributions on account of any such Disputed Claims or Disputed Interests shall be made pursuant to the provisions set forth in Article 11.2 hereof.

To the extent any Allowed Priority Tax Claim or any Allowed Other Priority Claim is not due and owing on the Effective Date, such Claim may be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the Holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

#### **11.2 Special Rules for Distributions to Holders of Disputed Claims and Interests**

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed by the Reorganized Debtors, on the one hand, and the Holder of a Disputed Claim or Disputed Interest, on the other hand, or as set forth in a Final Order: (a) no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Interest until all such disputes in connection with such Disputed Claim or Interest have been resolved by settlement or Final Order; and (b) any Person that holds both an Allowed Claim or Allowed Interest and a Disputed Claim or Disputed Interest shall not receive any distribution on the Allowed Claim or Allowed Interest unless and until all objections to the Disputed Claim or Disputed Interest have been resolved by settlement or Final Order or the Claims or Interests have been Allowed or expunged. Any distributions arising from property distributed to Holders of Allowed Claims or Interests, as applicable, in a Class and paid to such Holders under the Plan shall be paid also, in the applicable amounts, to any Holder of a Disputed Claim or Interest, as applicable, in such Class that becomes an Allowed Claim or Interest after the date or dates that such distributions were earlier paid to Holders of Allowed Claims or Interests in such Class.

#### **11.3 Delivery of Distributions**

##### **(a) Record Date for Distributions**

On the Effective Date, the Debtors' records of ownership of Claims against the Debtors (including without limitation the Claims Register maintained by the Claims and Noticing Agent in the Chapter 11 Cases) shall be closed and the Reorganized Debtors shall be authorized and entitled to recognize only those record Holders, if any, as of the close of business on the Effective Date. Notwithstanding the foregoing, if a Claim or Interest is transferred less than twenty (20) days before the Effective Date, the Reorganized Debtors (through Reorganized Debtor FIC) or their duly appointed disbursing agent shall make distributions to the transferee only to the extent practical and, in any event, only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

## (b) Distribution Process

The Reorganized Debtors (through Reorganized Debtor FIC) or their duly appointed disbursing agent shall make all distributions required under the Plan. Except as otherwise provided in the Plan, and notwithstanding any authority to the contrary, distributions to Holders of Allowed Claims and Interests, including Claims and Interests that become Allowed after the Effective Date, shall be made to Holders of record as of the Effective Date by the Reorganized Debtors: (1) first, to the distribution address set forth in such Holder's Proof of Claim, if any; (2) second, if no Proof of Claim, to the address of such Holder as set forth in the books and records of the applicable Debtor (or if the Debtors have been notified in writing, on or before the date that is twenty (20) days before the Effective Date, of a change of address, to the changed address); (3) third, in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004, if no address exists in the Debtors' books and records, no Proof of Claim has been filed and the Reorganized Debtors or their duly appointed disbursing agent has not received a written notice of a change of address on or before the date that is twenty (20) days before the Effective Date; or (4) fourth, on any counsel that has appeared in the Chapter 11 Cases on the Holder's behalf. The Debtors, the Reorganized Debtors (through Reorganized Debtor FIC) or their duly appointed disbursing agent, as applicable, shall not incur any liability whatsoever on account of any distributions under the Plan.

## (c) Compliance Matters

In connection with the Plan, to the extent applicable, the Reorganized Debtors (through Reorganized Debtor FIC) and any disbursing agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Reorganized Debtors and any disbursing agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances.

## (d) Foreign Currency Exchange Rate

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in The Wall Street Journal, National Edition, on the Effective Date.

## (e) Undeliverable and Unclaimed Distributions

- (1) *Undeliverable Distributions.* If any distribution to a Holder of an Allowed Claim is returned to the Reorganized Debtors or their duly appointed disbursing agent as undeliverable, no further distributions shall be made to

such Holder unless and until the Reorganized Debtors or their duly appointed disbursing agent are notified in writing of such Holder's then-current address or other necessary information for delivery, at which time all currently-due, missed distributions shall be made to such Holder as soon as reasonably practicable thereafter without interest. Subject to the succeeding sentence, the Reorganized Debtors or their duly appointed disbursing agent shall retain undeliverable distributions until such time as a distribution becomes deliverable. Each Holder of an Allowed Claim whose distribution remains (i) undeliverable for one hundred eighty (180) days after the distribution is returned as undeliverable or (ii) otherwise has not been deposited, endorsed or negotiated within one hundred eighty (180) days of the date of issuance shall have no claim to or interest in such distribution and shall be forever barred from receiving any distribution under the Plan.

- (2) *Reversion.* Any distribution under the Plan that is an Unclaimed Distribution for a period of one hundred eighty (180) days after distribution shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and such Unclaimed Distribution shall revert in the applicable Reorganized Debtor. Upon such reversion, the Claim or Interest of any Holder or its successors with respect to such property shall be cancelled and forever barred notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws, or any provisions in any document governing the distribution that is an Unclaimed Distribution, to the contrary.

#### 11.4 **Claims Paid or Payable by Third Parties**

##### (a) Claims Paid by Third Parties

A Claim shall be reduced in full, and such Claim shall be Disallowed to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or Reorganized Debtor. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such Holder shall repay, return or deliver any distribution held by or transferred to the Holder to the applicable Reorganized Debtor to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the Allowed amount of such Claim as of the date of any such distribution under the Plan.

##### (b) Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then such Claim may be expunged to the extent of any agreed upon satisfaction.



(c) **Applicability of Insurance Policies**

Except as otherwise specifically provided herein, distributions to Holders of Allowed Claims shall be in accordance with the provisions of an applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Person may hold against any other Person, 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.

**11.5 Setoffs and Recoupment**

Each Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any distributions to be made on account of any Allowed Claim, any and all claims, rights, and Causes of Action that such Reorganized Debtor may hold against the Holder of such Allowed Claim to the extent such setoff or recoupment is either (1) agreed in amount among the relevant Reorganized Debtor(s) and Holder of Allowed Claim or (2) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; provided, however, that neither the failure to effectuate a setoff or recoupment nor the Allowance of any Claim hereunder shall constitute a waiver or release by a Reorganized Debtor or its successor of any and all claims, rights, and Causes of Action that such Reorganized Debtor or its successor may possess against the applicable Holder.

**11.6 Allocation Between Principal and Accrued Interest**

Except as otherwise specifically provided in the Plan, the aggregate consideration paid to Holders with respect to their Allowed Claims shall be treated pursuant to the Plan as allocated first to the principal amount of such Allowed Claims (to the extent thereof) and, thereafter, to the interest, if any, accrued through the Effective Date.

**11.7 Manner of Payment under Plan**

At the option of the Reorganized Debtors (through Reorganized Debtor FIC), any Cash payment to be made hereunder may be made by check, wire transfer, Automated Clearing House, or credit card, or as otherwise provided in applicable agreements.

**11.8 Deleted****11.9 No Distribution in Excess of Amount of Allowed Claim**

Notwithstanding anything in the Plan to the contrary, no Holder of an Allowed Claim shall receive, on account of such Allowed Claim, distributions in excess of the Allowed amount of such Claim.

## ARTICLE XII

### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS AND INTERESTS**

#### **12.1 Allowance of Claims and Interests**

On and after the Effective Date, each of the Reorganized Debtors (through Reorganized Debtor FIC) shall have and shall retain any and all rights and defenses the applicable Debtor had with respect to any Claim or Interest immediately before the Effective Date, including any Cause of Action of the Debtors retained pursuant to Article 9.10 of the Plan. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim against or Interest in any Debtor shall become an Allowed Claim or Allowed Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest.

#### **12.2 Claims and Interests Administration Responsibilities**

Except as otherwise specifically provided in the Plan, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Reorganized Debtors (through Reorganized Debtor FIC), or any authorized agent or assignee thereof, and in consultation with the Plan Sponsor, shall have the authority: (a) to File, withdraw, or litigate to judgment, objections to Disputed Claims against or Disputed Interests in any of the Debtors; (b) to settle or compromise any Disputed Claim or Disputed Interest without any further notice to or action, order, or approval by the Bankruptcy Court; and (c) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

#### **12.3 Estimation of Claims**

Before or after the Effective Date, in consultation with the Plan Sponsor, the Debtors or the Reorganized Debtors may (but are not required to), at any time, request that the Bankruptcy Court estimate any Disputed Claim pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code, for any reason, regardless of whether any party previously has objected to such Disputed Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under sections 157 and 1334 of the Judicial Code to estimate any such Disputed Claim, including during the litigation of any objection to any Disputed Claim or during the pendency of any appeal relating to such objection. In the event that the Bankruptcy Court estimates any Disputed Claim, that estimated amount shall constitute a maximum limitation on such Disputed Claim for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Debtors or the Reorganized Debtors may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Disputed Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Disputed Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration

of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before 14 days after the date on which such Disputed Claim is estimated.

Each of the foregoing Disputed Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Disputed Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

#### 12.4 **Time to File Objections to Disputed Claims and Disputed Interests**

Any objections to Disputed Claims and Disputed Interests shall be Filed on or before the later of (1) the first Business Day following the date that is 180 days after the Effective Date and (2) such later date as may be specifically fixed by the Bankruptcy Court. For the avoidance of doubt, the Bankruptcy Court may extend the time period to object to Disputed Claims and Disputed Interests.

#### 12.5 **Disallowance of Claims**

Except as otherwise expressly provided for herein, all Claims of any Person from which property is recoverable, based on an order from the Bankruptcy Court, under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer that is avoidable, based on an order from the Bankruptcy Court, under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code, shall be deemed Disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Person have been settled or a Final Order with respect thereto has been entered by the Bankruptcy Court and all sums due, if any, to the Debtors by that Person have been turned over or paid to the Debtors or the Reorganized Debtors, as applicable.

Subject in all respects to Article 13.7, all Proofs of Claim Filed on account of an indemnification obligation to a director, manager, officer, or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to, action, order, or approval of the Bankruptcy Court.

**Except as otherwise provided herein, agreed to by the Reorganized Debtors or otherwise pursuant to an order of the Bankruptcy Court, all Entities that fail to properly File a Proof of Claim form by the applicable Bar Date shall be barred and estopped from (i) asserting any prepetition claim against the Debtors that such Entity may possess and that (A) is in an amount that exceeds the amount, if any, that is identified in the Schedules on behalf of such Entity as undisputed, noncontingent and liquidated or (B) is of a different nature, classification or priority than any Claim identified in the Schedules on behalf of such Entity.**

**Notwithstanding anything herein or in the Bar Date Order to the contrary, nothing herein or in the Bar Date Order shall limit an employee or former employee of the Debtors' right to assert Claims under the Debtors' health or workers' compensation insurance**

**policies. If an employee or former employee has Claims unrelated to (i) medical claims arising under health insurance or (ii) workers' compensation, then the Bar Date applies to such Claims.**

**12.6 Amendments to Proof of Claim**

A Proof of Claim against any Debtor may be amended as permitted by the Bankruptcy Court, the Bankruptcy Rules, or applicable nonbankruptcy law.

**12.7 Distributions After Allowance**

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. On the next Distribution Date (or soon as practicable thereafter) after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, Reorganized Debtor FIC (or any disbursing agent) shall provide to the Holder of such Allowed Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) made on account of the undisputed portion of such Allowed Claim, without any interest, dividends, or accruals to be paid on account of such Allowed Claim.

**ARTICLE XIII**

**RELEASE, INJUNCTION, And related provisions**

**13.1 Releases by the Debtors**

Pursuant to section 1123(b) of the Bankruptcy Code, on and after the Effective Date, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions of the Released Parties to facilitate and implement the Plan, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Reorganized Debtors, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Persons who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Persons, from any and all Causes of Action, including any derivative claims asserted or assertable on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, that the Debtors, the Reorganized Debtors, or their Estates or Affiliates, as applicable, would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the Holder of any Claim against or Interest in the Debtors or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' capital structure, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among the Debtors and/or their Affiliates, the subject matter of, or the transactions or events

giving rise to, any Claim against or Interest in the Debtors that is treated in the Plan, any and all transactions, business or contractual arrangements between any Debtor and any Released Party, including without limitation all management agreements, loan documentation, or lease agreements between any Debtor and any Released Party, the Credit Agreements, the Letters of Credit, the Chapter 11 Cases and related adversary proceedings, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Disclosure Statement, the Plan, the Plan Supplement, the Plan Documents, the Purchase Agreement, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Plan Documents, the Credit Agreements, the Letters of Credit, or the Purchase Agreement, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, or the administration and implementation of the Plan, including providing any legal opinion requested by any Person regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion, the issuance or distribution of any securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related to or related to any of the foregoing. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any obligations of any Person arising after the Effective Date under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

This Article 13.1 shall not operate to waive or release any right, Claim, or Cause of Action (i) in favor of any Debtor or Reorganized Debtor, as applicable, arising in the ordinary course of business under any contractual obligation owed to such Debtor or Reorganized Debtor that is not satisfied or discharged under the Plan or (ii) as expressly set forth herein, the Confirmation Order, or the Plan Supplement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to section 1123(b) and Bankruptcy Rule 9019, of the releases described in this Article 13.1 by the Debtors, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article 13.1 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound exercise of the Debtors' business judgment; and (7) a bar to any of the Debtors or Reorganized Debtors or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

### 13.2 Third Party Releases

On and after the Effective Date, in exchange for good and valuable consideration, including the obligations of the Debtors under the Plan and the contributions of the Released

Parties to facilitate and implement the Plan, to the fullest extent permissible under applicable law, as such law may be extended or integrated after the Effective Date, each of the Releasing Parties is deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released each Debtor, Reorganized Debtor, and Released Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of any of the Debtors, the Reorganized Debtors, or their Estates or Affiliates, as applicable, that such Person would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the Holder of any Claim against or Interest in the Debtors or other Person, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' capital structure, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among the Debtors and/or their Affiliates, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim against or Interest in the Debtors that is treated in the Plan, any and all transactions, business or contractual arrangements between any Debtor and any Released Party, including without limitation all management agreements, loan documentation, or lease agreements between any Debtor and any Released Party, the Credit Agreements, the Letters of Credit, the Chapter 11 Cases and related adversary proceedings, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Disclosure Statement, the Plan, the Plan Supplement, the Plan Documents, the Purchase Agreement, any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Plan Documents, the Credit Agreements, the Letters of Credit, or the Purchase Agreement, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, or the administration and implementation of the Plan, including providing any legal opinion requested by any Person regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion, the issuance or distribution, if any, of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any obligations of any Person arising after the Effective Date under the Plan, the Confirmation Order, or any other document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the releases described in this Article 13.2, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that each release described in this Article 13.2 is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good-faith settlement and compromise of such Causes of Action; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; (6) a sound

exercise of the Debtors' business judgment; and (7) a bar to any of the Releasing Parties or the Debtors or Reorganized Debtors or their respective Estates asserting any Cause of Action related thereto, of any kind, against any of the Released Parties or their property.

### 13.3 Exculpation

Notwithstanding anything herein to the contrary, and upon entry of the Confirmation Order, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action arising from any acts or omissions from the Petition Date through the Effective Date for any Claim or Interest related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Disclosure Statement, the Plan, the Plan Supplement, the Plan Documents, the Purchase Agreement, or any contract, instrument, release, or other agreement or document in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Plan Documents, the Purchase Agreement, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, or the administration and implementation of the Plan, including providing any legal opinion requested by any Person regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion, the issuance or distribution, if any, of Securities pursuant to the Plan or the distribution of property under the Plan or any other agreement (whether or not such issuance or distribution occurs following the Effective Date), negotiations regarding or concerning any of the foregoing, or the administration of the Plan or property to be distributed hereunder, except for Causes of Action related to any act or omission that is determined by Final Order to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Persons shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing such distributions made pursuant to the Plan.

### 13.4 Injunction

Except as otherwise expressly provided in the Plan, the Confirmation Order, or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Persons who have held, hold, or may hold Claims, Interests, or Causes of Action that have been released, or are subject to exculpation are permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, the Exculpated Parties, or the Released Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Persons on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (3) creating, perfecting,

or enforcing any Lien, Claim, or encumbrance of any kind against such Persons or the property or the estates of such Persons on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (4) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Persons or against the property of such Persons on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action, unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Effective Date, and notwithstanding any indication in any Proof of Claim or Proof of Interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind against such Persons on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action released, settled, or compromised pursuant to the Plan.

Upon entry of the Confirmation Order, all Holders of Claims and Interests and their respective current and former affiliates, parents, equity holders (regardless of whether such equity interests are held directly or indirectly), shareholders, stockholders, subsidiaries, coinvestors, partners, limited partners, general partners, and each of their respective officers, directors, members, managers, management companies, managed accounts or funds, principals, successors, assigns, predecessors, participants, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, fund advisors, insurers and other professionals, each in their capacity as such, shall be enjoined from taking any actions to interfere with the implementation or Consummation of the Plan.

Notwithstanding anything to the contrary in the foregoing, the injunction does not enjoin any party from enforcing their rights under the Plan or under any document, instrument or agreement (including those included in the Plan Supplement) executed to implement the Plan, including by bringing an action to enforce the terms of the Plan or such document, instrument or agreement (including those included in the Plan Supplement) executed to implement the Plan.

### 13.5 Release of Liens

Except as otherwise provided in the Plan, the Plan Documents, the Plan Supplement, the Credit Agreements, the Letters of Credit (if applicable), or any contract, instrument, release, or other agreement or document created pursuant to the Plan or the Confirmation Order, on the Effective Date, and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Debtors shall automatically revert to the applicable Debtor or Reorganized Debtor, as applicable, and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. Any Holder of such Secured Claim (and the applicable agents for such Holder) shall be authorized and directed to release any collateral or other property of any Debtor (including any cash collateral and possessory



collateral) held by such Holder (and the applicable agents for such Holder), and to take such actions as requested by the Debtors or Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such documents evidencing such releases. The presentation or filing of the Confirmation Order to or with any local, state, federal, or foreign agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

### 13.6 **Protection Against Discriminatory Treatment**

In accordance with section 525 of the Bankruptcy Code, and consistent with paragraph 2 of Article VI of the United States Constitution, no Governmental Unit shall discriminate against any Reorganized Debtor, or any Person with which a Reorganized Debtor has been or is associated, solely because such Reorganized Debtor was a Debtor under Chapter 11, may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before such Debtor was granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

### 13.7 **Indemnification**

All indemnification obligations in place as of the Effective Date (whether in the by-laws, certificates of incorporation or formation, limited liability company agreements, other organizational or formation documents, board resolutions, indemnification agreements, employment contracts, or otherwise) for the current and former directors, officers, managers, employees, attorneys, accountants, financial advisors, investment bankers, and other professionals of the Debtors, as applicable, shall be assumed and remain in full force and effect after the Effective Date, and shall not be modified, reduced, discharged, impaired, or otherwise affected in any way, and shall survive Unimpaired and unaffected, irrespective of when such obligation arose.

### 13.8 **Deleted.**

### 13.9 **Document Retention**

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors. Any Reorganized Debtor with a Chapter 11 Case that is closed before the other Reorganized Debtor Chapter 11 Cases are closed, shall transfer all documents to Reorganized Debtor FIC until its case is closed, at which time all documents maintained by Reorganized Debtor FIC may be destroyed or otherwise maintained pursuant to the terms of Reorganized Debtor FIC's Final Decree. Notwithstanding the foregoing, the Reorganized Debtors may file a motion seeking for cause early destruction of the Reorganized Debtors' documents.

### 13.10 **Reimbursement or Contribution**

If the Bankruptcy Court Disallows a Claim for reimbursement or contribution of an Person pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever Disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the

Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

#### **13.11 Term of Injunctions or Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. **All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.**

#### **13.12 Release of Preference Actions**

As of the Effective Date, the Debtors, on behalf of themselves and their Estates, shall be deemed to waive and release all Avoidance Actions except for those Avoidance Actions retained by the Debtors or the Reorganized Debtors as identified on the Schedule of Retained Causes of Action to be filed with the Plan Supplement; provided that, except as expressly provided in this Article 13.12 or otherwise in the Plan, or the Confirmation Order, the Reorganized Debtors shall retain the right to assert any Claims assertable in any Avoidance Action as defenses or counterclaims in any Cause of Action brought by any Person.

### **ARTICLE XIV**

#### **CONDITIONS PRECEDENT**

##### **14.1 Conditions Precedent to Confirmation.**

It shall be a condition to Confirmation that the following conditions shall have been satisfied or waived pursuant to Article 14.3:

- (a) the Bankruptcy Court shall have entered the Sale Order;
- (b) the Bankruptcy Court shall have entered the Final Cash Collateral Order in form and substance acceptable to the Plan Sponsor and such order shall have become a Final Order; and
- (c) the Plan, the Plan Documents, the Plan Supplement and the form of Confirmation Order filed by the Debtors shall be in form and substance acceptable to the Plan Sponsor.

##### **14.2 Conditions Precedent to the Effective Date.**

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to Article 14.3:

- (a) all conditions precedent to Confirmation set forth in Article 14.1 hereof shall have been satisfied or waived pursuant to Article 14.3 hereof;

(b) the Bankruptcy Court shall have entered the Confirmation Order, which shall be otherwise reasonably satisfactory to the Debtors and to the Plan Sponsor, and such order shall have become a Final Order;

(c) the Sale Order shall have become a Final Order and the Closing shall have occurred;

(d) all conditions precedent to Closing set forth in the Sale Order shall have been satisfied or waived in accordance with the terms of the Sale Order and the Purchase Agreement;

(e) the Holders of the Secured Lender Claims shall have provided all necessary definitive documentation to waive and release all Claims and Liens in connection with the Credit Agreements consistent with the settlements and substantial contributions to the Plan detailed in Class 2A, Class 2B and Class 2C.

(f) the Plan Documents having been executed and delivered, and any conditions (other than the occurrence of the Effective Date or certification by the Debtors that the Effective Date has occurred) contained therein having been satisfied or waived in accordance therewith; and

(g) all governmental, regulatory, environmental and third party approvals, authorizations, certifications, rulings, no-action letters, opinions, waivers and/or consents including, but not limited to, Bankruptcy Court approval, with respect to the transactions contemplated by the Plan, if any, having been obtained, not be subject to unfulfilled conditions and remaining in full force and effect, there existing no claim, action, suit, investigation, litigation or proceeding, pending or threatened in any court or before any arbitrator or governmental instrumentality, which would prohibit the Consummation of the Plan and all applicable waiting periods having expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions.

#### **14.3 Waiver of Conditions Precedent**

The Debtors, with the prior written consent of the Plan Sponsor (in the Plan Sponsor's sole and absolute discretion), may waive any of the conditions to Confirmation of the Plan or the Effective Date set forth in Article 14.1 or Article 14.2 (as applicable) at any time without any notice to any other parties-in-interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than proceeding to confirm or Consummate the Plan.

#### **14.4 Effect of Non-Occurrence of Conditions to Consummation**

If, prior to Consummation, the Confirmation Order is vacated pursuant to a Final Order, then, except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action; (b) prejudice in any manner the rights of any Debtor or any other Person; or (c) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Person.

## ARTICLE XV

### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

#### **15.1 Modification of Plan**

Effective as of the date hereof: (a) the Debtors, with the prior written consent of the Plan Sponsor, reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan before the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtors with the prior written consent of the Plan Sponsor may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission, or reconcile any inconsistency, in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

Entry of the Confirmation Order shall constitute approval of all modifications or amendments to the Plan and a finding that such modifications to the Plan do not require additional disclosure under Bankruptcy Rule 3019.

#### **15.2 Revocation or Withdrawal of Plan**

The Debtors reserve the right to revoke or withdraw the Plan with respect to any or all Debtors before the Effective Date and to File subsequent chapter 11 plans. If the Debtors revoke or withdraw the Plan, or if Confirmation or the Effective Date does not occur, then: (1) the Plan will be null and void in all respects; (2) any settlement or compromise not previously approved by Final Order of the Bankruptcy Court embodied in the Plan (including the fixing or limiting to an amount certain of the Claims or Interests or Classes of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effectuated by the Plan, and any document or agreement executed pursuant to the Plan will be null and void in all respects; and (3) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Person, (b) prejudice in any manner the rights of any Debtor or any other Person, or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by any Debtor or any other Person.

#### **15.3 Confirmation of the Plan**

The Debtors reserve the right to amend the Plan if required to obtain Confirmation pursuant to section 1129 of the Bankruptcy Code.

## ARTICLE XVI

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, except as otherwise provided herein, the Bankruptcy Court shall retain jurisdiction over all

matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Claim or Interest and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. hear and determine all applications for allowance of compensation and reimbursement of Professional Fee Claims under this Plan or under sections 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;
3. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for Allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
4. resolve any matters related to Executory Contracts or Unexpired Leases, including:  
(a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure claims or other Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed or assumed and assigned; and (c) any dispute regarding whether a contract or lease is or was executory, expired, or terminated;
5. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;
6. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
7. enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of (a) contracts, instruments, releases, indentures, and other agreements or documents approved by Final Order in the Chapter 11 Cases and (b) the Plan, the Confirmation Order, and contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan; provided that the Bankruptcy Court shall not retain jurisdiction over disputes concerning documents contained in the Plan Supplement that have a jurisdictional, forum selection, or dispute resolution clause that refers disputes to a different court;
8. enforce the Sale Order and any other order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
9. grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

10. issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with Consummation or enforcement of the Plan;

11. hear, determine, and resolve any cases, matters, controversies, suits, disputes, or Causes of Action in connection with or in any way related to the Chapter 11 Cases, including: (a) with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article XI; (b) with respect to the releases, injunctions, and other provisions contained in Article XIII, including entry of such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions; (c) that may arise in connection with the Consummation, interpretation, implementation, or enforcement of the Plan or the Confirmation Order, or any Person's obligations incurred in connection with the Plan or the Confirmation Order, including those arising under agreements, documents, or instruments executed in connection with the Plan; or (d) related to section 1141 of the Bankruptcy Code;

12. enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

13. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

14. enforce all orders, judgments, injunctions, releases, exculpations, indemnifications, and rulings entered in connection with the Chapter 11 Cases with respect to any Person, and resolve any cases, controversies, suits, or disputes that may arise in connection with any Person's rights arising from or obligations incurred in connection with the Plan.

15. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

16. enter an order or Final Decree concluding or closing one or more of the Chapter 11 Cases;

17. enforce all orders previously entered by the Bankruptcy Court in the Chapter 11 Cases; and

18. hear any other matter not inconsistent with the Bankruptcy Code or the Judicial Code.

Nothing herein limits the jurisdiction of the Bankruptcy Court to interpret and enforce the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan, the Plan Supplement, or the Disclosure Statement, without regard to whether the controversy with respect to which such interpretation or enforcement relates may be pending in any state or other federal court of competent jurisdiction.

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising out of the Plan, such abstention, refusal, or

failure of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

Unless otherwise specifically provided herein or in a prior order of the Bankruptcy Court, the Bankruptcy Court shall have exclusive jurisdiction to hear and determine disputes concerning Claims against or Interests in the Debtors that arose prior to the Effective Date.

## **ARTICLE XVII**

### **MISCELLANEOUS PROVISIONS**

#### **17.1 Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims or Interests, all Entities that are parties to or are subject to the settlements, compromises, releases, exculpations, and injunctions described in the Plan, each Person acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims against and Interests in the Debtors shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or Interest has voted on the Plan.

#### **17.2 Additional Documents**

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as the Debtors, in consultation with the Plan Sponsor, may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Reorganized Debtors, as applicable, and all Holders of Claims and Interests receiving distributions pursuant to the Plan and all other parties-in-interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **17.3 Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

#### **17.4 Successors and Assigns**

The rights, benefits, and obligations of any Persons named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign, affiliate, officer, director, agent, representative, attorney, beneficiary, or guardian, if any, of each Person.

### 17.5 Service of Documents

Any pleading, notice, or other document given regarding the matters contemplated by this Plan shall, unless otherwise expressly provided herein, be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile or electronic transmission, when sent and shall be served on:

<b>Reorganized Debtors</b>	Todd Schwendenmann 1855 Boston Road, Suite 300 Wilbraham, MA 01095 todd.schwendenmann@ficrg.com  with copies for information only (which shall not constitute notice) to:
<b>Counsel to the Debtors</b>	Matthew P. Ward Ericka F. Johnson Morgan L. Patterson <b>WOMBLE BOND DICKINSON (US) LLP</b> 1313 North Market Street, Suite 1200 Wilmington, DE 19801 Tel: (302) 252-4320 matthew.ward@wbd-us.com ericka.johnson@wbd-us.com morgan.patterson@wbd-us.com
<b>Counsel to Plan Sponsor</b>	Craig A. Wolfe <b>MORGAN, LEWIS &amp; BOCKIUS LLP</b> 101 Park Avenue New York, NY 10178-0060 craig.wolfe@morganlewis.com
<b>Counsel to the Purchaser</b>	Rakhee V. Patel <b>WINSTEAD PC</b> 500 Winstead Building 2728 N. Harwood Street Dallas, TX 75201 rpatel@winstead.com

### 17.6 Entire Agreement

Except as otherwise indicated, on the Effective Date, the Plan, the Plan Supplement, the Confirmation Order, and all documents related thereto supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations with respect to the subject matter of the Plan, all of which will have become merged and integrated into the Plan. Except as set forth in the Plan, in the event that any provision of the Disclosure Statement, the Plan Supplement, or any order (other than the Confirmation Order)



referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

#### 17.7 **Plan Supplement Exhibits**

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Bankruptcy Court's website for a fee at <https://www.pacer.uscourts.gov>, or from the website maintained by the Claims and Noticing Agent for these Chapter 11 Cases at <https://www.donlinrecano.com/friendlys>. Unless otherwise ordered by the Bankruptcy Court, to the extent any exhibit or document in the Plan Supplement is inconsistent with the terms of any part of the Plan that does not constitute the Plan Supplement, such part of the Plan that does not constitute the Plan Supplement shall control.

#### 17.8 **Non-Severability**

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified without the Debtors' consent; and (c) nonseverable and mutually dependent.

#### 17.9 **Substantial Consummation of the Plan**

On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

#### 17.10 **Dissolution of any Statutory Committee**

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall have no further powers or duties and shall be dissolved for all purposes; provided, however, that any such committee and its Professionals shall be entitled, after notice and a hearing, to reasonable compensation and reimbursement of actual and necessary expenses incurred prior to the Effective Date.

**17.11 Closing of the Chapter 11 Cases**

As soon as practicable after the Effective Date, the Chapter 11 Cases of Debtor Neapolitan, FIC Holdings, Friendly's and Franchising shall be closed with all outstanding Statutory Fees, if any, paid in conjunction with such Debtor's Filing of the respective proposed Final Decrees closing such cases. All Claims against the four Debtors with Chapter 11 Cases closing shortly after the Effective Date, shall be consolidated for administrative purposes with the Claims of Reorganized Debtor FIC for the Claims reconciliation, resolution and distribution process.

Thereafter, the Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases through Reorganized Debtor FIC, File all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the FIC Chapter 11 Case.

**17.12 Waiver or Estoppel**

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Person, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed prior to the Confirmation Date.

**17.13 Dates of Actions to Implement the Plan**

In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**17.14 Deemed Acts**

Subject to and conditioned on the occurrence of the Effective Date, whenever an act or event is expressed under the Plan to have been deemed done or to have occurred, it shall be deemed to have been done or to have occurred without any further act by any party, by virtue of the Plan and the Confirmation Order.

*[The remainder of this page is intentionally left blank.]*

FIC Restaurants, Inc.

By: /s/ Marc L. Pfefferle

Neapolitan Group Holdings, LLC

By: /s/ Marc L. Pfefferle

FIC Holdings, LLC

By: /s/ Marc L. Pfefferle

Friendly's Restaurant, LLC

By: /s/ Marc L. Pfefferle

Friendly's Franchising, LLC

By: /s/ Marc L. Pfefferle

**EXHIBIT B**

**(Notice of Effective Date)**

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

In re:	)	
	)	Chapter 11
FIC RESTAURANTS, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 20-12807 (CSS)
Debtors.	)	
	)	(Jointly Administered)

**NOTICE OF (A) ENTRY OF CONFIRMATION ORDER AND OCCURRENCE  
OF THE EFFECTIVE DATE OF AMENDED COMBINED DISCLOSURE  
STATEMENT AND JOINT CHAPTER 11 PLAN OF LIQUIDATION AND (B) BAR  
DATES FOR FILING ADMINISTRATIVE EXPENSE CLAIMS, PROFESSIONAL  
CLAIMS AND CONTRACT/LEASE REJECTION DAMAGES CLAIMS**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. **Confirmation of the Plan.** On [ · ], 2020, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Confirmation Order**”) confirming the Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation [Docket No. [·]] (as modified or amended and supplemented, the “**Plan**”), in the Chapter 11 Cases of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”). Unless otherwise defined in this Notice, capitalized terms and phrases used herein have the meanings given to them in the Plan and the Confirmation Order. This Notice is intended solely to provide notice of the entry of the Confirmation Order and it does not, and shall not be construed to, limit, modify or interpret any of the provisions of the Confirmation Order. The following paragraphs identify some of the provisions of the Confirmation Order for the convenience of creditors; however, creditors should refer to the full text of the Confirmation Order and should not rely upon the summary provided below.

2. **Effective Date of the Plan.** On [ · ], 2020, the Effective Date of the Plan occurred. All conditions precedent to the Effective Date enumerated in Article 14.2 of the Plan were satisfied or waived in accordance with the Plan. Pursuant to the Confirmation Order and the Plan, the releases, exculpation, and injunction provisions set forth in Article XIII of the Plan are now in full force and effect.

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<sup>1</sup> The Debtors in these chapter 11 cases, their jurisdictions of organization, and the last four digits of their U.S. taxpayer identification numbers are: (1) FIC Restaurants, Inc., a Massachusetts, corporation (1388) (“FIC”); (2) FIC Holdings, LLC, a Delaware limited liability company (0204) (“FIC Holdings”); (3) Neapolitan Group Holdings, LLC, a Delaware limited liability company (7922) (“Neapolitan”); (4) Friendly’s Restaurants, LLC, a Delaware limited liability company (0696) (“Friendly’s”); and (5) Friendly’s Franchising, LLC, a Delaware limited liability company (4364) (“Franchising”). The Debtors’ corporate headquarters is located at 1855 Boston Road, Suite 300, Wilbraham, MA 01095.

3. **Bar Dates.** If a Holder of an Administrative Claim (other than cure costs, or U.S. Trustee quarterly fees) that is required to, but does not, file and serve a request for payment of such Administrative Claim, Professional Claim, or Rejections Claim by the applicable Bar Date the Holder of such Claim shall be forever barred, estopped and enjoined from asserting such Administrative Claim, Professional Claim or Rejection Claim against the Debtors, the Reorganized Debtors and their respective Estates.

- a. *Administrative Claims.* All requests for payment of an Administrative Claim (other than Cure Costs, Professional Claims, or U.S. Trustee quarterly fees) that accrued on or before the Effective Date that were not otherwise accrued in the ordinary course of business must be filed with the Bankruptcy Court and served on the Reorganized Debtors no later than the date that is the 30th day after the Effective Date.
- b. *Professional Claims.* All final requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Effective Date must be Filed no later than 30th day after the Effective Date. Objections to any final requests for payment of Professional Claims must be filed no later than 21 days from the date of the filing of such final requests for payment of Professional Claims. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Bankruptcy Rules, and prior Bankruptcy Court orders. The Reorganized Debtors shall pay Professional Claims owing to the Professionals in Cash to such Professionals in the amount the Bankruptcy Court Allows.
- c. *Rejection Claims.* Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of the Executory Contracts and Unexpired Leases pursuant to the Plan must be filed with the Notice and Claims Agent by the later to occur of: (1) 30 days after the Effective Date and (2) 30 days after the Debtors surrender possession to a landlord of a rejected Unexpired Lease where surrender occurs after entry of an order approving such rejection.
  - i. Each Proof of Claim, including supporting documentation, for Rejection Claims must be submitted by electronic submission through the website of the Debtors' claims and noticing agent, Donlin Recano & Company, Inc. ("**Donlin Recano**") <https://www.donlinrecano.com/Clients/fr/FileClaim> or by hand delivery, courier service, first-class mail, overnight mail as to be **actually received** by Donlin Recano on or before the applicable deadline at:

**If Proof of Claim is sent by mail, send to:**

Donlin, Recano & Company, Inc.  
Re: FIC Restaurants, Inc., et al.  
P.O. Box 199043  
Blythebourne Station  
Brooklyn, NY 11219

**If Proof of Claim is sent by Overnight Courier or Hand Delivery, send to:**

Donlin, Recano & Company, Inc.  
Re: FIC Restaurants, Inc., et al.  
6201 15th Avenue  
Brooklyn, NY 11219

- ii. Receipt of Service. Persons or Entities wishing to receive acknowledgment that their paper-filed Proofs of Claim were received by Donlin Recano must submit: (i) a copy of the Proof of Claim form (in addition to the original Proof of Claim form sent to the Claims and Noticing Agent); and (ii) a self-addressed, stamped envelope.

4. Bankruptcy Court Address. For purposes of Filing requests for payment of Administrative Claims and applications for allowance of Professional Claims, the address of the Bankruptcy Court is 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

5. Copies of Confirmation Order. Copies of the Confirmation Order, the Plan, and any pleadings filed in these Chapter 11 Cases may be obtained by (a) visiting the Debtors' restructuring website at <https://www.donlinrecano.com/friendlys>; (b) sending an email to [friendlysinfo@donlinrecano.com](mailto:friendlysinfo@donlinrecano.com); and/or (c) calling the Debtors' restructuring hotline at 1-(866) 853-1834. The Confirmation Order and the Plan may also be examined by any party in interest during normal business hours at the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. You may also obtain copies of the Confirmation Order or of any pleadings filed in these Chapter 11 Cases for a fee at <http://www.deb.uscourts.gov>.

Dated: [·]  
Wilmington, Delaware

**WOMBLE BOND DICKINSON (US) LLP**

/s/  
\_\_\_\_\_  
Matthew P. Ward (DE Bar No. 4471)  
Ericka F. Johnson (DE Bar No. 5024)  
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Email: [nick.verna@wbd-us.com](mailto:nick.verna@wbd-us.com)

*Counsel to the Debtors and Debtors in Possession*

**EXHIBIT C**

**(Publication Notice of Effective Date)**



**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	) Chapter 11
FIC RESTAURANTS, INC., <i>et al.</i> ,	) Case No. 20-12807 (CSS)
Debtors.	)

**NOTICE OF (A) ENTRY OF CONFIRMATION ORDER AND OCCURRENCE OF THE EFFECTIVE DATE AND (B) DEADLINE FOR FILING CLAIMS**

1. **Plan Confirmed.** On [ · ], 2020, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered an order (the “**Confirmation Order**”) confirming the Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation [Docket No. [·]] (as modified or amended and supplemented, the “**Plan**”), in the Chapter 11 Cases of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”). Copies of all documents relating to the Chapter 11 Cases may be downloaded from <https://www.donlinrecano.com/friendlys> or may be obtained by a written request to (i) Donlin, Recano & Company, Inc., Re: FIC Restaurants, Inc., et al., P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219, (ii) email to [friendlysinfo@donlinrecano.com](mailto:friendlysinfo@donlinrecano.com), or (iii) calling 1-(866) 853-1834.

2. **Effective Date of the Plan.** On [ · ], 2020, the Effective Date of the Plan occurred. Pursuant to the Confirmation Order and the Plan, the releases, exculpation, and injunction provisions set forth in Article XIII of the Plan are now in full force and effect.

3. **Administrative Claims.** All requests for payment of an Administrative Claim (other than cure costs), Professional Claims, or U.S. Trustee quarterly fees) that accrued on or before the Effective Date that were not otherwise accrued in the ordinary course of business must be filed with the Bankruptcy Court and served on the Reorganized Debtors no later than the date that is the 30th day after the Effective Date.

4. **Rejection Claims.** Unless otherwise provided by a Bankruptcy Court order, any Proofs of Claim asserting Claims arising from the rejection of the Executory Contracts and Unexpired Leases pursuant to the Plan must be filed by the later to occur of: (1) 30 days after the Effective Date and (2) 30 days after the Debtors surrender possession to a landlord of a rejected Unexpired Lease where surrender occurs after entry of an order approving such rejection.

5. **How to File.** Information on how to file claims is available at <https://www.donlinrecano.com/friendlys> or by calling 1-(866) 853-1834.

6. **Consequences of Not Filing.** Any creditor who is required, but fails, to file by the applicable deadline may be forever barred and estopped from asserting such Claim against the Debtors, the Claim released, and such Holder may not be permitted to participate in any distribution in the Debtors' Chapter 11 Cases under the Plan on account of such Claim. A creditor should consult an attorney if there are any questions.