IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: ROADHOUSE HOLDING INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 16-11819 (BLS) (Jointly Administered)

DEBTORS' MEMORANDUM OF LAW IN SUPPORT OF DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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Wilmington, Delaware

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Roadhouse Holding Inc. (5939); Roadhouse Intermediate Inc. (6159); Roadhouse Midco Inc. (6337); Roadhouse Parent Inc. (5108); LRI Holdings, Inc. (4571); Logan's Roadhouse, Inc. (2074); Logan's Roadhouse of Texas, Inc. (2372); and Logan's Roadhouse of Kansas, Inc. (8716). The location of the Debtors' corporate headquarters is 3011 Armory Drive, Suite 300, Nashville, Tennessee 37204.

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MEMORANDUM OF LAW

Roadhouse Holding Inc. and its affiliated debtor entities (collectively, the "**Debtors**"), hereby submit this memorandum of law (this "**Memorandum of Law**") in support of confirmation of the *Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated September 28, 2016 [Docket No. 329] (including all exhibits thereto and as may be amended, modified or supplemented from time to time, the "**Plan**").[1] In support of confirmation of the Plan, the Debtors respectfully submit (a) the declaration of Nishant Macahado (the "**Machado Declaration**"), (b) the declaration of Richard Morgner (the "**Morgner Declaration**"), and (c) the voting report submitted by the Balloting Agent (the "**Voting Declaration**" and with the Machado Declaration and Morgner Declaration, collectively the "**Declarations**"), each of which were filed contemporaneously herewith and are incorporated herein by reference. In further support of confirmation, the Debtors respectfully state as follows:

I. PRELIMINARY STATEMENT

1. The Plan is the culmination of a consensual reorganization process negotiated among the Debtors' major secured creditors prior to filing, with further improvements developed after the Petition Date through the efforts of the Creditors' Committee. This restructuring will deleverage the Debtors by well in excess of $300 million of secured debt and positions the Logan's brand to succeed as a going concern, benefitting over 200 landlords, several hundred more suppliers and business partners, approximately 13,000 employees, and millions of Logan's customers.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. Any summary herein of the terms and conditions of the Plan and any related documents is qualified in its entirety by the actual terms and conditions thereof.

2. Moreover, the Plan garnered substantial creditor support beyond the parties to the Restructuring Support Agreement with over 91% of the dollar amount and over 76% of the creditors holding General Unsecured Claims voting to accept the Plan and over 70% of the holders of the 2010 Notes that voted on the Plan (and 99% in dollar amount) voting to accept the Plan. As demonstrated herein and in the Machado Declaration and Morgner Declaration, the Plan meets the requirements for confirmation under section 1129 of the Bankruptcy Code and should be confirmed.

II. PROCEDURAL BACKGROUND

3. On August 16, 2016, the Debtors filed the *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 114] and the *Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 115].

4. On September 28, 2016, the Debtors filed the Plan and the *Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 330] (the "**Disclosure Statement**").

5. On September 28, 2016, the Court entered an order [Docket No. 334] (the "**Solicitation Procedures Order**") approving the Disclosure Statement and authorizing the solicitation of votes to accept or reject the Plan.

6. On October 26, 2016, the Debtors filed the *Plan Supplement to the Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, Dated September 28, 2016* [Docket No. 459] (the "**Initial Plan Supplement**") and on November 6, 2016, the Debtors filed the *Notice of Filing (First) of Proposed Amendments and Revisions to Plan Supplement Documents* [Docket No. 535] (together with the Initial Plan Supplement, the "**Plan Supplement**").

7. A hearing on confirmation of the Plan is scheduled for November 9, 2016 (the "**Confirmation Hearing**"). In connection with the Confirmation Hearing, the Debtors submit this Memorandum to address the basic requirements set forth in title 11 of the United States Code (the "**Bankruptcy Code**") for confirmation and to respond to the various objections to confirmation of the Plan. The Debtors will also present evidence at the Confirmation Hearing to establish the factual predicates necessary for confirmation of the Plan.

8. Following the solicitation of acceptances on the Plan, which ended on November 2, 2016, except where extended by order of the Court [*see* Docket No. 334], the Plan was accepted by all of the classes entitled to vote on the Plan.

9. In total, as a result of all the interested parties' efforts to present a consensual chapter 11 plan, the Debtors only received formal objections to confirmation of the Plan from the following parties: (a) Ronnie Jandt [Docket No. 410]; (b) Ecolab, Inc. [Docket No. 489]; (c) Lubbock CAD, *et al.* [Docket No. 508]; and (d) the "Texas Ad Valorem Taxing Jurisdictions" [Docket No. 519] (each a "**Confirmation Objection**"). The Confirmation Objection of Mr. Jandt is addressed at Part V, *infra*. The Debtors have resolved the Confirmation Objections of Ecolab, Inc., Lubbock CAD, *et al.*, and the Texas *Ad Valorem* Taxing Jurisdictions through the addition of certain language to the proposed order confirming the Plan (the "**Confirmation Order**"). The Debtors also received certain informal objections that the Debtors believe have been resolved by clarifying or adding language in the Confirmation Order.

10. Additionally, the Debtors received formal objections to the assumption of executory contracts and leases and/or the applicable cure amount from the following parties: (a) Simon Property Group, Inc. [Docket No. 873]; (b) Ardmore of Ohio, Ltd [Docket No. 476];

(c) CNMK Texas Properties, LLC [Docket No. 479]; (d) Excel Spring Hill LL [Docket No. 481]; (e) IREIT Shreveport Regal Court, L.L.C. [Docket No. 482]; (f) Warren Logan's Tennessee LLC [Docket No. 483]; (g) ARC HCHARTX001, LLC [Docket No. 485]; (h) CBL & Associates Management, Inc. [Docket No. 487]; (i) The Sobhani 2005 Trust, Gloria Stephens Sobhani, Trustee; Sherine Jane Sobhani; Paree May Sobhani; The Layli Sobhani 2006 Trust, S. Layli Sobhani Azevedo, Trustee; and Stephen Borhan [Docket No. 488]; (j) Cintas Corporation No. 2 [Docket No. 484]; (k) Ecolab Inc. [Docket No. 489]; (l) RLV Millennium Park LP, Ramco-Gershenson Properties, LP, Ramco Jacksonville LLC, Geenen DeKock Properties, LLC, JANAF Shopping Center, LLC, and Kimco Riverview, LLC [Docket No. 490], (m) Champion Energy Services, LLC [Docket No. 492]; (n) WRI Ridgeway LLC [Docket No. 501; (o) Store Master Funding VIII, LLC [Docket No. 504]; (p) Washington Prime Group Inc. [Docket No. 505]; (q) Valley Road Properties, LLC [Docket No. 506]; (r) Store Master Funding III, LLC [Docket No. 507]; (s) NTS Bluegrass Commonwealth Park [Docket No. 509]; (t); Bluegrass Steaks, Inc. [Docket No. 510]; (u) the Le Friant Family Trust, Mary Elizabeth Le Friant, Co-Trustee, and Urban E. Mathieu, Jr., c/o Mary Elizabeth Le Friant [Docket No. 522]; (v) IRC Stone Creek, L.L.C. [Docket No. 524]; and (w) Cole LR Bristol VA, LLC, Cole LR Lancaster TX, LLC, Cole LR Martinsburg WV, LLC, Cole LR Opelika AL, LLC, Cole LR Sanford FL, LLC, Cole LR Troy OH, LLC, Cole LR Florence AL DST, Cole LR Killeen TX DST, Cole LR Tuscaloosa AL DST, Cole LR Waco TX DST, ARCP LR Fort Wayne IN, LLC, ARC CAFEUSA001, LLC, and CNL Net Lease Funding 2003, LLC [Docket No. 532] (each a "**Cure Objection**," and together with the Confirmation Objections, collectively, the "**Objections**"). The Debtors also received several informal Cure Objections. The Debtors believe they have resolved the issues raised in the Cure Objections, other than with respect to property-specific cure amounts, through the

addition of certain language to the proposed Confirmation Order. The Debtors intend to continue to work with the landlords to resolve the property-specific cure amounts issues and anticipate adjourning disputes regarding specific cure amounts while the Debtors continue to work with the counterparties to resolve those objections without the need for contested proceedings before this Court.

III. BACKGROUND AND OVERVIEW OF THE PLAN

A. Plan Formulation

11. The Debtors commenced these cases to implement a balance sheet and operational restructuring that will allow the Debtors to become a market leading casual dining steakhouse operator. In furtherance of this goal, prior to the Petition Date, the Debtors, in consultation with their professional advisors and after careful examination by the Debtors' management team, entered into that certain Restructuring Support Agreement, dated August 8, 2016.

12. The Restructuring Support Agreement is the lynchpin of the Debtors' proposed Plan. Pursuant to the Restructuring Support Agreement, the Debtors' Supporting Lenders and holders of over 83.9% of the approximately $378.0 million in principal amount of Notes agreed to support the restructuring, including committed exit financing facilities. Ultimately, the restructuring will (i) deleverage the company by over $300 million; (ii) provide liquidity to the Debtors' business; and (iii) facilitate financing and eliminate substantial ongoing cash debt service obligations to provide a stable financial foundation on which the Debtors can implement their operational restructuring and business plan and return to financial success.

13. Negotiations leading up to the entry into the Restructuring Support Agreement were hard-fought by the Debtors, their directors and officers and their advisors,

spanned several months, and the considerations and proposals ran the gamut of transactions and restructuring scenarios. Ultimately, those negotiations led to the parties to the Restructuring Support Agreement providing the Debtors with several valuable restructuring tools to implement the necessary financial and operational restructuring. This included, in addition to the prepetition forbearances that were entered into while the parties negotiated the Restructuring Support Agreement:

a) Consenting to cash collateral usage during the Chapter 11 Cases;

b) Rolling over the Revolving Lenders' claims into the Exit First Lien Facility, which has a maturity date 30 months after the Effective Date and the ability to pay in kind portions of interest;

c) Funding $25 million of new money, debtor-in-possession financing (junior to the Revolving Facility Lenders' liens) that provided the Debtors with the cash necessary not only to prosecute a chapter 11 plan but also sufficient post-emergence run-way to implement the Debtors' operational turnaround;

d) Rolling over the DIP Facilities obligations into the Exit Second Lien Facility and agreeing that such facility would only pay interest in kind, resulting in substantial cash savings to the Debtors that would not be available if the Debtors were required to take out the DIP Facility with a facility that paid in interest in cash only;

e) Committing to support a chapter 11 plan process, rather than an expedited section 363 sale process, that ensures payment of all administrative and priority creditors;

f) Consenting to the full equitization of the Notes Claims (except for those receiving the Cash-Out Payment);

g) Consenting to the extinguishment under the Plan of the greater than 97% equity interest in the Debtors that the Sponsors (who are also Noteholders) held without any consideration; and

h) Agreeing to the aggregate distribution of a $350,000 General Unsecured Claim Cash Pool to unsecured creditors if the class of unsecured creditors voted to accept the Plan.

14. The parties to the Restructuring Support Agreement, the Indenture Trustees, and the Debtors continued to work constructively to ensure that an effective

restructuring of the Debtors could be achieved. In furtherance of that goal, the parties to the Restructuring Support Agreement and DIP Credit Agreement agreed to several waivers thereunder to allow the Creditors' Committee to advance negotiations regarding amendments to the plan initially proposed in accordance with the Restructuring Support Agreement and the DIP Facilities. Those negotiations were ultimately fruitful, as the parties agreed upon the Creditors' Committee Settlement and the Debtors were able to file the Plan and the parties agreed to certain amendments to the DIP Facilities, which resulted in:

a) Adding $3.5 million in cash financing provided by the Unanimous Supporting Noteholders to the Exit Second Lien Facility;

b) Providing for an increase in the General Unsecured Claim Cash Pool to $1 million;

c) Amending the Plan to waive unsecured deficiency claims on account of the Notes, thereby substantially reducing the claims pool and materially increasing recoveries for the remaining General Unsecured Claims within the claims pool;

d) Waiving the Sponsors' General Unsecured Claims of several million dollars, further enhancing recoveries to General Unsecured Creditors;

e) Waiving and releasing Avoidance Actions, which the Debtors believe would exist substantially against holders of General Unsecured Claims; and

f) Increasing the funds available under the DIP Facilities for the Creditors' Committee's advisors, subject to the Creditors' Committee Claims Cap.

15. The Plan is the cumulative result of many concessions and accommodations by the Revolving Facility Agent, Revolving Facility Lenders, the Noteholders initially party to the Restructuring Supporting Agreement, and the Sponsors (which are also Noteholders). Further, the Debtors' officers, directors, and advisors, provided substantial and tireless efforts to the financial restructuring of the Debtors, which in itself is a substantial feat, but also to the operational turnaround of the Debtors.

B. Summary of the Plan

16. Under the Plan, the Debtors will reorganize and continue to operate as a going-concern, operating approximately 195 Logan's Roadhouse restaurants, with a financially healthier balance sheet and substantially reduced debt and cash debt service obligations. The Debtors are assuming (and not rejecting) approximately 195 leases on non-residential real property and numerous other executory contracts, the Debtors will continue to employ approximately 13,000 employees, and the Debtors will emerge as stronger business partner to their hundreds, if not thousands, of suppliers and service providers.

17. The Plan constitutes a plan of reorganization under chapter 11 of the Bankruptcy Code for the Debtors, under which their Estates will be consolidated for limited purposes under the Plan. The Plan provides for full payment of Administrative Claims, Professional Fee Claims, and Priority Tax Claims, consensual conversion of DIP Facilities Claims into the Exit Second Lien Facility, and renders Unimpaired Class 1 Other Priority Claims, Class 2 Other Secured Claims, Class 7 Intercompany Claims, and Class 10 Intercompany Interests.

18. Meanwhile, each holder of a Revolving Facility Lender Claim shall receive a Pro Rata share of the Exit Revolving Facility (by having any Revolving Facility Lender Claims for outstanding principal deemed outstanding under the Exit Revolving Facility on a dollar-for-dollar basis and all letters of credit issued under the Credit Agreement deemed outstanding under the Exit Revolving Facility), provided, however, that all Revolving Facility Lender Claims for interest and outstanding expenses shall be paid on the Effective Date in Cash to the extent not previously paid pursuant to the Interim DIP Order or Final DIP Order. Holders of Note Claims (Class 4 and 5) will receive either (i) a Pro Rata share of the New Stock (the common stock in Reorganized Holding that will be issued on or after the Effective Date), subject

to dilution for the Management Incentive Plan (to the extent the board of directors of Reorganized Holding approves awards of New Stock thereunder) or (ii) the Cash-Out Payment, which will be paid in Cash (as opposed to New Secured Notes), to the extent that their aggregate holdings are less than $9,000. Each holder of a Note Claim shall be deemed to have waived its Notes Deficiency Claim.

19. With respect to the holders of Allowed General Unsecured Claims, on the Effective Date, or as soon thereafter as reasonably practicable, except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Claim, each holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the General Unsecured Claim Cash Pool, which shall include $1,000,000 Cash for distribution to holders of Allowed General Unsecured Claims.

20. Class 7 Intercompany Claims shall be reinstated, cancelled or compromised as determined by the Debtors with the consent of the Required Supporting Noteholders. Class 8 Subordinated Claims shall neither receive Distributions nor retain any property under the Plan for or on account of such Subordinated Claims. Class 9 Existing Equity Interests shall be discharged, cancelled, released, and extinguished as of the Effective Date and holders of Existing Equity Interests shall neither receive any Distributions nor retain any property under the Plan for or on account of such Equity Interests. Class 10 Intercompany Interests shall be cancelled or reinstated, as determined by the Debtors with the consent of the Required Supporting Noteholders.

C. Plan Solicitation and the Results Thereof

21. On October 5, 2016, in accordance with the Solicitation Procedures Order, the Debtors commenced solicitation of the Plan by distributing the Disclosure Statement and

related materials to holders of Claims and Interests classified in impaired Classes entitled to vote under the Plan. With respect to the solicitation of the Plan, the Debtors, through Donlin, Recano & Company, Inc. ("**Donlin**"), the Debtors' claims agent, transmitted: (a) the Confirmation Hearing Notice; (b) the Solicitation Procedures Order; (c) the applicable form of Ballot; (d) a pre-paid, pre-addressed return envelope; and (e) either a paper copy or a copy in "pdf" format on CD-ROM of the Disclosure Statement (with the Plan and other exhibits annexed thereto) (collectively, the "**Solicitation Package**"), to all known holders of Claims and Interests in each impaired class of Claims and Interests entitled to vote to accept or reject the Plan as of September 28, 2016 (the "**Record Date**"). Specifically, the Solicitation Package was distributed to holders of Claims in Class 3 (Revolving Facility Claims), Class 4 (GSO Notes Claims and Kelso Notes Claims), Class 5 (Unexchanged Notes Claims), and Class 6 (General Unsecured Claims). *See Affidavit of Donlin, Recano and Company, Inc. Regarding Service of Solicitation Packages with Respect to Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 386].

22. Additionally, as required by the Solicitation Procedures Order, the Debtors served a copy of the Confirmation Hearing Notice and the Non-Voting Holder Notice on the holders of (i) unimpaired claims in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 7 (Intercompany Claims), and Class 10 (Intercompany Interests) that are deemed to accept the Plan; and (ii) impaired claims or interests in Class 8 (Subordinated Claims) and Class 9 (Existing Equity Interests) that are deemed to reject the Plan. The Debtors also served a copy of the Confirmation Hearing Notice on all parties who are known or potential creditors or interest holders, including counterparties to executory contracts or unexpired leases, as of the Voting Record Date.

23. Finally, the Debtors published the Confirmation Hearing Notice and the deadlines to vote on and file objections to the Plan in the national edition of the *New York Times* on October 7, 2016.

24. Pursuant to the Solicitation Procedures Order, the deadline for returning ballots accepting or rejecting the Plan was set as 5:00 p.m. (ET) on November 2, 2016 (the "**Voting Deadline**").

25. The following chart illustrates the voting results provided by Donlin Recano to the Debtors, which shows unanimous acceptance by parties voting in two of four classes, and substantial creditors support (at least 90% in dollar amount and 70% in number of votes) in the other two classes:

		Accepting		**Rejecting**		
Class	**Class Description**	**Amount ($)**	**Number**	**Amount ($)**	**Number**	**Class Voting Result**
		%	**%**	**%**	**%**	
3	Revolving Facility Lender Claims	29,000,000.00	2	0	0	**Accept**
		100%	100%	0%	0%	
4	GSO Notes Claims and Kelso Notes Claims	241,897,000.00	5	0	0	**Accept**
		100%	100%	0%	0%	
5	Unexchanged Notes Claims	118,181,000	114	1,122,000	48	**Accept**
		99.06%	70.37%	0.94%	29.63%	
6	General Unsecured Claims	6,480,360.17	160	601,429.26	50	**Accept**
		91.51%	76.19%	8.49%	23.81%	

IV. THE PLAN SHOULD BE CONFIRMED BECAUSE IT COMPLIES WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

26. To confirm the Plan, the Court must find that both the Plan and the Debtors, as proponents of the Plan, satisfy the requirements of section 1129(a) of the Bankruptcy Code under a preponderance of the evidence standard. *See In re Armstrong World Indus.*, 348

B.R. 111, 120-22 (D. Del. 2006); *In re Alta+Cast, LLC*, 2004 Bankr. LEXIS 219, at *6 (Bankr. D. Del. 2004); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 616 n.23 (Bankr. D. Del. 2001), *appeal dismissed*, 280 B.R. 339 (D. Del. 2002).

27. As set forth below in detail, the Plan and the Debtors, as applicable, satisfy all of the applicable requirements of sections 1129(a) of the Bankruptcy Code and section 1129(b)(1) of the Bankruptcy Code, which enables the Plan to be confirmed notwithstanding the fact that not all impaired Classes of Claims and Interests have accepted the Plan. The Plan is fair and equitable with respect to such non-accepting impaired Classes and does not unfairly discriminate against such Classes. Accordingly, the Plan should be confirmed pursuant to section 1129 of the Bankruptcy Code.

A. Section 1129(a)(1) – The Plan Complies with the Applicable Provisions of the Bankruptcy Code

28. Section 1129(a)(1) of the Bankruptcy Code provides that a court may confirm a plan of reorganization only if "[t]he plan complies with the applicable provisions of this title." The phrase "applicable provisions" has been interpreted to include sections 1122 and 1123 of the Bankruptcy Code, which govern the classification of claims and interests and the contents of a plan of reorganization. *Kane v. Johns-Mansville Corp.*, 843 F.2d 636, 648-49 (2d Cir. 1988); *In re Century Glove, Inc.*, Civ. A. Nos. 90-400-SLR, 90-401-SLR, 1993 U.S. Dist. LEXIS 2286, at *6 (D. Del. Feb. 10, 1993); H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978).

i. Appropriate Designation of Classes of Claims and Interests (Sections 1122 and 1123(a)(1))

29. Section 1123(a)(1) of the Bankruptcy Code requires that a chapter 11 plan classify all claims (with the exception of certain administrative and priority claims) and all interests, and that such classification comply with section 1122 of the Bankruptcy Code. 11

U.S.C. § 1123(a)(1). With the exception of DIP Facilities Claims, Administrative Claims, Professional Fee Claims, and Priority Tax Claims, which are not required to be classified under the Plan, Article II of the Plan designates various Classes of Claims and Interests.

30. Section 1122(a) of the Bankruptcy Code provides that a plan may place a claim or interest in a particular class only if it is substantially similar to other claims or interests in the class. *See In re Caldwell*, 76 B.R. 643, 644 (Bankr. E.D. Tenn. 1987). Claims or interests in a class need not be identical, but should be similar in legal character or effect with respect to the debtor. *See In re AOV Indus., Inc.*, 792 F.2d 1140, 1150-51 (D.C. Cir. 1986) (affirming plan confirmation where claims guaranteed by third party were grouped with non-guaranteed claims).

31. Section 1122(a) does not require placement of all claims that are substantially similar in the same class just because they may share some attributes. *See, e.g., In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060 (3d Cir. 1987) ("[t]he express language of this statute explicitly forbids a plan from placing dissimilar claims in the same class; it does not, though, address the presence of similar claims in different classes."). The debtor must simply advance a legitimate reason supported by credible proof for the separate classification. *See Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co. Inc. (In re U.S. Truck Co.)*, 800 F.2d 581, 585 (6th Cir. 1986) (affirming plan confirmation over objection by collective bargaining unit, finding that section 1122(a) "does not require that similar claims be grouped together, but merely that any group created must be homogenous"); *Aetna Cas. & Sur. Co. v. Clerk, United States Bankr. Ct. (In re Chateaugay Corp.)*, 89 F.3d 942, 949 (2d Cir. 1996) (affirming plan confirmation where debtor offered business justification for dividing workers' compensation claims into two classes); *In re Heritage Org., L.L.C.*, 375 B.R. 230, 298 n. 86 (Bankr. N.D. Tex. 2007) (finding that if creditors had different legal rights under principles of

equitable subordination, then separate classification would be appropriate). Thus, section 1122 of the Bankruptcy Code provides debtors with a large amount of flexibility to create classification schemes that will facilitate reorganization.

32. Here, the Plan's classification structure meets the applicable classification standards. The Plan provides for the separation of Claims and Interests into the following Classes based upon differences in the contractual and legal nature and/or priority of such Claims and Interests:

- Class 1 – provides for the separate classification of all Other Priority Claims;
- Class 2 – provides for the separate classification of all Other Secured Claims;
- Class 3 – provides for the separate classification of all Revolving Facility Lender Claims;
- Class 4 – provides for the separate classification of all GSO Notes Claims and Kelso Notes Claims, which are *pari passu* with, but arise under a separate indenture than, the Unexchanged Notes Claims;
- Class 5 – provides for the separate classification of all Unexchanged Notes Claims, which are *pari passu* with, but arise under a separate indenture than, the GSO Notes Claims and Kelso Notes Claims;
- Class 6 - provides for the separate classification of all General Unsecured Claims;
- Class 7 – provides for the separate classification of all Intercompany Claims;
- Class 8 – provides for the separate classification of all Subordinated Claims;
- Class 9 – provides for the separate classification of all Existing Equity Interests; and
- Class 10 – provides for the separate classification of all Intercompany Interests.

33. As required by section 1122(a) of the Bankruptcy Code, each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other

Claims or Interests within that Class. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims and Interests under the Plan, and the Plan's treatment thereof does not unfairly discriminate between holders of Claims or Interests. Pursuant to section 1123(a)(1) of the Bankruptcy Code, DIP Facilities Claims, Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not required to be classified under the Plan and as such have not been classified thereunder.

34. Accordingly, the Debtors submit that the Plan satisfies the requirements of section 1122 of the Bankruptcy Code.

ii. Specification of Unimpaired Classes (Section 1123(a)(2))

35. Section 1123(a)(2) of the Bankruptcy Code requires that a chapter 11 plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). In compliance with section 1123(a)(2), Article IV of the Plan specifies that Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 7 (Intercompany Claims), and Class 10 (Intercompany Interests) are Unimpaired under the Plan within the meaning of section 1124 of the Bankruptcy Code.

36. Accordingly, the Plan satisfies the requirements of section 1123(a)(2) of the Bankruptcy Code.

iii. Treatment of Impaired Classes (Section 1123(a)(3))

37. Section 1123(a)(3) of the Bankruptcy Code requires that a chapter 11 plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). In compliance with section 1123(a)(3) of the Bankruptcy Code, Article IV of the Plan specifies the treatment of each Impaired Class of Claims and Interests under the Plan. Class 3 (Revolving Facility Lender Claims), Class 4 (GSO Notes Claims and Kelso Notes Claims), Class 5 (Unexchanged Notes Claims), Class 6 (General Unsecured Claims), Class 8

(Subordinated Claims), and Class 9 (Existing Equity Interests) are designated as Impaired under the Plan within the meaning of section 1124 of the Bankruptcy Code.

38. The Plan therefore satisfies the requirements of section 1123(a)(3) of the Bankruptcy Code.

iv. Equal Treatment Within Classes (Section 1123(a)(4))

39. Section 1123(a)(4) of the Bankruptcy Code requires that a chapter 11 plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). Article IV of the Plan satisfies this requirement in that all holders of Claims and Interests within a particular Class are receiving identical economic treatment under the Plan. While the claims in Class 5 are receiving either New Stock or Cash Out Payments, the value of the Cash Out Payment is equal to the value of the New Stock that would otherwise be distributed to such holder had its holdings not been less than the threshold for the Cash Out Payment. Thus, the Plan complies with this section of the Bankruptcy Code.

v. Means for Implementation (Section 1123(a)(5))

40. Section 1123(a)(5) of the Bankruptcy Code requires that a chapter 11 plan provide "adequate means" for its implementation. 11 U.S.C. § 1123(a)(5). In compliance with section 1123(a)(5) of the Bankruptcy Code, Article VII of the Plan sets forth the means for implementation of the Plan, which means are adequate and proper. The Debtors or Reorganized Debtors, through the Disbursing Agent or such other entity, will be able to make all of the Distributions under, and comply with all other provisions of, the Plan, as the Debtors estimate that they will have sufficient Cash to ensure that the holders of Allowed Administrative Claims, Professional Fee Claims, and Priority Tax Claims and Allowed Claims in Classes 1 and 2 (as applicable) are satisfied in full, will have sufficient Cash to pay the estimated aggregate amount

of Cash Out Payments to holders of Claims in Class 5(b), and will have sufficient Cash to fund the General Unsecured Claim Cash Pool. The DIP Facilities Claims and Revolving Facility Lender Claims will be satisfied through the issuance of new debt instruments under the Plan; provided that the outstanding interest (in the case of the Revolving Facility Lender Claims), fees and expenses on account of these claims will be paid in Cash, which the Debtors believe they will have available. The Notes Claims in Class 4 and 5(a) will be satisfied through the issuance of the New Stock.

41. Additionally, Article VII and various other provisions of the Plan provide adequate and proper means for the Plan's implementation, including, without limitation: (i) the execution, delivery and implementation of the Exit Financing Facilities, consisting of the Exit First Lien Facility and the Exit Second Lien Facility, as well as the Exit Financing Intercreditor Agreement; (ii) the issuance of New Stock; (iii) the waiver of Avoidance Actions; (iv) the waiver of Notes Deficiency Claims and certain General Unsecured Claims; (v) the cancellation (except for limited purposes specified in the Plan and Confirmation Order), on the Effective Date, of, among other obligations of the Debtors, the obligations of the Debtors under the Credit Agreement, the 2010 Indenture, and the 2015 Indenture and any other certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Equity Interest (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically reinstated pursuant to the Plan); and (vi) provisions governing Distributions on account of Allowed Claims and the resolution of Disputed Claims. Additionally, Article IX of the Plan provides adequate and proper means for (x) the continued corporate existence of each of

the Debtors as Reorganized Debtors and (y) the vesting of assets in each respective Reorganized Debtor, free and clear of Liens, Claims, charges or other encumbrances (except for Liens granted to secure the Exit Financing Facilities and any Liens applicable to any capitalized leases existing on the Effective Date) and the preservation of all other Causes of Action (other than those released or exculpated under the Plan, the Interim DIP Order, Final DIP Orders and the DIP Credit Agreement).

42. Accordingly, the Plan satisfies the requirements of section 1123(a)(5) of the Bankruptcy Code.

vi. Charter Provisions (Section 1123(a)(6))

43. Section 1123(a)(6) of the Bankruptcy Code requires that a chapter 11 plan provide for the inclusion in a debtor's charter of specific provisions (i) prohibiting the issuance of nonvoting equity securities and (ii) providing for an "appropriate distribution" of voting power among the securities possessing voting power. 11 U.S.C. § 1123(a)(6).

44. As previously set forth herein, the Plan constitutes a plan of reorganization under chapter 11 of the Bankruptcy Code for the Debtors. Pursuant to the Plan, on or promptly after the Effective Date, Reorganized Holding will file the Reorganized Holding Certificate of Incorporation with the Secretary of State and/or other applicable authorities in its state of incorporation in accordance with the corporate laws of that state. In accordance with section 1123(a)(6) of the Bankruptcy Code, the Reorganized Holding Certificate of Incorporation will prohibit the issuance of non-voting equity securities. Similar revisions will be made with respect to the subsidiary Debtors.

45. Lastly, on the Effective Date (or as soon as reasonably practicable thereafter), (i) Reorganized Holding shall issue the New Stock, through any intermediate holding companies subject to the provisions of the Plan, to Logan's Roadhouse, Inc., which shall then

issue the New Stock to (i) the holders of Allowed GSO Notes Claims who are receiving New Stock pursuant to the Plan, (ii) the holders of Allowed Kelso Notes Claims who are receiving New Stock pursuant to the Plan and (iii) the holders of Allowed Unexchanged Notes Claims who are receiving New Stock pursuant to the Plan.

vii. Selections for Certain Positions (Section 1123(a)(7))

46. Section 1123(a)(7) states that a plan shall "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee." 11 U.S.C. §1123(a)(7). Article V.B of the Plan sets forth the means by which the Reorganized Debtors' directors and officers shall be selected. The Plan Supplement will provide the identities and certain other information relating to the initial board of directors of each of the Reorganized Debtors. Also, the Plan Supplement will identify the officers of the Reorganized Debtors, together with their applicable employment titles and compensation.

47. As such, the Plan satisfies the requirements of section 1123(a)(7) of the Bankruptcy Code.

viii. The Permissive Provisions Contained in the Plan Are Appropriate

48. Section 1123(b)(6) provides that a chapter 11 plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1123(b)(6). Among other things, this subsection provides the authority to include in a chapter 11 plan provisions beyond the list of examples of mandatory and permissive provisions set forth in sections 1123(a) and 1123(b) of the Bankruptcy Code. The Plan contains a number

of these provisions, each of which is consistent with the applicable provisions of the Bankruptcy Code.

a. Treatment of Executory Contracts and Unexpired Leases

49. Consistent with section 1123(b)(2) of the Bankruptcy Code, Article VIII of the Plan provides that, except as otherwise provided in the Plan or in any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, as of the Effective Date, all executory contracts and unexpired leases governed by section 365 of the Bankruptcy Code to which any of the Debtors are parties shall be rejected except for any executory contract or unexpired lease that (i) previously has been assumed or rejected by the Debtors in the Chapter 11 Cases, (ii) previously expired or terminated pursuant to its own terms; (iii) is specifically identified on the Schedule of Assumed Contracts and Leases, or (iv) is the subject of a separate motion to assume or reject such executory contract or unexpired lease filed by the Debtors under section 365 of the Bankruptcy Code prior to the Effective Date. Such treatment of executory contracts and unexpired leases is typical in reorganization chapter 11 cases and is appropriate and consistent with the applicable provisions of the Bankruptcy Code.

b. Provisions Regarding the Retention, Enforcement and Settlement of Claims Held by the Debtors and the Court's Retention of Jurisdiction

50. Consistent with section 1123(b)(3) of the Bankruptcy Code, Article IX.D of the Plan provides that, pursuant to section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in the Plan or in the Confirmation Order, the Distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of any and all Claims and Causes of Action (whether known or unknown) against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property or assets shall

have been distributed or retained pursuant to the Plan on account of such Claims, rights, and Interests, including Claims and Interests that arose before the Effective Date, any liability (including withdrawal liability to the extent such Claims relate to services performed by employees of the Debtors prior to the Petition Date and that arise from a termination of employment or a termination of any employee or retiree benefit program which occurred prior to the Effective Date), and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not (a) a Proof of Claim or Interest based upon such Claim, debt, right, or Interest was filed, is filed, or deemed filed under section 501 of the Bankruptcy Code, (b) a Claim or Interests based upon such Claim, debt, right, or Interest is Allowed under section 502 of the Bankruptcy Code, or (c) the holder of such a Claim, right, or Interest accepted the Plan. Article IX.D of the Plan further provides that the Confirmation Order shall be a judicial determination of the discharge of all Claims against and Interests in the Debtors, subject to the terms thereof and the occurrence of the Effective Date.

51. Additionally, Article IX.C of the Plan provides that, subject to the releases and exculpations set forth in the Plan, the Interim DIP Order, the Final DIP Order, and the DIP Credit Agreement, in accordance with section 1123(b)(3) of the Bankruptcy Code, the Debtors and the Reorganized Debtors shall retain all Litigation Rights (excluding Avoidance Actions), and nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any such Litigation Rights (excluding Avoidance Actions). Article IX.C of the Plan further provides that the Debtors may (but are not required to) enforce all Litigation Rights (excluding Avoidance Actions) and all other similar claims arising under applicable state laws, including fraudulent transfer claims, if any, and all other Causes of Action (excluding Avoidance Actions) of a trustee and debtor-in-possession under the Bankruptcy Code. Except as

otherwise set forth in the Plan, the Reorganized Debtors, as applicable, in their sole and absolute discretion, shall determine whether to bring, settle, release, compromise, or enforce any such Litigation Rights (or decline to do any of the foregoing), and shall not be required to seek further approval of the Court for such action. Finally, Article IX.C of the Plan provides, except as otherwise set forth in the Plan, the Debtors, the Reorganized Debtors, or any successors thereof may pursue such Litigation Rights (excluding Avoidance Actions) in accordance with the best interests of the Reorganized Debtors or any successors holding such rights of action.

52. Finally, pursuant to Article XI of the Plan, the Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan pursuant to, and for the purposes of, section 105(a) and section 1142 of the Bankruptcy Code and for, among other things, those purposes specifically identified in Article XI of the Plan. Significantly, the matters set forth in Article XI of the Plan are matters that the Court would otherwise have jurisdiction over during the pendency of the Chapter 11 Cases. *See* 28 U.S.C. §§ 157 and 1334. This retention of jurisdiction by the Court post-confirmation is permitted by the Bankruptcy Code. *In re Johns-Manville Corp.*, 97 B.R. 174, 180 (Bankr. S.D.N.Y. 1989).

c. Provisions Regarding the Modification of the Rights of Holders of Claims

53. Consistent with sections 1123(b)(1) and 1123(b)(5) of the Bankruptcy Code, Article IV of the Plan modifies or leaves unaffected, as the case may be, the rights of holders of Claims and Interests within each Class.

54. As set forth more fully therein, Article IX.E of the Plan provides that, as of the Effective Date, the Debtors shall release all claims and Causes of Action existing as of the Effective Date that they have against the Released Parties[2] (the "**Debtor Release**"). Article IX.F

[2] "Released Parties" means: (a) each Debtor, (b) the Supporting Noteholders, (c) the Indenture

of the Plan additionally provides for releases in favor of the Released Parties by any non-Debtor party that directly or indirectly has held, holds, or may holds claims or interests in the Debtors as of the Effective Date (the "**Non-Debtor Release**"). Further, the Plan includes customary exculpations of estate fiduciaries. Finally, the Plan and Confirmation Order include injunctive provisions that carry out the purpose and intent of these release and exculpation provisions.

55. The Plan's release, exculpation and injunction provisions recognize the substantial contributions and benefits conferred upon the Debtors and their stakeholders, collectively, by the Release Parties and will eliminate the costs and risks of litigation and allow the principals of the Reorganized Debtors to focus on operations after emergence, as opposed to being distracted by litigation (either as a party to such litigation themselves, a party who may be forced to bear the costs of the litigation, or the stakeholders who will bear the burdens of the Debtors' investigation, prosecution or participation in such litigation), are necessary and appropriate for the implementation of the Plan, and are otherwise consistent with the Bankruptcy Code and Third Circuit precedent. Accordingly, the release, exculpation, and injunctive provisions should be approved.

(1) Legal Standard for Approving the Debtor Release

56. Section 1123(b)(3)(A) of the Bankruptcy Code provides that a Plan may "provide for the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). Such a release is proper if it "is a valid exercise of the

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Trustees, (d) the DIP Lenders, DIP Agent and other lender-parties under the DIP Facilities, (e) the lenders, agents, issuing banks, arrangers and other lender-parties under the Exit Financing Facilities, (f) the Supporting Lenders (as well as any issuing bank) and the Revolving Facility Agent, (g) the Sponsors, and (h) with respect to each of the foregoing entities identified in subsections (a) through (g), such Person's current and former equity holders, including shareholders, partnership interest holders, and limited liability company unit holders, affiliates, partners, subsidiaries, members, officers, directors, managers serving on a board of managers, principals, employees, agents, managed funds, advisors, attorneys, accountants, investment banks, consultants, representatives, and other professionals, together with their respective predecessors, successors, and assigns.

debtor's business judgment, is fair, reasonable, and in the best interests of the estate." *U.S. Bank Nat'l Assoc. v. Wilmington Tr. Co. (In re Spansion, Inc.),* 426 B.R. 114, 143 (Bankr. D. Del. 2010); *see also In re Wash. Mut., Inc.*, 442 B.R. 314, 346 (Bankr. D. Del. 2011) (finding that court may approve a release after determining that it is fair); *In re Tribune Co.*, 464 B.R. 126, 186 (Bankr. D. Del. 2011) (same). In evaluating the propriety of a debtor's release of the debtor's and estate's causes of action, courts must "[weigh] the equities of the particular case after a fact-specific review." *Wash. Mut.*, 442 B.R. at 346. In conducting their analysis of a debtor's proposed releases (as opposed to non-debtor release), courts often consider the following five factors (the "***Master Mortgage* Factors**"):

> a) An identity of interest between the debtor and non-debtor, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete resources of the estate;
>
> b) Substantial contribution by the non-debtor of assets to the reorganization;
>
> c) The necessity of the release to the reorganization;
>
> d) The overwhelming acceptance of the plan and release by creditors and interest holders; and
>
> e) A provision in the plan for payment of all or substantially all of the claims of creditors and interest holders under the plan.

Id.; *see also In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013).

57. "These factors are neither exclusive nor conjunctive requirements, but simply provide guidance in the Court's determination of fairness." *Tribune*, 464 B.R. at 186 (citation omitted); *Wash. Mut.*, 442 B.R. at 346 (approving of debtor releases with parties that made tangible consideration while disapproving of debtor releases for parties who did nothing beyond serving their fiduciary duties or who did not yet exist, noting that factors "are neither exclusive nor conjunctive requirements, but simply provide guidance in the Court's

determination of fairness"). As discussed below, these factors listed weigh heavily in favor of granting the Debtor Release.

(2) Legal Standard for Approving the Non-Debtor Release

58. In the Third Circuit, where releasing parties have consented to a provision in a plan of reorganization that releases claims against non-debtors, such releases will be approved on the basis of general principles of contract law. *First Fid. Bank v. McAteer*, 985 F.2d 114, 118 (3d Cir. 1993) (noting that a consensual third-party release is no different from any other settlement or contract and does not implicate section 524(e)); *see Indianapolis Downs*, 486 B.R. at 305 ("[C]ourts in this jurisdiction have consistently held that a plan may provide for a release of third party claims against a non-debtor upon consent of the party affected."). At a minimum, the affirmative vote on a plan that contains release provisions has been deemed to constitute consent to such a release. *See, e.g.*, *In re Zenith Elecs Corp.*, 241 B.R. 92, 111 (Bankr. D. Del. 1999). This Court has also found that consent to a release can be deemed where a party had the opportunity to vote or otherwise make an election and abstained from doing so. *See Indianapolis Downs*, 486 B.R. at 306 ("As for those impaired creditors who abstained from voting on the Plan, or who voted to reject the Plan and did not otherwise opt out of the releases, the record reflects these parties were provided detailed instructions on how to opt out, and had the opportunity to do so by marking their ballots.").

59. Here, the Ballots provided to creditors stated as follows:

> Non-Debtor Release Disclosure and Election. Article IX.F of the Plan includes a release from the Debtors' creditors and interest holders in favor of Debtor and non-Debtor parties that will be granted to the maximum extent permitted by applicable law (such release, as set forth in Article IX.F of the Plan, the "Non-Debtor Release"). As a creditor of the Debtors, you should read Article IX.F of the Plan carefully as it affects your rights by releasing claims that you may hold against the Released Parties. The Debtors believe that the Non-Debtor Release, in the context of these Chapter 11 Cases and the Plan, is permissible under applicable law even without the consent of the releasing parties. However, parties

> may object to the Non-Debtor Release and the Court may find that such release may only be granted with consent of the releasing parties. The below election is intended to be used, and will only be considered, in the event that the Court finds that the consent of a releasing party is required for the Non-Debtor Release to be effective against such party. If you have checked the "Accept the Plan" box above, you are deemed to have consented to the Non-Debtor Release. If you have not checked the "Accept the Plan" box above, you should check the box below if you do not consent to the Non-Debtor Release. If you have not checked the "Accept the Plan" box above and you fail to return this Ballot with the box set forth below checked, you will be deemed to evidence your consent to the Non-Debtor Release.

A similar disclosure and opportunity to indicate that a party did not consent to the release was included in the Non-Voting Holder Notice and Opt Out Election provided to holders of Claims and Interests in Classes 1, 2, 7, 8, 9 and 10. Parties were instructed to submit their Ballots or Opt Out Election forms by November 2, 2016.

60. Therefore, the Court can find that the Non-Debtor Releases are consensual for all parties, except for those who rejected the Plan and indicated on their Ballot that they did not consent to the Non-Debtor Release or submitted an Opt Out Election form.

61. In the Third Circuit, non-consensual releases of third-party claims against non-debtors are also permissible where the releases are fair and necessary to the reorganization and specific factual findings support such conclusions. *See In re Cont'l Airlines*, 203 F.3d 203, 214 (3d Cir. 2000); Hr'g Tr. at 114-15, *In re Freedom Rings, LLC* (approving non-consensual third-party releases under *Cont'l* standard). Courts in the Third Circuit look to the above-cited *Master Mortgage* Factors in assessing the propriety of non-consensual third-party releases. *See Cont'l Airlines*, 203 F.3d at 217 n. 17. These factors are meant to serve as guidance and are not an exhaustive or conjunctive list of requirements that must be met before a court may authorize a non-consensual third-party release.[3] For the reasons set forth below, the Non-Debtor Releases

[3] *See, e.g.*, Hr'g Tr. at 67, *In re Energy Future Holdings Corp.*, ("The Delaware courts that have ruled on [non-consensual third-party releases] have looked at, among other things, whether (a) the

are fair, essential to the Debtors' reorganization, and supported by ample evidence demonstrating the same.

(3) The Facts of the Chapter 11 Cases Demonstrated that the Applicable Legal Standards for the Debtor Release and Non-Debtor Release Have Been Satisfied

62. The Debtor Release and Non-Debtor Release were the product of extensive arms' length and good faith negotiations among the Debtors and the parties to the Restructuring Support Agreement, who are included among the Released Parties, and their respective counsel and professional advisors. Further, the Plan, as submitted to the Court for confirmation, includes the Creditors' Committee Settlement, which as discussed above, resulted in significant improvements in recoveries to General Unsecured Creditors and resulted in the Creditors' Committee supporting confirmation of the Plan. Based on the factual record detailed above regarding the negotiation and formulation of the Plan, including the Debtor Release and Non-Debtor Release, and the below analysis of the *Master Mortgage* Factors, an ample record exists for the Court to find that the releases are both fair and necessary to the Debtors' reorganization. Indeed, absent the treatment provided for the Released Parties under the Plan, there likely would be no Plan and the holders of Allowed Claims would receive substantially less recovery in the Chapter 11 Cases (if any recovery at all) than is currently provided for, and anticipated under, the Plan.

63. There is an identity of interest with the Released Parties. The "identity of interest" factor is satisfied where the Debtors have an obligation to indemnify the party receiving the release. *See Indianapolis Downs*, 486 B.R. at 303. Many of the Released Parties are entitled

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release[e] has provided a critical contribution to the Debtors' plan; and (b) . . . whether the non-consenting creditors were compensated for their contributions"); *In re 710 Long Ridge Rd.*, No. 13-13653, 2014 WL 886433, *1, *14-15 (Bankr. D.N.J. Mar. 5, 2014).

to indemnification from the Debtors either under the Debtors' governance documents or an applicable loan document or management agreement. In addition, courts in this district have found that a common goal of confirming a plan and implementing a restructuring of a debtor establishes an identity of interest. *See, e.g.*, *Tribune*, 464 B.R. at 187; *In re Zenith Elecs Corp.*, 241 B.R. 92, 110-11 (Bankr. D. Del. 1999). Given the extensive efforts of the Released Parties to restructure the Debtors, as detailed above, the Released Parties have a common goal of restructuring the Debtors and, therefore, an identity of interest with the Debtors for purposes of the *Master Mortgage* Factors.

64. *Substantial contribution by the non-Debtors to the reorganization*. Part III.A., *supra*, discusses in extensive detail the contributions that the Released Parties have made to the restructuring of the Debtors, including the Supporting Lenders, the Supporting Noteholders, the Indenture Trustees, the DIP Agent, and the DIP Lenders. The Debtors and their businesses have benefitted, or will under the Plan benefit, from, among other things, $28.5 million of new money under the DIP Facilities and the Exit Second Lien Facility, the consent to use of cash collateral during the Chapter 11 Cases, the rollover of outstanding debt under the Plan, new credit facilities that include the substantial deferral of interest payments, an agreement to equitize the Notes Claims, and the commitment and support for the Debtors' emergence from chapter 11 under a plan of reorganization on a prompt timeline.

65. Additionally, General Unsecured Creditors have been benefitted by the efforts, contributions, and concessions of the Released Parties. Holders of General Unsecured Claims who continue to do business with the Debtors will benefit both from a financially strengthened Logan's. All holders of General Unsecured Claims will be benefitted by the fact that the Debtors continuing as a going concern avoids substantial additional General Unsecured

Claims that would result if the Debtors were forced to cease operations. Further, through the Creditors' Committee Settlement, the Released Parties were heavily involved in negotiating, and ultimately consented to, increased cash recoveries under the Plan to holders of General Unsecured Claims, waivers of the Notes Deficiency Claims by the Noteholders and General Unsecured Claims by the Unanimous Supporting Noteholders (including the Sponsors), which are substantial, and the agreement not to pursue Avoidance Actions, which would likely be prosecuted substantially (if not entirely) against holders of General Unsecured Claims.

66. Finally, the Debtors' officers, directors and advisors made substantial contributions to the Debtors' restructuring, both through negotiation of the Restructuring Support Agreement and related documents, including the Plan, but also by maintaining and preserving the Debtors' business operations in the face of the disruptive environment that is presented by a chapter 11 case. *See Zenith Elecs.*, 241 B.R. at 111 (finding that officers and directors made "substantial contributions to the reorganization … by designing and implementing the operational restructuring and negotiating the financial restructuring" of the debtor).

67. *The necessity of the release to the reorganization*. The Debtor Release and Non-Debtor Release have been critical to obtaining the financial support and concessions of the parties to the Restructuring Support Agreement for the Plan. *See Zenith Elecs.*, 241 B.R. at 111. Indeed, both of the releases were specifically negotiated provisions of the Restructuring Support Agreement, and the Debtors were advised that the parties thereto would not have supported the Plan in the absence of those releases. Absent the Restructuring Support Agreement, and the myriad concessions made by the creditors and equity holders party thereto, the Debtors would not have been in a position to propose the Plan, let alone be on the precipice of the confirmation of the Plan and implementing a successful restructuring of the Debtors. In

short, the Debtors likely would not be confirming a chapter 11 plan of reorganization in the absence of the Debtor Release and Non-Debtor Release.

68. Moreover, many of the Released Parties will have key roles in the Reorganized Debtors, including as lenders under the Exit Financing Facilities, shareholders of Reorganized Holding, and continuing officers and directors of the Debtors. Courts in this jurisdiction have recognized that elimination of post-emergence distractions of such stakeholders demonstrates a necessity to the restructuring. *Zenith Elecs.*, 241 B.R. at 111.

69. *Overwhelming acceptance of the plan and release by creditors and interest holders*. Perhaps the most objective factor considered by courts when assessing the fairness of a release is "the overwhelming acceptance of the plan and release by creditors and interest holders." *Wash. Mut.*, 442 B.R. at 346 (citing *Zenith Elecs.*, 241 B.R. at 110). This factor strongly supports the releases under the current Plan. Classes 3 and 4 unanimously accepted the Plan. Acceptances in Classes 5 and 6 were each in excess of 90% in dollar amount voted and in excess of 70% in number voting. In the aggregate, over $395 million of claims out of $397 million total claims voting on the Plan accepted the Plan, and 280 out of 378 total creditors voting on the Plan accepted the Plan. Further, the Sponsors, who hold over 97% of the Existing Equity Interests, are parties to the Restructuring Support Agreement and support the Plan.

70. *Payment of all or substantially all of the claims of creditors and interest holders under the plan*. While Classes 4 through 6 are not receiving payment of substantially all of their claims, the Debtors submit that the level of payment that creditors will receive under the Plan – as opposed to the alternative under a section 363 sale or liquidation under chapter 7 – justifies the Debtor Release and Non-Debtor Release. As set forth in the Liquidation Analysis,

the Revolving Facility Lenders would receive, at best a 62% recovery in a chapter 7 liquidation, and the DIP Facilities Claims, which are junior to the Revolving Facility Lender Claims, would receive nothing. In other words, the claims in Classes 4 through 6 are massively out of the money in a chapter 7 proceeding. Under the Plan, the Revolving Facility Lender Claims and DIP Facility Claims will be refinanced with the Exit Financing Facilities, all claims required to be paid in full to satisfy the requirements under section 1129 of the Bankruptcy Code will be paid in full under the Plan, the Notes Claims will receive the New Stock (or the equivalent Cash Out Payment), and the holders of General Unsecured Claims will share pro rata in the General Unsecured Claims Cash Pool. It is likely that none of these recoveries (beyond what the Revolving Facility Lenders may receive) would be available in the absence of the Restructuring Support Agreement and its attendant provisions, including the Plan, the Debtor Release and the Non-Debtor Release. Accordingly, the Debtors submit that while this factor may not be satisfied, it remains relevant that the transaction of which these releases are an integral part, yields substantial recoveries to creditors in excess of those available under the alternative.

(4) Exculpation

71. Pursuant to Article IX.G of the Plan, except as otherwise specifically provided in the Plan, the Plan Supplement or related documents, no Exculpated Party shall have or incur any liability to any entity for any prepetition or postpetition act taken or omitted to be taken in connection with, or related to, or arising out of the Chapter 11 Cases, the filing of the Chapter 11 Cases, the formulation, preparation, negotiation, dissemination, filing, implantation, administration, confirmation or consummation of the Plan, the Disclosure Statement, the exhibits to the Plan and the Disclosure Statement, the Plan Supplement documents, any employee benefit plan, instrument, release or other agreement or document created, modified, amended or entered into in connection with the Plan, except for their willful misconduct or gross negligence as

determined by a Final Order and except with respect to obligations arising under confidentiality agreements, joint interest agreements, or protective orders, if any, entered during the Chapter 11 Cases; provided, however, that each Exculpated Party shall be entitled to assert applicable affirmative defenses, if any (the "**Exculpation**").

72. Exculpation provisions similar to the Exculpation Provision in the Plan are appropriate where the exculpated parties have acted in good faith in negotiating and working toward the implementation of a chapter 11 plan. *See, e.g.*, *In re PWS Holding Corp.*, 228 F.3d 224, 246–47 (3d Cir. 2000) (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties . . . ."). The Exculpated Parties are the Debtors, their current and former officers and directors, the Creditors' Committee, each member of the Creditors' Committee (in its capacity as such), and the respective advisors to the Creditors' Committee. Courts in this jurisdiction routinely recognize that estate fiduciaries are entitled to the benefit of exculpatory provisions in a chapter 11 plan, such as the Exculpation Provision. *See Indianapolis Downs*, 486 B.R. at 306; *Wash. Mut.*, 442 B.R. at 350.

73. Accordingly, the Exculpation is appropriate and should be approved.

(5) Injunction

74. Finally, Article IX.H of the Plan contains an injunction provision (the "**Injunction**") which the Debtors believe is necessary to enforce and preserve the Debtor Releases, the Third Party Release, and the Exculpation and should therefore be approved. Furthermore, in compliance with Bankruptcy Rule 3016, Article VII.I.8 of the Disclosure Statement, Article IX.H of the Plan, and the proposed Confirmation Order filed with the Court identify all acts to be enjoined by, and all Persons that would be subject to, the Injunction.

75. The Injunction is therefore appropriate and should be approved.

B. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code (Section 1129(a)(2))

76. Section 1129(a)(2) of the Bankruptcy Code requires that the proponent of a chapter 11 plan comply with the applicable provisions of the Bankruptcy Code. 11 U.S.C. § 1129(a)(2). The principal purpose of this section of the Bankruptcy Code is to ensure that a plan proponent has complied with the requirements of sections 1125 and 1126 of the Bankruptcy Code in soliciting acceptances of a chapter 11 plan. *See In re Resorts Int'l Inc.*, 145 B.R. 412, 468-69 (Bankr. D.N.J. 1990); *see also* H.R. Rep. No. 95-595, at 412 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6368.

77. Here, the Debtors, as the proponents of the Plan, have complied with all applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 thereof, and Bankruptcy Rules 3017 and 3018 regarding the Disclosure Statement and solicitation of the Plan. On September 28, 2016, the Court entered the Solicitation Procedures Order, thereby approving the Debtors' proposed procedures for solicitation and tabulation of votes to accept or reject the Plan. As evidenced by the affidavits filed with the Court on October 11, 2016 and October 14, 2016 [Docket Nos. 386 and 406], the Disclosure Statement, the Plan, the appropriate Ballots and Master Ballots, the Confirmation Hearing Notice, and the Non-Voting Holder Notice (as defined in the Disclosure Statement Order) and all other related documents were distributed in accordance with the Solicitation Procedures Order. Furthermore, the Debtors have complied with all other orders of the Court entered during the pendency of the Chapter 11 Cases and with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules with respect to post-petition disclosure and solicitation of acceptances of the Plan.

78. Accordingly, the Debtors have fully complied with all provisions of the Bankruptcy Code and, in particular, with the provisions of section 1125 of the Bankruptcy Code.

As a result, the Debtors have satisfied the requirements of section 1129(a)(2) of the Bankruptcy Code. *See In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 723, 769 (Bankr. S.D.N.Y. 1992) (section 1129(a)(2) of the Bankruptcy Code satisfied where debtors complied with all provisions of the Bankruptcy Code and the Bankruptcy Rules governing notice, disclosure and solicitation relating to plan).

C. The Plan Has Been Proposed in Good Faith (Section 1129(a)(3))

79. Section 1129(a)(3) of the Bankruptcy Code requires that a chapter 11 plan be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). Although not defined in the Bankruptcy Code, "good faith" has been interpreted by the courts to include: (i) the debtor's "legitimate and honest purpose" in proposing the plan and "reasonable hope of success," *Century Glove, Inc.*, 1993 U.S. Dist. LEXIS 2286, at *15; (ii) a showing that the plan was proposed with "honesty and good intentions," *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d Cir. 1988) (citations omitted); and (iii) the existence of "a reasonable likelihood that the plan will achieve a result consistent with the objectives and purposes of the Bankruptcy Code," *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984) (citations omitted). The Court must also consider the totality of the circumstances surrounding a chapter 11 plan to determine if it has been proposed in good faith. *In re New Valley Corp.*, 168 B.R. 73, 81 (Bankr. D.N.J. 1994); *Century Glove*, 1993 WL 239489 at *4.

80. The Debtors submit that they have proposed the Plan, and all other documents necessary to effectuate the Plan, including the Plan Supplement, in good faith and not by any means forbidden by law. The Plan itself, the process leading to its formulation, and the overwhelming support for the Plan received from voting Classes provides independent evidence of the Debtors' good faith. The Debtors, the Creditors' Committee, the Prepetition Revolving Lenders, holders of Kelso Notes and GSO Notes, certain holders of Unexchanged Notes, the

Indenture Trustees, the DIP Agent and the DIP Lenders participated in good faith in negotiating, at arms' length, the Plan and the settlement and compromises, contracts, instruments, releases, agreements, and documents related to or necessary to implement, effectuate, and consummate the Plan, including, without limitation, the Plan and Plan Supplement Documents. Each of these parties and their respective counsel and advisors also participated in good faith in each of the actions taken to bring about, and in satisfying each of the conditions precedent to, confirmation and consummation of the Plan. The Indenture Trustees' participation in the Chapter 11 Cases and actions taken in connection therewith are in the best interest of the Noteholders. The Debtors' good faith is evidenced from the record of the Chapter 11 Cases, including, among other things, the totality of the circumstances surrounding the filing of the Chapter 11 Cases, the record developed in connection with the Confirmation Hearing, the formulation of the Plan and all related pleadings, exhibits, statements, and comments regarding confirmation of the Plan, and other proceedings held in the Chapter 11 Case. The Debtors and their directors, officers, employees, agents, affiliates, and professionals (acting in such capacity) have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code, thereby satisfying the "good faith" requirement of section 1129(a)(3).

D. Payments for Services or Costs and Expenses (Section 1129(a)(4))

81. Section 1129(a)(4) of the Bankruptcy Code requires that any payments by a debtor "for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case," either be approved by the Court as reasonable or subject to the approval of the Court as reasonable. 11 U.S.C. § 1129(a)(4). In other words, the debtor must disclose to the Court all professional fees and expenses, and such fees and expenses must be subject to Court approval. *In re Texaco, Inc.*, 85 B.R. 934, 939 (Bankr. S.D.N.Y. 1988). To date, all such payments have been approved by the Court or are subject to

the approval of the Court pursuant to the Plan or other orders entered in the Chapter 11 Cases.[4] The procedures for the Court's review and ultimate determination of the fees, costs, and expenses to be paid by the Debtors in connection with the Chapter 11 Cases satisfy the requirements of section 1129(a)(4) of the Bankruptcy Code. *Resorts Int'l*, 145 B.R. at 475-76 (stating that as long as fees, costs and expenses are subject to final approval of the court, section 1129(a)(4) of the Bankruptcy Code is satisfied).

E. Service of Certain Individuals (Section 1129(a)(5))

82. Section 1129(a)(5) of the Bankruptcy Code requires that a plan proponent disclose, among other things, the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor . . . or a successor to the debtor under the plan," and require a finding that 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." 11 U.S.C. § 1129(a)(5)(A)(i)-(ii).

83. In accordance with section 1129(a)(5) of the Bankruptcy Code, Article V.B of the Plan sets forth the means by which the Reorganized Debtors' managers and officers shall be selected. The Plan Supplement will provide the identities and certain other information relating to the initial board of directors and the officers of each of the Reorganized Debtors.

84. Accordingly, the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.

[4] The Debtors anticipate that the court will approve assumption of the Restructuring Support Agreement, which assumption is unopposed at this point. The Restructuring Support Agreement provides for the payment of certain fees and expenses but that such fees and expenses will be subject to the same review process provided for under the Interim DIP Order.

F. Rate Changes (Section 1129(a)(6))

85. Section 1129(a)(6) of the Bankruptcy Code requires any governmental regulatory commission having jurisdiction over the rates charged by the post-confirmation debtor in the operation of its business to approve any rate change provided for in a chapter 11 plan. 11 U.S.C. § 1129(a)(6). The Plan does not provide for or contemplate any rate change that would require the approval of any regulatory agency.

86. Accordingly, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Plan.

G. The Plan Satisfies the "Best Interests" Test (Section 1129(a)(7))

87. The Bankruptcy Code protects creditors and equity holders which are impaired by a chapter 11 plan and have not voted to accept such plan through the "best interests" test of section 1129(a)(7) of the Bankruptcy Code. The "best interests" test requires that holders of impaired claims or interests which do not vote to accept the chapter 11 plan at issue "receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of [the Bankruptcy Code] on such date." 11 U.S.C. § 1129(a)(7)(A). If the bankruptcy court finds that each non-consenting member of an impaired class will receive at least as much under a chapter 11 plan as it would receive in a chapter 7 liquidation, then the plan satisfies the "best interests" test. *Century Glove*, 1993 U.S. Dist. LEXIS 2286, at *23. Claims and Interests in Classes 1, 2, 7, and 10 are not implicated because the creditors in these Classes are Unimpaired under the Plan. All holders of Revolving Facility Lender Claims in Class 3 and GSO Notes Claims and Kelso Notes Claims in Class 4 affirmatively voted to accept the Plan and the "best interests test" does not apply to them.

88. The Claims and Interests in Classes 5, 6, 8, and 9 are Impaired under the Plan, and the "best interests test" must therefore be satisfied with respect to any holder in those Classes that voted (or was deemed) to reject the Plan. The Debtors prepared the liquidation analysis attached as Exhibit F to the Disclosure Statement (the "**Liquidation Analysis**"), which generally examines the effects that a conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code could have on the proceeds available for distribution under the Plan to holders of Allowed Claims. Based upon the Liquidation Analysis, holders of Allowed Unexchanged Notes Claims and General Unsecured Claims in Classes 5 and 6 would receive an estimated recovery of 0% with respect to their Allowed Claims under a chapter 7 liquidation scenario; however, under the Plan said creditors will receive a meaningful recovery in the Chapter 11 Cases. Holders of Class 8 Subordinated Claims and Class 9 Existing Equity Interests are not receiving any Distributions under the Plan.

89. In light of the foregoing, the Debtors submit that the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code, as the recoveries realized by holders of Unexchanged Notes Claims and General Unsecured Claims under the Plan are estimated to be greater than the distributions such Holders would receive in a hypothetical chapter 7 case, and the Class 8 Subordinated Claims and Class 9 Existing Equity Interests are not receiving any distribution under the Plan, nor would they in a chapter 7 liquidation.

H. Acceptance of the Plan by Each Impaired Class (Section 1129(a)(8))

90. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests must either accept a chapter 11 plan or be unimpaired under such plan. 11 U.S.C. § 1129(a)(8). A class of claims accepts a plan if the holders of at least two-thirds in dollar amount and more than one-half in the number of claims in the class vote to accept the plan, counting only those claims whose holders actually vote to accept or reject the plan. 11

U.S.C. § 1126(c). A class of interests accepts a plan if the holders of at least two-thirds in amount of the interests in the class vote to accept the plan, counting only those claims whose holders actually vote to accept or reject the plan. 11 U.S.C. § 1126(d).

91. Class 1 Other Priority Claims, Class 2 Other Secured Claims, Class 7 Intercompany Claims and Class 10 Intercompany Interests are deemed to have accepted the Plan, and as evidenced by the Voting Declaration, all of the Classes entitled to vote on the Plan – Classes 3 through 6 – accepted the Plan. Because the Plan provides that holders of Class 8 (Subordinated Claims) and Class 9 (Existing Equity Interests) will not receive or retain any property under the Plan on account of such Interests, such Class is deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Nonetheless, the Plan is confirmable because, for the reasons set forth immediately below, the Plan satisfies section 1129(b)(1) of the Bankruptcy Code (*i.e.*, the "cramdown" requirements) with respect to such Class 8 Subordinated Claims and Class 9 Existing Equity Interests.

i. Confirmation of the Plan Over Non-Acceptance of Class 8 Subordinated Claims and Class 9 Existing Equity Interests Deemed to Have Rejected the Plan (Section 1129(b))

92. Section 1129(b) of the Bankruptcy Code provides a mechanism for confirmation of a chapter 11 plan when the plan is not accepted by all impaired classes of claims or interests thereunder. Specifically, section 1129(b) provides, in pertinent part:

> [I]f all of the applicable requirements of subsection (a) of [section 1129] other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1). This section of the Bankruptcy Code essentially provides two (2) requirements for "cramdown" of a chapter 11 plan on a dissenting impaired class: (i) that the plan does not discriminate unfairly; and (ii) that the plan is fair and equitable with respect to such class. 11 U.S.C. § 1129(b)(1).

ii. The Plan Complies with Section 1129(b)(1) Because It Does Not Discriminate Unfairly Against Class 8 Subordinated Claims and Class 9 Existing Equity Interests

93. The requirement under section 1129(b)(1) of the Bankruptcy Code that a chapter 11 plan not discriminate unfairly against impaired, dissenting classes focuses on the treatment of the dissenting class relative to other classes consisting of similar legal rights. *See* H.R. Rep. No. 95-595, at 416 ("The plan may be confirmed . . . if the class is not unfairly discriminated against with respect to equal classes and if junior classes will receive nothing under the plan. . . ."); *see also In re Buttonwood Partners, Ltd.*, 111 B.R. 57, 62 (Bankr. S.D.N.Y. 1990) (same). Moreover, section 1129(b)(1) does not prohibit discrimination among classes; it only prohibits discrimination that is "unfair" with respect to the class or classes that do not accept the plan. *In re 11,111, Inc.*, 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The weight of judicial authority holds that a chapter 11 plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar claims are treated differently without a reasonable basis for the disparate treatment. *In re Kennedy*, 158 B.R. 589, 599 (Bankr. D.N.J. 1993); *In re Buttonwood Partners, Ltd.*, 111 B.R. at 63. Thus, with respect to non-accepting classes, there is no unfair discrimination if: (i) the classes comprise dissimilar claims or interests; or (ii) taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. *In re Johns-Manville Corp.*, 68 B.R 618, 636

(Bankr. S.D.N.Y. 1986); *Buttonwood Partners*, 111 B.R. at 63; *In re Rivera Echevarria*, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

94. Here, the Plan does not discriminate unfairly against the holders of Class 8 Subordinated Claims and Class 9 Existing Equity Interests, as a reasonable basis exists for separately classifying the holders of such Claims and Interests from the holders of Claims and Interests in other Classes. Separately classifying these Holders simply reflects their different contractual and legal rights and is therefore appropriate.

iii. The Plan Complies with Section 1129(b)(1) Because It Is Fair and Equitable with Respect to Class 8 Subordinated Claims and Class 9 Existing Equity Interests

95. Under section 1129(b)(2) of the Bankruptcy Code, a plan is fair and equitable with respect to a dissenting class of interests if it follows the "absolute priority rule." *See* 11 U.S.C. § 1129(b)(2)(C)(ii); *see also Bank of Am. Nat'l Tr. & Savs. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441-442 (1999); *In re PPI Enters. (U.S.), Inc.*, 228 B.R. 339, 352 (Bankr. D. Del. 1998); *In re Union Meeting Partners*, 165 B.R. at 569. Under the Plan, no holder of any Interest that is junior to Class 8 Subordinated Claims and Class 9 Existing Equity Interests[5] will receive or retain any property under the Plan on account of such junior Interest.

96. Accordingly, the Plan satisfies the "absolute priority rule" of section 1129(b)(2) of the Bankruptcy Code and is fair and equitable with respect to Class 8 Subordinated Claims and Class 9 Existing Equity Interests.

[5] While not entitled to vote on the Plan, the Supporting Interest Holders, who holder over 97% of the Existing Equity Interests, have entered into the Restructuring Support Agreement and have agreed to support confirmation of the Plan.

I. Treatment of Priority Claims (Section 1129(a)(9))

97. Section 1129(a)(9) of the Bankruptcy Code contains a number of requirements concerning the payment of priority claims. 11 U.S.C. § 1129(a)(9). The Debtors submit that the Articles III and IV of the Plan provide for the treatment of Allowed Claims entitled to priority pursuant to section 507(a)(2)-(8) of the Bankruptcy Code in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.

J. Acceptance of at Least One Impaired Class (Section 1129(a)(10))

98. If a chapter 11 plan has one or more impaired classes of claims, section 1129(a)(10) of the Bankruptcy Code requires that at least one (1) such class vote to accept the plan, determined without including any acceptance of the plan by any insider. 11 U.S.C. § 1129(a)(10). As evidenced by the Voting Declaration, all four Classes of Impaired Classes of Claims entitled to vote on the Plan have accepted the Plan, excluding the votes cast by any insiders, as that term is defined in section 101(31) of the Bankruptcy Code.

99. Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

K. Feasibility of the Plan (Section 1129(a)(11))

100. Section 1129(a)(11) of the Bankruptcy Code provides that a chapter 11 plan may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). This requirement, commonly known as the "feasibility" standard, usually encompasses two interrelated determinations: (i) the debtor's ability to consummate the provisions of the plan; and (ii) the debtor's ability to reorganize as a viable entity. *In re Lakeside Glob. II, Ltd.*, 116 B.R. 499, 506 (Bankr. S.D. Tex. 1989) (stating that the definition of feasibility

"has been slightly broadened and contemplates whether [a] debtor can realistically carry out its Plan . . . and [b] whether the Plan offers a reasonable prospect of success and is workable"). The courts have also universally interpreted the statute to mean that a debtor need only demonstrate a reasonable assurance of commercial viability, and the court need not require a guarantee of success in order to find that a plan satisfies the feasibility requirement. *See e.g., In re T-H New Orleans Ltd. P'ship*, 116 F.3d 790, 801 (5th Cir. 1997); *In re Briscoe Enters., Ltd.*, 994 F.2d 1160, 1165-66 (5th Cir. 1993); *Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988); *In re Prussia Assocs.*, 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005); *In re Greate Bay Hotel & Casino, Inc.*, 251 B.R. 213, 226 (Bankr. D.N.J. 2000); *Corestates Bank, NA. v. United Chem. Tech., Inc.*, 202 B.R. 33, 45 (E.D. Pa. 1996).

101. While the debtor bears the burden of proving plan feasibility, the applicable standard is by a preponderance of the evidence – proof that a given fact is "more likely than not." *In re Briscoe Enters., Ltd.*, 994 F.2d at 1164; *see also In re T-H New Orleans Ltd. P'ship*, 116 F.3d at 802; *Corestates Bank, NA*, 202 B.R. at 45. This threshold of proof is "relatively low." *See, e.g., In re TCI 2 Holdings, LLC*, 428 B.R. 117, 148 (Bankr. D.N.J. 2010) (collecting cases); *In re Eddington Thread Mfg. Co.*, 181 B.R. 826, 833 (Bankr. E.D. Pa. 1995); *In re Mayer Pollack Steel Corp.*, 174 B.R. 414, 423 (Bankr. E.D. Pa. 1994) (stating that the debtors "have established that they meet the requisite low threshold of support for the Plan as a viable undertaking ..."); *In re Briscoe Enters. Ltd.*, 994 F.2d at 1116 (upholding the bankruptcy court's ruling that a reorganization that had only "'a marginal prospect of success'" was feasible because only "a reasonable assurance of commercial viability" was required). The courts have also made clear that "speculative prospects of failure cannot defeat feasibility. The mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds." *In re*

WorldCom, Inc., No. 02-13533-AJG, 2003 Bankr. LEXIS 1401, at *170 (Bankr. S.D.N.Y. Oct. 31, 2003); *see also In re W.R. Grace & Co.*, 729 F.3d 332, 348 (3d Cir. 2013) (to satisfy the feasibility requirement, "[s]uccess need not be guaranteed, but must be reasonably likely").

102. The Debtors have continued their operations as a going-concern throughout the Chapter 11 Cases. As set forth in the Machado Declaration and the Morgner Declaration, upon emergence from bankruptcy, the Debtors will have significantly reduced their debt obligations. The Debtors have also negotiated the Exit Financing Facilities that, when combined with the Cash on hand at emergence, will provide adequate liquidity for the Reorganized Debtors' working capital needs at emergence, have maintained (or improved) normal trade credit terms with the majority of their principal suppliers, and have eliminated or re-negotiated lease terms on a number of underperforming and non-performing restaurant locations in their pre-petition restaurant portfolio, which should materially improve the Debtors' overall financial health and performance. Consequently, the Debtors will have more than sufficient ability to pay their debts as they come due. Finally, the Debtors estimate that they will have sufficient Cash to ensure that the Holders of Allowed Administrative Claims, Professional Fee Claims, Priority Tax Claims, and Allowed Claims in Classes 1 and 2 are satisfied in full, and Classes 3, 4, 5, and 6 will receive the Distributions required under the Plan.

103. Accordingly, the Debtors submit that the Plan is feasible and meets the requirements of section 1129(a)(11) of the Bankruptcy Code.

L. Payment of Statutory Bankruptcy Fees (Section 1129(a)(12))

104. Section 1129(a)(12) of the Bankruptcy Code requires that all fees payable under 28 U.S.C. § 1930 be paid or that the proposed chapter 11 plan provide for their payment on the effective date of the plan. 11 U.S.C. § 1129(a)(12). Article III.F of the Plan provides that all fees payable on or before the Effective Date pursuant to section 1930 of title 28 of the United

States Code shall be paid by the Debtors on or before the Effective Date and all such fees payable after the Effective Date shall be paid by the applicable Reorganized Debtor.

105. Therefore, the Plan satisfies the requirements of section 1129(a)(12) of the Bankruptcy Code.

M. Satisfaction of Retiree Benefits (Section 1129(a)(13))

106. Section 1129(a)(13) of the Bankruptcy Code requires that a chapter 11 plan provide for the continuation of retiree benefits at levels established pursuant to section 1114 of the Bankruptcy Code for the duration of the period that the debtor has obligated itself to provide such benefits. 11 U.S.C. § 1129(a)(13). Article VIII.E of the Plan provides that as of and subject to the Effective Date, all employment and severance agreements and policies, and all employee compensation and benefit plans, policies, and programs of the Debtors applicable generally to their employees, including agreements and programs subject to section 1114 of the Bankruptcy Code, as in effect on the Effective Date, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed under the Plan, and the Debtors' obligations under all such agreements and programs shall survive the Effective Date of the Plan, without prejudice to the Reorganized Debtors' rights under applicable nonbankruptcy law to modify, amend, or terminate the foregoing arrangements in accordance with the terms and provisions thereof, except for (i) such executory contracts or plans specifically rejected pursuant to the Plan (to the extent such rejection does not violate section 1114 of the Bankruptcy Code), and (ii) such executory contracts or plans as have previously been terminated, or rejected, pursuant to a Final Order, or specifically waived by the beneficiaries of such plans, benefits, contracts, or programs.

107. As such, the Plan satisfies the requirements of section 1129(a)(13) of the Bankruptcy Code.

N. Principal Purpose of the Plan (Section 1129(d))

108. Section 1129(d) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." The principal purpose of the Plan is neither of the foregoing, and no governmental entity has filed any objection to the Plan asserting any such avoidance.

109. Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

O. Satisfaction of Bankruptcy Rule 3016(a)

110. Bankruptcy Rule 3016(a) provides that "[e]very proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the entity or entities submitting or filing it." The Plan is dated and identifies the Debtors as the entities submitting the Plan; therefore, the Plan complies with Bankruptcy Rule 3016(a).

V. RESOLUTIONS OF, OR RESPONSES TO, OBJECTIONS TO CONFIRMATION

111. As previously noted herein, as of the filing of this Memorandum, four Confirmation Objections were filed with the Court and a number of informal comments to the Plan were provided to the Debtors. All but one of the Confirmation Objections and all of the informal responses have been addressed through language included in the Confirmation Order.

112. *Mr. Jandt's Objection*. Ronnie Jandt, a putative Noteholder, filed with the Court a letter including a "No Vote" on the Plan which objects to certain classes of claims (or unclassified claims) receiving a 100% recovery in the Chapter 11 Cases, whereas Class 5 is receiving a less than 100% recovery. Ostensibly, Mr. Jandt objects to the payment in full of one or more of the Administrative Claims, Priority Tax Claims, DIP Facilities Claims, Other Priority

Claims, Other Secured Claims, and Revolving Facility Lender Claims. As set forth herein, the payment in full of these claims reflects either (i) the priority scheme established under sections 503, 507 and 1129 of the Bankruptcy Code with respect to the Administrative Claims, Priority Tax Claims, Other Priority Claims, or (ii) the contractual, legal and/or other subordination of the Notes Claims to the DIP Facilities Claims, Other Secured Claims, and Revolving Facility Lender Claims, each of which are discussed above. To the extent that Mr. Jandt is objecting to confirmation, rather than voting to reject the Plan, the Debtors respectfully request that the Court overrule Mr. Jandt's Confirmation Objection.

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VI. CONCLUSION

113. For all the foregoing reasons, the Plan should be confirmed pursuant to section 1129 of the Bankruptcy Code.

Dated: Wilmington, Delaware
November 7, 2016

/s/ Elizabeth S. Justison

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