

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

In re:

YOUFIT HEALTH CLUBS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-12841 (MFW)

(Jointly Administered)

**COMBINED DISCLOSURE STATEMENT AND AMENDED CHAPTER 11 PLAN OF
LIQUIDATION OF YOUFIT HEALTH CLUBS, LLC AND ITS DEBTOR AFFILIATES**

A SOLICITATION OF VOTES IS BEING CONDUCTED TO OBTAIN SUFFICIENT ACCEPTANCES OF THIS COMBINED DISCLOSURE STATEMENT AND PLAN. NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE, COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY OTHER PARTY IN INTEREST. THIS COMBINED DISCLOSURE STATEMENT AND PLAN IS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS.

GREENBERG TRAURIG, LLP

Dennis A. Meloro (DE Bar No. 4435)
The Nemours Building
1007 North Orange Street, Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 661-7000
Facsimile: (302) 661-7360
Email: melorod@gtlaw.com

Nancy A. Peterman (admitted *pro hac vice*)
Eric Howe (admitted *pro hac vice*)
Nicholas E. Ballen (admitted *pro hac vice*)
77 West Wacker Dr., Suite 3100
Chicago, Illinois 60601
Telephone: (312) 456-8400
Facsimile: (312) 456-8435
Emails: petermanN@gtlaw.com
howeE@gtlaw.com
ballenN@gtlaw.com

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Counsel for the Debtors and Debtors in Possession

¹ The last four digits of YouFit Health Clubs, LLC's tax identification number are 6607. Due to the large number of debtor entities in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at www.donlinrecano.com/yfhc. The mailing address for the debtor entities for purposes of these chapter 11 cases is: 1350 E. Newport Center Dr., Suite 110, Deerfield Beach, FL 33442.

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Appendix A: Liquidating Trust Agreement

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THE COMBINED DISCLOSURE STATEMENT AND PLAN WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTORS' KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED, OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

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

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THE COMBINED DISCLOSURE STATEMENT AND PLAN SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED DISCLOSURE STATEMENT AND PLAN AND THE TRANSACTIONS CONTEMPLATED HEREBY.

NO PARTY IS AUTHORIZED TO GIVE ANY INFORMATION WITH RESPECT TO THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN THAT WHICH IS CONTAINED IN THE COMBINED DISCLOSURE STATEMENT AND PLAN. NO REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY HAVE BEEN AUTHORIZED BY THE DEBTORS OTHER THAN AS SET FORTH IN THE COMBINED DISCLOSURE STATEMENT AND PLAN. ANY INFORMATION, REPRESENTATIONS, OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE COMBINED DISCLOSURE STATEMENT AND PLAN OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM OR INTEREST. THE COMBINED DISCLOSURE STATEMENT AND PLAN HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND NOT IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NONAPPLICABLE BANKRUPTCY LAWS. THE COMBINED DISCLOSURE STATEMENT AND PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION (THE "SEC"), AND THE SEC HAS NOT PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN.

INTRODUCTION

YouFit Health Clubs, LLC and its debtor affiliates, as debtors and debtors in possession, propose this combined disclosure statement and chapter 11 plan of liquidation, as amended and supplemented from time to time, for the resolution of outstanding Claims against, and Interests in, the Debtors. Capitalized terms used and not otherwise defined shall have the meanings ascribed to such terms in Article I.A hereof.

This Combined Disclosure Statement and Plan implements a settlement between the Debtors, the Buyer, and the Creditors' Committee by, among other things, the establishment of the Liquidating Trust. In accordance with the Liquidating Trust Agreement and the provisions set forth herein, the Liquidating Trustee will marshal the remaining assets of the Debtors' Estates including prosecution and recovery of the Liquidating Trust Claims, review the Claims, and make Distributions from the remaining Assets of the Estates to Holders of certain Allowed Claims, consistent with the priority of claim provisions of the Bankruptcy Code.

This Combined Disclosure Statement and Plan contains, among other things, (i) a discussion of the Debtors' history and businesses, (ii) a summary of the events leading to these Chapter 11 Cases, (iii) a summary of key events in these Chapter 11 Cases, (iv) risk factors related to this Combined Disclosure Statement and Plan, (v) the terms of the plan of liquidation, including the establishment of the Liquidating Trust, and (vi) certain other related matters.

The Debtors are the proponents of the Combined Disclosure Statement and Plan within the meaning of section 1129 of the Bankruptcy Code. ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE COMBINED DISCLOSURE STATEMENT AND PLAN IN ITS ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE COMBINED DISCLOSURE STATEMENT AND PLAN. THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE, OR WITHDRAW THE COMBINED DISCLOSURE STATEMENT AND PLAN, OR ANY PART THEREOF, PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

Please take note of the following important dates relating to the Combined Disclosure Statement and Plan:

General Claim Bar Date. Persons or entities, other than governmental units, must file Proofs of Claim against the Debtors on account of Claims arising, or deemed to have arisen, prior to the Petition Date, including, for the avoidance of doubt, claims arising under section 503(b)(9) of the Bankruptcy Code by **February 22, 2021, at 4:00 (prevailing Eastern Time).**

Plan Supplement Deadline. Debtors to provide any supplemental disclosures regarding the Combined Disclosure Statement and Plan by April 5, 2021;

Voting Deadline. Ballots from voting creditors must be received by April 12, 2021 at 4:00 p.m. (prevailing Eastern Time);

Objection Deadline. Objections to confirmation of the Combined Disclosure Statement and Plan must be filed and served by April 12, 2021 at 4:00 p.m. (prevailing Eastern Time); and

Combined Hearing. Hearing on adequacy of disclosures and confirmation of the Combined Disclosure Statement and Plan: April 22, 2021, at 10:30 a.m. (prevailing Eastern Time).

**ARTICLE I.
DEFINED TERMS, RULES OF INTERPRETATION,
COMPUTATION OF TIME, AND GOVERNING LAW**

A. Defined Terms

As used in this Combined Disclosure Statement and Plan, capitalized terms have the meanings set forth below.

1. “*503(b)(9) Claims*” means Claims arising under section 503(b)(9) of the Bankruptcy Code against one or more of the Debtors that were to be Filed against one or more of the Debtors on or before the General Bar Date.

2. “*Acquired Assets*” has the meaning as set forth in the APA.

3. “*Acquired Causes of Action*” has the meaning set forth in Article III.G below.

4. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Debtors’ Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates; (b) Allowed Professional Fee Claims; (c) all Allowed requests for compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code; (d) all Allowed Claims arising under section 503(b)(9) of the Bankruptcy Code; and (e) all DIP Lender Claims.

5. “*Administrative Claims Bar Date*” means the Initial Administrative Claims Bar Date or the Supplemental Administrative Claims Bar Date, as applicable.

6. “*Affiliate*” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

7. “*Allowed*” means with respect to any Claim, except as otherwise provided herein: (a) a Claim that is evidenced by a Proof of Claim timely Filed by the Bar Date (or for which Claim under the Combined Disclosure Statement and Plan, the Bankruptcy Code, or a Final Order of the Bankruptcy Court, a Proof of Claim is not or shall not be required to be Filed); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not disputed, and for which no Proof of Claim has been timely Filed; or (c) a Claim Allowed pursuant to the Combined Disclosure Statement and Plan, any stipulation approved by the Bankruptcy Court, any contract, instrument, indenture, or other agreement entered into or assumed in connection with the Combined Disclosure Statement and Plan, or a Final Order; provided, that with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that with respect to such Claim no objection to the allowance thereof has been interposed within the applicable period of time fixed by the Combined Disclosure Statement and Plan, the Bankruptcy

Code, the Bankruptcy Rules, or the Bankruptcy Court, or if such an objection is so interposed, such Claim shall have been Allowed by a Final Order. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim or Interest is or has been timely Filed, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court unless otherwise ordered by the Bankruptcy Court. Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes. For the avoidance of doubt, a Proof of Claim Filed after the Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. “Allow” and “Allowing” shall have correlative meanings.

8. “*Approved Budget*” has the meaning as set forth in the Final DIP Order.

9. “*Asset Purchase Agreement*” or “*APA*” means that certain Asset Purchase Agreement dated as of November 9, 2020, as amended by (i) the First Amendment to Asset Purchase Agreement [Docket No. 235], by and between the Debtors and the Buyer and (ii) the Sale Order, as the same may be further amended, supplemented or otherwise modified from time to time that was approved by the Bankruptcy Court pursuant to the Sale Order.

10. “*Assets*” means all tangible and intangible assets of every kind and nature of the Debtors and their Estates within the meaning of section 541 of the Bankruptcy Code.

11. “*Avoidance Actions*” means Claims and Causes of Action under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law.

12. “*Bankruptcy Code*” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended from time to time, as applicable to the Chapter 11 Cases.

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

14. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Cases, promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each as amended from time to time.

15. “*Bar Date Order*” means the *Order (I) Fixing Deadlines for Filing Proofs of Claim and (II) Approving the Form and Manner of Notice Hereof* entered by the Bankruptcy Court on January 20, 2021 [Docket No. 671].

16. “*Berks Actions*” means any Avoidance Actions against the following individuals: Rick Berks, Christy Berks-Stross, Melissa Berks-Muniz, or Melinda Berks, which Berks Actions were transferred to the Buyer in connection with the Sale.

17. “*Berks Actions Cash Recovery*” means a recovery in Cash by the Buyer or one of its Affiliates, whether through assignment, settlement or judgment, on account of the Berks Actions.

18. “*Blank Action*” means that certain prepetition putative class action commenced by Jason Blank on April 9, 2020 in Broward County, Florida (17th Circuit Court, Case #106059805).

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

20. “*Buyer*” means YF FC Acquisition, LLC.

21. “*Cash*” means cash and cash equivalents, including bank deposits, checks, and other similar items in legal tender of the United States of America.

22. “*Causes of Action*” means any Claims, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, matured or unmatured, suspected or unsuspected, in tort, law, equity, or otherwise, including (a) all rights of setoff, counterclaim, or recoupment and claims on contracts or for breaches of duties imposed by law; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (d) such claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code.

23. “*Chapter 11 Cases*” means, when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court, and when used with reference to all of the Debtors, the procedurally consolidated and jointly administered chapter 11 cases pending for the Debtors in the Bankruptcy Court.

24. “*Claim*” means any claim, as defined in section 101(5) of the Bankruptcy Code.

25. “*Claims Agent*” means Donlin, Recano & Company, Inc. or any successor appointed by the Bankruptcy Court.

26. “*Claims Objection Bar Date*” means the deadline for objecting to a Claim, which shall be on the date that is the later of (a) 180 days after the Effective Date and (b) such other period of limitation as may be specifically fixed by order of the Bankruptcy Court for objecting to Claims.

27. “*Claims Register*” means the official register of Claims maintained by the Claims Agent.

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

29. “*Class 3/Class 4 Allocation*” means the allocation of (a) the Class 3 Liquidating Trust Interests Pro Rata to the Holders of Allowed Lender Claims and (b) the Class 4 Liquidating Trust Interests Pro Rata to Holders of Allowed General Unsecured Claims.

30. “*Class 3 Liquidating Trust Interests*” means Liquidating Trust Interests to be distributed Pro Rata to Holders of Allowed Lender Claims, which shall entitle such Holders to receive distributions of Liquidating Trust Assets pursuant to the Liquidating Trust Proceeds Waterfall.

31. “*Class 3 Recovery Percentage*” means the lesser of (x) the Lender Claim Pool Percentage and (y) 65%.

32. “*Class 4 Liquidating Trust Interests*” means Liquidating Trust Interests to be distributed Pro Rata to Holders of Allowed General Unsecured Claims, which shall entitle such Holders to receive distributions of Liquidating Trust Assets pursuant to the Liquidating Trust Proceeds Waterfall.

33. “*Class 4 Recovery Percentage*” means 100% minus the Lender Recovery Percentage.

34. “*Combined Disclosure Statement and Plan*” means this entire document and the Plan Supplement, all exhibits, schedules and related documents, whether annexed hereto or Filed in connection herewith, including the Disclosure Statement portions and the Plan portions.

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

36. “*Confirmation Order*” means the order of the Bankruptcy Court confirming this Combined Disclosure Statement and Plan pursuant to, among others, section 1129 of the Bankruptcy Code.

37. “*Combined Hearing*” means the combined hearing before the Bankruptcy Court to consider the adequacy of the disclosures in, and confirmation of, the Combined Disclosure Statement and Plan, which is scheduled for April 22, 2021, at 10:30 a.m. (prevailing Eastern Time).

38. “*Consummation*” means the occurrence of the Effective Date.

39. “*Contingent Claim*” means any contingent or unliquidated Claim asserted or which may be asserted against the Debtors.

40. “*Creditors’ Committee*” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code [Docket No. 101].

41. “*Creditors’ Committee Settlement*” means the settlement among the Creditors’ Committee, the Debtors, and the Buyer, described in more detail in Article III.M of the Combined

Disclosure Statement and Plan, and implemented pursuant to the terms of the Sale Order and this Combined Disclosure Statement and Plan.

42. “*Debtors*” means, collectively, the debtors and debtors in possession in the Chapter 11 Cases.

43. “*DIP Agent*” means Alter Domus (US) LLC, in its capacity as administrative and collateral agent under the DIP Facility.

44. “*DIP Credit Agreement*” means that certain Senior Secured Super-Priority Debtor-in-Possession Credit Agreement, dated as of November 9, 2020, by and among the Debtors, the DIP Lenders, and the DIP Agent, as it may be amended, restated, supplemented, or otherwise modified from time to time.

45. “*DIP Credit Documents*” means the DIP Credit Agreement and any other agreements and documents executed in connection with or related thereto.

46. “*DIP Credit Facility*” means the multi-draw superpriority senior secured priming debtor-in-possession term loan credit facility provided by the DIP Lenders to the Debtors under the terms of the DIP Credit Documents and DIP Orders.

47. “*DIP Lender Claims*” means any and all Claims derived from, based upon, or secured by, the DIP Facility, the DIP Credit Documents, or the DIP Orders held by any DIP Lender or the DIP Agent which claims are deemed Allowed.

48. “*DIP Lenders*” means, collectively, the lenders from time to time that are party to the DIP Credit Agreement.

49. “*DIP Lender Representative*” means BGC Lender Rep LLC, as lender representative under the DIP Credit Agreement.

50. “*DIP Orders*” means, collectively, the interim and final orders entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP Credit Documents and incur postpetition obligations thereunder [Docket Nos. 49 & 231] as well as orders entered by the Bankruptcy Court amending the terms of the DIP Credit Facility [Docket Nos. 568 and 656].

51. “*Disallowed*” means, with respect to any Claim, a Claim or any portion thereof that: (a) has been disallowed by a Final Order; (b) is listed on the Schedules as zero or as contingent, disputed, or unliquidated and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely Filed under applicable law or the Combined Disclosure Statement and Plan; (c) is not listed on the Schedules and as to which no Proof of Claim or request for payment of an Administrative Claim has been timely Filed or deemed timely Filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely Filed under applicable law or the Combined Disclosure Statement and Plan; (d) has been withdrawn by agreement of the applicable Debtor and the Holder thereof; or (e) has been withdrawn by the Holder thereof.

52. “*Disbursing Agent*” means mean the Liquidating Trustee; *provided, however*, that the Liquidating Trustee may, in its discretion, retain a third party to act as Disbursing Agent.

53. “*Disclosure Statement*” means the disclosure statement, as amended, supplemented or modified from time to time, that is embodied within the Combined Disclosure Statement and Plan and distributed in accordance with, among others, sections 1125, 1126(b) and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable law.

54. “*Disputed*” means a Claim that is not yet Allowed or Disallowed.

55. “*Distribution*” shall mean any distribution made pursuant to the Combined Disclosure Statement and Plan by the Liquidating Trustee or another Entity acting as the Disbursing Agent, to the Holders of Allowed Claims.

56. “*Distribution Reserve Accounts*” means the Undeliverable Distribution Reserve, the Liquidating Trust Expense Fund, and the GUC Disputed Claims Reserve established pursuant to this Combined Disclosure Statement and Plan.

57. “*Effective Date*” means the first Business Day after the Confirmation Date on which the conditions precedent specified herein have been either satisfied or waived.

58. “*Entity*” shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

59. “*Estate*” means, as to each Debtor, the estate created for the Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code.

60. “*Exculpated Parties*” means, collectively, and in each case in its capacity as such: (a) the Debtors, (b) the directors and officers of the Debtors who served during any portion of these Chapter 11 Cases, (c) the Debtors’ Professionals retained in these Chapter 11 Cases, (d) the Creditors’ Committee, the members of the Creditors’ Committee in their capacity as such, the individuals representing such members, in their capacity as such, and (e) the Creditors’ Committee’s Professionals retained in these Chapter 11 Cases.

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

62. “*File*,” “*Filed*,” or “*Filing*” means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim or proof of Interest, the Claims Agent.

63. “*Final DIP Order*” means the final order entered by the Bankruptcy Court authorizing the Debtors to enter into the DIP Credit Documents and incur postpetition obligations thereunder [Docket No. 231].

64. “*Final Order*” means (i) an order or judgment of the Bankruptcy Court, as entered on the docket in any Chapter 11 Case (or any related adversary proceeding or contested matter) or

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

65. “*General Bar Date*” means February 22, 2021 at 4:00 p.m. (prevailing Eastern Time) for certain Claims arising before the Petition Date, including 503(b)(9) Claims, as established by the Bar Date Order.

66. “*General Unsecured Claim*” or “*GUC*” means any Claim other than (a) an Administrative Claim, (b) an Other Secured Claim, (c) a Priority Tax Claim, (d) an Other Priority Claim, (e) an Intercompany Claim, (f) a DIP Lender Claim, (g) a Prepetition Lender Claim, or (h) a Subordinated Claim.

67. “*Governmental Unit*” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

68. “*GUC Disputed Claims Reserve*” means a reserve account with respect to Disputed General Unsecured Claims to be established and funded by the Liquidating Trustee pursuant to Article X and the Liquidating Trust Agreement.

69. “*Holder*” means any Person holding a Claim, Interest, or Liquidating Trust Interest, as applicable.

70. “*Holdings*” means YouFit Health Clubs, LLC.

71. “*Impaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

72. “*Initial Administrative Claims Bar Date*” means the deadline by which all Holders of Initial Administrative Claims must file a request for allowance of any such claims via the form approved by the Solicitation Procedures Order by 4:00 p.m. (prevailing Eastern Time) on April 12, 2021.

73. “*Initial Administrative Claims*” means Administrative Claims, other than 503(b)(9) Claims, DIP Lender Claims, or Professional Fee Claims, that arose or accrued between the Petition Date and the later of March 3, 2021 and the date of the entry of the Solicitation Procedures Order.

74. “*Intercompany Claim*” means any Claim held by a Debtor against another Debtor.

75. “*Interest*” means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor, including any rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

76. “*Insurance Policies*” mean all insurance policies that have been issued at any time to or provide coverage to any of the Debtors and all agreements, documents, or instruments relating thereto.

77. “*IRS*” means the Internal Revenue Service.

78. “*Interim Compensation Order*” means the order of the Bankruptcy Court establishing procedures for interim compensation and reimbursement of expenses for professionals [Docket No. 202].

79. “*Judicial Code*” means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as amended from time to time, as applicable to the Chapter 11 Cases.

80. “*Lender Claim Pool Percentage*” means the percentage derived by dividing (i) the Lender Claims Allowed Amount by (ii) the sum of (a) the Lender Claims Allowed Amount and (b) the aggregate amount of Allowed General Unsecured Claims.

81. “*Lender Claims*” means together the Prepetition Lender Claims and the DIP Lender Claims, which are deemed allowed.

82. “*Lender Claims Allowed Amount*” means the aggregate Allowed amount of the Lender Claims, which amount is no less than \$17,727,918.35.

83. “*Lenders*” means together the Prepetition Lenders and the DIP Lenders.

84. “*Lien*” shall have the meaning set forth in section 101(37) of the Bankruptcy Code.

85. “*Liquidating Trust*” means a liquidating trust to be established on the Effective Date for the benefit of Holders of Allowed Lender Claims and General Unsecured Claims pursuant to the terms of the Liquidating Trust Agreement and the Combined Disclosure Statement and Plan.

86. “*Liquidating Trust Advisory Board*” means the advisory board that shall oversee the Liquidating Trust in accordance with the Liquidating Trust Agreement and the Combined Disclosure Statement and Plan, the initial composition of which shall consist of three members,

one of whom shall be designated by the Creditors' Committee (the identity of whom, to the extent known, shall be disclosed prior to the Effective Date), one of whom shall be designated by the Lenders (the identity of whom, to the extent known, shall be disclosed prior to the Effective Date), and one of whom shall be jointly designated by the Creditors' Committee and the Lenders.

87. *"Liquidating Trust Agreement"* means the trust or similar agreement that establishes the Liquidating Trust and governs the powers, duties, and responsibilities of the Liquidating Trustee, on terms materially consistent with the Combined Disclosure Statement and Plan, the form of which is attached hereto as Appendix A, as may be amended, modified, or supplemented from time to time, which shall be on terms acceptable to the Debtors, the Lenders, and the Creditors' Committee.

88. *"Liquidating Trust Assets"* means (a) all Excluded Assets (as defined in the Sale Order) including, but not limited to, the Liquidating Trust Funding Amount, (b) the Debtors' books and records that are not Acquired Assets, if any, and (c) the Liquidating Trust Claims and the proceeds thereof.

89. *"Liquidating Trust Beneficiaries"* means the Holders of Liquidating Trust Interests.

90. *"Liquidating Trust Claims"* means all Avoidance Actions against West Central Construction as set forth in paragraph 11 of the Sale Order and Exhibit E to the Sale Order.

91. *"Liquidating Trust Expenses"* shall have the meaning set forth in Article XI.C.

92. *"Liquidating Trust Funding Amount"* means Cash, if any, remaining from the Professional Fee Excess Amount and Wind Down Amount after payment of all Allowed Administrative Claims and all Allowed Priority Claims, which amount shall be contributed to the Liquidating Trust and distributed in accordance with Liquidating Trust Proceeds Waterfall.

93. *"Liquidating Trustee"* means the Person jointly designated by the Creditors' Committee and the Lenders to serve as the trustee of the Liquidating Trust and any successor thereto appointed pursuant to the Liquidating Trust Agreement.

94. *"Liquidating Trust Interests"* means the beneficial interests in the Liquidating Trust.

95. *"Liquidating Trust Proceeds Waterfall"* means the following priority of Distributions with respect to the Liquidating Trust Assets: (a) first, any outstanding Allowed Administrative Claims and Allowed Priority Claims, if any; (b) second, after the amounts in clause (a) are fully satisfied, all Liquidating Trust Expenses; (c) third, after the amounts in clause (a) and (b) are fully satisfied or reserved, to pay Holders of Class 4 Liquidating Trust Interests (i) \$350,000 plus (ii) if the Liquidating Trust Funding Amount is greater than the amount of the Liquidating Trust Expenses, the difference between the Liquidating Trust Funding Amount and the amount of the Liquidating Trust Expenses; (d) fourth, after the amounts in clauses (a) through (c) are fully satisfied or reserved, if there has been a Berks Actions Cash Recovery, to pay Holders of Class 4 Liquidating Trust Interests up to an amount equal to the Class 3 Recovery Percentage applied to the Berks Actions Cash Recovery; and (e) fifth, after the amounts in clauses (a) through (d) are

fully satisfied or reserved, to pay Holders of Class 3 Liquidating Trust Interests and Holders of Class 4 Liquidating Trust Interests as follows: (i) the Holders of Class 3 Liquidating Trust Interests shall receive the Class 3 Recovery Percentage of any distributions made under this clause (e) and (ii) Holders of Class 4 Liquidating Trust Interests shall receive the Class 4 Recovery Percentage of any distributions made under this clause.

96. “*Local Rules*” means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

97. “*OCP Order*” means the *Order Authorizing the Retention and Payment of Professionals Utilized by the Debtors in the Ordinary Course of Business* entered by the Bankruptcy Court on December 3, 2020 [Docket No. 201].

98. “*Ordinary Course Professional*” shall have the meaning ascribed to such term in the OCP Order.

99. “*Other Priority Claim*” means any Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, other than: (a) an Administrative Claim; or (b) a Priority Tax Claim, to the extent such Claim has not already been paid during the Chapter 11 Cases.

100. “*Other Secured Claim*” means any Secured Claim other than a DIP Lender Claim and a Prepetition Lender Claim.

101. “*Person*” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

102. “*Petition Date*” means November 9, 2020, the date on which the Debtors commenced the Chapter 11 Cases.

103. “*Plan*” means the Combined Disclosure Statement and Plan, and the Plan Supplement, which is incorporated herein by reference, including all exhibits and schedules hereto and thereto.

104. “*Plan Documents*” means all documents, forms of documents, schedules, and exhibits to this Combined Disclosure Statement and Plan to be executed, delivered, assumed, or performed in conjunction with consummation of this Combined Disclosure Statement and Plan on the Effective Date.

105. “*Plan Supplement*” means the compilation of all Plan Documents to be entered into as of the Effective Date and which, if not attached to this Combined Disclosure Statement and Plan, will be filed with the Bankruptcy Court not later than seven (7) calendar days prior to the Voting Deadline.

106. “*Prepetition Agent*” means Cortland Capital Market Services, LLC, as administrative agent (together with its permitted successors in such capacity) and as collateral agent (together with its permitted successors in such capacity) under the Prepetition Credit Agreement.

107. “*Prepetition Collateral*” means the Collateral (as defined in the Prepetition Credit Agreement), which Prepetition Collateral constitutes substantially all of each Prepetition Loan Party’s assets.

108. “*Prepetition Credit Agreement*” means that certain Credit and Guaranty Agreement, dated as of April 16, 2019 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time) by and among the Prepetition Loan Parties, the Prepetition Guarantors, and the Prepetition Secured Parties.

109. “*Prepetition Credit Documents*” means the Prepetition Credit Agreement and any other agreements and documents executed in connection with or related thereto.

110. “*Prepetition Guarantors*” means Holdings and certain subsidiaries of Holdings under the Prepetition Credit Agreement.

111. “*Prepetition Lender Representative*” means BGC Lender Rep LLC, as lender representative under the Prepetition Credit Agreement.

112. “*Prepetition Lenders*” mean the lenders from time to time party thereto under the Prepetition Credit Agreement.

113. “*Prepetition Lender Claims*” means any and all Claims arising from, under, or in connection with the Prepetition Credit Documents which claims are deemed Allowed.

114. “*Prepetition Loan Parties*” means collectively You Fit, LLC, Holdings, and certain subsidiaries of Holdings as borrowers under the Prepetition Credit Agreement.

115. “*Prepetition Secured Obligations*” means any other accrued and accruing unpaid obligations under the Prepetition Credit Agreement, including interest, fees and expenses (including legal fees and expenses) (collectively with all loans, advances, debts, liabilities, principal, interest, fees, charges, expenses, and obligations for the performance of covenants, tasks, or duties or for the payment of monetary amounts owing to the Prepetition Secured Parties by the Prepetition Loan Parties, of any kind or nature, whether or not evidenced by any note, agreement, or other instrument.

116. “*Prepetition Secured Parties*” means the Prepetition Lender Representative, the Prepetition Lenders, and the Prepetition Agent under the Prepetition Credit Agreement.

117. “*Priority Claims*” means, collectively, Priority Tax Claims and Other Priority Claims.

118. “*Priority Tax Claim*” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

119. “*Pro Rata*” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that Allowed Claims in a particular Class bear to the aggregate amount of Allowed Claims in a particular Class and

other Classes entitled to share in the same recovery as such Allowed Claim under the Combined Disclosure Statement and Plan.

120. “*Professional*” means an Entity employed pursuant to a Bankruptcy Court order in accordance with sections 327, 328 or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, or 331 of the Bankruptcy Code.

121. “*Professional Fee Claims*” means all Administrative Claims for the compensation of Professionals and the reimbursement of expenses incurred by such Professionals through and including the Effective Date to the extent such fees and expenses have not been previously paid.

122. “*Professional Fee Escrow Account*” means an interest-bearing account in an amount equal to the total Professional Fee Reserve Amount funded by the Debtors on the Effective Date, which account and all Cash therein are Excluded Assets under, and as defined in, the APA.

123. “*Professional Fee Excess Amount*” means the amount in the Professional Fee Escrow Account allocated to pay the Creditors’ Committee’s Professionals and Debtors’ legal counsel Greenberg Traurig, LLP under the Approved Budget minus the aggregate amount of all Allowed Professional Fee Claims for the Creditors’ Committee’s Professionals and Greenberg Traurig, LLP.

124. “*Professional Fee Reserve Amount*” means the aggregate amount in the Approved Budget allocated to Professional Fee Claims minus the amount of such Professional Fee Claims that have already been paid as of the Effective Date.

125. “*Pro Rata Share*” means, with respect to any Distribution on account of any Allowed Claim, the ratio that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in the same Class.

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

127. “*Quarterly Fees*” shall have the meaning set forth in Article VI.E.

128. “*Released Party*” means each of the following, solely in its capacity as such: (a) the DIP Agent; (b) the DIP Lenders; (c) the DIP Lender Representative (d) the Prepetition Lenders; (e) the Prepetition Agent; (f) the Prepetition Lender Representative; (g) the Creditors’ Committee, (h) the Buyer; and (i) with respect to (1) the Entities in the foregoing clauses (a) through (h) and (2) the Debtors, each such Entity’s current and former Affiliates, and such Entities’ and their current and former Affiliates’ current and former directors, managers, officers, control persons, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, participants, managed accounts or funds, fund advisors, predecessors, successors, assigns, subsidiaries, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, investment managers, and other professionals, each in their capacity as such.

129. “Sale” means the sale of substantially all of the Debtors’ Assets to the Buyer pursuant to the Sale Documents.

130. “Sale Documents” means the APA, the Sale Order, the Supplemental Sale Order, and all documents, instruments, and agreements executed and delivered in connection with the consummation of the transactions contemplated by the APA.

131. “Sale Order” means, collectively, (i) the Order [Docket No. 564] entered by the Bankruptcy Court on December 28, 2020 that, among other things, approved the Sale and (ii) the Supplemental Sale Order.

132. “Secured” means when referring to a Claim: (a) secured by a Lien on property in which any of the Debtors has an interest, which Lien is valid, perfected, enforceable and unavoidable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the applicable Holder’s interest in the applicable Debtor’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed pursuant to the Combined Disclosure Statement and Plan, or separate order of the Bankruptcy Court, as a secured claim.

133. “Solicitation Procedures Order” means the Bankruptcy Court’s order approving the *Motion for Entry of an Order (A) Approving the Disclosure Statement on an Interim Basis, (B) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, (C) Approving the Form of Ballot and Solicitation Materials, (D) Establishing Voting Record Date, (E) Fixing the Date, Time, and Place for the Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan and the Deadline for Filing Objections Thereto, (F) Approving Related Notice Procedures and Deadlines; and (G) Fixing a Deadline for Initial Administrative Expense Claims* on March 4, 2021 [Docket No. 801].

134. “Subordinated Claim” means a Claim of the type described in and subject to subordination pursuant to section 510(b) of the Bankruptcy Code.

135. “Supplemental Administrative Claims Bar Date” means the deadline for Filing requests for payment of Administrative Claims, which: (a) with respect to Administrative Claims other than Professional Fee Claims, 503(b)(9) Claims, and Initial Administrative Claims, shall be 30 days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be 45 days after the Effective Date.

136. “Supplemental Sale Order” means the Order [Docket No. 735] entered by the Bankruptcy Court on February 9, 2021 that, among other things, supplements the Sale Order.

137. “U.S. Trustee” means the Office of the United States Trustee for the District of Delaware and the U.S. Trustee for Region 3.

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

139. “*Unimpaired*” means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that are unimpaired within the meaning of section 1124 of the Bankruptcy Code, including through payment in full in Cash.

140. “*Voting Deadline*” means April 12, 2021 at 4:00 p.m. (prevailing Eastern Time).

141. “*Wind Down Amount*” means \$400,000, which as of the Closing Date has been funded to the Debtors under the DIP Credit Facility and is an Excluded Asset under, and as defined in, the APA.

B. Rules of Interpretation

For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to a Person as a Holder of a Claim or Interest includes that Person’s successors and assigns; (5) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words “herein,” “hereof,” and “hereto” refer to the Combined Disclosure Statement and Plan in its entirety rather than to a particular portion of the Combined Disclosure Statement and Plan; (8) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Combined Disclosure Statement and Plan; (9) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (10) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (11) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court’s CM/ECF system; (12) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (13) any immaterial effectuating provisions may be interpreted by the Debtors or the Liquidating Trustee in such a manner that is consistent with the overall purpose and intent of the Combined Disclosure Statement and Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Person; and (14) all reference to “corporate action” shall mean with respect to any Entity, corporate, limited liability, partnership or other organizational action, as applicable to such Entity.

C. Computation of Time

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Combined Disclosure Statement and Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

D. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Combined Disclosure Statement and Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Combined Disclosure Statement and Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); provided, that corporate governance matters relating to the Debtors shall be governed by the laws of the state of incorporation or formation of the relevant Debtor.

E. Reference to Monetary Figures

All references in the Combined Disclosure Statement and Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

ARTICLE II. SUMMARY OF CLASSIFICATION OF CLAIMS AND INTERESTS AND ESTIMATED RECOVERIES

The information in the table below is provided in summary form for illustrative purposes only and is subject to material change based on certain contingencies, including those related to the reconciliation process of Claims. Actual recoveries may widely vary within these ranges, and any changes to any of the assumptions underlying these amounts could result in material adjustments to recovery estimates provided herein and/or the actual distribution received by Creditors. The projected recoveries are based on information available to the Debtors as of the date hereof and reflect the Debtors' estimates as of the date hereof only. In addition to the cautionary notes contained elsewhere in the Combined Disclosure Statement and Plan, it is underscored that the Debtors make no representation as to the accuracy of these recovery estimates. The Debtors expressly disclaim any obligation to update any estimates or assumptions after the date hereof on any basis (including new or different information received and/or errors discovered).

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or

Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Combined Disclosure Statement and Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

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

**THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW
ARE ESTIMATES ONLY AND ARE THEREFORE SUBJECT TO CHANGE.**

Class/Designation	Combined Disclosure Statement and Plan Treatment	Estimated Amount of Claims	Status	Projected Recovery
Class 1: Other Priority Claims	In full and final satisfaction of each Allowed Other Priority Claim, except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, each Holder thereof will receive payment in full in Cash.	\$0	Unimpaired/ Deemed to accept Combined Disclosure Statement and Plan	100%
Class 2: Other Secured Claims	In full and final satisfaction of each Allowed Other Secured Claim, except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder thereof will receive at the option of the Debtors: (a) payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, in each case, or as soon as reasonably practicable thereafter or (b) delivery of the collateral securing any such Claim.	\$0	Unimpaired/ Deemed to accept Combined Disclosure Statement and Plan	100%

Class/Designation	Combined Disclosure Statement and Plan Treatment	Estimated Amount of Claims	Status	Projected Recovery
Class 3: Prepetition Lender Claims	In full and final satisfaction of each Prepetition Lender Claim and, pursuant to Article VI.C and the terms of the Creditors' Committee Settlement, each DIP Lender Claim, each Holder of an Allowed Lender Claim shall receive its Pro Rata share of the Class 3 Liquidating Trust Interests.	Not less than \$17,727,918 in Allowed Lender Claims	Impaired / Entitled to Vote	Up to 1% or more of Allowed Lender Claims depending on trust funding and litigation recoveries
Class 4: General Unsecured Claims	In full and final satisfaction of each General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the Class 4 Liquidating Trust Interests.	\$20,000,000 ²	Impaired / Entitled to Vote	Up to 1% or more depending on trust funding and litigation recoveries
Class 5: Subordinated Claims	Subordinated Claims will be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of a Subordinated Claim will not receive any distribution on account of such Subordinated Claim.	\$0	Impaired / Deemed to reject Combined Disclosure Statement and Plan	0%
Class 6: Intercompany Claims	Holders of Intercompany Claims shall not receive a distribution on account of such Intercompany Claims.	N/A	Impaired / Deemed to reject Combined Disclosure Statement and Plan	0%
Class 7: Interests in the Debtors	On the Effective Date, all Interests shall be deemed canceled, extinguished and of no further force or effect, and the Holders of Interests shall not be entitled to receive or retain any property on account of such Interest	N/A	Impaired / Deemed to reject Combined Disclosure Statement and Plan	0%

² This amount is based on the Debtors' schedules of assets and liabilities and does not include any contingent, unliquidated, and/or disputed claims set forth therein.

ARTICLE III. BACKGROUND

The information in this Article III is provided in order to enable voting creditors to make an informed decision regarding rejection or approval of the Combined Disclosure Statement and Plan. By order entered on March 4, 2021, the Combined Disclosure Statement and Plan was approved on an interim basis by the Bankruptcy Court as containing “adequate information” within the meaning of section 1125 of the Bankruptcy Code. If you are a voting creditor and believe additional information is necessary for this purpose, please contact counsel for the Debtors³ as soon as possible to request such information.

The Debtors will make reasonable efforts to comply with requests for additional information, and to make any such information available to all voting creditors by filing a supplement on the docket of the Chapter 11 Cases and posting it on the Claims Agent’s case website.⁴

A. Background and Procedural History

1. The Debtors and their Business

Prior to the novel coronavirus (“COVID-19”) pandemic, the Debtors owned and operated over 100 fitness clubs (the “Clubs”) located in twelve states across the country and actively employed more than 3,200 employees, operating under the YouFit Health Clubs name. As explained below, due to COVID-19, the Debtors reduced their footprint to ten states, eighty-five Clubs, and approximately 1,600 employees as of the Petition Date.

Prior to the Sale, the Debtors’ primary sources of revenue were sales of gym memberships and sales of personal training services to their members. As of the Petition Date, the Debtors had approximately 360,000 members. For the twelve-month period ending December 31, 2019, the Debtors had total revenues of approximately \$135 million.

Beginning March 17, 2020, in accordance with local and state “stay-at-home” ordinances imposed in response to the spread of COVID-19, the Debtors began to suspend operations and ultimately closed all of their Clubs. While the Debtors have a small e-commerce business segment, selling activewear and athleisure apparel and accessories through its website, the foundation of the business is the provision of clean and comfortable environments with ample exercise machinery and equipment and helpful and knowledgeable staff and trainers at the Clubs.

Though the Debtors had to do their part to help slow the spread of COVID-19 and protect their members, staff, and communities, the current business model largely depends on members having physical access to the Clubs and staff. Accordingly, with state and local restrictions being lifted or otherwise eased in certain states in which the Debtors operate, the Debtors resumed in-

³ Greenberg Traurig, LLP, 77 Wacker Drive, Chicago, Illinois 60601, Attn: Nicholas E. Ballen (ballenN@gtlaw.com), and Danny Duerdoth (duerdothd@gtlaw.com).

⁴ www.donlinrecano.com/yfhc.

person operations at eighty-four of their eighty-five remaining Clubs and permanently closed all other Clubs. Like so many other businesses, however, the Debtors experienced a dramatic decrease in revenue due to the Club closures and suspended operations, resulting in an acute liquidity crunch.

B. Debtors' Prepetition Capital Structure

As of the Petition Date, the Debtors had outstanding debt obligations in the aggregate principal amount of approximately \$110 million, consisting primarily of (a) not less than approximately \$87,965,901.34 in secured debt under a first lien senior secured credit facility, (b) approximately \$9.5 million owed to landlords, (c) approximately \$10 million owed with respect to the PPP Loan (as defined below) and (c) approximately \$2 million owed to vendors and other unsecured creditors.

1. The Prepetition Credit Agreement

The Debtors are party to the Prepetition Credit Agreement by and among Debtor You Fit, LLC, and certain subsidiaries of Holdings, as borrowers, the Prepetition Guarantors, and the Prepetition Secured Parties. The proceeds of the Prepetition Credit Agreement were used to refinance the Debtors' prior secured debt and to finance capital expenditures for new Clubs opened in 2019.

As of the Petition Date, the Prepetition Loan Parties were indebted and liable for all Prepetition Secured Obligations to the Prepetition Secured Parties under the Prepetition Credit Documents in an amount not less than \$87,965,901.34.

The Prepetition Secured Obligations were secured by the security interests granted in those certain Collateral Documents (as defined in the Prepetition Credit Agreement) pursuant to which each Prepetition Loan Party granted to the Prepetition Agent, for the benefit of the Prepetition Secured Parties, to secure the Prepetition Secured Obligations, a first priority security interest in the Prepetition Collateral, which constitutes substantially all of each Prepetition Loan Party's assets.

2. Unsecured Debt

As of the Petition Date, the Debtors estimated that they had approximately \$21.5 million in unsecured debt consisting primarily of \$9.5 million owed to various landlords, \$10 million owed to Bank of America, N.A. ("**BOA**") for the PPP Loan (as defined below), and \$2 million of trade debt owed to hundreds of vendors.

3. Equity Interests

Holdings, a Delaware limited liability company is the direct and indirect corporate parent of all of the other Debtors. Non-Debtor YF Lime, LLC ("**YF Lime**") owns 100% of the authorized

and outstanding common units of Holdings, while non-Debtor YF-GEF Holdings, LLC (the “**Preferred Equity Member**”) owns 100% of the preferred units.⁵

C. Events Leading Up to the Chapter 11 Case

1. The Redemption Notice and the 2019 Marketing Process

After entering into the Prepetition Credit Agreement in the first quarter of 2019, on June 5, 2019, the Preferred Equity Member issued a redemption notice (the “**Redemption Notice**”) ⁶ to Holdings and YF Lime demanding the redemption of its interests by December 10, 2019. Based on the Redemption Notice, in October of 2019, Holdings retained Citigroup Global Markets Inc. (“**Citi**”) as its investment banker to solicit a purchaser for Holdings, and the Preferred Equity Member agreed to extend the redemption deadline pursuant to a tolling agreement.

Citi was still in the process of finalizing a confidential information memorandum on Holdings and had begun reaching out to strategic and financial investors regarding a potential transaction when COVID-19 began spreading in the United States. Due to the suspension of operations and closure of the Clubs, the Debtors and Citi did not have an opportunity to run a robust sale process. As part of the limited pre-petition marketing process, a single potential strategic buyer submitted a non-binding indication of interest, but that discussions regarding the indication of interest and the process did not result in an offer for the business or distinct assets of the business.

2. Defaults Under the Prepetition Credit Agreement

The Debtors’ business suffered a greater-than-normal seasonal decline in the fourth quarter of 2019, leading to events of default under the Prepetition Credit Agreement for breaching certain of the financial covenants in addition to other non-monetary breaches.

Historically, the Debtors have recorded a significant portion of their new sales in the first month of a given calendar year. Based on historical sales, the Debtors anticipated returning to covenant compliance in the first quarter of 2020. Unfortunately, these anticipated sales did not materialize as the world began to grapple with the then-emerging COVID-19 pandemic. The potential strategic buyer withdrew its indication of interest citing the uncertainty created by the COVID-19 crisis.

⁵ Holdings’ membership interests also include profits interest units; the holders of such membership interests include four (4) current employees of the Debtors’ management team and eight (8) former employees. As stated in the *Motion of the Debtors for Entry of an Order (A) Authorizing Debtors to Pay (I) All Prepetition Employee Obligations, and (II) Prepetition Withholding Obligations and (B) Authorizing Banks to Honor Related Transfers* [Docket No. 7], as compensation for their service, the four (4) current employees receive guaranteed payments, akin to traditional wages, on account of their profits interest unit holdings; the amount of the payments is not contingent on the operations of the Debtors.

⁶ Under the applicable agreements, service of the Redemption Notice initiated various procedures to determine in good faith the fair market value of the distributions on the Preferred Units in excess of the Preferred Unreturned Contributions and the Unpaid Preferred Return.

Due to the acute liquidity issues created by the unprecedented decline in sales and the limited interest from strategic purchasers, the Debtors engaged in good faith negotiations with the Prepetition Lenders and other stakeholders to address their deteriorating financial condition.

In connection with these negotiations, Brian Gleason was retained as the Chief Restructuring Officer (“**CRO**”) and worked with other professionals to formulate strategic options for the Debtors. Around the same time, Pamela B. Corrie, was appointed as an independent manager (in such capacity, the “**Independent Manager**”) of the YouFit entities.⁷

3. Amendments to the Prepetition Credit Agreement and Entry into the PPP Loan

Following the appointments of the CRO and the Independent Manager, Holdings actively negotiated with the Prepetition Lenders, equity holders and other stakeholders to obtain additional liquidity and concessions as Holdings formulated a response to its deteriorating financial condition. As a result of these negotiations, on June 10, 2020, the Debtors, the Prepetition Lenders and the Prepetition Agent entered into that certain Forbearance Agreement and First Amendment to Credit Agreement (the “**Forbearance Agreement and First Amendment**”).

Further to the negotiations and entry into the Forbearance Agreement and First Amendment, the Preferred Equity Member and YF Lime agreed to certain modifications with respect to Holdings’ corporate governance whereby YF Lime granted the Independent Manager with a majority of the voting power of the Debtors’ board of managers (the “**Board**”), and the then-existing managers, other than the Independent Manager, subsequently resigned from the Board. Accordingly, subject to certain consent rights held by the Preferred Equity Member, the Independent Manager is empowered with, and has been exercising, the decision-making authority on behalf of Holdings and the other Debtors.

In connection with the Forbearance Agreement and First Amendment, Holdings applied for and received an unsecured loan in the amount of \$10 million from BOA (the “**PPP Loan**”) pursuant to the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”), which was approved by the Small Business Administration (“**SBA**”). Subject to prepayment or forgiveness, the PPP Loan will mature in or around October 2026 and bears interest at a rate of 1.0% per annum. Principal and interest are payable monthly beginning in or around October 2021 and may be prepaid at any time prior to maturity with no prepayment penalties.⁸

⁷ With respect to Debtor South Florida Health and Fitness, Inc., Ms. Corrie serves as the sole director.

⁸ Under the terms of the CARES Act, PPP Loan recipients can apply for and be granted forgiveness for all or a portion of the loan. Such forgiveness will be determined, subject to limitations, based on the use of loan proceeds for payment of payroll costs and any covered payments of mortgage interest, rent, and utilities. In the event the loan, or any portion thereof, is forgiven, the amount forgiven is applied to outstanding principal. Holdings has used the proceeds of the PPP Loan to maintain payroll and make lease, rent and utility payments. Without the PPP Loan, the Debtors would have been forced to further reduce the number of employees. As of the Petition Date, \$10 million remains outstanding under the PPP Loan. See section V.H.1 below for risk factors related to forgiveness of the PPP Loan.

In addition, the Forbearance Agreement and First Amendment, which, among other things, amended certain provisions of the Prepetition Credit Agreement, provided commitments by the Prepetition Lenders for up to an additional \$10.35 million in liquidity. Between executing the Forbearance Agreement and First Amendment, and the Petition Date, the Debtors borrowed \$3 million from the Prepetition Lenders.

The additional funds provided under the PPP Loan and by the Prepetition Lenders provided sufficient liquidity for Holdings to pursue an operational turnaround, permit Holdings to attempt to restructure its balance sheet out-of-court and to investigate various methods to maximize value for Holdings' stakeholders. As part of these efforts, Holdings (a) actively renegotiated with its landlords and, to date, has obtained renegotiated rent terms for over 35% of its leases, (b) conducted closures of nearly twenty (20) underperforming Clubs, (c) reduced operating expenses by 29% from the same time as 2019 and (d) retained FocalPoint Securities, LLC ("**FocalPoint**") as its investment banker to investigate various methods to maximize value for Holdings' stakeholders.

4. COVID-19 Related Measures and Resulting Litigation

As discussed in the Debtors' motion requesting relief to, *inter alia*, continue using its existing cash management system [Docket No. 15], the Debtors, like many of their competitors, typically collect membership fees on a monthly basis through their billing agent ABC Financial Services, LLC (the "**Billing Agent**"), a third-party payment processor that drafts the applicable membership dues from a member's bank account or credit card. The Debtors' member policies and/or agreements allow members to freeze or suspend their memberships for up to three (3) consecutive months twice in any calendar year. If a member seeks to freeze his or her membership for any reason other than a medical condition or military deployment, Holdings typically charges a fee for each month the membership is frozen.

In April of 2020, following the Club closures due to COVID-19, the Debtors posted a *frequently asked questions* page (the "**FAQ**") to their website providing answers to certain questions regarding Club operations and membership fees during the closure.⁹ Through the FAQ, the Debtors advised members how to freeze or otherwise cancel memberships, as needed. The Debtors offered to waive the fee for freezing memberships during the closures and provided alternative means of contacting the Debtors in order to accomplish membership modifications.

The FAQ also noted that membership fees were continuing to be automatically drafted and encouraged members to contact the Debtors to adjust membership billing, if the member so desired. In addition, the FAQ provided that members who continued to be charged during the closure would, if requested, be eligible upon a Club's reopening for a credit for lost time.

Notwithstanding the measures implemented by the Debtors as promptly as possible in light of the developments of the unprecedented COVID-19 pandemic, the Debtors were subject to complaints filed with Attorneys General, primarily of the states of Arizona and Florida. As they

⁹ See *YouFit COVID-19 FAQ*, published around April 21, 2020, updated on June 4, 2020, available at <https://www.youfit.com/blog/covid-faq/>.

have become aware of such complaints, the Debtors' management, with the assistance of counsel, have worked with the Attorneys General, as well as the Debtors' staff, to address concerns raised by the Attorneys General. As of the date hereof, the Debtors believe that they have resolved the complaints and all related issues raised by the Attorneys General. Additionally, three (3) putative class-action lawsuits were filed regarding the Debtors' billing practices by members or former members prior to the Petition Date. At the time of the commencement of these Chapter 11 Cases, each of the cases was in the early stages of litigation and no classes had been certified. All three (3) of the putative class-action lawsuits were stayed as of the Petition Date.

As set forth in the Supplemental Sale Order, the Debtors and the Buyer reached a resolution with one of the putative class action plaintiffs, Jason Blank, on his own behalf and on behalf of any other party for whom he was, as putative class action plaintiff, entitled to assert such claims (the "**Blank Resolution**"), with an eye to being inclusive of all similarly situated current and former members, regardless of whether they fit within the scope of the Blank Action. The Blank Resolution provides for the following:

- After Closing, the Buyer will make available to current and former members the Membership Promotion (as defined in the Supplemental Sale Order) by either (a) sending notice of the Member Promotion by electronic mail to the current and former members for whom the Buyers have electronic mail addresses, (b) posting notice of the Member Promotion in each of the Buyer's open club locations, (c) posting notice of the Member Promotion on the Buyer's website, or (d) by mail to the current and former members.
- At the Closing, the Buyer will pay \$125,000 to counsel for Blank. Within five (5) days after receipt of payment, Blank will dismiss with prejudice the Blank Action.
- All objections filed by Blank in these Chapter 11 Cases will be withdrawn with prejudice on his own behalf and on behalf of any other party on whose behalf he was or is, as putative class action plaintiff, entitled to assert such objections, and the transfer of the Acquired Membership Assets (as defined below) shall be free and clear of all Claims and Liens of Blank, on his own behalf and on behalf of any other party on whose behalf he was or is, as putative class action plaintiff, entitled to assert such objections.

5. The 2020 Marketing Process

Notwithstanding the incremental liquidity and the operational improvements implemented, the prolonged Club closures and changing consumer habits – with many individuals continuing to refrain from frequenting public places such as fitness centers – the Debtors made the decision to seek a buyer or financial partner to help sustain the going-concern value of the business. In June 2020, FocalPoint, with the assistance of the Debtors' management and other professional advisors, commenced marketing efforts to locate a potential purchaser for the Debtors.

As part of this prepetition marketing process, FocalPoint assisted the Debtors in: (a) preparing and negotiating confidentiality agreements for prospective purchasers; (b) preparing

detailed information about the Debtors' business, operations and financial condition; (c) identifying and contacting potential purchasers; (d) establishing a data room for due diligence to be conducted by prospective purchasers; (e) drafting a "teaser" describing the transaction; (f) drafting a confidential information memorandum describing the transaction; (g) evaluating proposals from prospective purchasers; and (h) negotiating a stalking horse offer.

During the prepetition marketing period, FocalPoint contacted over 100 potential investors/buyers. Of those contacted, fifty-one parties executed confidentiality agreements and were given operational, organizational and financial information on the Debtors. Of those parties that executed confidentiality agreements, twenty-six engaged in follow-up diligence calls. The Debtors received non-binding indications of interest from five (5) parties interested in pursuing a transaction.

D. The Debtors' Bankruptcy Filings and "First-Day" Relief

On the Petition Date, each of the Debtors filed a voluntary chapter 11 bankruptcy petition. Also on the Petition Date, the Debtors filed a number of motions and applications seeking customary relief intended to facilitate a smooth transition for the Debtors into the Chapter 11 Cases and to minimize disruptions to the Debtors' business operations (the "**First-Day Motions**"), namely:

- a motion for authority to jointly administer the Debtors' Chapter 11 Cases [Docket No. 2];
- an application to retain Donlin, Recano & Company, Inc. ("**Donlin Recano**") as the Debtors' official claims and noticing agent [Docket No. 3];
- a motion for authority to (a) pay prepetition taxes and in the ordinary course of business and (b) have banks and financial institutions honor and process checks and transfers [Docket No. 5];
- a motion for authority to maintain existing Insurance Policies, pay all premiums, and renew or enter into new policies [Docket No. 6];
- a motion to continue (a) honoring prepetition obligations to customers and (b) customer programs in the ordinary course of business [Docket No. 7]
- a motion for authority to honor prepetition employee wage and withholding obligations [Docket No. 8];
- a motion prohibiting utility providers from discontinuing, altering, or refusing services and other related relief [Docket No. 9];
- a motion for approval of debtor-in-possession financing from the DIP Lenders and authority to use cash collateral [Docket No. 10]; and

- a motion for authority to continue using the Debtors' prepetition bank accounts and business forms and to waive certain investment and deposit guidelines [Docket No. 15].

The Bankruptcy Court held hearings on November 10, 2020 and December 3, 2020 to consider the relief requested in the First Day Motions. The Bankruptcy Court granted each First Day Motion, several of which were first granted on interim basis then on a final basis. [Docket Nos. 37, 39, 40-41, 47, 49, 54-56, 193-94, 228, and 231].

E. "Second-Day" Relief

On or shortly after the Petition Date, the Debtors also filed a number of "second-day" motions and applications for retention of professionals including:

- a motion to establish interim procedures for compensation and reimbursement of expenses of professionals [Docket No. 75], which was granted by the Bankruptcy Court [Docket No. 202].
- a motion for authority to pay non-bankruptcy professionals and advisors without formal retention [Docket No. 77], which was granted by the Bankruptcy Court [Docket No. 201];
- an application to retain Red Banyan, LLC to act as the Debtors' communications consultant [Docket No. 78], which was granted by the Bankruptcy Court [Docket No. 197];
- an application to retain Hilco Real Estate, LLC to act as the Debtors' real estate and lease advisor [Docket No. 79], which was granted by the Bankruptcy Court [Docket No. 196];
- a motion for authority to retain Phoenix Executive Services, LLC to provide the Debtors with a CRO and designating Brian Gleason as CRO [Docket No. 80], which was granted by the Bankruptcy Court [Docket No. 195];
- an application to retain FocalPoint to act as the Debtors' investment banker [Docket No. 81], which was granted by the Bankruptcy Court [Docket No. 200];
- an application to retain Donlin Recano to act as the Debtors' administrative agent [Docket No. 82], which was granted by the Bankruptcy Court [Docket No. 198]; and
- an application to retain Greenberg Traurig, LLP as counsel for the Debtors [Docket No. 83], which was granted by the Bankruptcy Court [Docket No. 226].

F. DIP Credit Facility

Recognizing their need for liquidity, the Debtors, with the assistance of their professionals, including their counsel, and FocalPoint, initiated an arm's-length process and careful evaluation of the available alternatives. Specifically, and in the face of insufficient cash-on-hand, the Debtors and their advisors determined that the Debtors would require postpetition financing to support their operational needs and chapter 11 activities. The Debtors also determined that negotiating a

financing facility with the Prepetition Secured Parties was the most cost effective and expedient way to secure sufficient funding during the Chapter 11 Cases.

On the Petition Date, the Debtors filed a motion seeking approval to obtain debtor in possession financing in the amount of up to \$31,795,518.00 and authorization to use cash collateral [Docket No. 10]. On November 10, 2020, the Bankruptcy Court granted the motion on an interim basis, which allowed the Debtors to immediately borrow \$3,500,000 under the DIP Credit Facility. On December 4, 2020, the Bankruptcy Court granted the motion on a final basis, which allowed the Debtors to borrow the full amount under the DIP Credit Facility [Docket No. 231]. On December 29, 2020 the Bankruptcy Court entered an order [Docket No. 568] extending to January 15, 2021 the maturity date and certain sale-related milestones under the DIP Credit Facility. On January 15, 2021, the Bankruptcy Court entered an order [Docket No. 656] extending to January 31, 2021 the same dates and milestones.

Under the terms of the DIP Credit Agreement, the DIP Credit Facility rolled up outstanding debt under the Prepetition Credit Agreement in the amount of \$21,197,012.00, which was calculated on a 2:1 basis (i.e. two times the amount of postpetition financing offered under the DIP Credit Facility). The Prepetition Lenders would not otherwise consent to the use of their Cash Collateral or the subordination of their Liens to the Liens of the DIP Lenders, and the DIP Agent and the DIP Lenders would not provide the DIP Credit Facility or extend credit to the Debtors thereunder, without the inclusion of the roll up.

G. Sale of Substantially all of the Debtors' Assets

As noted above, the Debtors engaged in a lengthy prepetition marketing process for the sale of substantially all of the Debtors' assets. The prepetition process culminated with the Debtors' entry on the Petition Date into the Asset Purchase Agreement with YF FC Acquisition, LLC, an acquisition vehicle created by the Prepetition Lenders and DIP Lenders, (in such capacity, the "**Buyer**"), as the stalking horse bidder for the sale of substantially all of their assets. The APA contemplated a purchase price for the Acquired Assets (as defined in the APA) of not less than \$75,000,000.00, consisting of (i) a credit bid or an assumption of up to the full amount owing under the DIP Credit Facility, (ii) a credit bid or an assumption of up to the full amount owing under the Prepetition Credit Agreement, and (iii) the assumption of certain liabilities, as set forth in the APA.

Accordingly, on the Petition Date, the Debtors filed a motion [Docket No. 17] for approval of (i) bidding procedures in connection with the sale of substantially all of the Debtors' assets, and (ii) the sale of such assets to the Buyer or other successful bidder.

On November 23, 2020, the Bankruptcy Court entered an order, among other things, (i) approving certain bidding procedures relating to the sale of the Debtors' assets, (ii) scheduling a hearing on December 23, 2020 to consider approval of a proposed sale of the Debtors' assets (the "**Sale Hearing**"), and (iii) approving the form and manner of notice of the Sale, auction, and the Sale Hearing (the "**Bidding Procedures Order**") [Docket No. 136]. The Bidding Procedures Order fixed December 15, 2020 at 12:00 p.m. (prevailing Eastern Time) as the deadline for the submission of bids for the Debtors' assets.

In accordance with the Bidding Procedures Order, on December 15, 2020, the Debtors filed a notice indicating that: (i) the Debtors did not receive any Qualified Bids (as defined in the Bidding Procedures Order) by the bid deadline; (ii) the auction was cancelled; and (iii) the Debtors designated the Buyer as the Successful Bidder (as defined in the Bidding Procedures Order) [Docket No. 521].

On December 28, 2020, the Bankruptcy Court entered the Sale Order. On February 9, 2021, the Bankruptcy Court entered the Supplemental Sale Order. The Debtors consummated the Sale on February 18, 2021 (the “**Closing Date**”). As of the Closing Date, and in accordance with the terms of the Creditors’ Committee Settlement, the Buyer credit bid and/or assumed obligations under the DIP Credit Facility and the Prepetition Credit Agreement in the aggregate amount of \$85,000,000. The Buyer is in the process of finalizing the allocation of such credit bid/assumption of debt between the DIP Lender Claims and the Prepetition Lender Claims. Accordingly, the allocation of the Lender Claims Allowed Amount between the DIP Lender Claims and the Prepetition Lender Claims has not yet been finalized.

Pursuant to the Supplemental Sale Order, the Acquired Assets were sold free and clear of all liens, claims, encumbrances, and other interests and included:

- (i) the Debtors’ customer lists, customer files, customer accounts, membership agreements, all member, customer and end-user data and information (including lists of members, personally identifiable information of members, and any other information related to membership of the Debtors), and customer purchases or services provided to members or customers (collectively, the “**Membership Assets**”), but excluding the Excluded Membership Assets (as defined in the Supplemental Sale Order); and
- (ii) all claims, rights, credits, causes of action (including any commercial tort claims), defenses and rights of set-off of any type of any Seller, including D&O Causes of Action, and any proceeds of, or property and interests recovered in respect of, and the right to control, all claims, counterclaims, causes of action and defenses of any Seller, including all causes of action pursuant to chapter 5 of the Bankruptcy Code or similar state laws, and all claims arising under or in connection with director and officer insurance policies, non-disclosure, confidentiality, non-compete, and/or non-solicitation agreements, and all proceeds of the foregoing, in each case whether or not the Buyer chooses to settle, dismiss, prosecute, defend or otherwise pursue or resolve such claims, rights, credits, causes of action, defenses and/or rights of set-off, as set forth in section 2.1(p) of the APA (the “**Acquired Causes of Action**”).

H. Formation of a Creditors’ Committee

On November 18, 2020, the U.S. Trustee appointed the Creditors’ Committee [Docket No. 101]. The Creditors’ Committee is currently comprised of: Gator Flower Mount, LLC; DF Lexington Properties, LLC; Hulen Pointe Retail, LLC; Westwood Plaza, LLC; and Jason Blank.

The Creditors' Committee retained Berger Singerman LLP and Pachulski Stang Ziehl & Jones LLP [Docket Nos. 579 and 589] as its legal counsel and Dundon Advisers LLC as its financial advisor [Docket No. 580].

I. Schedules and Statements and 341 Meeting

On December 7, 2020 and December 8, 2020, the Debtors filed their schedules of assets and liabilities and statements of financial affairs (collectively, the “**Schedules and Statements**”). If you would like to view the Schedules and Statements, you may do so by visiting: <https://www.donlinrecano.com/Clients/yfhc/Index>.

On December 17, 2020, the U.S. Trustee conducted a telephonic meeting of creditors (the “**341 Meeting**”) at which the U.S. Trustee and creditors had the opportunity to question the Debtors under oath concerning the Debtors’ acts, conduct, property, and the administration of the Chapter 11 Cases.

J. Omnibus Rejections of Executory Contracts including Unexpired Leases of Nonresidential Real Property

To date, the Debtors have filed three omnibus motions seeking court approval to reject certain executory contracts including leases of nonresidential real property [Docket Nos. 28, 565, and 753]. The Bankruptcy Court has approved each omnibus motion [Docket Nos. 232, 663, and 780]. In total, the Debtors have rejected sixty-six leases of nonresidential real property.

K. Sale of De Minimis Assets

On December 30, 2020, the Bankruptcy Court entered an order that authorized the Debtors to sell and abandon *de minimis* assets, subject to certain conditions and procedures, without the need for a hearing [Docket No. 569]. Since then, the Debtors have proposed three *de minimis* asset sales [Docket Nos. 567 and 584], and the Bankruptcy Court has approved each *de minimis* asset sale [Docket Nos. 578 and 639].

L. Claim Bar Dates

On January 11, 2021, the Debtors filed a motion seeking to set deadlines for filing proofs of claim on an expedited basis [Docket No. 622]. On January 20, 2021, the Bankruptcy Court entered an order approving the motion [Docket No. 671] and set the following bar dates:

General Bar Date: **February 22, 2021, at 4:00 p.m. (prevailing Eastern Time)**. The General Bar Date is the last date for persons or entities, other than Governmental Units, to file Proofs of Claim against the Debtors on account of Claims arising, or deemed to have arisen, prior to the Petition Date, including, for the avoidance of doubt, claims arising under section 503(b)(9) of the Bankruptcy Code.

Government Bar Date: **May 10, 2021 at 4:00 p.m. (prevailing Eastern Time)**. The Government Bar Date is the last date for Governmental Units, as defined in section 101(27) of the Bankruptcy Code, to file Proofs of Claim against the Debtors on account of claims arising, or

deemed to have arisen, prior to the Petition Date.

In addition, the Solicitation Procedures Order set the Initial Administrative Claims Bar Date for **April 12, 2021 at 4:00 p.m. (prevailing Eastern Time)**.

M. Creditors' Committee Settlement

Prior to the Sale Hearing, the Creditors' Committee provided to the Debtors and the Buyer its draft objection to the Sale. Following discussions among the Creditors' Committee, the Debtors, and the Buyer, the informal objection of the Creditors' Committee was resolved through the Creditors' Committee Settlement, reflected in the Sale Order and stated on the record at the Sale Hearing.

The Creditors' Committee Settlement provides for the following terms:

Creditors' Committee's Support of the Sale. The Creditors' Committee agreed to support the Sale to the Buyer pursuant to the APA.

Lender Claims Amount. The Lenders agreed that the Lender Claims are no more than \$23,500,000. Lenders agreed to increase to \$85,000,000 the total amount of Lender Claims that the Buyer would credit bid or assume in connection with the Sale.

Expiration of the Challenge Period. Upon entry of the Sale Order, the deadline by which any party in interest (including the Creditors' Committee) could challenge the Liens and Claims of the Prepetition Lenders expired.

Certain Avoidance Actions. Without limiting the Acquired Assets in the APA, all Acquired Causes of Action constitute Acquired Assets including: (a) all Avoidance Actions (other than the Liquidating Trust Claims) and (b) D&O Causes of Action (including Claims against Rick Berks, Christy Berks Stross, Melissa Berks Muniz, Melinda Berks and their other family members other than the West Central Avoidance Action as and to the extent set forth in the Committee Objection Resolution (as defined in the Sale Order)), and (c) the proceeds of the Assets described in clauses (a) and (b).

- The Buyer agreed to not prosecute Avoidance Actions against trade vendors and lessors.
- The Prepetition Lenders have no obligation to prosecute any Claims or assert any rights whatsoever.

Prepetition Lender Support of the Combined Disclosure Statement and Plan. The Prepetition Lenders support the Combined Disclosure Statement and Plan so long as it: (a) treats the Prepetition Lender Claims in accordance with the Bankruptcy Code, (b) releases all Prepetition Lender Parties and their advisors, and (c) is consistent with the Creditors' Committee Settlement.

Amendments to the Approved Budget. The Approved Budget was amended to increase the Wind Down Amount and the amount allocated to payment of Professional Fee Claims of the Creditors' Committee's Professionals. In addition, funds allocated to Professionals of the

Creditors' Committee and Debtors can be used for, among other things, drafting, filing, and implementing the Combined Disclosure Statement and Plan. Any leftover funds from the above-stated line items in the Approved Budget, after payment of Priority Claims and Administrative Claims, will be used to fund the Liquidating Trust.

Establishment of the Liquidating Trust. As provided in further detail in Article X hereof, the Combined Disclosure Statement and Plan establishes the Liquidating Trust to be controlled by the Creditors' Committee. On the Effective Date, the Debtors will transfer the Liquidating Trust Assets including Liquidating Trust Claims to the Liquidating Trust. The Creditors' Committee, the Debtors, and the Lenders agree to the Liquidating Trust Proceeds Waterfall.

Failure to Confirm. In the event the Combined Disclosure Statement and Plan is not confirmed and the Chapter 11 Cases are dismissed or converted, the Liquidating Trust Claims will automatically revert to the Buyer as an Acquired Asset with no obligation to any other party.

ARTICLE IV. CONFIRMATION AND VOTING PROCEDURES

A. Confirmation Procedures

On March 4, 2021, the Bankruptcy Court entered the Solicitation Procedures Order [Docket No. 801]. Among other things, the Solicitation Procedures Order, approved the adequacy of disclosures in the Combined Disclosure Statement and Plan on an interim basis and set certain deadlines for the solicitation of the Combined Disclosure Statement and Plan, voting on the Combined Disclosure Statement and Plan, filing objections to the Combined Disclosure Statement and Plan and a hearing to consider approval of the Combined Disclosure Statement and Plan. The Combined Hearing has been scheduled for April 22, 2021 at 10:30 a.m. (prevailing Eastern Time) to consider (a) final approval of the Combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and (b) Confirmation of the Combined Disclosure Statement and Plan pursuant to section 1129 of the Bankruptcy Code. The Combined Hearing may be adjourned from time to time by the Debtors without further notice, except for an announcement of the adjourned date made at the Combined Hearing or by Filing a notice with the Bankruptcy Court.

B. Procedures for Objection

Any objection to final approval of the Combined Disclosure Statement and Plan as providing adequate information pursuant to section 1125 of the Bankruptcy Code and/or confirmation of the Combined Disclosure Statement and Plan must be made in writing and Filed with the Bankruptcy Court and served on the following parties so as to be actually received on or before April 12, 2021 at 4:00 p.m. (prevailing Eastern Time) upon: (i) counsel for the Debtors, Greenberg Traurig, LLP, (a) The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, DE 19801 (Attn: Dennis A. Meloro (melorod@gtlaw.com)) and (b) 77 West Wacker Dr., Suite 3100, Chicago, IL 60601 (Attn: Nancy A. Peterman (petermann@gtlaw.com), Eric Howe (howee@gtlaw.com), Nicholas E. Ballen (ballenn@gtlaw.com), and Danny Duerdoth

(duerdothd@gtlaw.com)); (ii) the Office of the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, (Attn: Hannah McCollum, Esq. (hannah.mccollum@usdoj.gov)); (iii) counsel for the Buyer, (a) Winston & Strawn LLP, 200 Park Avenue, New York, NY 10166, (Attn: Carey D. Schreiber, Esq. (cschreiber@winston.com) and Gregory M. Gartland, Esq. (ggartland@winston.com)), (b) Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, Delaware 19801, (Attn: Joseph Barry, Esq. (jbarry@ycst.com) and Joseph M. Mulvihill, Esq. (jmulvihill@ycst.com)), and (c) Holland & Knight LLP, 150 N. Riverside Plaza, Suite 2700, Chicago, IL 60606, (Attn: Joshua Spencer (joshua.spencer@hklaw.com), Phillip W. Nelson (phillip.nelson@hklaw.com), and Anastasia Sotiropoulos (anastasia.sotiropoulos@hklaw.com)); and (iv) counsel for the Creditors' Committee: Berger Singerman, LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131 (Attn: Brian G Rich (brich@bergersingerman.com) and Michael Niles (mniles@bergersingerman.com)) and Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, DE 19801 (Attn: Bradford Sandler (bsandler@pszjlaw.com) and Colin Robinson (crobinson@pszjlaw.com)).

C. Requirements for Confirmation

Among the requirements for confirmation of a plan pursuant to section 1129 of the Bankruptcy Code are: (1) the plan is accepted by all impaired classes of claims, or if rejected by an impaired class, the plan (a) is accepted by at least one impaired class and (b) “does not discriminate unfairly” and is “fair and equitable” as to the rejecting impaired class(es); (2) the plan is feasible; and (3) the plan is in the “best interests” of holders of claims or interests.

At the Combined Hearing, the Bankruptcy Court will determine whether the Combined Disclosure Statement and Plan satisfies all of the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that: (1) the Combined Disclosure Statement and Plan satisfies, or will satisfy, all of the necessary statutory requirements of chapter 11 for plan confirmation; (2) the Debtors have complied, or will have complied, with all of the necessary requirements of chapter 11 for plan confirmation; and (3) the Combined Disclosure Statement and Plan has been proposed in good faith.

D. Classification of Claims and Interests

Bankruptcy Code section 1123 provides that a plan must classify the claims and interests of a debtor's creditors and equity interest holders. In accordance with Bankruptcy Code section 1123, the Combined Disclosure Statement and Plan divides Claims and Interests into Classes and sets forth the treatment for each Class (other than those claims which pursuant to Bankruptcy Code section 1123(a)(1) need not be and have not been classified). The Debtors also are required, under Bankruptcy Code section 1122, to classify Claims and Interests into Classes that contain Claims or Interests that are substantially similar to the other Claims or Interests in such Class.

The Bankruptcy Code also requires that a plan provide the same treatment for each claim or interest of a particular class unless the claim holder or interest holder agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Combined Disclosure Statement and Plan complies with such standard. If the Bankruptcy Court finds otherwise, however, it could deny confirmation of the Combined Disclosure Statement and Plan if the Holders of Claims or

Interests affected do not consent to the treatment afforded them under the Combined Disclosure Statement and Plan.

A claim or interest is placed in a particular class only to the extent that the claim or interest falls within the description of that class and is classified in other classes to the extent that any portion of the claim or interest falls within the description of such other classes. A claim also is placed in a particular class for the purpose of receiving distributions pursuant to a plan only to the extent that such claim is an allowed claim in that class and such claim has not been paid, released, or otherwise settled prior to the effective date.

The Debtors believe that the Combined Disclosure Statement and Plan has classified all Claims and Interests in compliance with the provisions of Bankruptcy Code section 1122 and applicable case law. It is possible that a Holder of a Claim or Interest may challenge the Debtors' classification of Claims or Interests and that the Bankruptcy Court may find that a different classification is required for the Combined Disclosure Statement and Plan to be confirmed. If such a situation develops, the Debtors intend, in accordance with the terms of the Combined Disclosure Statement and Plan, to make such permissible modifications to the Combined Disclosure Statement and Plan as may be necessary to permit its confirmation. Any such reclassification could adversely affect Holders of Claims by changing the composition of one or more Classes and the vote required of such Class or Classes for approval of the Combined Disclosure Statement and Plan.

EXCEPT AS SET FORTH IN THE COMBINED DISCLOSURE STATEMENT AND PLAN, UNLESS SUCH MODIFICATION OF CLASSIFICATION MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A HOLDER OF A CLAIM AND REQUIRES RE-SOLICITATION, ACCEPTANCE OF THE COMBINED DISCLOSURE STATEMENT AND PLAN BY ANY HOLDER OF A CLAIM PURSUANT TO THIS SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE COMBINED DISCLOSURE STATEMENT AND PLAN'S TREATMENT OF SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the actual recovery ultimately received by a particular Holder of an Allowed Claim may be adversely or favorably affected by the aggregate amount of Claims Allowed in the applicable Class.

The classification of Claims and Interests and the nature of distributions to members of each Class are summarized herein. The Debtors believe that the consideration, if any, provided under the Combined Disclosure Statement and Plan to Holders of Claims reflects an appropriate resolution of their Claims taking into account the differing nature and priority (including applicable contractual subordination) of such Claims and Interests. The Bankruptcy Court must find,

however, that a number of statutory tests are met before it may confirm the Combined Disclosure Statement and Plan. Many of these tests are designed to protect the interests of holders of claims or interests who are not entitled to vote on a plan, or do not vote to accept a plan, but who will be bound by the provisions of a plan if it is confirmed by a bankruptcy court.

E. Impaired Claims or Interests

Pursuant to the provisions of the Bankruptcy Code, only classes of claims or interests that are “impaired” (as defined in Bankruptcy Code section 1124) under a plan may vote to accept or reject such plan. Generally, a claim or interest is impaired under a plan if the holder’s legal, equitable, or contractual rights are changed under such plan. In addition, if the holders of claims or interests in an impaired class do not receive or retain any property under a plan on account of such claims or interests, such impaired class is deemed to have rejected such plan under Bankruptcy Code section 1126(g) and, therefore, such holders are not entitled to vote on such plan.

Holders of Claims in Classes 3 and 4 are Impaired and are entitled to vote on the Combined Disclosure Statement and Plan. Holders of Claims or Interests in Classes 5 through 7 are Impaired and will not receive or retain any property on account of such Claims or Interests and, therefore, are not entitled to vote on and are deemed to reject the Combined Disclosure Statement and Plan. Holders of Claims in Classes 1 and 2 are Unimpaired and, therefore, not entitled to vote and are deemed to accept the Combined Disclosure Statement and Plan.

ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION OF THE COMBINED DISCLOSURE STATEMENT AND PLAN IS BEING PROVIDED ONLY TO HOLDERS OF CLAIMS IN CLASSES 3 AND 4.

F. The Debtor Release, Exculpation, and Injunction Provisions.

Under applicable law, a release provided by a debtor is appropriate where: (a) there is an identity of interest between the debtor and the third party, such that a suit against the released non-debtor party is, at core, a suit against the debtor or will deplete assets of the estate; (b) there is a substantial contribution by the non-debtor of assets to the reorganization; (c) the injunction is essential to the reorganization; (d) there is overwhelming creditor support for the injunction; and (e) the chapter 11 plan will pay all or substantially all of the claims affected by the injunction. *In re Indianapolis Downs, LLC*, 486 B.R. 286, 303 (Bankr. D. Del. 2013). Importantly, these factors are “neither exclusive nor are they a list of conjunctive requirements,” but “[i]nstead, they are helpful in weighing the equities of the particular case after a fact-specific review.” *Id.* In addition, exculpation is appropriate where it applies to estate fiduciaries. *Id.* at 306. Finally, an injunction is appropriate where it is necessary to the reorganization and fair pursuant to section 105(a) of the Bankruptcy Code. *In re W.R. Grace & Co.*, 475 B.R. 34, 107 (D. Del. 2012). In addition, approval of the releases, exculpations, and injunctions for each of the Released Parties and each Exculpated Party as part of confirmation of the Combined Disclosure Statement and Plan will be limited to the extent such releases, exculpations, and injunctions are permitted by applicable law.

The Debtors believe that the releases, exculpations, and injunctions set forth in the Combined Disclosure Statement and Plan are appropriate because, among other things, the releases

are narrowly tailored to the Debtors' Chapter 11 Cases, and each of the Released Parties has contributed value to the Debtors and aided in the sale process, which facilitated the Debtors' ability to propose and pursue confirmation. The Debtors believe that each of the Released Parties has played an integral role in formulating the Combined Disclosure Statement and Plan and has expended significant time and resources analyzing and negotiating the issues presented by the Debtors' prepetition capital structure. The Debtors further believe that such releases, exculpations, and injunctions are a necessary part of the Combined Disclosure Statement and Plan. The Debtors will be prepared to meet their burden to establish the basis for the releases, exculpations, and injunctions for each of the Released Parties and each Exculpated Party as part of confirming the Combined Disclosure Statement and Plan.

G. Best Interests of Creditors and Liquidation Analysis

Even if a plan is accepted by the holders of each class of claims and interests, the Bankruptcy Code requires a bankruptcy court to determine that such plan is in the best interests of all holders of claims or interests that are impaired by that plan and that have not accepted such plan. The "best interests" test, as set forth in Bankruptcy Code section 1129(a)(7), requires a bankruptcy court to find either that all members of an impaired class of claims or interests have accepted a plan or that a plan will provide a member who has not accepted a plan with a recovery of property of a value, as of the effective date of a plan, that is not less than the amount that such holder would recover if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor was liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from a debtor's assets if its chapter 11 cases were converted to cases under chapter 7 of the Bankruptcy Code. To determine if a plan is in the best interests of each impaired class, the present value of the distributions from the proceeds of a liquidation of the debtor's unencumbered assets and properties, after subtracting the amounts attributable to the costs, expenses and administrative claims associated with a chapter 7 liquidation, must be compared with the value offered to such impaired classes under a plan. If the hypothetical liquidation distribution to holders of claims or interests in any impaired class is greater than the distributions to be received by such parties under a plan, then such plan is not in the best interests of the holders of claims or interests in such impaired class.

The Debtors believe that creditors will receive a better recovery under the Combined Disclosure Statement and Plan than they would in a hypothetical chapter 7 liquidation. Indeed, under the terms of the Prepetition Credit Documents, the DIP Credit Documents, the DIP Order, and the Sale all assets of the Debtors were encumbered by the liens of the Lenders and/or sold to the Buyer. Thus, in a hypothetical chapter 7 liquidation, there would not be any unencumbered assets available to pay claims of unsecured creditors, including creditors that hold Administrative Claims or Priority Claims. There would not even be assets available to pay the costs of administering the chapter 7 liquidation. On the other hand, the Combined Disclosure Statement and Plan implements the Creditors' Committee Settlement. Under the terms of that settlement, the Prepetition Lenders have agreed to make the Liquidating Trust Assets available for distributions to creditors pursuant to the Liquidating Trust Proceeds Waterfall. Absent the Creditors' Committee Settlement, such assets would have been sold to the Buyer in connection with the Sale

or otherwise transferred to the Prepetition Lenders on account of their secured claims and would not be available in a hypothetical chapter 7 liquidation.

Moreover, in a chapter 7 liquidation, there would be additional costs and expenses that the Estates would incur as a result of liquidating the Estates in a chapter 7 case. The costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as the costs of counsel and other professionals retained by the trustee. The Debtors believe such amount would exceed the amount of expenses that would be incurred in implementing the Combined Disclosure Statement and Plan and winding up the affairs of the Debtors. Conversion also would likely delay the liquidation process and ultimate distribution of the Assets. The Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for professionals) that are allowed in the chapter 7 cases.

Accordingly, the Debtors believe that Holders of Allowed Claims would receive less than anticipated under the Combined Disclosure Statement and Plan if the Chapter 11 Cases were converted to chapter 7 cases, and therefore, the classification and treatment of Claims and Interests in the Combined Disclosure Statement and Plan complies with Bankruptcy Code section 1129(a)(7).

Attached hereto as Appendix C and incorporated herein by reference is a liquidation analysis prepared by the Debtors with the assistance of the Debtors' advisors

H. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan not be likely to be followed by the liquidation, or the need for further financial reorganization, of the debtors or any successor to the debtors (unless such liquidation or reorganization is proposed in a plan). Inasmuch as the Debtors' Assets have principally been liquidated and the Combined Disclosure Statement and Plan provides for the distribution of all of the Cash proceeds of the Debtors' Assets to Holders of Claims that are Allowed as of the Effective Date in accordance with the Combined Disclosure Statement and Plan, for purposes of this test, the Debtors have analyzed the ability of the Liquidating Trust to meet its obligations under the Combined Disclosure Statement and Plan. Based on the Debtors' analysis, the Liquidating Trustee will have sufficient assets to accomplish its tasks under the Combined Disclosure Statement and Plan. Therefore, the Debtors believe that the liquidation pursuant to the Combined Disclosure Statement and Plan will meet the feasibility requirements of the Bankruptcy Code.

I. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, except as described in the following section, that each class of claims or equity interests impaired under a plan, accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such a class is not required.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in

a number of allowed claims in that class, counting only those claims that have *actually* voted to accept or to reject the plan. Thus, a class of claims will have voted to accept a plan only if two-thirds in amount and a majority in number of the allowed claims in such class that vote on the plan actually cast their ballots in favor of acceptance.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of impaired equity interests as acceptance by holders of at least two-thirds in amount of allowed interests in that class, counting only those interests that have *actually* voted to accept or to reject the plan. Thus, a class of interests will have voted to accept a plan only if two-thirds in amount of the allowed interests in such class that vote on plan actually cast their ballots in favor of acceptance.

Pursuant to the Combined Disclosure Statement and Plan, if Holders of Claims eligible to vote do not vote to accept or reject the Combined Disclosure Statement and Plan, the Holders of such Claims shall be deemed to have accepted the Combined Disclosure Statement and Plan.

J. Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if all impaired classes have not accepted it; *provided*, that the plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the plan, the plan will be confirmed, at the plan proponent's request, in a procedure commonly known as a "cramdown" so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan.

If any Impaired Class rejects the Combined Disclosure Statement and Plan, the Debtors reserve the right to seek to confirm the Combined Disclosure Statement and Plan utilizing the "cramdown" provision of section 1129(b) of the Bankruptcy Code. To the extent that any Impaired Class rejects the Combined Disclosure Statement and Plan or is deemed to have rejected the Combined Disclosure Statement and Plan, the Debtors may request confirmation of the Combined Disclosure Statement and Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Combined Disclosure Statement and Plan or any Plan Document, including the right to amend or modify the Plan Supplement to satisfy the requirements of section 1129(b) of the Bankruptcy Code.

1. No Unfair Discrimination

The "unfair discrimination" test applies to classes of claims or interests that are of equal priority and are receiving different treatment under a plan. The test does not require that the treatment be the same or equivalent, but that treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims or interests of equal rank (*e.g.*, classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly. A plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class.

2. Fair and Equitable Test

The “fair and equitable” test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in the class. As to the dissenting class, the test sets different standards depending upon the type of claims or equity interests in the class.

As a condition to the test, section 1129(b)(2) of the Bankruptcy Code provides that a plan is “fair and equitable” with respect to a dissenting impaired class of unsecured claims if the creditors in the class receive or retain property of a value equal to the allowed amount of their claims or, failing that, no creditor of lesser priority, or shareholder, receives any distribution under the plan. This requirement is sometimes referred to as the “absolute priority rule.”

The Debtors submit that if the Debtors “cramdown” the Combined Disclosure Statement and Plan pursuant to section 1129(b) of the Bankruptcy Code, the Combined Disclosure Statement and Plan is structured so that it does not “discriminate unfairly” and satisfies the “fair and equitable” requirement. With respect to the unfair discrimination requirement, all Classes under the Combined Disclosure Statement and Plan are provided treatment that is substantially equivalent to the treatment that is provided to other Classes that have equal rank. With respect to the fair and equitable requirement and “absolute priority rule,” no Class under the Combined Disclosure Statement and Plan will receive more than 100% of the amount of Allowed Claims or Interests in that Class. The Debtors believe that the Combined Disclosure Statement and Plan and the treatment of all Classes of Claims or Interests under the Combined Disclosure Statement and Plan satisfy the foregoing requirements for nonconsensual confirmation of the Combined Disclosure Statement and Plan.

ARTICLE V. CERTAIN RISK FACTORS TO CONSIDER PRIOR TO VOTING

The Holders of General Unsecured Claims and Prepetition Lender Claims should read and carefully consider the following factors, as well as the other information set forth in this Article V, before deciding whether to vote to accept or reject the Combined Disclosure Statement and Plan. These risk factors should not, however, be regarded as constituting the only risks associated with the Combined Disclosure Statement and Plan and its implementation.

A. Non-Confirmation of the Combined Disclosure Statement and Plan

Even if the voting Class votes in favor of the Combined Disclosure Statement and Plan, and even if, with respect to any Impaired Class deemed to have rejected the Combined Disclosure Statement and Plan, the requirements for “cramdown” are met, the Bankruptcy Court, which is a court of equity, may exercise substantial discretion and may choose not to confirm the Combined Disclosure Statement and Plan. In addition, while the Debtors believe the feasibility test and the best interests test for confirmation are satisfied, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

B. Classification Risk

The Debtors believe that the Combined Disclosure Statement and Plan has classified all Claims and Interests in compliance with the provisions of Bankruptcy Code section 1122 and applicable case law, but it is possible that a Holder of a Claim may challenge the classification of Claims, and that the Bankruptcy Court may determine that a different classification is required for the Combined Disclosure Statement and Plan to be confirmed. In that event, the Debtors intend, to the extent permitted by the Bankruptcy Code, the Combined Disclosure Statement and Plan, and the Bankruptcy Court, to make such reasonable modifications of the classifications under the Combined Disclosure Statement and Plan to permit confirmation and to use the Combined Disclosure Statement and Plan acceptances received for purposes of obtaining the approval of the reconstituted Class or Classes of which each accepting holder ultimately is deemed to be a member. Any such reclassification could adversely affect the Class in which such holder initially was a member, or any other Class under the Combined Disclosure Statement and Plan, by changing the composition of such Class and the vote required of that Class for approval of the Combined Disclosure Statement and Plan.

C. Claims Estimations

There can be no assurance that any estimated Claim amounts set forth in this Combined Disclosure Statement and Chapter 11 Plan are correct. The actual Allowed amount of Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should the underlying assumptions prove incorrect, the actual Allowed amount of Claims may vary from those estimated herein.

D. Administrative and Priority Claims

The Debtors have been paying its administrative expenses in the ordinary course and do not anticipate any outstanding Administrative Expense Claims, Priority Tax Claims, and Other Priority Claims following the claims reconciliation process.

Notwithstanding the foregoing, if the actual number and amount of such Claims exceeds the amount of Cash the Debtors have to satisfy all such Claims in full, then unless the Holders of such Claims consent to less than full payment, then the Bankruptcy Court may deny confirmation of the Combined Disclosure Statement and Plan.

E. Conditions Precedent to Consummation; Timing

The Combined Disclosure Statement and Plan provides for certain conditions that must be satisfied (or waived) prior to the Effective Date. There can be no assurance that any or all of the conditions in the Combined Disclosure Statement and Plan will be satisfied (or waived). Accordingly, even if the Combined Disclosure Statement and Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Combined Disclosure Statement and Plan will be consummated.

F. Certain Tax Considerations

There are a number of material income tax considerations, risks and uncertainties associated with the Combined Disclosure Statement and Plan of liquidation of the Debtor described in the Combined Disclosure Statement and Plan.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE COMBINED DISCLOSURE STATEMENT AND PLAN ARE COMPLEX. NOTHING HEREIN SHALL CONSTITUTE TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE URGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND APPLICABLE FOREIGN INCOME AND OTHER TAX CONSEQUENCES OF THE COMBINED DISCLOSURE STATEMENT AND PLAN.

G. The Liquidating Trust Assets, Including the Liquidating Trust Claims, May Not Result in Recovery

The principal Liquidating Trust Assets are the Liquidating Trust Claims. The outcome of litigation is inherently uncertain and, thus, there is no assurance that the Liquidating Trust Claims will result in any proceeds distributable from the Liquidating Trust. Moreover, to the extent the Liquidating Trust realizes or obtains any Cash proceeds from the Liquidating Trust Claims distributable under the Liquidating Trust Agreement, the timing of any such distribution is uncertain.

H. Reductions to Estimated Creditor Recoveries Under the Liquidating Trust

The Allowed amount of Claims in any Class could be greater than projected, which, in turn, could cause the amount of Distributions to Creditors in such Class to be reduced substantially. The amount of Cash realized from the liquidation of the Liquidating Trust Assets could be less than anticipated, which could cause the amount of Distributions to Creditors to be reduced substantially. Additionally, any changes to any of the assumptions underlying the estimated Allowed amounts could result in material adjustments to recovery estimates provided herein or the actual Distribution received by Creditors.

ARTICLE VI.

ADMINISTRATIVE CLAIMS, DIP LENDER CLAIMS, AND PRIORITY TAX CLAIMS

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

A. Administrative Claims

Except with respect to Administrative Claims that are Professional Fee Claims or DIP Lender Claims, and except to the extent that an Administrative Claim has already been paid during

the Chapter 11 Cases or a Holder of an Allowed Administrative Claim and the applicable Debtor(s) agree to less favorable treatment, each Holder of an Allowed Administrative Claim shall be paid in full in Cash the unpaid portion of its Allowed Administrative Claim on the latest of: (a) the Effective Date if such Administrative Claim is Allowed as of the Effective Date; (b) the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; and (c) the date such Allowed Administrative Claim becomes due and payable, or as soon thereafter as is reasonably practicable.

Except as otherwise provided in this Article VI.A and except with respect to Administrative Claims that are Professional Fee Claims or DIP Lender Claims, requests for payment of Administrative Claims must be Filed as follows:

(a) 503(b)(9) Claims must be Filed by the General Bar Date in accordance with the Bar Date Order;

(b) Initial Administrative Claims must be Filed by the Initial Administrative Claims Bar Date in accordance with the Solicitation Procedures Order; and

(c) any other Administrative Claims must be Filed by the Supplemental Administrative Claims Bar Date in accordance with the Confirmation Order.

Holders of Administrative Claims that are required to, but do not, File and serve a request for payment of such Administrative Claims by such dates shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or their property and such Administrative Claims shall be deemed discharged as of the Effective Date, unless the Bankruptcy Court orders otherwise. Objections to such requests, if any, must be Filed and served on the Debtors and the requesting party in accordance with the Solicitation Procedures Order or Confirmation Order.

In accordance with section 503(b)(1)(D) of the Bankruptcy Code, taxing authorities are not required to file a request for payment of their Administrative Claims as a condition of such Administrative Claims being Allowed. To the extent not assumed by the Buyer in connection with the Sale, the Debtors will pay any such taxes, to the extent Allowed, that arose after the Petition Date in the ordinary course of business.

B. Professional Compensation

1. Final Fee Applications and Payment of Professional Fee Claims

All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Effective Date shall be Filed no later than 45 days after the Effective Date, provided, however, that nothing herein alters the ability of an Ordinary Course Professional to be paid, or the authority of the Debtors to pay Ordinary Course Professionals, pursuant to the terms of the OCP Order, and such Ordinary Course Professionals shall not be required to file requests for payment of Professional Fee Claims unless such requests are required under the OCP Order. All such final requests will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy

Rules, and prior orders of the Bankruptcy Court, including the Interim Compensation Order, and once approved by the Bankruptcy Court, shall be promptly paid from the Professional Fee Escrow Account up to the full Allowed amount. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, and the Debtors shall pay the full unpaid amount of such Allowed Administrative Claim in Cash.

2. Professional Fee Escrow Account

On the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. The Professional Fee Escrow Account shall be held in trust solely for the Allowed Professional Fee Claims and maintained by the Liquidating Trustee. Such funds shall not be considered property of the Estates. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals by the Liquidating Trustee as soon as reasonably practicable after such Professional Fee Claims are Allowed. When all Allowed amounts owing to the Professionals have been paid in full, the Professional Fee Excess Amount, if any, shall promptly be transferred to the Liquidating Trust without any further action or order of the Bankruptcy Court. Any other amounts remaining in the Professional Fee Escrow Account after Professionals have been paid in full shall be transferred to the Buyer as an Acquired Asset. If the Professional Fee Escrow Account is insufficient to fund the full Allowed amounts of Professional Fee Claims, the remaining unpaid Allowed Professional Fee Claims will be paid by the proceeds of the Liquidating Trust in accordance with the Liquidating Trust Proceeds Waterfall.

C. DIP Lender Claims

Pursuant to the terms of the Creditors' Committee Settlement, the DIP Lenders have agreed that all DIP Lender Claims shall be fully satisfied through the treatment of the Class 3 Claims pursuant to Article VII.B.3.

D. Priority Tax Claims

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the Holder of an Allowed Priority Tax Claim and the applicable Debtor, each Holder of an Allowed Priority Tax Claim will receive in full satisfaction of its Allowed Priority Tax Claim Cash equal to the amount of such Allowed Priority Tax Claim on the later of the Effective Date, the date such Priority Tax Claim is Allowed, or as soon as reasonably practicable thereafter.

E. Statutory Fees

All fees due and payable to the U.S. Trustee pursuant to section 1930 of Title 28 of the United States Code ("**Quarterly Fees**") before the Effective Date shall be paid by the Debtors on the Effective Date. Notwithstanding anything else to the contrary in the Combined Disclosure Statement and Plan, the Liquidating Trustee shall be liable to pay all Quarterly Fees accruing from and after the Effective Date until the earliest to occur of the particular Debtor's case being

converted to a case under chapter 7 of the Bankruptcy Code, dismissed, or closed. The Liquidating Trustee shall File with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. The U.S. Trustee shall not be required to file a request for payment of its Quarterly Fees, which shall be deemed an Administrative Claim against the Debtors and their Estates.

ARTICLE VII.
CLASSIFICATION AND TREATMENT OF CLAIMS AND
INTERESTS AND EXPECTED RECOVERIES

A. Summary of Classification

All Claims and Interests are classified in the Classes set forth below in accordance with section 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest qualifies within the description of such other Classes. A Claim or an Interest is classified in a particular Class for the purpose of receiving distributions under the Combined Disclosure Statement and Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against each Debtor (as applicable) pursuant to the Combined Disclosure Statement and Plan is as follows:

B. Treatment of Claims and Interests

Subject to Article VI, each Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Combined Disclosure Statement and Plan the treatment described below in full and final satisfaction, compromise, settlement, release, and discharge of, and in exchange for, such Holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Debtors and the Holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the later of the Effective Date and the date such Holder's Claim or Interest becomes an Allowed Claim or Allowed Interest or as soon as reasonably practicable thereafter.

1. Class 1 – Other Priority Claims

- a. *Classification:* Class 1 consists of Other Priority Claims.
- b. *Treatment:* In full and final satisfaction of each Allowed Other Priority Claim, except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, each Holder thereof will receive payment in full in Cash.
- c. *Voting:* Class 1 is Unimpaired. Holders of Class 1 Claims are conclusively presumed to have accepted the Combined Disclosure Statement and Plan

under section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Combined Disclosure Statement and Plan.

2. Class 2 – Other Secured Claims

- a. *Classification:* Class 2 consists of Other Secured Claims.
- b. *Treatment:* In full and final satisfaction of each Allowed Other Secured Claim, except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder thereof will receive at the option of the Debtors: (a) payment in full in Cash, payable on the later of the Effective Date and the date that is ten (10) Business Days after the date on which such Other Secured Claim becomes an Allowed Other Secured Claim, in each case, or as soon as reasonably practicable thereafter or (b) delivery of the collateral securing any such Claim.
- c. *Voting:* Class 2 is Unimpaired. Holders of Class 2 Claims are conclusively presumed to have accepted the Combined Disclosure Statement and Plan under section 1126(f) of the Bankruptcy Code, and are not entitled to vote to accept or reject the Combined Disclosure Statement and Plan.

3. Class 3 – Prepetition Lender Claims

- a. *Classification:* Class 3 consists of all Prepetition Lender Claims.
- b. *Treatment:* In full and final satisfaction of each Prepetition Lender Claim, and pursuant to Article VI.C each DIP Lender Claim, each Holder of an Allowed Prepetition Lender Claim shall receive its Pro Rata share of the Class 3 Liquidating Trust Interests.
- c. *Voting:* Class 3 is Impaired. Holders of Allowed Prepetition Lender Claims under Class 3 are entitled to vote to accept or reject the Combined Disclosure Statement and Plan.

4. Class 4 – General Unsecured Claims

- d. *Classification:* Class 4 consists of all General Unsecured Claims.
- e. *Treatment:* In full and final satisfaction of each General Unsecured Claim, each Holder of an Allowed General Unsecured Claim shall receive its Pro Rata share of the Class 4 Liquidating Trust Interests.
- f. *Voting:* Class 4 is Impaired. Holders of Allowed Class 4 General Unsecured Claims are entitled to vote to accept or reject the Combined Disclosure Statement and Plan.

5. Class 5 – Subordinated Claims

- a. *Classification:* Class 5 consists of all Subordinated Claims.
- b. *Treatment:* Subordinated Claims will be cancelled, released, and extinguished as of the Effective Date, and will be of no further force or effect, and each Holder of a Subordinated Claim will not receive any distribution on account of such Subordinated Claim.
- c. *Voting:* Class 5 is Impaired. Holders of Class 5 Claims are deemed to have rejected the Combined Disclosure Statement and Plan under section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Combined Disclosure Statement and Plan.

6. Class 6 – Intercompany Claims

- a. *Classification:* Class 6 consists of all Intercompany Claims.
- b. *Treatment:* Holders of Intercompany Claims shall not receive a distribution on account of such Intercompany Claims.
- c. *Voting:* Holders of Class 6 Claims are conclusively deemed to have rejected the Combined Disclosure Statement and Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Class 6 Claims are not entitled to vote to accept or reject the Combined Disclosure Statement and Plan.

7. Class 7 – Interests in the Debtors

- a. *Classification:* Class 7 consists of all Interests in the Debtors.
- b. *Treatment:* On the Effective Date, all Interests shall be deemed canceled, extinguished and of no further force or effect, and the Holders of Interests shall not be entitled to receive or retain any property on account of such Interest.
- c. *Voting:* Class 7 is Impaired. Holders of Class 7 Interests are deemed to have rejected the Combined Disclosure Statement and Plan pursuant to section 1126(g) of the Bankruptcy Code and are not entitled to vote to accept or reject the Combined Disclosure Statement and Plan.

C. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of the Combined Hearing by acceptance of the Combined Disclosure Statement and Plan by at least one Impaired Class of Claims, determined without including any acceptances of the Combined Disclosure Statement and Plan by any insider. The Debtors shall seek confirmation of the Combined

Disclosure Statement and Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class(es) of Claims and Interests. The Debtors reserve the right to modify the Combined Disclosure Statement and Plan in accordance with Article XV hereof to the extent, if any, that confirmation of the Combined Disclosure Statement and Plan pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims to render such Class of Claims Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

D. Elimination of Vacant Classes

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

E. [Intentionally Omitted]

F. Subordinated Claims and Interests

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

**ARTICLE VIII.
MEANS FOR IMPLEMENTATION OF THE COMBINED
DISCLOSURE STATEMENT AND PLAN**

A. Corporate Existence

On the Effective Date or as soon as reasonably practicable thereafter, each of the Debtors will each be deemed dissolved and no longer in existence.

B. Cancellation of Interests in the Debtors.

On the Effective Date, all existing Interests of each of the Debtors shall be retired, cancelled, extinguished and/or discharged in accordance with the terms of the Combined Disclosure Statement and Plan. Except as otherwise provided in the Plan Supplement, on the Effective Date: (1) the obligations of the Debtors under any 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 Interest shall be cancelled as to the Debtors and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be released and discharged.

C. Creditors' Committee Settlement

Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, the Combined Disclosure Statement and Plan effectuates the Creditors' Committee Settlement. Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the Creditors' Committee Settlement and the Bankruptcy Court's finding that the Creditors' Committee Settlement is in the best interests of the Debtors, their Estates, and the Holders of Claims and Interests, and is fair, equitable, and reasonable.

D. Causes of Action

On the Effective Date, all Causes of Action (other than the Liquidating Trust Claims and, for the avoidance of doubt, the Acquired Causes of Action), shall be deemed waived, discharged, forgiven, and forever compromised, and the Liquidating Trust Claims shall be transferred to, vested in, and/or retained by the Liquidating Trust; provided, however, that nothing in this sentence shall waive or otherwise impair any defenses to any Claims asserted in these Chapter 11 Cases. Following the Effective Date, except as otherwise expressly provided herein or the Liquidating Trust Agreement, the Liquidating Trustee may assert, compromise or dispose of the Liquidating Trust Claims without further notice or authorization of the Bankruptcy Court. In the event the Liquidating Trustee initiates an adversary proceeding in Bankruptcy Court, such proceeding shall be governed by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and all other applicable law.

E. Vesting; Representative of the Estates

Except as otherwise provided in this Combined Disclosure Statement and Plan, on the Effective Date, all Liquidating Trust Assets shall be transferred to and vest in the Liquidating Trust, free and clear of all Claims, Liens, charges, other encumbrances, Interests, or other interests. On and after the Effective Date, the Liquidating Trustee may use, acquire and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions imposed by the Combined Disclosure Statement and Plan, the Confirmation Order, or the Liquidating Trust Agreement.

The Liquidating Trustee shall serve as the representative of the Estates pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.

F. Effectuating Documents; Further Transactions

On and after the Effective Date, the Liquidating Trustee is authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of the Combined Disclosure Statement and Plan and the transactions contemplated thereby, in each case, in the name of and on behalf of the Debtors and the Liquidating Trust, without the need for any approvals, authorization or consents except those expressly required pursuant to the Combined Disclosure Statement and Plan. In connection with the foregoing, the Liquidating Trustee shall complete any remaining wind down activities of the Debtors, including negotiating the purchase price allocation related to the Sale on behalf of the Sellers as and to the extent set forth in the Asset Purchase Agreement and filing a final tax return.

G. Deemed Substantive Consolidation

The Combined Disclosure Statement and Plan contemplates and is predicated upon the deemed substantive consolidation of the Estates for voting, confirmation, and Distribution purposes. Accordingly, on the Effective Date, each Claim Filed or to be Filed against any Debtor shall be deemed Filed only against Holdings and shall be deemed a single Claim against and a single obligation of Holdings for Distribution purposes, which shall be paid from the Liquidating Trust. This deemed substantive consolidation of the Estates for Distribution purposes means that the specific Debtor against which a Creditor holds or asserts a Claim will have no effect on the distribution (if any) provided to such Creditor under the Combined Disclosure Statement and Plan.

The Combined Disclosure Statement and Plan also provides for the deemed substantive consolidation of the Estates for voting purposes, including tabulating votes to accept or reject the Combined Disclosure Statement and Plan. Accordingly, the Debtors will tabulate each Ballot as a vote to accept or reject the Combined Disclosure Statement and Plan as to each Debtor.

Absent the consent of affected creditors, the Debtors will bear the burden at the Combined Hearing of establishing a prima facie case for the deemed substantive consolidation of their respective Estates. Accordingly, the Debtors will, to the extent necessary, adduce evidence at the Combined Hearing to justify the deemed substantive consolidation in accordance with the standards established by applicable case law. Such evidence may include, without limitation, evidence indicating that Creditors have dealt with the Debtors as a single, consolidated enterprise, both before and after the Petition Date, the Sale of all of the Debtors' assets without allocation pursuant to the Debtors, the Debtors' central management, and the Debtors' prepetition employed an integrated cash management system of bank accounts. Further, efforts to deconsolidate the Debtors' respective assets and liabilities would be burdensome and divert professional resources that are more profitably directed elsewhere, all without meaningfully affecting the distributions to be received under the Combined Disclosure Statement and Plan.

H. Insurance Policies

Insurance Policies Remain In Force. Up to and including their policy expiration date(s),

any and all Insurance Policies in effect as of the Effective Date shall remain in full force and effect according to their terms and the coverage obligations of the insurers and third party administrators under such Insurance Policies shall continue following the Effective Date (including any obligations to pay, defend and process insured claims).

D&O Insurance Policies; Employment Practice Liability Policies; Similar Policies. Nothing contained in this Combined Disclosure Statement and Plan shall affect or impair the rights of any non-Debtor insured persons covered under any D&O Insurance Policy, employment practices or similar liability Insurance Policies (including, without limitation, policies for the benefit of the Debtors' directors, officers, employees, members, managers, or similar persons who served in such capacity either before or after the Petition Date).

I. Dissolution of Creditors' Committee

Following the Effective Date, the Creditors' Committee shall continue in existence and have standing and capacity to prepare and prosecute applications for the payment of fees and reimbursement of expenses incurred by the Creditors' Committee or its respective Professionals. Following the completion of the foregoing, the Creditors' Committee shall be dissolved and the members of the Creditors' Committee shall be released and discharged from any further authority, duties, responsibilities, and obligations related to, or arising from, the Chapter 11 Cases.

J. Termination of the Claims Agent

At any time following the Effective Date, the Liquidating Trustee shall be authorized to terminate the services of the Claims Agent by providing thirty (30) days written notice without need for order of the Bankruptcy Court or any other party. Following termination, the Claims Agent shall provide the Liquidating Trustee and the Bankruptcy Court with a copy of the Claims Register and a copy of all Filed Proofs of Claim. No later than thirty (30) days after its termination, the Claims Agent shall provide the Liquidating Trustee with a final invoice, and unless the Liquidating Trustee has any issues with respect to the Claims Agent's fees or expenses, the Liquidating Trustee will be authorized to remit payment of the final invoice within fifteen (15) days of receipt. The Bankruptcy Court will retain jurisdiction to hear any dispute in the event that the Liquidating Trustee and Claims Agent cannot agree upon the amount of fees and expenses sought by the Claims Agent.

K. Closing of Cases

Upon the occurrence of the Effective Date, the Liquidating Trustee shall file a certification of counsel seeking entry of an Order authorizing the Clerk of the Bankruptcy Court to close all of the Bankruptcy Cases, other than the Bankruptcy Case of Holdings, without need for further notice or Order of the Bankruptcy Court.

L. Final Decree

At any time following the Effective Date, the Liquidating Trustee shall be authorized to file a motion for entry of a final decree closing the Chapter 11 Case of Holdings.

ARTICLE IX.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

Except as otherwise provided in the Combined Disclosure Statement and Plan, or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with the Combined Disclosure Statement and Plan, as of the Effective Date, each Debtor will be deemed to have rejected each Executory Contract or Unexpired Lease to which such Debtor is a party, unless such Executory Contract or Unexpired Lease (i) was previously assumed or rejected; (ii) was previously expired or terminated pursuant to its own terms; or (iii) is the subject of a motion or notice to assume or reject Filed on or before the Confirmation Date.

The Confirmation Order shall constitute an order of the Bankruptcy Court under sections 365 and 1123(b) of the Bankruptcy Code approving the rejections described above as of the Effective Date.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Claims based on the rejection of the Debtors' Executory Contracts or Unexpired Leases pursuant to the Combined Disclosure Statement and Plan or otherwise must be Filed set forth in the Bar Date Order.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease that are not Filed within such time, unless otherwise ordered by the Bankruptcy Court, will be automatically Disallowed, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Buyer, the Estates, or property of the foregoing parties, without the need for any objection by the Debtors, or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims.

C. Insurance Policies

Insurance Policies shall not be considered Executory Contracts for purposes of this Article IX. As discussed in Article VIII.H, the Insurance Policies shall remain in full force and effect following the Effective Date.

ARTICLE X. THE LIQUIDATING TRUST

A. Creation of the Liquidating Trust

On the Effective Date, the Debtors and the Liquidating Trustee shall execute the Liquidating Trust Agreement and shall take all steps necessary to establish the Liquidating Trust in accordance with the Combined Disclosure Statement and Plan, which shall be for the benefit of the Liquidating Trust Beneficiaries. The Liquidating Trust shall be governed by the terms of the Liquidating Trust Agreement and the Combined Disclosure Statement and Plan and administered by the Liquidating Trustee and the Liquidating Trust Advisory Board. The powers, rights, responsibilities, and compensation of the Liquidating Trustee and Liquidating Trust Advisory Board shall be specified in the Liquidating Trust Agreement. The Liquidating Trustee shall hold and distribute the Liquidating Trust Assets in accordance with the Combined Disclosure Statement and Plan and the Liquidating Trust Agreement.

B. Transfer of Liquidating Trust Assets to the Liquidating Trust

1. Transfer Free and Clear

On the Effective Date the Debtors shall transfer and/or assign and shall be deemed to transfer and/or assign to the Liquidating Trust all of their rights, title and interest in and to all of the Liquidating Trust Assets, and in accordance with section 1141 of the Bankruptcy Code, the Liquidating Trust Assets shall automatically vest in the Liquidating Trust free and clear of all Claims and Liens, subject only to the Liquidating Trust Interests. Notwithstanding anything herein to the contrary, the transfer of the Liquidating Trust Assets to the Liquidating Trust shall not diminish, and fully preserves, any defenses a Debtor would have if such Liquidating Trust Assets had been retained by the Debtors.

2. Certain Tax Consequences

Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the Liquidating Trust is intended to be treated as a “liquidating trust” for U.S. federal income tax purposes pursuant to Treasury Regulation section 301.7701-4(d), and the Liquidating Trustee will take this position on the Liquidating Trust’s tax return accordingly. The Liquidating Trust Beneficiaries shall be treated as the grantors of the Liquidating Trust and as the deemed owners of the Liquidating Trust Assets. For U.S. federal income tax purposes, the transfer of assets to the Liquidating Trust will be deemed to occur as (a) a first-step transfer of the Liquidating Trust Assets to the Liquidating Trust Beneficiaries and, to the extent the Liquidating Trust Assets are allocable to Disputed General Unsecured Claims, to the GUC Disputed Claims Reserve described in the subsequent paragraph and (b) a second-step transfer by such Liquidating Trust Beneficiaries and, to the extent relevant with respect to the GUC Disputed Claims Reserve, to the Liquidating Trust. As a result, the transfer of the Liquidating Trust Assets to the Liquidating Trust should be a taxable transaction, and the Debtors should recognize gain or loss equal to the difference between the tax basis and fair value of such assets. As soon as possible after the transfer of the Liquidating Trust Assets to the Liquidating Trust, the Liquidating Trustee shall make a good

faith valuation of the Liquidating Trust Assets. This valuation will be made available from time to time, as relevant for tax reporting purposes. Each of the Debtors, Liquidating Trustee, and the Liquidating Trust Beneficiaries shall take consistent positions with respect to the valuation of the Liquidating Trust Assets, and such valuations shall be utilized for all U.S. federal income tax purposes. The Liquidating Trust shall in no event be dissolved later than 5 years from the creation of such Liquidating Trust unless the Bankruptcy Court, upon motion within the 6-month period prior to the 5th anniversary (or within the 6-month period prior to the end of an extension period), determines that a fixed period extension (not to exceed 5 years with a private letter ruling from the IRS or an opinion of counsel satisfactory to the Liquidating Trustee that any further extension would not adversely affect the status of the trust as a liquidating trust for United States federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Liquidating Trust Assets.

With respect to amounts, if any, in a reserve for Disputed General Unsecured Claims, it is expected that such account will be treated as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9, that any appropriate elections with respect thereto shall be made, and that such treatment will also be applied to the extent possible for state and local tax purposes. Under such treatment, a separate federal income tax return shall be filed with the IRS for such disputed claims reserve and will be subject to tax annually on a separate entity basis. Any taxes (including with respect to interest, if any, earned in the account, or any recovery on the portion of assets allocable to such account in excess of the disputed claims reserve’s basis in such assets) imposed on such account shall be paid out of the assets of the respective account (and reductions shall be made to amounts disbursed from the account to account for the need to pay such taxes). Liquidating Trust Beneficiaries will be bound by such election, if made by the Liquidating Trustee, and, as such, will, for U.S. federal income tax purposes (and, to the extent permitted by law, for state and local income tax purposes), report consistently therewith.

C. Administration of the Liquidating Trust

1. In General

The Liquidating Trust shall be administered by the Liquidating Trustee with oversight by the Liquidating Trust Advisory Board pursuant to the Liquidating Trust Agreement. In the event of any inconsistency solely between this Article X.C of the Combined Disclosure Statement and Plan and the Liquidating Trust Agreement, the Liquidating Trust Agreement shall control, with the Combined Disclosure Statement and Plan controlling in all other cases. All compensation for the Liquidating Trustee and other costs of administration for the Liquidating Trust shall be paid by the Liquidating Trust in accordance with this Combined Disclosure Statement and Plan and the Liquidating Trust Agreement. The Liquidating Trust Agreement generally will provide for, among other things: (a) the payment of the expenses of the Liquidating Trust, including the cost of pursuing the Liquidating Trust Claims; (b) the retention of counsel, accountants, financial advisors, or other professionals and the payment of their reasonable compensation; (c) the investment of Cash by the Liquidating Trustee within certain limitations, including those specified in the Combined Disclosure Statement and Plan; (d) the orderly liquidation of the Liquidating Trust Assets; and (e) liquidating of any Liquidating Trust Claims including the, which may include the prosecution, settlement, abandonment, or dismissal of any such Liquidating Trust Claims.

2. Powers and Duties of Liquidating Trustee

In furtherance of and consistent with the purpose of the Liquidating Trust and the Combined Disclosure Statement and Plan, and subject to the terms of the Liquidating Trust Agreement, the Liquidating Trustee, for the benefit of the Liquidating Trust, shall (a) hold the Liquidating Trust Assets for the benefit of the Liquidating Trust Beneficiaries, (b) make distributions of the Liquidating Trust Assets as provided in the Liquidating Trust Agreement, and (c) have the power and authority to commence, prosecute, and resolve any Liquidating Trust Claims. The Liquidating Trustee shall be responsible for all decisions and duties with respect to the Liquidating Trust and the Liquidating Trust Assets, except as otherwise provided in the Liquidating Trust Agreement. In all circumstances, the Liquidating Trustee shall act in the best interests of the Liquidating Trust Beneficiaries.

Subject to the provisions of the Liquidating Trust Agreement, the Liquidating Trustee may settle, compromise, abandon, or withdraw any Liquidating Trust Claim on any grounds or terms it deems reasonable, without further order of the Bankruptcy Court. The Liquidating Trustee may also settle or compromise any Disputed General Unsecured Claim, or withdraw any objection thereto, on any grounds or terms he or she deems reasonable, without further order of the Bankruptcy Court, but subject to the terms of the Liquidating Trust Agreement.

The Liquidating Trustee, on behalf of the Liquidating Trust, may employ, without further order of the Bankruptcy Court, professionals to assist in carrying out its duties hereunder and may compensate and reimburse the reasonable expenses of those professionals without further order of the Bankruptcy Court from the Liquidating Trust Assets in accordance with the Combined Disclosure Statement and Plan and the Liquidating Trust Agreement.

3. Liquidating Trust Advisory Board

The Liquidating Trust Advisory Board shall have the authority to: (a) oversee, review, and guide the activities and performance of the Liquidating Trustee; (b) retain and employ attorneys and other professionals on behalf of the Liquidating Trust to facilitate the Liquidating Trustee's performance of his or her duties under the Liquidating Trust Agreement; and (c) remove and appoint the Liquidating Trustee for any reason. The members of the Liquidating Trust Advisory Board shall not be entitled to compensation for their services but will be entitled to reimbursement from the Liquidating Trust for reasonable and documented out-of-pocket expenses.

4. Liquidating Trust Proceeds Waterfall

Any Liquidating Trust Assets, including proceeds recovered from the successful prosecution or settlement of any Liquidating Trust Claims, shall be distributed in accordance with the Liquidating Trust Proceeds Waterfall and the Liquidating Trust Agreement.

ARTICLE XI. RESERVES

If the Liquidating Trustee determine that they are required, or that it is necessary, to establish any of the reserves set forth in this Article XI, the Liquidating Trustee shall administer

such reserves in the manner established by this Article XI; provided, however, that the Liquidating Trustee (and not the Debtors) shall in all events establish and maintain the Liquidating Trust Expense Fund and GUC Disputed Claims Reserve, respectively.

A. Establishment of Reserve Accounts

The Liquidating Trustee shall establish each of the Distribution Reserve Accounts by either establishing a segregated account or establishing book entry accounts, in the sole discretion of the Liquidating Trustee.

B. Undeliverable Distribution Reserve

1. Deposits

If a distribution to any Holder of an Allowed Claim is returned to the Liquidating Trustee as undeliverable or is otherwise unclaimed, such distribution shall be deposited in a segregated, interest-bearing account, designated as an “Undeliverable Distribution Reserve,” for the benefit of such Holder until such time as such distribution becomes deliverable, is claimed or is deemed to have been forfeited in accordance with Article XI.B.2 of the Combined Disclosure Statement and Plan.

2. Forfeiture

Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Combined Disclosure Statement and Plan for an undeliverable or unclaimed distribution within three months after the first distribution is made to such Holder shall be deemed to have forfeited its claim for such undeliverable or unclaimed distribution and shall be forever barred and enjoined from asserting any such claim for the undeliverable or unclaimed distribution against any Debtor, any Estate, the Liquidating Trust or their respective properties or assets unless the Bankruptcy Court orders otherwise. In such cases, any Cash or other property held by the Debtors or Liquidating Trustee in the Undeliverable Distribution Reserve for distribution on account of such claims for undeliverable or unclaimed distributions, including the interest that has accrued on such undeliverable or unclaimed distribution while in the Undeliverable Distribution Reserve, without any further action or order of the Bankruptcy Court shall promptly be transferred to the Liquidating Trust, notwithstanding any federal or state escheat laws to the contrary.

3. Disclaimer

Neither the Debtors, the Liquidating Trustee, nor their respective agents and attorneys are under no duty to take any action to attempt to locate any Claim Holder; provided that in his or her sole discretion, the Liquidating Trustee may periodically publish notice of unclaimed distributions.

4. Distribution from Reserve

Within fifteen (15) Business Days after the Holder of an Allowed Claim satisfies the requirements of this Combined Disclosure Statement and Plan, such that the distribution(s) attributable to its Claim is no longer an undeliverable or unclaimed distribution (provided that

satisfaction occurs within the time limits set forth in Article XI.B), the Liquidating Trustee shall distribute out of the Undeliverable Distribution Reserve the amount of the undeliverable or unclaimed distribution attributable to such Claim, including the interest that has accrued on such undeliverable or unclaimed distribution while in the Undeliverable Distribution Reserve.

C. Liquidating Trust Expense Fund

The Liquidating Trustee shall maintain a reserve (the “**Liquidating Trust Expense Fund**”) in an amount as is reasonably necessary to pay the costs and expenses incurred or expected to be incurred by the Liquidating Trust and Liquidating Trustee in connection with administering the Liquidating Trust Assets and performing the duties set forth in the Combined Disclosure Statement and Plan and the Liquidating Trust Agreement, including, without limitation, paying the fees and expenses of the Liquidating Trustee, and attorneys, advisors, and professionals retained by the Liquidating Trust and/or Liquidating Trustee (the “**Liquidating Trust Expenses**”).

With the prior majority approval of the Liquidating Trust Advisory Board, the Liquidating Trust may borrow money or raise capital on such terms as determined by the Liquidating Trustee to fund the Liquidating Trust Expense Fund. Except for purposes of funding the Liquidating Trust Expense Fund, the Liquidating Trust shall not incur any debt.

D. GUC Disputed Claims Reserve

The Liquidating Trustee may establish, for the benefit of each Holder of a Disputed General Unsecured Claim, the GUC Disputed Claims Reserve consisting of Liquidating Trust Interests in an amount equal to the Pro Rata share of distributions that would have been made to the holder of such Disputed General Unsecured Claim if it were an Allowed General Unsecured Claim in an amount equal to the lesser of (i) the liquidated amount set forth in the filed Proof of Claim relating to such Disputed General Unsecured Claim or if no Proof of Claim has been filed the liquidated amount set forth in the Schedules, (ii) the amount in which the Disputed General Unsecured Claim has been estimated by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code as constituting and representing the maximum amount in which such Claim may ultimately become an Allowed General Unsecured Claim or (iii) such other amount as may be agreed upon by the holder of such Disputed General Unsecured Claim and the Liquidating Trustee. Amounts held in the GUC Disputed Claims Reserve shall be retained by the Liquidating Trustee for the benefit of Holders of Disputed General Unsecured Claims pending determination of their entitlement thereto under the terms of the Combined Disclosure Statement and Plan. No payments or distributions shall be made with respect to all or any portion of any Disputed General Unsecured Claim pending the entire resolution thereof by Final Order or agreement between the Liquidating Trustee and the Holder of the applicable Disputed General Unsecured Claim.

At such time as a Disputed General Unsecured Claim becomes an Allowed General Unsecured Claim, the Liquidating Trustee shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Combined Disclosure Statement and Plan or Liquidating Trust Agreement. Such distribution, if any, shall be made as soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court Allowing such Disputed General Unsecured Claim becomes a Final Order or the effective date of the relevant

agreement between the Liquidating Trustee and the Holder of the applicable Disputed General Unsecured Claim.

If a Disputed General Unsecured Claim is Disallowed, in whole or in part, the Liquidating Trustee shall distribute amounts held in the GUC Disputed Claims Reserve with respect to such Claim (or, if Disallowed in part, the amounts held in the GUC Disputed Claims Reserve with respect to the Disallowed portion of such Claim) in accordance with the Liquidating Trust Proceeds Waterfall.

ARTICLE XII. PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Allowance of Claims

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses the applicable Debtor had with respect to any Claim immediately before the Effective Date. Except as expressly provided in the Combined Disclosure Statement and Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Combined Disclosure Statement and Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Combined Disclosure Statement and Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Liquidating Trustee shall have the authority to File and prosecute objections to Claims and shall have the sole authority, without any further notice to or action, order, or approval by the Bankruptcy Court, to (1) settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all such Claims, regardless of whether such Claims are in a Class or otherwise; (2) settle, compromise, or resolve any such Disputed Claim; and (3) administer and direct the adjustment of the Claims Register to reflect any such settlements or compromises. Except as otherwise specifically provided in the Combined Disclosure Statement and Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, after the Effective Date, the Liquidating Trustee shall have the authority to File and prosecute objections to General Unsecured Claims and shall have the sole authority, without any further notice to or action, order, or approval by the Bankruptcy Court, to (1) settle, compromise, withdraw, litigate to judgment, or otherwise resolve objections to any and all such General Unsecured Claims; (2) settle, compromise, or resolve any Disputed General Unsecured Claim; and (3) administer and direct the adjustment of the Claims Register to reflect any such settlements or compromises.

C. Estimation of Claims

Before, on, or after the Effective Date, the Debtors or the Liquidating Trustee may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim pursuant to applicable law, including, without limitation, pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction under 28 U.S.C. §§ 157 and 1334 to estimate any such Claim, including during the litigation of any objection to any Claim or during the pendency of any appeal relating to such objection. Notwithstanding any provision to the contrary in the Combined Disclosure Statement and Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim, such estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Combined Disclosure Statement and Plan (including for purposes of distributions and discharge) and may be used as evidence in any supplemental proceedings, and the Liquidating Trustee may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim. Each of the foregoing Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

D. Adjustment to Claims Without Objection

Any Claim that has been paid or satisfied, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register as directed by the Liquidating Trustee without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Time to File Objections to Claims

Any objections to Claims shall be Filed on or before the Claims Objection Bar Date.

F. Disallowance of Claims

All Proofs of Claim Filed on account of an indemnification obligation shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Combined Disclosure Statement and Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as otherwise provided herein or as agreed to by the Liquidating Trustee, any and all Proofs of Claim Filed after the Claims Bar Date shall be deemed Disallowed and expunged as of the Effective Date without any further notice to or action, order, or approval of the Bankruptcy Court, and Holders of such Claims may not receive any distributions on account of such Claims, unless such late Proof of Claim has been deemed timely Filed by a Final Order.

G. Amendments to Claims

On or after the Effective Date, a Claim may not be Filed or amended without the prior authorization of the Bankruptcy Court, or by agreement with the Liquidating Trustee and any such new or amended Claim Filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court to the maximum extent provided by applicable law, unless otherwise ordered by the Bankruptcy Court.

H. No Distributions Pending Allowance

If an objection to a Claim or portion thereof is Filed, no payment or distribution provided under the Combined Disclosure Statement and Plan shall be made on account of such Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim or unless otherwise determined by the Liquidating Trustee.

I. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Combined Disclosure Statement and Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Liquidating Trustee shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Combined Disclosure Statement and Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under applicable bankruptcy law or as otherwise provided herein.

ARTICLE XIII. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Term of Injunctions or Stays

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

B. Release of Liens

Except as otherwise provided in the Combined Disclosure Statement and Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Combined Disclosure Statement and Plan, on the Effective Date, all Liens against the property of any Estates will be fully released, and all of the right, title and interest of any holder of such Liens, including any rights to any collateral thereunder, shall

attach to and be enforceable solely against any net proceeds of sales or other liquidation of such assets. For the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

C. Debtor Release

Notwithstanding anything contained in the Combined Disclosure Statement and Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed forever released by the Debtors, their respective Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any cause of action, by, through, for, or because of the foregoing entities, from any and all claims and Causes of Action, whether known or unknown, liquidated or unliquidated, fixed or contingent, matured or unmatured, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors or their respective Estates, that the Debtors would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in the Debtors based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), the Sale, any securities issued by the Debtors and the ownership thereof, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), any intercompany transaction, the DIP Credit Documents, the Prepetition Credit Documents, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Sale Documents, the Combined Disclosure Statement and Plan, the DIP Credit Facility, the Plan Supplement, solicitation of votes on the Combined Disclosure Statement and Plan, the prepetition negotiation and settlement of Claims, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Combined Disclosure Statement and Plan, including the distribution of property under the Combined Disclosure Statement and Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date except for Claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted criminal conduct, actual fraud, willful misconduct, knowing violation of law, gross negligence or bad faith, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Combined Disclosure Statement and Plan (collectively, the "Debtor Release"). Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any post-Effective Date obligations of any party or Entity under the Combined Disclosure Statement and Plan or any document, instrument, or agreement (including any documents, instruments and agreements set forth in the Plan Supplement) executed to implement the Combined Disclosure Statement and Plan and shall not result in a release, waiver, or discharge of any of the Debtors' assumed

indemnification provisions as set forth in the Combined Disclosure Statement and Plan, or (ii) any Acquired Cause of Action.

D. Exculpation

Notwithstanding anything contained in the Combined Disclosure Statement and Plan to the contrary, no Exculpated Party shall have or incur liability for, and each Exculpated Party is released and exculpated from, any Cause of Action or any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Combined Disclosure Statement and Plan, the DIP Credit Facility, the Plan Supplement, solicitation of votes on the Combined Disclosure Statement and Plan, the pursuit of confirmation, the pursuit of consummation or the distribution of property under the Combined Disclosure Statement and Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place from the Petition Date through the Effective Date, except for Claims related to any act or omission that is determined in a final order by a court of competent jurisdiction to have constituted criminal conduct, actual fraud, willful misconduct, knowing violation of law or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Combined Disclosure Statement and Plan.

Notwithstanding anything to the contrary in the foregoing, the exculpation set forth above does not release or exculpate any Claim relating to any post-Effective Date obligations of any party or Entity under the Combined Disclosure Statement and Plan or any document, instrument, or agreement (including any documents, instruments and agreements set forth in the Plan Supplement) executed to implement the Combined Disclosure Statement and Plan.

E. Non-Discharge of the Debtors; Injunction

In accordance with Bankruptcy Code section 1141(d)(3), the Combined Disclosure Statement and Plan does not discharge the Debtors. Bankruptcy Code section 1141(c) nevertheless provides, among other things, that the property dealt with by the Combined Disclosure Statement and Plan is free and clear of all Claims and Interests against the Debtors. As a result, except as otherwise provided in the Combined Disclosure Statement and Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (a) are subject to compromise and settlement pursuant to the terms of the Combined Disclosure Statement and Plan; (b) have been released by the Debtors pursuant to the Combined Disclosure Statement and Plan; (c) are subject to exculpation pursuant to the Combined Disclosure Statement and Plan; or (d) are otherwise discharged, satisfied, stayed or terminated pursuant to the terms of the Combined Disclosure Statement and Plan, are permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Released Parties, or the Exculpated Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or

with respect to any such Claims, Interests, or Causes of Action; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or Estates of such Entities on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action; (4) asserting any right of setoff (other than setoffs exercised prior to the Petition Date), or subrogation of any kind against any debt, liability, or obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any Claims, Causes of Action, or Interests; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims, Interests, or Causes of Action discharged, released, exculpated or settled pursuant to the Combined Disclosure Statement and Plan.

Any Entity injured by any willful violation of such injunction may seek actual damages and, in appropriate circumstances, may seek punitive damages from the willful violator.

F. Subordination Rights.

Any distributions under the Combined Disclosure Statement and Plan shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Combined Disclosure Statement and Plan, in each case other than as provided in the Combined Disclosure Statement and Plan.

ARTICLE XIV.

CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

A. Conditions Precedent to Confirmation

It shall be a condition to confirmation of the Combined Disclosure Statement and Plan that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article XIV.C hereof):

1. The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors, approving the Disclosure Statement with respect to the Combined Disclosure Statement and Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.
2. The Combined Disclosure Statement and Plan, the Confirmation Order, and the Plan Documents shall be in a form and substance reasonably acceptable to the Debtors, the DIP Agent, the DIP Lenders, the DIP Lender Representative, the Prepetition Lenders, the Prepetition Agent, the Prepetition Lender Representative, and the Creditors' Committee.

B. Conditions Precedent to the Effective Date

It shall be a condition to the Effective Date that the following conditions shall have been satisfied (or waived pursuant to the provisions of Article XIV.C hereof):

1. The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors confirming the Combined Disclosure Statement and Plan pursuant to section 1129 of the Bankruptcy Code.
2. All authorizations, consents and approvals required, if any, in connection with the Combined Disclosure Statement and Plan's effectiveness shall have been obtained.
3. All actions, documents, certificates and agreements necessary to implement the Combined Disclosure Statement and Plan shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable Governmental Units in accordance with applicable laws, and are in form and substance, acceptable to the Debtors. All conditions precedent to the effectiveness of the Liquidating Trust Agreement shall have been satisfied or duly waived.
4. The Debtors' obligations to provide transition services and the Buyer's designation rights in connection with the Sale have terminated or otherwise expired.

C. Waiver of Conditions

The conditions to confirmation of the Combined Disclosure Statement and Plan and to the Effective Date of the Combined Disclosure Statement and Plan set forth in this Article XIV may be waived only by consent of the Debtors without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Combined Disclosure Statement and Plan.

D. Substantial Consummation

"Substantial Consummation" of the Combined Disclosure Statement and Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

ARTICLE XV.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE COMBINED
DISCLOSURE STATEMENT AND PLAN

A. Modification and Amendments

Subject to the limitations contained in the Combined Disclosure Statement and Plan, the Debtors reserve the right to modify the Combined Disclosure Statement and Plan and seek confirmation of the Combined Disclosure Statement and Plan consistent with the Bankruptcy Code and, as appropriate and to the extent allowed under the Bankruptcy Code, not resolicit votes on such modified Combined Disclosure Statement and Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Combined Disclosure Statement and Plan, the Debtors expressly reserve their rights to alter, amend, or modify materially the Combined Disclosure Statement and Plan, one or more times after confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Combined Disclosure Statement and Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Combined Disclosure Statement and Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Combined Disclosure Statement and Plan.

B. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to the Combined Disclosure Statement and Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Combined Disclosure Statement and Plan

Subject to the provisions of the DIP Credit Agreement, the Debtors reserve the right to revoke or withdraw the Combined Disclosure Statement and Plan before the Confirmation Date. If the Debtors revoke or withdraw the Combined Disclosure Statement and Plan, or if confirmation of the Combined Disclosure Statement and Plan and Consummation does not occur, then: (1) the Combined Disclosure Statement and Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Combined Disclosure Statement and Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Combined Disclosure Statement and Plan, and any document or agreement executed pursuant to the Combined Disclosure Statement and Plan, shall be deemed null and void; and (3) nothing contained in the Combined Disclosure Statement and Plan shall: (i) constitute a waiver or release of any Claims or Interests; prejudice in any manner the rights of the Debtors or any other Entity, including the Holders of Claims; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

ARTICLE XVI. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters arising out of or related to the Chapter 11 Cases and the Combined Disclosure Statement and Plan, including jurisdiction to:

1. Allow, Disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims;
2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals;
3. Resolve any matters related to: (a) the assumption or rejection of any Executory Contract or Unexpired Lease and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, cure amounts pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease and (b) any dispute regarding whether a contract or lease is or was executory or expired;
4. Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Combined Disclosure Statement and Plan;
5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
6. Adjudicate, decide, or resolve any and all Causes of Action (including, without limitation, the Liquidating Trust Claims) and any matters related thereto;
7. Adjudicate, decide, or resolve any and all matters related to sections 1141 and 1145 of the Bankruptcy Code;
8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Combined Disclosure Statement and Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Combined Disclosure Statement and Plan.
9. Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;
10. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Combined Disclosure

Statement and Plan or any Entity's obligations incurred in connection with the Combined Disclosure Statement and Plan;

11. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Combined Disclosure Statement and Plan;

12. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, discharges, releases, injunctions, exculpations, and other provisions contained in Article XIII hereof and enter such orders as may be necessary or appropriate to implement or enforce such releases, injunctions, and other provisions;

13. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid;

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

15. Determine any other matters that may arise in connection with or relate to the Combined Disclosure Statement and Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement;

16. Adjudicate any and all disputes arising from or relating to distributions under the Combined Disclosure Statement and Plan or any transactions contemplated therein;

17. Consider any modifications of the Combined Disclosure Statement and Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

18. Determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

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

20. Hear and determine all disputes involving the existence, nature, or scope of the release provisions set forth in the Combined Disclosure Statement and Plan, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;

21. Enforce all orders previously entered by the Bankruptcy Court in the Chapter 11 Cases;

22. Hear any other matter not inconsistent with the Bankruptcy Code;

23. Enter an order closing the Chapter 11 Cases;
24. Enforce the injunction, release, and exculpation provisions provided in Article XIII hereof; and
25. Hear and determine all disputes involving the Liquidating Trust Agreement.

ARTICLE XVII. MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Combined Disclosure Statement and Plan, the final versions of the documents contained in the Plan Supplement, and the Confirmation Order shall be immediately effective and enforceable and deemed binding upon the Debtors and any and all Holders of Claims or Interests (regardless of whether such Claims or Interests are deemed to have accepted or rejected the Combined Disclosure Statement and Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunctions described in the Combined Disclosure Statement and Plan, each Entity acquiring property under the Combined Disclosure Statement and Plan or the Confirmation Order, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Combined Disclosure Statement and Plan regardless of whether any Holder of a Claim or debt has voted on the Combined Disclosure Statement and Plan.

B. Additional Documents

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

C. Reservation of Rights

Before the Effective Date, neither the Combined Disclosure Statement and Plan, any statement or provision contained in the Combined Disclosure Statement and Plan, nor any action taken or not taken by any Debtor with respect to the Combined Disclosure Statement and Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to any Claims or Interests.

D. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Combined Disclosure Statement and Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

E. Service of Documents

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows: counsel for the Debtors, Greenberg Traurig, LLP, (a) The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, DE 19801 (Attn: Dennis A. Meloro (melorod@gtlaw.com)) and (b) 77 West Wacker Dr., Suite 3100, Chicago, IL 60601 (Attn: Nancy A. Peterman (petermann@gtlaw.com), Eric Howe (howee@gtlaw.com), Nicholas E. Ballen (ballenn@gtlaw.com), and Danny Duerdoth (duerdothd@gtlaw.com)).

F. Entire Agreement

Except as otherwise indicated, the Combined Disclosure Statement and Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Combined Disclosure Statement and Plan.

G. Exhibits

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Combined Disclosure Statement and Plan as if set forth in full in the Combined Disclosure Statement and Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at <https://www.donlinrecano.com/Clients/yfhc/Index> or the Bankruptcy Court's website at <https://www.deb.uscourts.gov/>.

H. Nonseverability of The Combined Disclosure Statement and Plan Provisions

If, before confirmation of the Combined Disclosure Statement and Plan, any term or provision of the Combined Disclosure Statement and Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Combined Disclosure Statement and Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order

shall constitute a judicial determination and shall provide that each term and provision of the Combined Disclosure Statement and Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Combined Disclosure Statement and Plan and may not be deleted or modified without the Debtors' consent; and (3) nonseverable and mutually dependent.

I. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Combined Disclosure Statement and Plan in good faith and in compliance with the Bankruptcy Code, and, pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of Securities offered and sold under the Combined Disclosure Statement and Plan and any previous plan, and, therefore, neither any of such parties or individuals or the Debtors will have any liability for the violation of any applicable law (including the Securities Act), rule, or regulation governing the solicitation of votes on the Combined Disclosure Statement and Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Combined Disclosure Statement and Plan and any previous plan.

J. Waiver and Estoppel.

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

[Remainder of page intentionally left blank.]

Respectfully submitted, as of the date set forth above,

Youfit Health Clubs, LLC
on behalf of itself and all other Debtors

By /s/ Brian Gleason _____
Name: Brian Gleason
Titles: Chief Restructuring Officer
and Authorized Person

APPENDIX A

Form Liquidating Trust Agreement

[To be included in Plan Supplement]

APPENDIX B

Identity and Compensation of Liquidating Trustee

[To be included in Plan Supplement]

Appendix C

Liquidation Analysis

Liquidation Analysis

This Liquidation Analysis¹ has been prepared assuming that the Debtors hypothetically liquidate under a chapter 7 plan of liquidation. It is assumed that the Bankruptcy Court would appoint a chapter 7 trustee (the “**Chapter 7 Trustee**”) on the date of conversion of these Chapter 11 Cases to cases under chapter 7 to oversee the liquidation of the Debtors’ Estates.

This Liquidation Analysis has not been examined or reviewed by independent accountants in accordance with standards promulgated by the American Institute of Certified Public Accountants. Although the Debtors consider the estimates and assumptions set forth herein to be reasonable under the circumstances, such estimates and assumptions are inherently subject to significant uncertainties and contingencies beyond the Debtors’ control. Accordingly, there can be no assurance that the results set forth by this Liquidation Analysis would be realized if the Debtors were actually liquidated pursuant to chapter 7 of the Bankruptcy Code, and actual results in such a case could vary materially from those presented herein, and distributions available to Holders of Claims and Interests could differ materially from the projected recoveries set forth by this Liquidation Analysis.

THIS LIQUIDATION ANALYSIS IS A HYPOTHETICAL EXERCISE THAT HAS BEEN PREPARED FOR THE SOLE PURPOSE OF PRESENTING A REASONABLE, GOOD FAITH ESTIMATE OF THE PROCEEDS THAT WOULD BE REALIZED IF THE DEBTORS WERE LIQUIDATED IN ACCORDANCE WITH CHAPTER 7 OF THE BANKRUPTCY CODE AS OF THE CONVERSION DATE. THIS LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THIS LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE DEBTORS’ ASSETS AS A GOING CONCERN AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE VALUES AND RECOVERIES REPRESENTED IN THIS LIQUIDATION ANALYSIS AND THE VALUES THAT MAY BE REALIZED OR CLAIMS GENERATED IN AN ACTUAL LIQUIDATION.

NOTHING CONTAINED IN THIS LIQUIDATION ANALYSIS IS INTENDED TO BE, OR CONSTITUTES, A CONCESSION, ADMISSION, OR ALLOWANCE OF ANY CLAIM BY THE DEBTORS. THE ACTUAL AMOUNT OR PRIORITY OF ALLOWED CLAIMS IN THE CHAPTER 11 CASES OR IN ANY SUBSEQUENT CHAPTER 7 CASES COULD MATERIALLY DIFFER FROM THE ESTIMATED AMOUNTS SET FORTH AND USED IN THIS LIQUIDATION ANALYSIS. THE DEBTORS RESERVE ALL RIGHTS TO SUPPLEMENT, MODIFY, OR AMEND THE ANALYSIS SET FORTH HEREIN.

The Debtors have determined, as summarized in the following analysis, that confirmation of the Combined Disclosure Statement and Plan will provide Holders of Claims and Interests with a recovery that is not less than what they would otherwise receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Combined Disclosure Statement and Amended Chapter 11 Plan of Liquidation of YouFit Health Clubs, LLC and its Debtor Affiliates (the “**Combined Disclosure Statement and Plan**”).

YouFit Health Clubs
Illustrative Liquidation Analysis

	<u>Chapter 7</u>	<u>Chapter 11</u>	
<u>Available Assets</u>			
Liquidation Trust Funding	\$ -	\$ 200,000	(1)
Liquidation Trust Claims	N/A	Unknown	(2)
Total Available Assets	\$ -	\$ 200,000	
<u>Expenses/Admin Claims</u>			
Ch 7/Liquidating Trustee	\$ (50,000) (7)	\$ (50,000)	(3)
DIP Lender Claims (9)	\$ (17,700,000)		
Potential Net Recovery	\$ - (8)	\$ 150,000	(4)
<u>Claims Pool</u>			
Gross General Unsecured Claims	\$ 20,000,000	\$ 20,000,000	(5)
Lender Claims (9)	N/A	\$ 17,700,000	(6)
Gross Creditor Claims	\$ 20,000,000	\$ 37,700,000	
Recovery Percentage	0.00%	0.40%	(4)

(1) This is an estimate of the Liquidating Trust Funding Amount. This estimate is net of any Allowed Administrative Claims and Allowed Priority Claims to be paid out of the Wind Down Amount and Professional Fee Excess Amount. The actual amount could be higher or lower depending on such Allowed Administrative Claims and Allowed Priority Claims; there is no assurance that there will be any funding available to the Liquidating Trust.

(2) Pursuant to the terms of the Creditors' Committee Settlement, in a Chapter 7, the Liquidating Trust Claims would revert to the Buyer as an Acquired Asset and, thus, would not be available to creditors. As to an estimated recovery under the Plan, while the face amount of Transfers that may be subject to the Liquidating Trust Claims is approximately \$12,500,0000, the Debtors have not done a substantive investigation into the Liquidating Trust Claims, nor an analysis of any potential defenses thereto. Therefore, the Debtors cannot estimate the ultimate recovery, if any, on account of such claims.

(3) For the purposes of the estimate of the Liquidation Trust Expenses, the Debtors have assumed that the Liquidation Trust Claims will be pursued on a contingency-fee basis and, thus, have not included in the expense estimate any attorneys' fees related to the pursuit of those claims.

(4) This recovery estimate is for illustration purposes only and is dependent on, among other things, the ultimate recovery, if any, on the account of the Liquidation Trust Claims. To the extent there is a recovery on account of such claims, the recovery will be higher. There is no assurance that there will be any recovery. Net recovery will be allocated amount Class 3 and Class 4 pursuant to the Class 3 and Class 4 allocation.

(5) Estimate of the Amount of Class 4 Claims.

(6) Estimate of the amount of Lender Claims.

(7) An estimate for the potential incremental expenses in a Chapter 7 are included. However, since no assets are expected to be available, there would be no source of payment of such expenses.

(8) Recovery in Chapter 7 is expected to be \$0 since no assets are expected to be available for unsecured creditors in a Chapter 7.

(9) As of the Closing of the Sale, there are approximately \$17.7 million of DIP Lender Claims. In connection with the Creditors' Committee Settlement, the DIP Lender Claims will be fully satisfied under the Plan through the treatment afforded on account of the Class 3 Claims. However, in a Chapter 7, the DIP Lenders' Claims would need to be paid in full before unsecured creditors would be entitled to any recovery.