SOLICITATION VERSION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	Chapter 11
RUBIO'S RESTAURANTS, INC., *et al.*,	Case No. 20-_____(___)
Debtors.[1]	(Joint Administration Requested)

DISCLOSURE STATEMENT FOR THE JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF RUBIO'S RESTAURANTS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

[1] The debtors in these Chapter 11 Cases, along with the last four digits of each debtor's federal tax identification number are: Rubio's Restaurants, Inc. (0303); MRRC Hold Co. (1242); Rubio's Restaurants of Nevada, Inc. (7609); and Rubio's Incentives, LLC. (9359) (collectively, the "Debtors"). The Debtors' mailing address is 2200 Faraday Avenue, Suite 250, Carlsbad, CA 92008.

THIS IS A SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN IN ACCORDANCE WITH BANKRUPTCY CODE[2] SECTION 1125 AND WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1126. THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE DEBTORS INTEND TO SUBMIT THIS DISCLOSURE STATEMENT TO THE BANKRUPTCY COURT FOR APPROVAL FOLLOWING SOLICITATION AND THE DEBTORS' FILING FOR RELIEF UNDER CHAPTER 11 OF THE BANKRUPTCY CODE. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE AND SUBJECT TO THE PLAN DOCUMENTS. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

IMPORTANT INFORMATION REGARDING THIS DISCLOSURE STATEMENT FOR SOLICITATION OF VOTES ON THE JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF RUBIO'S RESTAURANTS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE FROM THE HOLDERS OF OUTSTANDING CLAIMS IN THE FOLLOWING CLASS:

VOTING CLASS	NAME OF CLASS UNDER THE PLAN
CLASS 3	SECURED LOAN CLAIMS

IF YOU ARE IN CLASS 3, YOU ARE RECEIVING THIS DOCUMENT AND THE ACCOMPANYING MATERIALS BECAUSE YOU ARE ENTITLED TO VOTE ON THE PLAN

DELIVERY OF BALLOTS

BALLOTS MUST BE ACTUALLY RECEIVED BY THE SOLICITATION AGENT BY THE VOTING DEADLINE, WHICH IS 3:00 P.M. (PREVAILING EASTERN TIME) ON OCTOBER 25, 2020 VIA THE BALLOTING PORTAL USING THE LOGIN INFORMATION ON YOUR BALLOT AT:

BALLOTING.STRETTO.COM

OR VIA EMAIL AT:

TEAMRUBIOS@STRETTO.COM

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms elsewhere in this disclosure statement (as may be amended, supplemented, or otherwise modified from time to time, this "Disclosure Statement") or in the *Joint Prepackaged Chapter 11 Plan of Reorganization of Rubio's Restaurants, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"), as applicable.

SUBJECT LINE: "RUBIOS"

**OR VIA FIRST CLASS MAIL,
OVERNIGHT COURIER, OR HAND DELIVERY AT:**

**RUBIO'S RESTAURANTS, INC. BALLOT PROCESSING
C/O STRETTO
410 EXCHANGE, SUITE 100
IRVINE, CA 92602**

BALLOTS RECEIVED VIA MEANS OTHER THAN THE AFOREMENTIONED MEANS WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS ON THE PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT BANKRUPTCY MANAGEMENT SOLUTIONS, INC. D/B/A STRETTO (THE DEBTORS' SOLICITATION AGENT) AT:

855-730-4709 (TOLL FREE) OR 949-278-2001 (INTERNATIONAL)

OR EMAIL: TEAMRUBIOS@STRETTO.COM; SUBJECT LINE: "RUBIOS"

This Disclosure Statement provides information regarding the Plan, which the Debtors are seeking to have confirmed by the Bankruptcy Court. A copy of the Plan is attached hereto as Exhibit A. The Debtors are providing the information in this Disclosure Statement to certain Holders of Claims for purposes of soliciting votes to accept or reject the Plan.

The Plan is currently supported by the Debtors, Holders of more than 66.6% of the amount of Secured Loan Claims, and the Investor.

The consummation and effectiveness of the Plan are subject to certain material conditions precedent described herein and set forth in Article VIII of the Plan. There is no assurance that the Bankruptcy Court will confirm the Plan or, if the Bankruptcy Court does confirm the Plan, that the conditions necessary for the Plan to become effective will be satisfied or, in the alternative, waived.

You are encouraged to read this Disclosure Statement (including "Certain Factors to Be Considered" described in Article VII of this Disclosure Statement) and the Plan in their entirety before submitting your Ballot to vote on the Plan.

The Debtors urge each Holder of a Claim or Equity Interest to consult with its own advisors with respect to any legal, financial, securities, tax, or business advice in reviewing this Disclosure Statement, the Plan, and each transaction contemplated by the Plan.

The Debtors strongly encourage Holders of Claims in Class 3 to read this Disclosure Statement and the Plan in their entirety before voting to accept or reject the Plan. Assuming the requisite acceptances to the Plan are obtained, the Debtors will seek the Bankruptcy Court's approval of the Plan at the Confirmation Hearing.

RECOMMENDATION BY THE DEBTORS

EACH DEBTOR'S BOARD OF DIRECTORS, MEMBER, OR MANAGER, AS APPLICABLE, HAS APPROVED THE TRANSACTIONS CONTEMPLATED BY THE PLAN AND DESCRIBED IN THIS DISCLOSURE STATEMENT, AND EACH DEBTOR BELIEVES THAT THE PLAN IS FAIR AND EQUITABLE, MAXIMIZES THE VALUE OF EACH OF THE DEBTOR'S ESTATES, AND PROVIDES THE BEST RECOVERY TO CLAIM HOLDERS. AT THIS TIME, EACH DEBTOR BELIEVES THAT THE PLAN AND RELATED TRANSACTIONS REPRESENT THE BEST ALTERNATIVE FOR ACCOMPLISHING THE DEBTORS' OVERALL RESTRUCTURING OBJECTIVES. EACH OF THE DEBTORS, THEREFORE, STRONGLY RECOMMEND THAT ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED SUBMIT BALLOTS TO ACCEPT THE PLAN BY RETURNING THEIR BALLOTS SO AS TO BE ACTUALLY RECEIVED BY THE SOLICITATION AGENT NO LATER THAN OCTOBER 25, 2020 AT 3:00 P.M. (PREVAILING EASTERN TIME) PURSUANT TO THE INSTRUCTIONS SET FORTH HEREIN AND IN THE BALLOTS.

SPECIAL NOTICE REGARDING FEDERAL AND STATE SECURITIES LAWS

The Bankruptcy Court has not reviewed this Disclosure Statement or the Plan, and the securities to be issued on or after the Effective Date will not be issued pursuant to a registration statement filed with the United States Securities and Exchange Commission (the "SEC") under the United States Securities Act of 1933 (as amended, the "Securities Act") or any securities regulatory authority of any state under any state securities law ("Blue Sky Laws"). The Plan has not been approved or disapproved by the SEC or any state regulatory authority, and neither the SEC nor any state regulatory authority has passed upon the accuracy or adequacy of the information contained in this Disclosure Statement or the Plan. Any representation to the contrary is a criminal offense. The Debtors are relying on section 4(a)(2) of the Securities Act, and similar Blue Sky Laws provisions, to exempt from registration under the Securities Act and Blue Sky Laws the offer to certain Holders of Secured Loan Claims of new securities prior to the Petition Date, including in connection with the solicitation of votes to accept or reject the Plan (the "Solicitation").

After the Petition Date, the Debtors will rely on section 1145(a) of the Bankruptcy Code, Section 4(a)(2) of the Securities Act, or other exemptions under the Securities Act to exempt from registration under the Securities Act and Blue Sky Laws the offer, issuance, and distribution of Reorganized Equity Interests under the Plan. Neither the Solicitation nor this Disclosure Statement constitutes an offer to sell or the solicitation of an offer to buy securities in any state or jurisdiction in which such offer or solicitation is not authorized.

Except to the extent publicly available, this Disclosure Statement, the Plan, and the information set forth herein and therein are confidential. This Disclosure Statement and the Plan may contain material non-public information concerning the Debtors, their subsidiaries, and their respective debt and Securities. Each recipient hereby acknowledges

that it (a) is aware that the federal securities laws of the United States prohibit any person who has material non-public information about a company, which is obtained from the company or its representatives, from purchasing or selling Securities of such company or from communicating the information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such Securities and (b) is familiar with the United States Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder.

DISCLAIMER

This Disclosure Statement contains summaries of certain provisions of the Plan and certain other documents and financial information. The information included in this Disclosure Statement is provided solely for the purpose of soliciting acceptances of the Plan and should not be relied upon for any purpose other than to determine whether and how to vote on the Plan. All Holders of Claims entitled to vote are advised and encouraged to read this Disclosure Statement and the Plan in their entirety before voting. The Debtors believe that these summaries are fair and accurate. The summaries of the financial information and the documents that are attached to, or incorporated by reference in, this Disclosure Statement are qualified in their entirety by reference to such information and documents. In the event of any inconsistency or discrepancy between a description in this Disclosure Statement, on the one hand, and the terms and provisions of the Plan or the financial information and documents incorporated in this Disclosure Statement by reference, on the other hand, the Plan or the financial information and documents, as applicable, shall govern for all purposes.

Except as otherwise provided in the Plan or in accordance with applicable law, the Debtors are under no duty to update or supplement this Disclosure Statement. The Bankruptcy Court's approval of this Disclosure Statement does not constitute a guarantee of the accuracy or completeness of the information contained herein or the Bankruptcy Court's endorsement of the merits of the Plan. The statements and financial information contained in this Disclosure Statement have been made as of the date hereof unless otherwise specified. Holders of Claims reviewing this Disclosure Statement should not assume at the time of such review that there have been no changes in the facts set forth in this Disclosure Statement since the date of this Disclosure Statement. No Holder of a Claim or Equity Interest should rely on any information, representations, or inducements that are not contained in or are inconsistent with the information contained in this Disclosure Statement, the documents attached to this Disclosure Statement, and the Plan. This Disclosure Statement does not constitute legal, business, financial, or tax advice. Any Person or Entity desiring any such advice should consult with their own advisors. Additionally, this Disclosure Statement has not been approved or disapproved by the Bankruptcy Court, the SEC, or any securities regulatory authority of any state under Blue Sky Laws. The Debtors are soliciting acceptances of the Plan prior to commencing any cases under chapter 11 of the Bankruptcy Code.

The financial information contained in or incorporated by reference into this Disclosure Statement has not been audited, except as specifically indicated otherwise. The Debtors' management ("Management"), in consultation with their advisors, has prepared the financial projections attached hereto as **Exhibit D** and described in this Disclosure Statement. The financial projections, while presented with numerical specificity, necessarily were based on a variety of estimates and assumptions that are inherently uncertain and may be beyond the control of Management. Important factors that may affect actual results and cause Management forecasts not to be achieved include, but are not limited to, risks and uncertainties relating to the Debtors' business (including their ability to achieve strategic goals, objectives, and targets over applicable periods), industry performance, the regulatory environment, general business and economic conditions, and other factors. The Debtors caution that no representations can be made as to the accuracy of these projections or to their ultimate performance compared to the information contained in the forecasts or that the forecasted results will be achieved. Therefore,

the financial projections may not be relied upon as a guarantee or other assurance that the actual results will occur.

Regarding contested matters, adversary proceedings, and other pending, threatened, or potential litigation or other actions, this Disclosure Statement does not constitute, and may not be construed as, an admission of fact, liability, stipulation, or waiver by the Debtors or any other party, but rather as a statement made in the context of settlement negotiations in accordance with Rule 408 of the Federal Rules of Evidence and any analogous state or foreign laws or rules. As such, this Disclosure Statement shall not be construed to be conclusive advice on the tax, securities, financial or other effects of the Plan to Holders of Claims against or Equity Interests in, the Debtors or any other party in interest. Please refer to Article VII of this Disclosure Statement, entitled "Certain Factors to Be Considered" for a discussion of certain risk factors that Holders of Claims voting on the Plan should consider.

Except as otherwise expressly set forth herein, all information, representations, or statements contained herein have been provided by the Debtors. No person is authorized by the Debtors in connection with this Disclosure Statement, the Plan, or the Solicitation to give any information or to make any representation or statement regarding this Disclosure Statement, the Plan, or the Solicitation, in each case, other than as contained in this Disclosure Statement and the exhibits attached hereto or as otherwise incorporated herein by reference or referred to herein. If any such information, representation, or statement is given or made, it may not be relied upon as having been authorized by the Debtors.

This Disclosure Statement contains certain forward-looking statements, all of which are based on various estimates and assumptions. Such forward-looking statements are subject to inherent uncertainties and to a wide variety of significant business, economic, and competitive risks, including, but not limited to, those summarized herein. When used in this Disclosure Statement, the words "anticipate," "believe," "estimate," "will," "may," "intend," and "expect" and similar expressions generally identify forward-looking statements. Although the Debtors believe that their plans, intentions, and expectations reflected in the forward-looking statements are reasonable, they cannot be sure that they will be achieved. These statements are only predictions and are not guarantees of future performance or results. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated by a forward-looking statement. All forward-looking statements attributable to the Debtors or Persons or Entities acting on their behalf are expressly qualified in their entirety by the cautionary statements set forth in this Disclosure Statement. Forward-looking statements speak only as of the date on which they are made. Except as required by law, the Debtors expressly disclaim any obligation to update any forward-looking statement, whether as a result of new information, future events, or otherwise.

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EXECUTIVE SUMMARY

The Plan implements a prepackaged restructuring agreed to among the Debtors and the Debtors' major stakeholders, including the Consenting Secured Lenders and the Investor. The the restructuring will result in a significant deleveraging of the Debtors' capital structure, as reflected in the chart below:

Capital Structure as of October 23, 2020	
Instrument	Principal Outstanding
Revolving Facility	$4,049,615
Term Loan Facility	$68,236,500
PPP Loan	$10,000,000
Total	**$82,313,115**

Structure Post-Emergence	
Instrument	Principal Outstanding
Exit Facility	$52,000,000[3]
Investor Investment	$6,000,000
Reorganized Equity Interests	$18,000,000
Total	**$76,000,000**

The anticipated benefits of the Plan include, without limitation, the following:

(a) Conversion of approximately $55.0 million of Secured Loan Claims to equity and an exit facility;

(b) Treatment of approximately $18.0 million of Secured Lender Deficiency Claims as General Unsecured Claims under the Plan;

(c) A $8.0 million DIP Facility[4] from the DIP Lenders; and

(d) Prompt emergence from chapter 11.

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[3] This amount includes: (i) $37.0 million in accordance with treatment of Class 3 Secured Loan Claims under the Plan; (ii) $8.0 million in DIP Claims to be converted on a dollar-for-dollar basis into loans under the Exit Facility; and (iii) an additional $7.0 million in available liquidity.

[4] The DIP Facility is in the form of a superpriority senior secured debtor in possession credit agreement providing $8.0 million in aggregate term loan commitments with up to $4.5 million made available to the Debtors upon entry of an interim financing order (the "Interim DIP Order") and an aggregate amount not to exceed $3.5 million made available to the Debtors on the date of entry of a final financing order (the "Final DIP Order" and together with the Interim DIP Order, the "DIP Orders").

The Plan provides for a comprehensive restructuring of the Debtors' prepetition obligations, preserves the going-concern value of the Debtors' business, maximizes all creditor recoveries, and protects the jobs of the Debtors' invaluable employees, including Management. As described in further detail below, under the terms of the Plan, among other things, each Holder of Secured Loan Claims will receive, on account of their Secured Loan Claims, a Pro-Rata Share of (A) a portion of the Exit Facility (after accounting for the Exit Conversion Amount) in a principal amount equal to $37.0 million and (B) the Reorganized Equity Interests.

The purpose of this Disclosure Statement is to provide Holders of Claims entitled to vote to accept or reject the Plan with adequate information about (i) the Debtors' business and certain historical events, (ii) the Chapter 11 Cases, (iii) the rights of Holders of Claims and Equity Interests under the Plan, and (iv) other information necessary to enable each Holder of a Claim to make an informed judgment as to whether to vote to accept or reject the Plan.

ARTICLE I:

INTRODUCTION

The Debtors are operators and franchisors of approximately 170 limited service restaurants in California, Arizona and Nevada under the Rubio's Coastal Grill concept. As is the case with nearly every other restaurant chain in the country, if not the world, the Debtors have spent the last eight months navigating the challenges imposed by the COVID-19 pandemic.

In response to the pandemic and changes in customer dining patterns, both related to and accelerated by the pandemic, the Debtors temporarily shut stores or reduced store hours to match customer demand and closed many underperforming stores on permanent basis. As a result, the Debtors laid off and furloughed numerous employees. Additionally, the Debtors were called upon to address increased costs related to implementing new health and safety measures and the expansion of support for delivery and take-out services further impacted margins during this period.

To address the Debtors' cash needs, through the spring and summer months, the Debtors sought concessions from landlords and in certain instances stopped paying rent to conserve cash. In May 2020, the Debtors withdrew entirely from the poorly performing Colorado and Florida markets where the Debtors had yet to achieve the same penetration and brand recognition as in its core geographies, but was unable to negotiate acceptable buy-outs of its lease obligations. The Debtors also applied for and received a $10.0 million loan (the "PPP Loan") under the Paycheck Protection Program, administered by the Small Business Administration under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which the Debtors used to fund payroll. The Debtors have requested 100% forgiveness of the PPP Loan.

Unfortunately, these and the other measures taken by Management to cut costs, drive sales and win new customers proved insufficient in the face of the Debtors dwindling cash position, and in June 2020, the Debtors received a notice of default and reservation of rights from

the Prepetition Secured Lenders under its prepetition secured credit facility.[5] Since then, the Debtors have been in negotiations with the Prepetition Secured Lenders regarding a restructuring of its balance sheet and a right sizing of its operational footprint and with Mill Road Capital, L.P. (the "Investor") on the terms of the restructuring. While negotiations were progressing, in late September, the Prepetition Secured Lenders initiated a $6.5 million cash sweep of the Debtors' main cash concentration account, which would have deprived the Debtors of much needed cash for the month of October. In response, and to preserve the cash necessary to bridge to a restructuring, the Debtors negotiated a pay down of its revolving credit facility in the amount of approximately $4.6 million, which the Debtors believed would provide sufficient liquidity to conclude negotiations regarding the proposed prepackaged consensual restructuring that the Debtors now seek to implement through these Chapter 11 Cases. Further, the Debtors negotiated and reached an agreement with Golub Capital Markets LLC (f/k/a GCI Capital Markets LLC) ("Golub") on the terms of debtor in possession financing to be provided by certain of the Prepetition Secured Lenders in an aggregate amount of up to $8.0 million in term loan commitments to fund the Debtors' operations through the pendency of these Chapter 11 Cases. Last, the Debtors also agreed to the terms of an equity investment by the Investor immediately upon Consummation of the Plan to provide additional liquidity to the Reorganized Debtors. These negotiations resulted in the preparation of the Plan on which the acceptances of the Prepetition Secured Lenders were solicited and received immediately prior to the commencement of these Chapter 11 Cases.

Thus, the Debtors filed these Chapter 11 Cases to implement the terms of the Prepackaged Plan and the go-forward business plan on which the Prepackaged Plan is based. In that regard, these Chapter 11 Cases will enable the Debtors to (i) consensually reduce the Debtors' secured indebtedness, (ii) address its operational footprint by rejecting leases on locations already closed, assessing geographical markets in which margins and go-forward viability are suspect, and negotiating go-forward rental rates that are more in line with now existing markets current operating, and (iii) provide the Debtors with a significant liquidity infusion upon emergence.

ARTICLE II:

THE PLAN

2.1 Treatment of Claims and Equity Interests

The Plan provides for the treatment of Claims against and Equity Interests in the Debtors through, among other things, the following:

- Each Holder of an Allowed Administrative Claim will receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the unpaid portion of such Allowed Administrative Claim;

[5] The Notice of Default and Reservation of Rights dated June 25, 2020 referenced certain Events of Default existing as of March 31, 2020 in connection with the delivery of Rubios' first quarter compliance package, including with respect to Rubios' fixed charge coverage, total leverage and lease adjusted leverage ratios.

- Each Holder of an Allowed Priority Tax Claim will be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code;

- Each Holder of an Allowed Other Priority Claim, in full and final satisfaction, settlement, release, and discharge and in exchange for each Other Priority Claim, shall (i) be paid in full in Cash, or (ii) receive such other recovery as is necessary to satisfy section 1129 of the Bankruptcy Code;

- On the Effective Date, all DIP Claims shall convert on a dollar-for-dollar basis into loans under, or otherwise paid or satisfied by, the Exit Facility pursuant to the Exit Facility Documents in an amount equal to the Exit Conversion Amount;

- Each Holder of an Other Secured Claim shall receive, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim: (i) payment in full in Cash; (ii) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (iii) Reinstatement of such Claim; or (iv) other treatment rendering such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code;

- Each Holder of an Allowed Secured Loan Claim in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Allowed Secured Loan Claim, shall receive its Pro-Rata Share of: (A) a portion of the Exit Facility (after accounting for the Exit Conversion Amount) in a principal amount equal to $37.0 million and (B) the Reorganized Equity Interests;

- All PPP Loan Claims, for which the Debtors have requested 100% loan forgiveness pursuant to applicable Law, shall be treated as General Unsecured Claims to the extent not forgiven;

- All General Unsecured Claims shall be discharged and will receive no distribution on account of such Claims;

- Each Intercompany Claim shall, at the option of the Debtors and the Consenting Secured Lenders be (i) Reinstated or (ii) cancelled, released and discharged without any distribution on account of such Claims;

- All Subordinated Claims shall be cancelled, released, and discharged as of the Effective Date, and shall be of no further force or effect;

- All Equity Interests in Holdings shall be cancelled, released and discharged without any distribution on account of such Equity Interests; and

- The Intercompany Equity Interests shall be cancelled, released and discharged without any distribution on account of such Intercompany Equity Interests; *provided, however,* that at the option of the Debtors and the Consenting Secured Lenders, the Intercompany Equity Interests may be Reinstated for administrative convenience.

As described below, you are receiving this Disclosure Statement because you are a Holder of a Claim entitled to vote to accept or reject the Plan. Prior to voting on the Plan, you are encouraged to read this Disclosure Statement and all documents attached to this Disclosure Statement in their entirety. As reflected in this Disclosure Statement, there are risks, uncertainties, and other important factors that could cause the Debtors' actual performance or achievements to be materially different from those they may project, and the Debtors undertake no obligation to update any such statement. Certain of these risks, uncertainties, and factors are described in Article VII of this Disclosure Statement, entitled "Certain Factors To Be Considered."

2.2 Unclassified Claims

(a) Unclassified Claims Summary

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

Claim	Plan Treatment
Administrative Claims	Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the applicable Debtor(s) or the Reorganized Debtor(s), as applicable, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim Paid in Full in Cash
DIP Claims	Converted on a dollar-for-dollar basis into loans under, or otherwise paid or satisfied by, the Exit Facility pursuant to the Exit Facility Documents in an amount equal to the Exit Conversion Amount
Accrued Professional Fee Claims	Except to the extent that each Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, Paid in Full in Cash
Priority Tax Claims	Treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code

(b) Unclassified Claims

(1) Administrative Claims

Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the applicable Debtor(s) or the Reorganized Debtor(s), as applicable, in full and final satisfaction, settlement, release, and discharge of and in exchange for such Allowed Administrative Claim, to the extent an Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases, each Holder of an Allowed Administrative Claim shall receive in full and

final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the unpaid portion of such Allowed Administrative Claim in Cash: (i) if such Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Administrative Claim is due or as soon as reasonably practicable thereafter); (ii) if such Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; (iii) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable; or (iv) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

(2) Professional Fee Claims

All final requests for payment of Professional Fee Claims must be filed no later than the first Business Day that is 45 days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

On the Effective Date, the Reorganized Debtors shall establish (if not already established) and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount; *provided* that any amounts remaining in the Funded Reserve Account shall be used to fund the Professional Fee Escrow Account. The Professional Fee Escrow Account shall be maintained in trust solely for the benefit of the Retained Professionals. Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors. No Liens, Claims, or Equity Interests shall encumber the Professional Fee Escrow Account in any way. The Reorganized Debtors shall be obligated to pay Allowed Professional Fee Claims in excess of the Professional Fee Escrow Amount in the event that the condition set forth in section 8.1(i) is satisfied. The amount of Professional Fee Claims owing to the Retained Professionals shall be paid in Cash to such Retained Professionals from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by an Order of the Bankruptcy Court; *provided* that in the event the Professional Fee Reserve Amount is insufficient to satisfy the Professional Fee Claims, (x) each Retained Professional shall receive its portion of the Professional Fee Escrow Account, allocated on the basis of the unused amounts set forth in the DIP Budget for such Retained Professional, from the Professional Fee Escrow Account and (y) the Reorganized Debtors shall be required to satisfy the Allowed amounts of the remainder of any outstanding Professional Fee Claims. When all such Allowed amounts owing to Retained Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court or any other Entity.

The Retained Professionals shall reasonably estimate in good faith their Accrued Professional Compensation prior to and as of the Effective Date and shall deliver such estimate to the Debtors and the Consenting Secured Lenders no later than five Business Days before the anticipated Effective Date; *provided* that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Retained Professional. If a Retained Professional does not provide such estimate, the Reorganized Debtors may estimate the unbilled

fees and expenses of such Retained Professional; *provided* that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Retained Professional. The total amount estimated as of the Effective Date shall consist of the Professional Fee Reserve Amount; *provided* that the Debtors shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

Except as otherwise specifically provided in the Plan, on and after the Confirmation Date, the Reorganized Debtors shall pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by such Debtor or Reorganized Debtor (as applicable) after the Confirmation Date in the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtors shall pay, within ten Business Days after submission of a detailed invoice to the Reorganized Debtors, such reasonable Claims for compensation or reimbursement of expenses incurred by the Retained Professionals of the Debtors. From and after the Confirmation Date, any requirement that Retained Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and each Debtor or Reorganized Debtor (as applicable) may employ and pay any Retained Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court

(3) DIP Claims

Subject to the DIP Orders, the DIP Claims shall be Allowed Claims in the full amount outstanding under the DIP Credit Agreement as of the Effective Date, including principal, interest, fees, costs, other charges, and expenses, and all other obligations related to the DIP Facility, if any.

Notwithstanding anything to the contrary in the Plan, in full and final satisfaction, settlement, release and discharge of and in exchange for release of all DIP Claims, on the Effective Date, the DIP Claims shall convert on a dollar-for-dollar basis into loans under, or otherwise paid or satisfied by, the Exit Facility pursuant to the Exit Facility Documents in an amount equal to the Exit Conversion Amount.

(4) Priority Tax Claims

Except to the extent that each Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on or before the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Debtors and the Holder of such Claim, or when such Allowed Priority Tax Claim becomes due and payable under applicable non-bankruptcy Law, or in the ordinary course of business.

(5) Statutory Fees

The Debtors and the Reorganized Debtors, as applicable, shall pay all quarterly fees under 28 U.S.C § 1930(a), plus any interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtors' or Reorganized Debtors' business, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

(c) Classified Claims and Equity Interests Summary

The Plan establishes a comprehensive classification of Claims and Equity Interests. The table below summarizes the classification, treatment, voting rights, and estimated recoveries of the Claims and Equity Interests, by Class, under the Plan. Amounts in the far right column under the heading "Liquidation Recovery" are estimates only and are based on certain assumptions described herein and set forth in greater detail in the Liquidation Analysis (as defined below) attached hereto as **Exhibit B**. Accordingly, recoveries actually received by Holders of Claims and Equity Interests in a liquidation scenario may differ materially from the projected liquidation recoveries listed in the table below.

Class	Claim	Treatment	Status/ Voting Right	Voting Right	Projected Plan Recovery [6]
1	Other Priority Claims	Paid in full in Cash or receive such other recovery as is necessary to satisfy section 1129 of the Bankruptcy Code.	Unimpaired	No (conclusively presumed to accept)	100%
2	Other Secured Claims	(i) Paid in full in Cash; (ii) Satisfied in full by delivery of the collateral securing the claim; (iii) Reinstated; or (iv) Such other treatment rendering such claims unimpaired.	Unimpaired	No (conclusively presumed to accept)	100%
3	Secured Loan Claims	Except to the extent that a Holder of an Allowed Secured Loan Claim agrees to less favorable treatment, on or as soon as is reasonably practicable after the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Allowed Secured Loan Claim, each Holder thereof shall receive their Pro-Rata Share of: (A) a portion of the Exit Facility (after accounting for the Exit	Impaired	Yes	100%

[6] Projected Recovery for each class is based on the implied valuation more fully described in **Exhibit C**.

		Conversion Amount) in a principal amount equal to $37.0 million and (B) the Reorganized Equity Interests.			
4	General Unsecured Claims	On the Effective Date, all General Unsecured Claims shall be cancelled, released, and discharged, and shall be of no further force or effect. Therefore, Holders of General Unsecured Claims shall not receive any distribution on account of such General Unsecured Claims.	Impaired	No (deemed not to accept)	0%
5	Intercompany Claims	On the Effective Date, at the option of the Debtors and the Consenting Secured Lenders, each Intercompany Claim shall be Reinstated or cancelled and released without any distribution on account of such claims.	Unimpaired /Impaired	No (conclusively presumed to accept/ deemed not to accept)	100% / 0%
6	Subordinated Claims	Discharged without any distribution.	Impaired	No (deemed not to accept)	0%
7	Equity Interests in Holdings	Cancelled without any distribution.	Impaired	No (deemed not to accept)	0%
8	Intercompany Equity Interests	Cancelled without any distribution; *provided, however*, that at the option of the Debtors and the Consenting Secured Lenders, the Intercompany Equity Interests may be Reinstated for administrative convenience.	Impaired	No (deemed not to accept)	0%

(d) <u>Classified Claims and Equity Interests Details</u>

(1) *Class 1—Other Priority Claims.*

(i) *Classification*: Class 1 consists of all Other Priority Claims.

(ii) *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Other Priority Claim, each Holder of such Allowed Other Priority Claim shall (A) be paid in full in Cash on or as soon as reasonably practicable after (1) the Effective Date, (2) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or (3) such other date as may be ordered by the

Bankruptcy Court; or (B) receive such other recovery as is necessary to satisfy section 1129 of the Bankruptcy Code.

(iii) *Impairment and Voting:* Class 1 is Unimpaired and Holders of Other Priority Claims are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Other Priority Claims.

(2) *Class 2—Other Secured Claims.*

(i) *Classification*: Class 2 consists of all Other Secured Claims.

(ii) *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each Holder thereof shall receive: (A) payment in full in Cash; (B) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (C) Reinstatement of such Claim; or (D) other treatment rendering such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(iii) *Impairment and Voting*: Class 2 is Unimpaired and Holders of Other Secured Claims are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Other Secured Claims.

(3) *Class 3—Secured Loan Claims.*

(i) *Classification:* Class 3 consists of Secured Loan Claims.

(ii) *Treatment:* Except to the extent that a Holder of an Allowed Secured Loan Claim agrees to less favorable treatment, on or as soon as is reasonably practicable after the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Allowed Secured Loan Claim, each Holder thereof shall receive their Pro-Rata Share of: (A) a portion of the Exit Facility (after accounting for the Exit Conversion Amount) in a principal amount equal to $37.0 million and (B) the Reorganized Equity Interests.

(iii) *Impairment and Voting:* Secured Loan Claims are Impaired and are entitled to vote to accept or reject the Plan.

(4) *Class 4—General Unsecured Claims.*

(i) *Classification*: Class 4 consists of all General Unsecured Claims.

(ii) *Treatment*: On the Effective Date, all General Unsecured Claims shall be cancelled, released, and discharged, and shall be of no further force or effect. Therefore, Holders of General Unsecured Claims shall not receive any distribution on account of such General Unsecured Claims.

(iii) *Impairment and Voting*: General Unsecured Claims are Impaired and Holders of such Claims are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of General Unsecured Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such General Unsecured Claims.

(5) *Class 5—Intercompany Claims.*

(i) *Classification*: Class 5 consists of all Intercompany Claims.

(ii) *Treatment*: On the Effective Date, at the option of the Debtors, and the Consenting Secured Lenders, each Intercompany Claim shall be either (A) Reinstated or (B) cancelled, released and discharged without any distribution on account of such Claims.

(iii) *Impairment and Voting*: Holders of Intercompany Claims that are Reinstated are conclusively presumed to accept the Plan pursuant to section 1126(f) and Holders of Intercompany Claims that are cancelled, released and discharged under the Plan without any distribution are deemed not to accept pursuant to section 1126(g) of the Bankruptcy Code, respectively. Therefore, Holders of Allowed Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Intercompany Claims.

(6) *Class 6—Subordinated Claims.*

(i) *Classification*: Class 6 consists of all Subordinated Claims, if any.

(ii) *Treatment*: On the Effective Date, all Subordinated Claims shall be cancelled, released, and discharged as of the Effective Date, and shall be of no further force or effect. Therefore, Holders of

Subordinated Claims shall not receive any distribution on account of such Subordinated Claims.

(iii) *Impairment and Voting*: Subordinated Claims are Impaired and Holders of such Claims are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Subordinated Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Subordinated Claims.

(7) *Class 7—Equity Interests*.

(i) *Classification*: Class 7 consists of all Equity Interests.

(ii) *Treatment*: On the Effective Date, all Equity Interests shall be cancelled without any distribution on account of such Equity Interests.

(iii) *Impairment and Voting*: Equity Interests are Impaired and Holders of such *Equity* Interests are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Equity Interests.

(8) *Class 8—Intercompany Equity Interests.*

(i) *Classification*: Class 8 consists of all Intercompany Equity Interests.

(ii) *Treatment*: On the Effective Date, the Intercompany Equity Interests shall be cancelled without any distribution on account of such Equity Interests; *provided, however*, that at the option of the Debtors and the Consenting Secured Lenders, the Intercompany Equity Interests may be Reinstated for administrative convenience.

(iii) *Impairment and Voting*: Holders of Intercompany Equity Interests are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of such Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Equity Interests.

(e) Special Provision Governing Unimpaired Claims

Except as otherwise provided in the Plan, the DIP Orders, or the DIP Facility Documents, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights in respect of

any Unimpaired Claim, including, but not limited to, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

(f) PPP Loans

The Debtors have used the proceeds of the PPP Loans to pay "forgivable expenses" as that term is defined under the Paycheck Protection Program and CARES Act. Accordingly, the Debtors have requested that the full amount of the PPP Loan Claims be forgiven in accordance with applicable Law. To the extent any portion of the PPP Loan Claims are not forgiven, such portion of PPP Loan Claims shall be treated as General Unsecured Claims in Class 4 and shall be cancelled, released, and discharged as of the Effective Date, and of no further force or effect.

(g) Voting, Presumptions, Solicitation

(1) *Acceptance by Certain Impaired Classes.* Only Holders of Allowed Claims in Class 3 are entitled to vote to accept or reject the applicable Plan. An Impaired Class of Claims shall have accepted the Plan if (i) the Holders of at least 66.6% in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Holders of Claims in Class 3 have received Ballots containing detailed voting instructions.

(2) *Conclusively Presumed Acceptance by Unimpaired Classes.* Holders of Claims in Class 1 and Class 2, and certain Holders of Claims in Class 6 are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject the Plan and the vote of such Holders shall not be solicited.

(3) *Deemed Not To Accept by Certain Impaired Classes.* Holders of Claims and Equity Interests in [Class 4], Class 5, Class 6, Class 7, and Class 8, and certain Holders of Claims in Class 6 are deemed not to accept the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject the Plan and the vote of such Holders shall not be solicited.

(4) *Controversy Concerning Impairment.* If a controversy arises as to whether any Claims or Equity Interests, or any Class thereof, is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

(h) Confirmation Pursuant to Section 1129(a)(10) and 1129(b) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by an Impaired Class of Claims. The Debtors shall seek Confirmation pursuant to section 1129(b) of the Bankruptcy Code with respect to any Class of

Claims or Equity Interests that does not accept the Plan, including the Classes of Claims and Equity Interest that are deemed not to accept the Plan.

(i) Subordinated Claims

The allowance, classification, and treatment of all Allowed Claims and Equity Interests, and the respective distributions and treatments under the Plan, shall take into account and conform to the relative priority and rights of the Claims and Equity 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, except where otherwise provided in the Plan, the Debtors reserve the right to reclassify any Allowed Claim or Equity Interest in accordance with any contractual, legal, or equitable subordination rights relating thereto.

(j) Intercompany Equity Interests

To the extent Reinstated under the Plan, distributions on account of Intercompany Equity Interests are not being received by Holders of such Intercompany Equity Interests on account of their Intercompany Equity Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure for the ultimate benefit of the Holders that receive the Reorganized Equity Interests in exchange for the Debtors' and Reorganized Debtors' agreement under the Plan to make certain distributions on account of such Holders' Allowed Claims.

2.3 Liquidation Analysis

The Debtors, with the assistance of Mackinac Partners LLC, have prepared an unaudited liquidation analysis, which is attached hereto as **Exhibit B** (the "Liquidation Analysis"), to assist Holders of Claims and Equity Interests in evaluating the Plan. The Liquidation Analysis compares the projected recoveries that would result from the liquidation of the Debtors in a hypothetical case under chapter 7 of the Bankruptcy Code with the estimated distributions to Holders of Allowed Claims and Equity Interests under the Plan. The Liquidation Analysis is based on the value of the Debtors' assets and liabilities as of a certain date and incorporates various estimates and assumptions, including a hypothetical conversion to a chapter 7 liquidation as of a certain date. Further, the Liquidation Analysis is subject to potentially material changes, including with respect to economic and business conditions and legal rulings. Therefore, the actual liquidation value of the Debtors could vary materially from the estimate provided in the Liquidation Analysis. As set forth in the Liquidation Analysis, the Debtors believe that the Plan provides a greater recovery for Holders of Allowed Claims than they would receive in liquidation under chapter 7 of the Bankruptcy Code.

2.4 Valuation Analysis

The Plan provides for the distribution of the Reorganized Equity Interests to the Holders of Allowed Secured Loan Claims, as applicable and as provided for in the Plan. Accordingly, Gower Advisors, at the request of the Debtors, has performed an analysis, which is attached hereto as **Exhibit C**, of the estimated implied value of the Debtors on a going-concern basis as of

October 20, 2020 (the "Valuation Analysis"). The Valuation Analysis, including the procedures followed, assumptions made, qualifications, and limitations on review undertaken described therein, should be read in conjunction with Article VII of this Disclosure Statement, entitled "Certain Factors To Be Considered." The Valuation Analysis is based on data and information as of October 20, 2020. Gower Advisors makes no representations as to changes to such data and information that may have occurred since the date of the Valuation Analysis.

THE VALUATION ANALYSIS REPRESENTS A HYPOTHETICAL VALUATION OF THE REORGANIZED DEBTORS AND THEIR ASSETS AND BUSINESS. THE ESTIMATED VALUE SET FORTH IN THE VALUATION ANALYSIS DOES NOT PURPORT TO CONSTITUTE AN APPRAISAL OR NECESSARILY REFLECT THE ACTUAL MARKET VALUE THAT MIGHT BE REALIZED THROUGH A SALE OR LIQUIDATION OF THE REORGANIZED DEBTORS, THEIR SECURITIES OR THEIR ASSETS, WHICH MAY BE MATERIALLY DIFFERENT THAN THE ESTIMATES SET FORTH IN THE VALUATION ANALYSIS. ANY SUCH PRICES MAY BE MATERIALLY DIFFERENT THAN INDICATED BY THE VALUATION ANALYSIS.

2.5 Financial Information and Projections

In connection with planning and developing the Plan, the Debtors, with the assistance of their advisors, prepared projections for the fiscal years ending December 2020 through 2025, which are attached hereto as **Exhibit D** (the "Financial Projections"), including Management's assumptions related thereto. For purposes of the Financial Projections, the Debtors have assumed an Effective Date of December 31, 2020. The Financial Projections assume that the Plan will be implemented in accordance with its stated terms. The Debtors are unaware of any circumstances as of the date of this Disclosure Statement that would require the re-forecasting of the Financial Projections due to a material change in the Debtors' prospects.

The Financial Projections are based on forecasts of key economic variables and may be significantly impacted by, among other factors, changes in the competitive environment, commodity prices, regulatory changes, or a variety of other factors, including the factors listed in this Disclosure Statement. Accordingly, the estimates and assumptions underlying the Financial Projections are inherently uncertain and are subject to significant business, economic, and competitive uncertainties. Therefore, such projections, estimates, and assumptions are not necessarily indicative of current values or future performance, which may be significantly less or more favorable than set forth herein. The Financial Projections should be read in conjunction with the assumptions, qualifications, and explanations set forth in this Disclosure Statement.

ARTICLE III:

VOTING PROCEDURES AND REQUIREMENTS

3.1 Class Entitled to Vote on the Plan

The following Class is entitled to vote to accept or reject the Plan (the "Voting Class"):

Class	Claim or Interest	Status
3	Secured Loan Claims	Impaired

If your Claim or Interest is not included in the Voting Class, you are not entitled to vote and you will not receive a Solicitation Package (as defined below). If you are a Holder of a Claim in the Voting Class, you should read your ballot(s) and carefully follow the instructions included in the ballot(s). Please use only the ballot(s) that accompany the applicable Solicitation Package, if any, or the ballot(s) that the Debtors, or Bankruptcy Management Solutions, Inc. (d/b/a Stretto) (the "Solicitation Agent") on behalf of the Debtors, otherwise provided to you.

3.2 Votes Required for Acceptance by a Class

Under the Bankruptcy Code, acceptance of a plan of reorganization by a class of claims or interests is determined by calculating the amount and, if a class of claims, the number, of claims and interests voting to accept, as a percentage of the allowed claims or interests, as applicable, that have voted. Acceptance by a class of claims requires an affirmative vote of more than one-half in number of total allowed claims that have voted and an affirmative vote of at least two-thirds in dollar amount of the total allowed claims that have voted. Acceptance by a class of interests requires an affirmative vote of at least two-thirds in amount of the total allowed interests that have voted.

3.3 Certain Factors to Be Considered Prior to Voting

There are a variety of factors that all Holders of Claims entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan and include, among other things:

- unless otherwise specifically indicated, the financial information contained in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and this Disclosure Statement;

- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;

- the Debtors may request Confirmation without the acceptance of the Plan by all Impaired Classes in accordance with section 1129(b) of the Bankruptcy Code; and

- any delays of either Confirmation or Consummation could result in, among other things, increased Administrative Claims and Professional Fee Claims.

While these factors could affect distributions available to Holders of Allowed Claims and Equity Interests under the Plan, the occurrence or impact of such factors may not necessarily affect the validity of the vote of the Voting Class or necessarily require a re-solicitation of the votes of Holders of Claims in the Voting Class pursuant to section 1127 of the Bankruptcy Code.

For a further discussion of risk factors, please refer to "Certain Factors to Be Considered" described in Article VII of this Disclosure Statement.

3.4 Classes Not Entitled To Vote on the Plan

Under the Bankruptcy Code, holders of claims and interests are not entitled to vote if their contractual rights are unimpaired by the proposed plan or if they will receive no property under the plan. Accordingly, the following Classes of Claims against and Equity Interests in the Debtors are ***not entitled to*** vote to accept or reject the Plan:

Class	Claim or Interest	Status	Voting Rights
1	Other Priority Claims	Unimpaired	No (conclusively presumed to accept)
2	Other Secured Claims	Unimpaired	No (conclusively presumed to accept)
4	General Unsecured Claims	Impaired	No (deemed not to accept)
5	Intercompany Claims	Unimpaired/ Impaired	No (conclusively presumed to accept/ deemed not to accept)
6	Subordinated Claims	Impaired	No (deemed not to accept)
7	Equity Interests	Impaired	No (deemed not to accept)
8	Intercompany Equity Interests	Impaired	No (deemed not to accept)

3.5 Solicitation Procedures

(a) Solicitation Agent

The Debtors have retained Stretto to act as, among other things, the Solicitation Agent in connection with the solicitation of votes to accept or reject the Plan.

(b) Solicitation Package

The following materials constitute the solicitation package (collectively, the "Solicitation Package") distributed to Holders of Claims in the Voting Class:

- a Ballot and applicable voting instructions; and
- this Disclosure Statement and all exhibits hereto, including the Plan and all exhibits thereto.

(c) Distribution of the Solicitation Package

The Debtors will cause the Solicitation Agent to distribute the Solicitation Package to Holders of Claims in the Voting Class on October 23, 2020.

The Solicitation Package (except the Ballots) may also be obtained from the Solicitation Agent by: (i) calling the Solicitation Agent at 855-730-4709 (toll free) or 949-278-2001 (international), (ii) emailing TeamRubios@stretto.com and referencing "Rubios" in the subject line, or (iii) writing to the Solicitation Agent at: Rubio's Restaurants, Inc. Ballot Processing, c/o Stretto, 410 Exchange, Suite 100, Irvine, CA 92602. After the Debtors file the Chapter 11 Cases, you may also obtain copies of any pleadings filed with the Bankruptcy Court for free by visiting the Debtors' restructuring website, cases.stretto.com/rubios, or for a fee via PACER at https://www.pacer.gov/.

3.6 Voting Procedures

October 23, 2020 (the "Voting Record Date") is the date that was used for determining which Holders of Claims are entitled to vote to accept or reject the Plan and receive the Solicitation Package in accordance with the solicitation procedures. Except as otherwise set forth herein, the Voting Record Date and all of the Debtors' solicitation and voting procedures shall apply to all of the Debtors' creditors and other parties in interest.

In order for the Holder of a Claim in the Voting Class to have its Ballot counted as a vote to accept or reject the Plan, such Holder's Ballot must be properly completed, executed, and submitted via the balloting portal using the login information on the Holder's ballot at balloting.stretto.com or via email at TeamRubios@stretto.com, so that such Holder's ballot is actually received by the Solicitation Agent on or before the Voting Deadline, which is October 25, 2020 at 3:00 p.m. (prevailing Eastern Time).

If a Holder of a Claim in a Voting Class transfers all of such Claim to one or more parties on or after the Voting Record Date and before the Holder has cast its vote on the Plan, such Claim Holder is automatically deemed to have provided a voting proxy to the purchasers of the Holder's Claim, and such purchasers shall be deemed to be the Holders thereof as of the Voting Record Date for purposes of voting on the Plan.

You may receive more than one Ballot if you hold Claims through one or more affiliated funds, in which case the vote cast by each such affiliated fund will be counted separately. Separate Claims held by affiliated funds in a particular Class shall not be aggregated, and the vote of each such affiliated fund related to its Claims shall be treated as a separate vote to accept or reject the Plan, as applicable. If you hold any portion of a single Claim, you and all other Holders of any portion of such Claim will be (a) treated as a single creditor for voting purposes and (b) required to vote every portion of such Claim collectively to either accept or reject the Plan.

IF A BALLOT IS RECEIVED AFTER THE VOTING DEADLINE, IT WILL NOT BE COUNTED UNLESS THE DEBTORS DETERMINE OTHERWISE OR AS ORDERED BY THE BANKRUPTCY COURT.

ANY BALLOT THAT IS PROPERLY EXECUTED BY THE HOLDER OF A CLAIM BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR ANY BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

EACH HOLDER OF A CLAIM IN CLASS 3 MUST VOTE ALL OF ITS CLASS 3 CLAIMS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN. IF A HOLDER CASTS MULTIPLE BALLOTS WITH RESPECT TO THE SAME CLAIM AND THOSE BALLOTS ARE IN CONFLICT WITH EACH OTHER, SUCH BALLOTS WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE VOTING CLASS FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT AND THE ACCOMPANYING INSTRUCTIONS. NO BALLOT MAY BE WITHDRAWN OR MODIFIED AFTER THE VOTING DEADLINE WITHOUT THE DEBTORS' PRIOR CONSENT OR PERMISSION OF THE BANKRUPTCY COURT.

ARTICLE IV:

CORPORATE AND CAPITAL STRUCTURE

4.1 Prepetition Corporate and Capital Structure

(a) Corporate Structure

Debtor MRRC Hold Co. currently owns, directly or indirectly, each of the other Debtor entities. A summary chart depicting the Debtors' corporate and capital structure is included below. An organizational chart illustrating the corporate structure of the Debtors is annexed hereto as **Exhibit E**.

(b) The Debtors' Capital Structure

(1) Prepetition Credit Facility

The Prepetition Credit Agreement governs both a senior secured term loan credit facility (the Term Loan Facility") and senior secured revolving credit facility (the "Revolving Credit Facility"). The Term Loan Facility and the Revolving Credit Facility are *pari passu* with respect

to collateral, although the Revolving Credit Facility has payment priority relative to the Term Loan Facility. Each of the other Debtors are guarantors of the Prepetition Credit Facility.

A. Revolving Credit Facility

The Revolving Credit Facility was originally issued in an aggregate principal amount of $5.0 million (subsequently increased to $10.0 million and later reduced to $8.0 million, as of December 31, 2018) and has a maturity date of April 30, 2021. Interest on the Revolving Credit Facility accrues at LIBOR plus an applicable margin of 7.50%. Additional payment-in-kind (PIK) interest accrues to the principal balance at a rate of 4.0%. As of the Petition Date, approximately $4.0 million principal amount and $21,900 in accrued interest remain outstanding on the Revolving Credit Facility.

B. Term Loan Credit Facility

The Term Loan Facility (the loans issued thereunder, the "Term Loans") was originally issued in an aggregate principal amount of $41.1 million. Since then, the lenders under the Prepetition Credit Facility have made additional Term Loans to the Debtors in an aggregate amount equal to $25.0 million. Interest on the Term Loan Facility accrues at LIBOR plus an applicable margin of 7.50%. Additional payment-in-kind (PIK) interest accrues to the principal balance at a rate of 4.00%. As of the Petition Date, approximately $68.3 million principal amount (including capitalized PIK interest and fees) and $768,600 in accrued interest and other fees remain outstanding on the Term Loan Facility. The Term Loan Facility has a maturity date of April 30, 2021.

C. Prepetition Liens and Prepetition Collateral

The Debtors' (each, a "Grantor" and together, the "Grantors") obligations under the Prepetition Credit Agreement are secured (i) by a continuing first-priority lien and security interest in and Lien[7] on each of the Grantors' right, title and interest in and to substantially all of the property and assets of such Grantor (which, for the avoidance of doubt, includes Cash Collateral), and the proceeds thereof, whether now owned or existing or hereafter acquired or arising, regardless of where located; (ii) by a grant to the Prepetition Agent for the benefit of itself and the other Prepetition Secured Parties, of all of Rubio's Restaurants, Inc.'s presently existing or hereafter acquired right, title and interest in and to the Trademarks[8] and all proceeds and products thereof, and (c) Rubio's Restaurants, Inc.'s pledge, assignment, hypothecation, transfer, delivery and grant to the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, a lien on and security interest in the Pledged Collateral,[9] whether

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[7] As defined in that certain Security Agreement, dated as of August 24, 2020 (as amended, restated, supplemented, amended and restated or otherwise modified from time to time, the "Security Agreement").

[8] As defined in that certain Trademark Security Agreement, dated as of August 14, 2010 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Trademark Security Agreement").

[9] As defined in that certain Pledge Agreement, dated as of August 24, 2010 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Pledge Agreement", and together with the Security Agreement and the Trademark Security Agreement, the "Prepetition Security Documents").

now existing or hereafter acquired, and whether consisting of investment property, accounts, payment intangibles or other general intangibles, or proceeds of any of the foregoing.

The Prepetition Secured Parties' security interests in the Debtors' deposit accounts are perfected by control. A deposit account control agreement ("DACA") is in place between the Loan Parties, the Prepetition Agent, and JPMorgan Chase Bank, N.A. relating to certain of the Debtors' accounts. The Loan Parties also have a deposit account with Sunwest Bank, which holds proceeds of the loans issued under the PPP Loan Agreement, and another account with JPMorgan Chase Bank, N.A. that is used to for payroll disbursements. Neither of these accounts are covered by an existing DACA.

(2) PPP Loan

As of the Petition Date, $10.0 million principal amount remains outstanding under the PPP Loan Agreement. Pursuant to its terms, the PPP Loans are forgivable to the extent the Debtors can demonstrate compliance with certain employee retention metrics. On October 5, 2020, the Debtors submitted a request for 100% loan forgiveness based on the satisfaction of these metrics.

(3) Equity Interests in MRRC Hold Co., Inc.

As of the Petition Date, MRRC Hold Co. has 541 shares of common stock outstanding, nearly all of which are held by former members of Management,[10] and 122,746 shares of preferred stock outstanding, of which approximately 92.00% is held by the Investor, approximately 5.00% is held by Golub and the remainder is held by current and former members of Management.

ARTICLE V:

CIRCUMSTANCES LEADING TO THESE CHAPTER 11 CASES

As stated above, the Debtors intend to file the Chapter 11 Cases to implement a prepackaged chapter 11 plan of reorganization that provides for a comprehensive balance sheet restructuring of their funded debt obligations with the consent of the Debtors' key stakeholders. Given the events described in greater detail below and other considerations, the Debtors have concluded in the exercise of their business judgment and as fiduciaries for all of the Debtors' stakeholders that the best path to maximize the value of their business is a strategic chapter 11 filing to implement the Plan.

5.1 Secular Trends and Recent Headwinds

The Debtors operate in the ultra-competitive fast casual dining sector, competing with everything from national and multi-state chains to local chains and individual restaurants. The fast casual model is expected to continue to grow relative to other food service models. However, the Debtors have had to increase spending to compete effectively and maintain its customer base as significant capital financed the expansion of existing fast casual competitors,

[10] The Investor holds one (1) share of common stock.

the launch of new formats and operators and the deployment of new technologies to better reach and engage customers.

(a) Increased Competition from Adjacent Restaurant Formats and Saturation of the Fast-Casual Market.

Fast casual dining first became popular in the 1990s. With the maturation and success of the fast casual model, many casual dining and fast food restaurants have shifted toward the fast casual model to win back customers. Such restaurants have introduced better, healthier and more sustainable ingredients, and new customer interaction technologies, ultimately blurring the distinctions between service models. Fast casual chains themselves pursued aggressive expansion in urban centers where many early fast casual concepts were introduced as well as in suburban and other areas. This all led to increased competition for customers, particularly during the lunch daypart which had a direct impact on growth of the fast casual segment.

(b) Increased Emphasis On Off-Premises Dining

The past decade has seen incredible growth in food delivery. Customers can easily order a wide variety of food online or from mobile devices and have it delivered to their home or workplace within a short time span. Digital ordering and delivery, including through third party delivery services, has grown 300% faster than dine-in traffic since 2014. This trend is especially prevalent among millennials who are more likely to order takeout or delivery than eat in-store. While the ability to offer delivery increases the Debtors' ability to reach customers, third party online ordering applications threaten to interfere with the direct relationship between the Debtors and their customers and impact margins.[11] The need to keep up with the latest ordering applications and be where the customer is places new demands on restaurants. Restaurants must work harder and more creatively to differentiate their offerings from the competition when the in-store experience is no longer a prominent aspect of the overall customer value proposition.

(c) Minimum Wage Increases

Minimum wage increases in many of the Debtors' key markets, especially in California, have impacted margins and are expected to continue to impact margins through 2022, the date of the last scheduled increase. To partially mitigate the compression impact of the annual increases in minimum wage, prior to the COVID-19 pandemic, the Debtors introduced a tip program in which all employees in the service chain participate. As of September 2020, the impact on average wage for the average employee has been an addition of approximately $1.70 per hour. The Debtors believe that this program will make the Debtors a more competitive employer.

(d) Other Labor Matters

From 2012 to 2016, the Debtors enjoyed significant year-on-year sales and EBITDA growth almost entirely on a same store basis. Then, in mid-2017, as the result of a new IRS rule related to the Affordable Care Act, the Debtors were forced to terminate certain employees,

[11] The Debtors began subsidizing administrative and delivery fees in order to maintain market share. As discussed below, since the pandemic, the Debtors have further subsidized these costs to provide reduced or free delivery to customers in line with competitors. The Debtors have begun renegotiating certain terms with its delivery partners and is moving towards a more normalized delivery cost model.

including over 30% of its line chefs (the most important crew position in its restaurants), with an average of 9.5 years of experience with the Debtors).[12] Training the less experienced workers hired to replace them diverted critical resources, including Management's time. New store openings in Northern California and Florida suffered as a result. The transition required the Debtors to reduce store hours in the tightest labor markets and resulted in reduced employee oversight. The Debtors suffered a period of poor service and customer complaints, reflected in the Debtors' year-end overall customer satisfaction ("OSAT") scores in all key areas, including speed of service and accuracy of orders. Meanwhile, increased hourly employee costs due to a tight labor market and steady increases to the minimum wage in California also impacted margins.[13] In the second half of 2017 and into 2018, the Debtors' revenues and EBITDA declined, with same store sales also declining.

5.2 Pre-COVID Turnaround Efforts

Between 2018 and 2020, Management launched a series of initiatives to respond to these challenges. Management rebuilt the Debtors' employee base and, in the process, improved hiring, training and oversight practices. Beginning in 2019, the Debtors began investing in a more "frictionless" guest experience in line with customer demand. The Debtors relaunched its website, introduced a new online ordering system and the Debtors branded delivery program, launched a mobile-app based loyalty program,[14] expanded service options by partnering with additional third-party online ordering and delivery partners, and significantly enhanced data and analytics-driven marketing initiatives. The Debtors also shifted the focus of its messaging to the "health benefits" and "adventurous bold flavors" of wild-caught seafood. Through its mobile-app based loyalty program, the Debtors began encouraging customers to eat seafood "Twice a Week." Separately, Management drove significant cost savings in procurement and other areas that improved overall profitability.

As a result of these efforts, the Debtors year-end OSAT scores improved from a low of 66.4 at year end 2017 to a best-in-class 72.4 at year end 2019. Same store sales grew 2.4% after two years of break-even or declining sales.

Given the Debtors' improved outlook, Management prepared to launch a sale process in February/March 2020. The Debtors retained investment bank Duff & Phelps to drive this process, but the COVID-19 pandemic interrupted the Debtors' efforts before Management and its advisors had reached out to any potential buyers, forcing the Debtors to suspend the process.

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[12] The Internal Revenue Service rule (the "IIM Rule") mandated verification of all employee Social Security Numbers ("SSN") to ensure compliance with the individual insurance mandate under the Affordable Care Act. In 2012, the Debtors adopted the federal E-Verify system for all newly hired employees to ensure that new employees were authorized to work in the United States. Regulations prohibited the Debtors from using E-Verify or any other means to check the immigration status of existing employees that had previously been hired using the traditional I-9 process in compliance with requirements at that time. When the IIM Rule took effect in 2017, the Debtors identified 341 employees without valid SSNs, all of whom it terminated.

[13] After a period of no wage increases since 2014, on January 1, 2016, the hourly minimum wage in California increased from $9.00 to $10.00. It increased again on January 1, 2017 to $10.50 and on January 1, 2018 to $11.00.

[14] Within three months of launch, the program attracted over 220,000 members; current membership exceeds 320,000 and the Debtors have observed incremental transaction volume among participating customers.

5.3 COVID-19 Pandemic and Related Restrictions

Despite Management's success in restoring OSAT scores and rebuilding its customer base, the unprecedented scale of the COVID-19 pandemic and the severity of its impact on customer demand and store operations were unforeseeable circumstances. As various federal, state and local governments instituted shelter-in-place mandates and limited restaurants to delivery and takeout services,[15] the Debtors (like many other restaurants) experienced a significant decline in customer spending and foot traffic. Meanwhile, the Debtors were forced to adopt an entirely new set of operational requirements (and incur related costs) to protect the health and safety of its customers, employees and supplier partners. Management could not have predicted the scope, scale and impact of the government-ordered shutdowns, which effectively altered the viability of the Debtors' business model overnight. Given that on-premises dining had traditionally accounted for approximately 47% of the Debtors' sales, the shutdowns delivered a sudden and significant blow to the Debtors' liquidity position.[16] The Debtors' projections demonstrated that, to weather this environment, the Debtors needed to take immediate action to preserve liquidity, significantly de-lever its capital structure, and right-size its restaurant lease portfolio to more appropriately match customer demand.

5.4 Management's Strategic Response

Over the past eight (8) months, Management and employees have demonstrated their ability to persevere in spite of the unprecedented shutdowns and their economic impact. Beginning in late February 2020, the Debtors implemented aggressive measures to minimize the risk of transmission at its stores through enhanced cleaning protocols, distancing requirements and the use of protective equipment in kitchens, at pick-up counters, in dining rooms (to the extent they remained open), around the store premises generally, and in preparing food for pick-

[15] *See, e.g.*, Ariz. Exec. Order 2020-47 (Jul. 9, 2020) (directing restaurants to limit indoor dining at 50% capacity and maintain at least six (6) feet of separation between parties or groups at different tables, booths or bar tops, unless the tables are separated by glass or plexiglass; directing restaurants to eliminate indoor standing room where patrons can congregate); Cal. Guidance on Closure of Sectors in Response to COVID-19 (Jul. 1, 2020) (directing restaurants in counties that have been on the state's county monitoring list based on transmission data for three consecutive days to close indoor operations for a minimum of three weeks); Cal. Exec. Order N-60-20 (May 4, 2020) (informed local health jurisdictions and industry sectors that they may gradually reopen under new modifications and guidance provided by the state of California); May 7, 2020 Public Health Order; Cal Exec. Order N-33-20 (Mar. 19, 2020) (directing residents to stay at home except as needed to maintain continuity of operation of critical infrastructure sectors); Nev. Exec. Order, Declaration of Emergency, Directive 021: Phase Two Reopening Plan (May 28, 2020) (directing restaurants and food establishments to limit capacity to 50% occupancy); Nev. Exec. Order, Declaration of Emergency, Directive 024 (extending Phase Two Reopening Plan to July 31, 2020).

[16] By the second week of April, weekly same store sales had declined by 65.2% from the same period in 2019. Same store sales for units that the Debtors were able to keep open have since recovered but were still below 2019 levels at negative 6.0% to date in October. In terms of cash flow, the Debtors generated positive operating cash flow of $3.3 million in the first two months of 2020. However, from April through September 2020, operating cash flow was approximately negative $2.1 million, despite the Debtors not paying $6.6 million in rent obligations during this period.

up and delivery.[17] The safety of employees and guests is critical to the Debtors who have sought to meet or exceed all local COVID-19 and health regulations in the operation of its stores.

In mid-March 2020, as states began to issue stay-at-home orders, social distancing protocols and restrictions that forced the Debtors to temporarily close restaurants for on-premises dining, Management quickly mobilized to serve the Debtors' customers within these new operating constraints. The Debtors quickly transitioned from an operating model based on a mix of limited-service in-store dining, takeout and delivery to an operating model based solely on takeout and delivery or to a delivery-only operating model. In the process, Management navigated dozens of unique and changing sets of federal, state and local government operational rules, guidelines and mandates. The Debtors also applied for and obtained the PPP Loan, which avoided a liquidity crisis in the May timeframe, and commenced rent negotiations with landlords or stopped paying rent all together to conserve cash.

In addition to these efforts, Management took swift, responsive action across all levels of the company to help the Debtors manage the impacts of the pandemic, including, among other actions, temporarily closing stores, reducing store hours and work schedules, cutting pay for corporate and management personnel, implementing furloughs, and expanding take-out and delivery services.

5.5 Analysis of Store Locations and Leases

On May 29, 2020, the Debtors engaged B. Riley Real Estate to perform, together with Mackinac Partners, an analysis of the Debtors' store base to identify locations that either (i) should remain open, (ii) should be closed or (iii) may remain open if negotiations with landlords to reduce rent costs are successful.[18] Upon conclusion of the analysis, B. Riley developed a plan to be implemented post-petition to re-negotiate terms of the various existing leases in its three remaining markets. The Debtors permanently closed 26 stores based on unsustainable operating losses and identified a number of other stores with unsustainable profitability levels that the Debtors believe can remain open only if satisfactory concessions are received from the properties' landlords. The degree of success of the negotiations with landlords will determine whether additional closures are necessary to right-size the Debtors' leasehold portfolio. In an effort to preserve cash during this uncertain time, the Debtors generally did not pay rent for approximately three (3) months after the onset of the COVID-19 pandemic and continued to negotiate deferrals thereafter. After that time, the Debtors negotiated specific arrangements with each landlord to address its ongoing obligations and entered into deferral

[17] In early May 2020, in recognition of the Debtors' practices, the CEO was asked to participate in a small group advising California Governor Newsom regarding pandemic-related industry issues. The Debtors expects that their expanded offerings and new safety and sanitation practices, implemented in response to the COVID-19 pandemic, will help attract and retain customers and enhance employee retention as economies reopen more fully and even after the immediate impact of COVID-19 recedes.

[18] The Debtors' assessment of each location considered a host of factors, including: (i) historical operating and financial performance, (ii) the physical environment in which the location operates (mall, in-line, stand-alone), such as the type, strength and drawing power of other formats, (iii) the competitive environment, (iv) the strength of the location and regional oversight leadership (v) the degree to which new balance of prospective pickup, delivery and dispatch and in-location dining for those locations would fit with the location's historical strengths and (vi) the market within which the location operates.

agreements with approximately 60 landlords, resulting in deferred rent of approximately $7.2 million as of the Petition Date.

5.6 Recognizing and Rewarding Employees

Management demonstrated staunch resolve and leadership over the course of the past eight (8) months—particularly in early March and April—which permeated the organization. On July 31, 2020, in recognition of the increased risk and additional demands placed on team members working at the Debtors' restaurant locations through the height of the COVID-19 pandemic, the Debtors provided recognition awards to 206 store managers and 17 other restaurant employees across the organization (the "Store Manager Recipients"), in the aggregate amount of $202,500. Certain of the Store Manager Recipients are also eligible for KERP Bonuses (defined and discussed below).

On August 13, 2020, in recognition of Management's exemplary efforts during this uncertain time period for the Debtors, the Debtors' board of directors approved a compensation plan (the "Compensation Plan") for twenty-four (24) key employees (each individually, a "Compensation Plan Participant" and collectively, the "Compensation Plan Participants") pursuant to which an aggregate amount of $581,000 was awarded to the Compensation Plan Participants on August 24, 2020, with each such award contingent on the participant agreeing to return the full awarded amount (net of any taxes required to be paid by the participant in respect thereof and determined by taking into account any tax benefit that may be available to the participant in respect of such repayment) in the event that the participant's employment with the Debtors is terminated for any reason other than for certain exceptions, prior to December 31, 2020 or, in the case of certain participants who were made aware of the need for a bankruptcy filing, emergence from chapter 11 pursuant to a confirmed plan of reorganization. The Compensation Plan also contemplates (i) an additional amount to be awarded in postpetition incentive-based awards (the "KEIP Bonuses") for ten (10) of the Compensation Plan Participants and (ii) an additional amount in postpetition retention-based awards (the "KERP Bonuses") for the remaining fourteen (14) Compensation Plan Participants. In addition, the Debtors anticipate awarding KERP Bonuses to six (6) additional employees who are not participants in the Compensation Plan. The Debtors intend to file a motion for approval of the post-petition KEIP Bonuses and KERP Bonuses at a later date, which will provide greater detail on the bonus structure and metrics.

The Debtors also put in place a separate incentive program for field managers (the "Employee Recipients") who perform in the top-quartile of certain guest satisfaction metrics (the "Field Management Bonus Plan"). Specifically, unit-level managers are eligible to receive payments under the Field Management Bonus Plan based on performing in the top quartile for guest satisfaction metrics from several sources.[19] The first payment under the Field Management Bonus Plan will be on October 23, 2020 for performance in the month of September.

[19] Guest satisfaction metrics include OSAT score (weighted 40% of total bonus), guest complaint score (weighted 30% of total bonus), and 3rd party/digital score (based on a five star scale, weighted 30% of total bonus).

5.7 Engagement with Golub and the Investor

In April, 2020, the Debtors sought to obtain the PPP Loan and Golub, the Prepetition Agent under the Debtors' Prepetition Credit Agreement, consented to this course of action. Then, following the delivery in June 2020 by Golub of a notice of defaults under the Prepetition Credit Agreement, the Debtors, with the assistance of their advisors, entered into negotiations with Golub to negotiate debt relief in respect of the Prepetition Credit Agreement. The Debtors also commenced negotiations with Golub and the Investor on the terms of a broader restructuring. From the outset of these discussions, all parties readily acknowledged that the Debtors' balance sheet and lease footprint were simply not manageable given the current operating environment and impact on sales. Efforts to obtain landlord concessions, stoppage of rent payments to conserve cash, receipt of the PPP Loan and the Debtors' withdrawal from Colorado and Florida market were insufficient to stabilize the business. As negotiations progressed, the Debtors continued to burn through cash and the parties began to prepare for a chapter 11 filing. The Debtors and their advisors analyzed, among other things, the potential demands on available liquidity and the financing necessary to sufficiently capitalize the Debtors. Based on this analysis, the Debtors and their advisors concluded that the Debtors would require access to new money debtor-in-possession financing to support their operations and to maintain sufficient liquidity for the duration of these Chapter 11 Cases. Simultaneously, Golub and the Investor negotiated the terms of an equity investment by the Investor which would provide additional liquidity to the Reorganized Debtors.

In September, Golub initiated a $6.5 million cash sweep of the Debtors' main cash concentration account, which would have deprived the Debtors of much needed cash for the month of October. In response, and to preserve the cash necessary to bridge to a restructuring, the Debtors negotiated a pay down of its revolving credit facility in the amount of approximately $4.6 million, which the Debtors believed would provide sufficient liquidity to conclude negotiations regarding the proposed prepackaged consensual restructuring that the Debtors now seek to implement through these Chapter 11 Cases.

ARTICLE VI:

OTHER MATERIAL ASPECTS OF THE PLAN

6.1 Distributions

Under the Bankruptcy Code, only claims and interests that are "Allowed" may receive distributions under a chapter 11 plan. This term is used throughout the Plan and the descriptions below. In general, an Allowed Claim or Equity Interest means that the Debtors agree, or if there is a dispute, the Bankruptcy Court determines, that the Claim or Equity Interest, and the amount thereof, is in fact a valid Claim against or Equity Interest in the Debtors.

6.2 Distribution on Account of Claims and Equity Interests Allowed as of the Effective Date

Except as otherwise provided in the Plan or a Final Order, or as agreed to by the relevant parties, distributions under the Plan on account of Claims and Equity Interests Allowed on or

before the Effective Date shall be made on the Distribution Date; *provided* that (a) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice and (b) in accordance with Article II of the Plan, Allowed Priority Tax Claims, unless otherwise agreed, shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Debtors and the Holder of such Claim, or as may be due and payable under applicable non-bankruptcy Law, or in the ordinary course of business.

6.3 Distribution on Account of Claims and Equity Interests Allowed After the Effective Date

(a) Payments and Distributions on Disputed Claims

Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, distributions under the Plan on account of Disputed Claims that become Allowed after the Effective Date shall be made on the first day that is 30 Business Days after the Disputed Claims become Allowed Claims; *provided* that (i) Disputed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors on or before the Effective Date that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice and (ii) Disputed Priority Tax Claims that become Allowed Priority Tax Claims after the Effective Date shall be treated as Allowed Priority Tax Claims in accordance with Article IX of the Plan and paid.

(b) Special Rules for Distributions to Holders of Disputed Claims

Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the relevant parties, no payments or distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or agreement among the relevant parties, or by Final Order.

6.4 Timing and Calculation of Amounts to Be Distributed

Except as otherwise provided in the Plan, on the Distribution Date each Holder of an Allowed Claim shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. Except as otherwise provided in the Plan, or any order of the Bankruptcy Court, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

(a) Delivery of Distributions

(1) Record Date for Distributions

On the Distribution Date, the Claims Register shall be closed and any party responsible for making distributions shall be authorized and entitled to recognize only those Holders of Claims listed on the Claims Register as of the close of business on the Distribution Date. If a Claim is transferred twenty (20) or fewer days before the Distribution Date, the Distribution Agent shall make distributions to the transferee only to the extent practical and, in any event, only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

(2) Delivery of Distributions in General

Except as otherwise provided in the Plan, the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated in the Debtors' records as of the date of any such distribution, including the address set forth in any Proof of Claim filed by that Holder; *provided* that the manner of such distributions shall be determined at the discretion of the Reorganized Debtors.

(3) Delivery of Distributions on Account of Secured Loan Claims

The Prepetition Agent shall be deemed to be the holder of all Secured Loan Claims for purposes of distributions to be made under the Plan, and all distributions on account of the Secured Loan Claims in Class 3 shall be made to the Prepetition Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan (as applicable), the Prepetition Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Secured Loan Claims in Class 3 in accordance with the terms of the Prepetition Credit Agreement Documents and the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the Prepetition Agent shall not have any liability to any Entity with respect to distributions made or directed to be made by the Prepetition Agent.

(4) Delivery of Distributions on Account of DIP Claims

The DIP Agent shall be deemed to be the Holder of all DIP Claims for purposes of distributions to be made under the Plan, and all distributions on account of such DIP Claims shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan (as applicable), the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of DIP Claims in accordance with the terms of the DIP Facility, subject to any modifications to such distributions in accordance with the terms of the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the DIP Agent shall not have any liability to any Entity with respect to distributions made or directed to be made by the DIP Agent.

(5) Distribution by Distribution Agent (if any)

The Debtors and the Reorganized Debtors, as applicable, shall have the authority, in their sole discretion, to enter into agreements with one or more Distribution Agents to facilitate the distributions required under the Plan. To the extent the Debtors and the Reorganized Debtors, as applicable, determine to utilize a Distribution Agent to facilitate the distributions under the Plan to Holders of Allowed Claims, any such Distribution Agent would first be required to: (i) affirm its obligation to facilitate the prompt distribution of any documents; (ii) affirm its obligation to facilitate the prompt distribution of any recoveries or distributions required under the Plan; (iii) waive any right or ability to setoff, deduct from or assert any lien or encumbrance against the distributions required under the Plan to be distributed by such Distribution Agent; and (iv) post a bond, obtain a surety or provide some other form of security for the performance of its duties, the costs and expenses of procuring which shall be borne by the Debtors or the Reorganized Debtors, as applicable.

The Debtors or the Reorganized Debtors, as applicable, shall pay to the Distribution Agents all reasonable and documented fees and expenses of the Distribution Agents without the need for any approvals, authorizations, actions, or consents. The Distribution Agents shall submit detailed invoices to the Debtors or the Reorganized Debtors, as applicable, for all fees and expenses for which the Distribution Agent seeks reimbursement and the Debtors or the Reorganized Debtors, as applicable, shall pay those amounts that they, in their sole discretion, deem reasonable, and shall object in writing to those fees and expenses, if any, that the Debtors or the Reorganized Debtors, as applicable, deem to be unreasonable. In the event that the Debtors or the Reorganized Debtors, as applicable, object to all or any portion of the amounts requested to be reimbursed in a Distribution Agent's invoice, the Debtors or the Reorganized Debtors, as applicable, and such Distribution Agent shall endeavor, in good faith, to reach mutual agreement on the amount of the appropriate payment of such disputed fees or expenses. In the event that the Debtors or the Reorganized Debtors, as applicable, and a Distribution Agent are unable to resolve any differences regarding disputed fees or expenses, either party shall be authorized to move to have such dispute heard by the Bankruptcy Court.

(6) Minimum Distributions

Notwithstanding anything in the Plan to the contrary, the Reorganized Debtors and the Distribution Agents shall not be required to make distributions or payments of less than $100 (whether Cash or otherwise) and shall not be required to make partial distributions or payments of fractions of dollars. Whenever any payment or distribution of a fraction of a dollar or fractional share of applicable equity interests under the Plan would otherwise be called for, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar or share of applicable equity interests (up or down), with half dollars and half shares of applicable equity interests or less being rounded down.

(b) <u>Undeliverable Distributions</u>

(1) Holders of Certain Undeliverable Distributions

If any distribution to a Holder of an Allowed Claim made in accordance with the Plan is returned to the Reorganized Debtors (or their Distribution Agent) as undeliverable, no further

distributions shall be made to such Holder. Undeliverable distributions shall remain in the possession of the Reorganized Debtors, subject to Article VI of the Plan, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends, or other accruals of any kind on account of their distribution being undeliverable.

(2) Failure to Claim Undeliverable Distributions

No later than 60 days after a distribution has been made to each Holder of an Allowed Claim entitled to receive a distribution under the Plan, the Reorganized Debtors shall file with the Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtors for as long as the Chapter 11 Cases stay open. Any Holder of an Allowed Claim, irrespective of when a Claim becomes an Allowed Claim, that does not notify the Reorganized Debtors of such Holder's then current address in accordance herewith within 30 days after the filing of the list of Holders of undeliverable distributions shall have its Claim for such undeliverable distribution discharged and shall be forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtors or their property. Within 90 days after the mailing or other delivery of any such distribution checks, notwithstanding applicable escheatment Laws, all such distributions shall revert to the Reorganized Debtors. Nothing contained in the Plan shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

(3) Failure to Present Checks

Checks issued by the Reorganized Debtors (or their Distribution Agent) on account of Allowed Claims shall be null and void if not negotiated within 90 days after the issuance of such check. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 90 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and be discharged and forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtors or their property. Within 90 days after the mailing or other delivery of any such distribution checks, notwithstanding applicable escheatment Laws, all such distributions shall revert to the Reorganized Debtors. Nothing contained in the Plan shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

(c) Manner of Payment

At the option of the Distribution Agent, any Cash payment to be made under the Plan may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

(d) No Postpetition or Default Interest on Claims

Unless otherwise specifically provided for in the Plan or the Confirmation Order and notwithstanding any documents that govern the Debtors' prepetition indebtedness to the contrary, (1) postpetition or default interest shall not accrue or be paid on any Claims, and (2) no Holder of a Claim shall be entitled to (a) interest accruing on or after the Petition Date on any such Claim or (b) interest at the contract default rate, each as applicable.

(e) Compliance with Tax Requirements/Allocations

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

(f) Surrender of Cancelled Instruments or Securities

On the Effective Date or as soon as reasonably practicable thereafter, each Holder of a certificate or instrument evidencing a Claim or Equity Interest that is discharged by the Plan shall be deemed to have surrendered such certificate or instrument to the Reorganized Debtors. Except as otherwise expressly provided in the Plan, such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors and Reorganized Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the Holder of a Claim or Equity Interests, which shall continue in effect. Notwithstanding anything to the contrary the Plan, this paragraph shall not apply to certificates or instruments evidencing Claims that are Unimpaired under the Plan.

(g) Claims Paid or Payable by Third Parties

(1) Claims Payable by Insurance

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy.

(2) Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained in the Plan constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

6.5 No Substantive Consolidation

The Plan is being proposed as a joint plan of reorganization of the Debtors for administrative purposes only and constitutes a separate chapter 11 plan of reorganization for each Debtor. The Plan does not contemplate substantive consolidation of any of the Debtors.

6.6 General Settlement of Claims and Equity Interests

As discussed further herein and as otherwise provided in the Plan, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classifications, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Equity Interests, Causes of Action, and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019. Distributions made to Holders of Allowed Claims in any Class are intended to be final.

6.7 Restructuring Transactions

On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtors may take all actions as may be reasonably necessary or appropriate to effect any transaction described in, approved by, contemplated by or necessary to effectuate the Plan and the Plan Supplement, including: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable Law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates of formation or incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable Law; and (d) all other actions that the Reorganized Debtors reasonably determine are necessary or appropriate. For the purposes of effectuating the Plan, none of the Restructuring Transactions contemplated in the Plan shall constitute a change of control under any agreement, contract, or document of the Debtors.

(a) Approval of the Exit Facilities and Exit Facility Documents

On the Effective Date, the Reorganized Debtors shall have total funded debt in the form of the Exit Facility in an initial aggregate amount equal to $52.0 million. The Reorganized Debtors may use the Exit Facility for any purpose permitted by the Exit Facility Documents, including the funding of obligations under the Plan and satisfaction of ongoing working capital needs.

Confirmation of the Plan shall be deemed to constitute approval of the Exit Facility and the Exit Facility Documents (including all transactions contemplated thereby, such as any supplementation or additional syndication of the Exit Facility, and all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities and expenses provided for therein) and, subject to the occurrence of the Effective Date, authorization for the Reorganized Debtors to enter into and perform their obligations under the Exit Facility Documents and such

other documents as may be reasonably required or appropriate, in each case, in accordance therewith.

The Exit Facility Documents shall constitute legal, valid, binding, and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. The financial accommodations to be extended pursuant to the Exit Facility Documents are being extended, and shall be deemed to have been extended, in good faith, for legitimate business purposes, are reasonable, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy Law.

On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents: (i) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents; (ii) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents; and

(iii) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy Law. The Reorganized Debtors and the Entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other Law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable Law to give notice of such Liens and security interests to third parties.

(b) Issuance of Reorganized Equity Interests

Shares of Reorganized Equity Interests shall be authorized under the New Organizational Documents, issued on the Effective Date and distributed as soon as practicable thereafter in accordance with the Plan. All of the Reorganized Equity Interests issuable in accordance with the Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable. The issuance of the Reorganized Equity Interests is authorized without the need for any further corporate action and without any further action by any Holder of a Claim or Equity Interest.

All shares of common stock of Holdings outstanding prior to Consummation (including all rights exchangeable or exercisable for shares of common stock of Investor) shall be extinguished upon Consummation and holders thereof shall not receive any payment or property on account of any such shares of capital stock.

On the Effective Date, the Reorganized Debtors and the Holders of Reorganized Equity Interests, and to the extent applicable, the Investor, shall enter into the New Organizational Documents in substantially the form included in the Plan Supplement. The New Organizational

Documents shall be deemed to be valid, binding, and enforceable in accordance with their terms, and each Holder of Reorganized Equity Interests shall be bound thereby, in each case without the need for execution by any party thereto other than the Reorganized Debtors.

(c) Management Incentive Plan

On the Effective Date, the Management Incentive Plan shall be deemed adopted by the Reorganized Board to grant select members of the management team of the Reorganized Company and its subsidiaries options exercisable in accordance with the terms of the Plan Supplement.

(d) Investment

After the Effective Date, Investor shall invest $10.0 million for the purchase of equity in accordance with the terms of the Plan Supplement.

6.8 Continued Corporate Existence

Except as otherwise provided in the Plan, or as otherwise may be agreed between the Debtors and the Consenting Secured Lenders, each of the Debtors, as Reorganized Debtors, shall continue to exist on and after the Effective Date as a separate legal Entity with all of the powers available to such legal Entity under applicable Law and pursuant to the New Organizational Documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with such applicable Law. On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, without the need for approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, take such action as permitted by applicable Law, and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (a) a Reorganized Debtor to be merged into another Reorganized Debtor or an Affiliate of a Reorganized Debtor; (b) a Reorganized Debtor to be dissolved; (c) the legal name of a Reorganized Debtor to be changed; (d) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter; or (e) the reincorporation of a Reorganized Debtor under the Law of jurisdictions other than the Law under which the Debtor currently is incorporated.

6.9 Vesting of Assets

Except as otherwise provided in the Plan or the Plan Documents, on the Effective Date, all Assets, including all Claims, rights, and Causes of Action, and any property acquired by the Debtors under or in connection with the Plan, shall vest in each respective Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests. Subject to the terms of the Plan, on and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Claims), Equity Interests, and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

6.10 Cancellation of Existing Securities and Agreements

On the Effective Date, except as otherwise specifically provided for in the Plan: (i) the obligations of the Debtors under any certificate, share, note, bond, agreement, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Equity Interest, including the Prepetition Credit Agreement (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan, if any) shall be cancelled, terminated and of no further force or effect, without further act or action, and the Debtors and the Reorganized Debtors shall not have any continuing obligations thereunder; and (ii) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, 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 (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors that are specifically Reinstated or assumed pursuant to the Plan, if any) shall be released and discharged.

Notwithstanding such cancellation and discharge:

(1) Pursuant to Section 8.2 of the DIP Credit Agreement, all indemnification or other protections provided to any Indemnified Person (as defined therein) pursuant to the provisions in Article X and Article XII of the DIP Credit Agreement shall survive. The DIP Facility Documents shall also continue in effect for purposes of allowing the DIP Agent to (a) receive distributions from the Debtors under the Plan and to make further distributions to the Holders of the DIP Claims on account of such Claims, as set forth in Article VI of the Plan; (b) enforce its rights, Claims and interests with respect to the DIP Lenders; and (c) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of DIP Claims, including any rights to priority of payment with respect to the DIP Lenders; and (d) appear and be heard in the Chapter 11 Cases or in any other proceeding, including to enforce any obligation owed to the DIP Agent or Holders of DIP Claims under the Plan..

(2) The Prepetition Credit Agreement Documents shall continue in effect solely for purposes of allowing the Prepetition Agent to: (a) receive distributions from the Debtors under the Plan and to make further distributions to the Holders of the Secured Loan Claims on account of such Claims, as set forth in Article VI of the Plan; (b) enforce its rights, Claims and interests with respect to the Prepetition Secured Lenders; (c) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of Secured Loan Claims, including any rights to priority of payment with respect to the Prepetition Secured Lenders; and (d) appear and be heard in the Chapter 11 Cases or in any other proceeding, including to enforce any obligation owed to the Agent or Holders of Secured Loan Claims under the Plan.

6.11 Sources of Consideration for Plan Distributions

The Debtors shall fund distributions under the Plan with (1) Cash on hand, including Cash from operations; (2) the proceeds of the DIP Loans; (3) the Exit Facility; and (4) the Reorganized Equity Interests. Cash payments to be made pursuant to the Plan will be made by the Reorganized Debtors. The Reorganized Debtors shall be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Reorganized Debtors to satisfy their obligations under the Plan. Except as set forth in the Plan, any changes in intercompany account balances resulting from such transfers shall be accounted for and settled in accordance with the Debtors' historical intercompany account settlement practices and shall not violate the terms of the Plan.

From and after the Effective Date, subject to any applicable limitations set forth in any post-Effective Date agreement (including, without limitation, the Exit Facility Documents, the Equity Holders Agreement, the Reorganized Debtors shall have the right and authority without further order of the Bankruptcy Court to raise additional capital and obtain additional financing as the boards of directors of the applicable Reorganized Debtors deem appropriate..

6.12 Exemption from Registration Requirements

The issuance of the Reorganized Equity Interests under the Plan and/or the Plan Supplement shall be exempt from registration under the Securities Act and any other applicable securities Laws pursuant to section 1145 of the Bankruptcy Code. These Securities may be resold without registration under the Securities Act or other federal securities Laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the Holder is an "underwriter" with respect to such Securities, as that term is defined in section 1145(b) of the Bankruptcy Code. In addition, such exempt Securities generally may be resold without registration under state securities Laws pursuant to various exemptions provided by the respective Laws of the several states.

6.13 Organizational Documents

Subject to Article V of the Plan, the Reorganized Debtors shall enter into such agreements and amend their corporate governance documents to the extent necessary to implement the terms and provisions of the Plan. The New Organizational Documents shall comply with section 1123(a)(6) of the Bankruptcy Code.

6.14 Exemption from Certain Transfer Taxes and Recording Fees

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfer from a Debtor to a Reorganized Debtor or to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, securities, or other interest in the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject

to any Stamp or Similar Tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property approved by the Bankruptcy Court on or before the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

6.15 Directors and Officers of the Reorganized Debtors

The members of the Reorganized Board will be designated in accordance with the Plan Supplement. Except to the extent that a member of the board of directors or board of managers, or the sole manager, as applicable, of a Debtor is designated in the Plan Supplement to serve as a director, manager or sole manager of such Reorganized Debtor on the Effective Date, the members of the board of directors or board of managers, or the sole manager, as applicable, of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to the Reorganized Debtors on or after the Effective Date, and each such director, manager, or sole manager shall be deemed to have resigned or shall otherwise cease to be a director, manager or sole manager of the applicable Debtor on the Effective Date. Each of the directors, managers, sole managers and officers of each of the Reorganized Debtors shall serve pursuant to the terms of the applicable New Organizational Documents of such Reorganized Debtor and may be designated, replaced or removed in accordance with such New Organizational Documents.

6.16 Insurance Policies

All insurance policies pursuant to which any Debtor has any obligations in effect as of the Effective Date shall be deemed and treated as Executory Contracts pursuant to the Plan and shall be assumed and assumed and assigned to the respective Reorganized Debtors and shall continue in full force and effect thereafter in accordance with such policy's respective terms.

6.17 Corporate Action

On the Effective Date, all actions contemplated by the Plan, the Plan Supplement, and the Restructuring Transactions shall be deemed authorized and approved in all respects, including: (i) the selection of the directors and officers of each of the Reorganized Debtors; (ii) the distribution of the Reorganized Equity Interests as provided in the Plan or in the Plan Supplement; (iii) the execution and entry into the Exit Facility Documents; and (iv) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date) or Restructuring Transactions, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have timely occurred and shall be in effect and shall be authorized and approved in all respects, without any requirement of further action by the security holders, directors, or officers of the Debtors or the Reorganized Debtors or otherwise.

On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and, as applicable, directed, to issue, execute, and deliver the agreements, documents, securities, certificates of incorporation, operating agreements, and instruments contemplated by the Plan and the Plan Supplement(or necessary or desirable to effect the transactions contemplated by the Plan and the Plan Supplement) in the name of and on behalf of the Reorganized Debtors, including the Reorganized Equity Interests, the Exit Facility Documents, and any and all agreements, documents, securities, and instruments relating to the foregoing.

The authorizations and approvals contemplated by this Section 4.5 shall be effective notwithstanding any requirements under non-bankruptcy Law.

6.18 Effectuating Documents; Further Transactions

Prior to, on, and after the Effective Date, the Debtors and Reorganized Debtors and the directors, managers, officers, authorized persons, and members of the boards of directors or managers and directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and provisions of the Plan, the DIP Facility Documents, the Exit Facility Documents, the New Organizational Documents, and any securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant to the Plan.

The Confirmation Order shall, and shall be deemed to, pursuant to both section 1123 and section 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

6.19 Restructuring Expenses

The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date, but not paid pursuant to the DIP Orders or DIP Facility Documents, shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to the Plan and the DIP Orders, without any requirement to file a fee application with the Bankruptcy Court, without the need for itemized time detail, and without any requirement for Bankruptcy Court review or approval. All Restructuring Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date and such estimates shall be delivered to the Debtors at least five Business Days before the anticipated Effective Date (or such shorter period as the Debtors may agree); *provided*, that such estimate shall not be considered an admission or limitation with respect to such Restructuring Expenses. On or as soon as reasonably practicable after the Effective Date, final invoices for all Restructuring Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. In addition, the Debtors and the Reorganized Debtors (as applicable) shall continue to pay pre- and post-Effective Date, when due and payable in the ordinary course, Restructuring Expenses related to implementation, Consummation and defense of the Plan whether incurred before, on, or after the Effective Date.

6.20 Retained Causes of Action

Unless any Causes of Action or Claims against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, the DIP Orders, or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action or Claims in the ordinary course, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action and Claims shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such retained Causes of Action or Claims, and may exercise any and all rights in connection therewith. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to Article IV of the Plan include any Claim or Cause of Action with respect to, or against, a Released Party.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or this Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein.

6.21 Treatment of Executory Contracts and Unexpired Leases

(a) Assumption and Rejection of Executory Contracts and Unexpired Leases

All Executory Contracts and Unexpired Leases of the Debtors that are not otherwise assumed or rejected will be deemed rejected by the applicable Debtor or Reorganized Debtor in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than (i) those that are identified on the Assumed Executory Contracts and Unexpired Leases Schedule; (ii) those that have been previously assumed or rejected pursuant to a Final Order by the Debtors prior to the Effective Date; and (iii) those that are the subject of a motion seeking assumption or rejection as of the Effective Date. Each Executory Contract and Unexpired Lease assumed pursuant to this Article V but not assigned to a third party shall be deemed to be assigned to a Reorganized Debtor, and be fully enforceable by, the applicable contracting Reorganized Debtor(s) in accordance with the terms thereof, except as otherwise modified by the provisions of the Plan, or by any order of the Bankruptcy Court.

The Confirmation Order shall constitute an order of the Bankruptcy Court: (i) approving the assumption, assumption and assignment, or rejection, as the case may be, of Executory Contracts or Unexpired Leases, as described in the Plan and Plan Supplement, pursuant to Bankruptcy Code sections 365(a) and 1123(b)(2); (ii) providing that each assumption, assignment, or rejection, as the case may be, is in the best interest of the Reorganized Debtors, their Estates, and all parties in interest in the Chapter 11 Cases; and (iii) providing that the requirements for assumption or assumption and assignment of any Executory Contract or Unexpired Lease to be assumed have been satisfied. Unless otherwise indicated, all assumptions or rejections of Executory Contracts or Unexpired Leases pursuant to the Plan are effective as of the Effective Date.

Except as otherwise provided in the Plan or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

(b) Cure of Defaults for Assumed Executory Contracts and Unexpired Leases

Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed or assumed and assigned pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Cost in Cash on the Effective Date, subject to the limitation described in the following paragraph, or on such other terms as the parties to such Executory Contract or Unexpired Lease may otherwise agree. No later than the Plan Supplement Filing Date, to the extent not previously filed with the Bankruptcy Court and served on affected counterparties, the Debtors shall provide for notices of proposed assumption and proposed Cure Costs to be filed and served upon applicable contract and lease counterparties (and upon such Entities' counsel, if known), together with procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. Any objection by a contract or lease counterparty to a proposed assumption, assumption and assignment, or related Cure Cost must be filed, served, and actually received by the Debtors by the date on which objections to Confirmation are due.

Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Cost shall be deemed to have assented to such assumption or Cure Cost. In the event of a dispute regarding (i) the amount of any Cure Cost, (ii) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365(b) of the Bankruptcy Code, if applicable, under the Executory Contract or the Unexpired Lease to be assumed or assumed and assigned, and/or (iii) any other matter pertaining to assumption and/or assignment, then the Bankruptcy Court shall hear such dispute prior to the assumption and/or assignment becoming effective, and the applicable Cure Costs associated therewith (if any) shall be paid following entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment and shall not prevent or delay implementation of the Plan or Effective Date; *provided* that the Debtors may settle any dispute regarding the amount of any Cure Cost without any further notice to any party or any action, order, or approval of the Bankruptcy Court; *provided, further,* that notwithstanding anything to the contrary to the Plan, the Debtors reserve the right to either reject, any Executory

Contract or Unexpired Lease within 30 days after the entry of a Final Order resolving an objection to assumption or assumption and assignment, determining the Cure Cost under an Executory Contract or Unexpired Lease that was subject to a dispute, or resolving any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease.

Assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise, and the payment of the Cure Cost, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment. Any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned, and the Cure Cost paid, shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

(c) Indemnification and Reimbursement Obligations

Any and all Indemnification Obligations of the Debtors, including pursuant to their corporate charters, agreements, bylaws, limited liability company agreements, memorandum and articles of association, or other organizational documents, or board resolutions, employment contracts or other agreements for the directors, officers, managers, employees, attorneys, other professionals and agents employed by the Debtors to indemnify current and former officers, directors, agents, or employees with respect to all present and future actions, suits, and proceedings against the Debtors based upon any act or omission for or on behalf of the Debtors shall remain in full force and effect to the maximum extent permitted by applicable Law and shall not be discharged, impaired, or otherwise affected by the Plan. All such obligations shall be deemed and treated as Executory Contracts that are assumed by the Debtors under the Plan and shall continue as obligations of the Reorganized Debtors. Any Claim based on the Debtors' obligations in this section shall not be a Disputed Claim or subject to any objection, in either case, by reason of section 502(e)(1)(B) of the Bankruptcy Code or otherwise.

(d) Claims Based on Rejection of Executory Contracts and Unexpired Leases (if Any)

Unless otherwise provided by a Bankruptcy Court order, Proofs of Claim asserting Claims arising from the rejection of the Debtors' Executory Contracts and Unexpired Leases, if any, pursuant to the Plan or otherwise must be filed with the Notice and Claims Agent within 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. Proofs of Claim arising from the rejection or repudiation of the Debtors' Executory Contracts and Unexpired Leases, if any, that are not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtors or further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection or repudiation 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. All Allowed Claims arising from the rejection of the Debtors' Executory

Contract and Unexpired Leases, if any, shall constitute General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

(e) Contracts and Leases Entered into After the Petition Date

Contracts and leases entered into after the Petition Date by any Debtor including any Executory Contracts and Unexpired Leases assumed by such Debtor, shall be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) that are not otherwise assumed or rejected will be deemed assumed by the applicable Debtor or Reorganized Debtor in accordance with the provisions and requirements of section 365 and 1123 of the Bankruptcy Code.

6.22 Employee Compensation and Benefits

Except as otherwise provided in the Plan or the Plan Supplement and except for any equity-based compensation or incentive plans, on and after the Effective Date, the Reorganized Debtors may, but are not required to, honor in the ordinary course of business: (i) any employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974) and any other contracts, agreements, policies, programs, and plans for, among other things, employment, compensation, health care, disability and other welfare benefits, deferred compensation benefits, severance policies and benefits, retirement benefits, workers' compensation insurance and accidental death and dismemberment insurance that as of immediately prior to the Petition Date are, and as of immediately prior to the Effective Date continue to be, sponsored, maintained, or contributed to by any of the Debtors for the directors, officers, employees and other service providers of any of the Debtors who served in such capacity at any time; *provided*, *however*, that notwithstanding the foregoing, the Reorganized Debtors shall assume and otherwise Reinstate the Deferred Compensation Plan on the Effective Date. Nothing contained in the Plan shall entitle any person to any benefit or alleged entitlement under any policy, program, or plan that has expired or been terminated before the Effective Date, or restore, reinstate, or revive any such expired benefit plan or alleged entitlement under any such expired benefit plan. Nothing in the Plan shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, Claims, Causes of Action, or other rights with respect to any benefit plan, whether expired or unexpired.

Except as otherwise provided in the Plan, none of (i) the Debtors' emergence from chapter 11 of the Bankruptcy Code as contemplated by the Plan or (ii) the consummation of the transactions provided in the Plan (or otherwise contemplated by the Restructuring Transactions and the Plan to occur prior to or on or about the Effective Date), in each case alone or together with any other event, will (A) entitle any current or former director, officer, employee or other service provider of any of the Debtors to any payment or benefit, (B) accelerate the time of payment or vesting or trigger any payment or funding of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any benefit plan or Expired benefit plan or (C) limit or restrict the right of the Debtors or Reorganized Debtors to merge, amend or terminate any benefit plan, in each case including as a result of a "change in control" or similar provision or as a result of giving rise to any person to terminate his or her service with the Debtors or Reorganized Debtors for "good reason" or similar provision.

6.23 Release, Injunction, and Related Provisions

(a) Discharge of Claims and Termination of Equity Interests; Compromise and Settlement of Claims, Equity Interests, and Controversies

Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, release, and discharge, effective as of the Effective Date, of all Equity Interests and Claims of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against the Debtors, the Reorganized Debtors or any of their Assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, including demands, liabilities, and causes of action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim or Equity Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest is Allowed; or (iii) the Holder of such Claim or Equity Interest has accepted or rejected, or been deemed to accept or reject, the Plan. Except as otherwise provided herein, any default by the Debtors or their Affiliates with respect to any Claim or Equity Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Equity Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Equity Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against the Debtors and their Estates and Causes of Action against other Entities.

(b) Releases by the Debtors

PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE EFFORTS OF THE RELEASED PARTIES TO FACILITATE THE EXPEDITIOUS REORGANIZATION OF THE DEBTORS AND THE IMPLEMENTATION OF THE RESTRUCTURING

CONTEMPLATED BY THE PLAN, PURSUANT TO THE CONFIRMATION ORDER, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, AND ON AND AFTER THE EFFECTIVE DATE, EACH RELEASED PARTY SHALL BE DEEMED FOREVER RELEASED AND DISCHARGED BY EACH AND ALL OF THE DEBTORS, THE REORGANIZED DEBTORS, AND THEIR ESTATES FROM ANY AND ALL CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF ANY OF THE DEBTORS, THE REORGANIZED DEBTORS, OR THEIR ESTATES, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR FIXED, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS, THE REORGANIZED DEBTORS, THE ESTATES OR THEIR AFFILIATES 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 EQUITY INTEREST IN, A DEBTOR OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE BUSINESS OPERATIONS OF THE DEBTORS, ACTIONS TAKEN BY THE DEBTORS' BOARD OF DIRECTORS, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN ANY DEBTOR AND ANY RELEASED PARTY, THE DEBTORS' IN- OR OUT-OF-COURT RESTRUCTURING EFFORTS, INTERCOMPANY TRANSACTIONS (OTHER THAN ANY INTERCOMPANY CLAIMS THAT HAVE BEEN REINSTATED AS CONTEMPLATED ABOVE), THE RESTRUCTURING, THE CHAPTER 11 CASES, THE FORMULATION, PREPARATION, DISSEMINATION, OR NEGOTIATION OF THE PLAN, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES PURSUANT TO THE PLAN, OR THE DISTRIBUTION OF PROPERTY UNDER THE PLAN OR ANY OTHER RELATED AGREEMENT, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE DIP FACILITY DOCUMENTS, THE EXIT FACILITY DOCUMENTS, OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, OTHER THAN CLAIMS OR LIABILITIES ARISING FROM ANY ACT OR OMISSION OF A RELEASED PARTY THAT CONSTITUTES FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; *PROVIDED* THAT THE FOREGOING RELEASE SHALL NOT APPLY TO ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHT OR OBLIGATION ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENTS (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) ENTERED INTO PURSUANT TO, IN CONNECTION WITH, OR

CONTEMPLATED BY THE PLAN, AND ANY RIGHT TO ENFORCE THE PLAN AND CONFIRMATION ORDER IS NOT SO RELEASED.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTORS' RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT EACH DEBTOR RELEASE IS (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF SUCH CLAIMS; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS OR REORGANIZED DEBTORS OR THEIR RESPECTIVE ESTATES ASSERTING ANY CLAIM, CAUSE OF ACTION, OR LIABILITY RELATED THERETO, OF ANY KIND WHATSOEVER, AGAINST ANY OF THE RELEASED PARTIES OR THEIR PROPERTY

(c) Releases by Holders of Claims and Equity Interests

AS OF THE EFFECTIVE DATE, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH OF THE RELEASING PARTIES (REGARDLESS OF WHETHER A RELEASING PARTY IS A RELEASED PARTY) SHALL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER, RELEASED AND DISCHARGED EACH DEBTOR, REORGANIZED DEBTOR AND EACH OTHER RELEASED PARTY FROM ANY AND ALL CLAIMS, EQUITY INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR FIXED, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, AT EQUITY, OR OTHERWISE, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF ANY OF THE DEBTORS, THE REORGANIZED DEBTORS, EACH OTHER RELEASING PARTY OR THEIR ESTATES, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE BUSINESS OPERATIONS OF THE DEBTORS, ACTIONS TAKEN BY THE DEBTORS' BOARD OF DIRECTORS, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN ANY DEBTOR AND ANY RELEASED PARTY, THE DEBTORS' IN- OR OUT-OF-COURT RESTRUCTURING EFFORTS, INTERCOMPANY TRANSACTIONS, ENTRY INTO THE CHAPTER 11 CASES, THE FORMULATION, PREPARATION, DISSEMINATION, OR

NEGOTIATION OF THE DISCLOSURE STATEMENT, THE PLAN, THE PLAN SUPPLEMENT, THE DIP FACILITY DOCUMENTS, THE EXIT FACILITY DOCUMENTS, OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, OTHER THAN CLAIMS OR LIABILITIES ARISING FROM ANY ACT OR OMISSION OF A RELEASED PARTY THAT CONSTITUTES FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; *PROVIDED* THAT THE FOREGOING RELEASE SHALL NOT APPLY TO ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHT OR OBLIGATION ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENTS (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) ENTERED INTO PURSUANT TO, IN CONNECTION WITH, OR CONTEMPLATED BY THE PLAN, AND ANY RIGHT TO ENFORCE THE PLAN AND CONFIRMATION ORDER IS NOT SO RELEASED.

(d) Exculpation and Limitation of Liability

UPON AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE DEBTORS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, RESTRUCTURING CONSULTANTS AND OTHER PROFESSIONAL ADVISORS AND AGENTS SHALL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THE PLAN IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING SECTION 1125(E) OF THE BANKRUPTCY CODE.

EXCEPT WITH RESPECT TO ANY ACTS OR OMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THE PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN OR ANY OTHER PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE RESTRUCTURING OF THE DEBTORS; *PROVIDED* THAT THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT; *PROVIDED, FURTHER,* THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH, THE PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT.

THE EXCULPATED PARTIES HAVE, AND UPON CONFIRMATION, SHALL BE DEEMED TO HAVE, PARTICIPATED IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING WITH REGARD TO THE DISTRIBUTIONS OF REORGANIZED EQUITY INTERESTS PURSUANT TO THE PLAN AND, THEREFORE, ARE NOT AND SHALL NOT BE LIABLE AT ANY TIME FOR THE VIOLATIONS OF ANY APPLICABLE LAW, RULE, OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN OR SUCH DISTRIBUTIONS MADE PURSUANT TO THE PLAN.

(e) Injunction

THE SATISFACTION, RELEASE AND DISCHARGE PURSUANT TO THIS ARTICLE IX OF THE PLAN SHALL ALSO ACT AS AN INJUNCTION AGAINST ANY ENTITY BOUND BY SUCH PROVISION AGAINST COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS OR ACT TO COLLECT, OFFSET, OR RECOVER ANY CLAIM OR CAUSE OF ACTION SATISFIED, RELEASED, OR DISCHARGED UNDER THE PLAN OR THE CONFIRMATION ORDER TO THE FULLEST EXTENT AUTHORIZED OR PROVIDED BY THE BANKRUPTCY CODE, INCLUDING, WITHOUT LIMITATION, TO THE EXTENT PROVIDED FOR OR AUTHORIZED BY SECTIONS 524 AND 1141 THEREOF.

6.24 Setoffs and Recoupment

Except as otherwise provided in the Plan or in the DIP Orders, each Reorganized Debtor pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy or non-bankruptcy Law, or as may be agreed to by the Holder of an Allowed Claim, may set off or recoup against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature that the applicable Debtor or Reorganized Debtor may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan, a Final Order or otherwise); *provided* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action.

In no event shall any Holder of Claims be entitled to set off or recoup any Claim against any Claim, right, or Cause of Action of a Debtor or a Reorganized Debtor, as applicable, unless such Holder has timely filed a Proof of Claim with the Bankruptcy Court preserving such setoff or recoupment in such Proof of Claim.

6.25 Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust,

Liens, pledges, or other security interests shall revert to the applicable Reorganized Debtor and its successors and assigns.

To the extent that any Holder of a Secured Loan Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any Liens or security interests to secure such Holder's Secured Loan Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

6.26 Plan Modifications

Subject to the limitations contained in the Plan, the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules: (a) to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan; *provided* that any amendments or modifications that affect the rights, obligations, liabilities and duties of the DIP Agent or the Prepetition Agent shall require the consent of the DIP Agent or the Prepetition Agent, as applicable.

6.27 Effect of Confirmation on Modifications

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

6.28 Certain Technical Amendments

Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court; *provided* that such technical adjustments and modifications do not adversely affect the treatment of Holders of Claims or Equity Interests under the Plan.

6.29 Revocation or Withdrawal of Plan

Subject to the conditions to the Effective Date, the Debtors reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the entry of the Confirmation Order and to file subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if entry of the Confirmation Order or the Effective Date does not occur, then: (a) the Plan with respect to such Debtor or Debtors shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan,

assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void with respect to such Debtor or Debtors; and (c) nothing contained in the Plan with respect to such Debtor or Debtors shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Entity; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission of any sort by the Debtors or any other Entity.

6.30 Reservation of Rights

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, this Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

6.31 Conditions Precedent to the Effective Date

The Effective Date shall not occur unless and until each of the following conditions have occurred or been waived in accordance with the terms of the Plan:

1. the Bankruptcy Court shall have approved the Disclosure Statement, in a form reasonably acceptable to the Debtors, the Consenting Secured Lenders and the Investor, which consent shall not be unreasonably withheld, conditioned, or delayed, and the order approving the Disclosure Statement shall not have been stayed;

2. the Confirmation Order shall have become a Final Order (unless otherwise waived by the Consenting Lenders), shall have been entered by December 31, 2020 (or such other later date as agreed to by the Consenting Secured Lenders in their sole discretion), shall be consistent in all material respects with the Plan, and shall otherwise be in a form reasonably acceptable to the Debtors, the Consenting Secured Lenders, and the Investor (and with respect to those provisions thereof that affect the rights, obligations, liabilities and duties of the DIP Agent or the Prepetition Agent, to the DIP Agent or the Prepetition Agent, as applicable), which consent as to the form of the Confirmation Order shall not be unreasonably withheld, conditioned, or delayed, and the Confirmation Order shall not have been stayed; *provided, however*, that the Confirmation Order may not conflict with the treatment of the DIP Claims and the Secured Loan Claims without the prior consent of the DIP Agent and the Holders of the Secured Loan Claims, which consent may be withheld in their respective sole discretion;

3. all documents, certificates, and agreements necessary to implement the Plan shall have been executed and tendered for delivery to the required parties and, to the extent required, filed with the applicable Governmental Units in accordance with applicable Laws, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the

terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date);

4. all actions necessary to implement the Plan shall have been effected;

5. the Bankruptcy Court shall have entered the DIP Orders, and the final DIP Order shall have become a Final Order, and the DIP Facility shall not have been terminated and shall continue to be in full force and effect in accordance with its terms

6. not later than the Footprint Notification Date, the Consenting Secured Lenders shall notify the Debtors that the (i) list of assumed Unexpired Leases, (ii) the list of the rejected Unexpired Leases, (iii) the terms of any amended, modified or otherwise renegotiated Unexpired Leases and (iv) the annualized savings resulting from (i)–(iii) ((i) through (iv) collectively, the "Go-Forward Footprint and Savings") are acceptable to the Consenting Secured Lenders; provided, however, that in the event that Consenting Secured Lenders do not provide such notice on or before the Footprint Notification Date, the Go-Forward Footprint and Savings shall be deemed acceptable to the Consenting Secured Lenders. After the Footprint Notification Date, no additional assumption, rejection or modification of Unexpired Leases shall have occurred without the consent of Consenting Secured Lenders;

7. all governmental and material third party approvals and consents necessary in connection with the Restructuring Transactions shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose materially adverse conditions on the Restructuring Transactions;

8. there shall be no ruling, judgment or order issued by any Governmental Unit making illegal, enjoining or otherwise preventing or prohibiting the consummation of the Restructuring Transactions;

9. the aggregate amount of (i) all Allowed Professional Fee Claims approved by the Bankruptcy Court prior to the Effective Date, plus (ii) amounts sufficient to pay all Professional Fee Claims that have accrued as of the Effective Date but may become Allowed after the Effective Date shall not exceed the Professional Fee Reserve Amount (or such greater amount agreed to by the Consenting Secured Lenders in their sole discretion);

10. the Professional Fee Escrow Account shall have been established and the Professional Fee Reserve Amount shall have been funded in accordance with this Plan; provided, for the avoidance of doubt, that the Professional Fee Escrow Account shall be funded in an amount set forth in the DIP Budget or such other amount to which the Consenting Secured Lenders consent;

11. the Debtors shall have paid in full in Cash all Restructuring Expenses incurred or estimated to be incurred, through the Effective Date; and

12. except as otherwise agreed by the Exit Agent in its sole discretion, the conditions to effectiveness of the Exit Facilities Documents have been satisfied or waived in accordance with the terms thereof, and the Exit Facilities Documents are in full force and effect and binding on all parties thereto.

6.32 Waiver of Conditions Precedent

The Debtors or the Reorganized Debtors, as applicable, with the consent of the Consenting Secured Lenders and the Investor, which consent shall not be unreasonably withheld, conditioned, or delayed (except as to Section 8.1(b) which may be withheld as therein provided), may waive any of the conditions to the Effective Date set forth above at any time, without any notice to parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than a proceeding to confirm the Plan. The failure of the Debtors or Reorganized Debtors, as applicable, to exercise any of the foregoing rights shall not be deemed a waiver of such rights or any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

6.33 Effect of Failure of Conditions Precedent

If the Effective Date does not occur, then upon notice by the Debtors to the Bankruptcy Court, that (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (c) nothing contained in the Plan, the Confirmation Order, or this Disclosure Statement shall: (i) constitute a waiver or release of any Claims, Equity Interests, or Causes of Action; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

ARTICLE VII:

CERTAIN FACTORS TO BE CONSIDERED

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLAIMS THAT ARE IMPAIRED AND ENTITLED TO VOTE SHOULD READ AND CAREFULLY CONSIDER THE FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT.

ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.

7.1 General

The following provides a summary of various important considerations and risk factors associated with the Plan; however, it is not exhaustive. In considering whether to vote to accept or reject the Plan, Holders of Claims should read and carefully consider the factors set forth below, as well as all other information set forth or otherwise incorporated by reference in this Disclosure Statement.

7.2 Risks Relating to the Plan and Other Bankruptcy Law Considerations

(a) A Holder of a Claim or Equity Interest May Object to, and the Bankruptcy Court May Disagree with, the Debtors' Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtors believe that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created 8 Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. However, a Holder of a Claim or Interest could challenge the Debtors' classification. In such an event, the cost of the Chapter 11 Cases and the time needed to confirm the Plan may increase, and there can be no assurance that the Bankruptcy Court will agree with the Debtors' classification. If the Bankruptcy Court concludes that the classifications of Claims and Equity Interests under the Plan do not comply with the requirements of the Bankruptcy Code, the Debtors may need to modify the Plan. Such modification could require re-solicitation of votes on the Plan. The Plan may not be confirmed if the Bankruptcy Court determines that the Debtors' classification of Claims and Equity Interests is not appropriate.

(b) The Debtors May Not Be Able to Satisfy the Voting Requirements for Confirmation of the Plan

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors may seek, as promptly as practicable thereafter, Confirmation. If the Plan does not receive the required support from Class 3, the Debtors may elect to amend the Plan, seek to sell their assets pursuant to section 363 of the Bankruptcy Code, or proceed with liquidation. There can be no assurance that the terms of any such alternative chapter 11 plan or sale pursuant to section 363 of the Bankruptcy Code would be similar or as favorable to the Holders of Allowed Claims as the Restructuring Transactions contemplated by the Plan.

(c) Parties in Interest May Object to the Debtors' Classification of Claims and Interests

Bankruptcy Code section 1122 provides that a debtor may place a claim or an equity interest in a particular class under a plan of reorganization only if such claim or equity interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of Claims and Equity Interests in the Plan complies with the Bankruptcy Code

requirements because the Debtors classified Claims and Equity Interests that are substantially similar to the other Claims and Equity Interests, as applicable, in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

(d) The Bankruptcy Court May Not Confirm the Plan or May Require the Debtors to Re-Solicit Votes with Respect to the Plan

The Debtors cannot assure you that the Plan will be confirmed by the Bankruptcy Court. Section 1129 of the Bankruptcy Code, which sets forth the requirements for confirmation of a plan of reorganization, requires, among other things, a finding by the Bankruptcy Court that the plan of reorganization is "feasible," that all claims and interests have been classified in compliance with the provisions of section 1122 of the Bankruptcy Code, and that, under the plan of reorganization, each holder of a claim or interest within each impaired class either accepts the plan of reorganization or receives or retains cash or property of a value, as of the date the plan of reorganization becomes effective, that is not less than the value such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. With respect to any impaired Classes of Claims and Equity Interests that do not accept the plan or are deemed not to accept the Plan, section 1129(b) requires that the plan be fair and equitable (including, without limitation, with respect to the "absolute priority rule") and not discriminate unfairly with respect to such classes. There can be no assurance that the Bankruptcy Court will conclude that the feasibility test and other requirements of section 1129 of the Bankruptcy Code (including, without limitation, finding that the Plan satisfies the "new value" exception to the absolute priority rule, if applicable) have been met with respect to the Plan. If and when the Plan is filed, there can be no assurance that modifications to the Plan would not be required for Confirmation, or that such modifications would not require a re-solicitation of votes on the Plan.

The Bankruptcy Court could fail to approve this Disclosure Statement and determine that the votes in favor of the Plan should be disregarded. The Debtors then would be required to recommence the solicitation process, which would include re-filing a plan of reorganization and disclosure statement. This process includes a Bankruptcy Court hearing with respect to the required approval of a disclosure statement, followed (after Bankruptcy Court approval) by solicitation of claim and equity interest holder votes for the plan of reorganization, followed by a confirmation hearing at which the Bankruptcy Court will determine whether the requirements for confirmation have been satisfied, including the requisite claim and interest holder acceptances.

If the Plan is not confirmed, the Chapter 11 Cases may be converted into cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on the recoveries of Holders of Claims and Equity Interests and the Debtors' analysis thereof are set forth in the unaudited Liquidation Analysis, attached hereto as **Exhibit B**. The Debtors believe that liquidation under chapter 7 of the Bankruptcy Code would result in, among other things, smaller distributions being made to creditors and interest holders than those provided for in the Plan because of:

- the likelihood that the Debtors' assets would have to be sold or otherwise disposed of in a disorderly fashion over a short period of time rather than reorganizing or selling in a controlled manner, affecting the business as a going concern;

- additional administrative expenses involved in the appointment of a chapter 7 trustee; and

- additional expenses and Claims, some of which would be entitled to priority, that would be generated during the liquidation.

(e) Even if the Debtors Receive All Necessary Acceptances for the Plan to Become Effective, the Debtors May Fail to Meet All Conditions Precedent to Effectiveness of the Plan

Although the Debtors believe that the Effective Date would occur very shortly after the Confirmation Date, there can be no assurance as to such timing.

The Confirmation and Consummation of the Plan are subject to certain conditions that may or may not be satisfied. The Debtors cannot assure you that all requirements for Confirmation and effectiveness required under the Plan will be satisfied. If each condition precedent to Confirmation is not met or waived, the Plan will not be confirmed, and if each condition precedent to Consummation is not met or waived, the Effective Date will not occur. In the event that the Plan is not Confirmed or is not consummated, the Debtors may seek Confirmation of an alternative plan of reorganization.

(f) The Bankruptcy Court May Find the Solicitation of Acceptances Inadequate

Usually, votes to accept or reject a plan of reorganization are solicited after the filing of a petition commencing a chapter 11 case. Nevertheless, a debtor may solicit votes prior to the commencement of a chapter 11 case in accordance with sections 1125(g) and 1126(b) of the Bankruptcy Code and Bankruptcy Rule 3018(b).

Bankruptcy Rule 3018(b) provides that a holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Bankruptcy Code will not be deemed to have accepted or rejected the plan if the court finds after notice and a hearing that the plan was not transmitted in accordance with reasonable solicitation procedures. Section 1126(b) of the Bankruptcy Code provides that a holder of a claim or interest that has accepted or rejected a plan before the commencement of a case under the Bankruptcy Code is deemed to have accepted or rejected the plan if (i) the solicitation of such acceptance or rejection was in compliance with applicable nonbankruptcy law, rule or regulation governing the adequacy of disclosure in connection with such solicitation or (ii) there is no such law, rule, or regulation, and such acceptance or rejection was solicited after disclosure to such holder of adequate information (as defined by section 1125(a) of the Bankruptcy Code). While the Debtors believe that the requirements of sections 1125(g) and 1126(b) of the Bankruptcy Code and Bankruptcy Rule 3018(b) will be met, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

(g) There is a Risk of Loss of Support for the Plan

The Plan is currently supported by its key stakeholders but there is a risk that unforeseen changes in circumstances could result in the loss of support for the Plan by such stakeholders prior to Confirmation and could result in the loss of use of cash collateral by the Debtors under certain circumstances. Any such loss of support could adversely affect the Debtors' ability to confirm and consummate the Plan.

(h) The Bankruptcy Court May Dismiss Some or All of the Chapter 11 Cases

Certain parties in interest may contest the Debtors' authority to commence or prosecute the Chapter 11 Cases. If, pursuant to any such proceeding, the Bankruptcy Court finds that some or all of the Debtors could not commence the Chapter 11 Cases for any reason, the Debtors may be unable to consummate the transactions contemplated by the Plan, and any parties providing exit financing may be unwilling to proceed with such funding. If some or all of the Chapter 11 Cases are dismissed, the Debtors may be forced to cease operations due to insufficient funding or liquidate their business in another forum to the detriment of all parties in interest.

(i) The United States Trustee or Other Parties May Object to the Plan on Account of the Debtors Releases, Third-Party Releases, Exculpations, or Injunction Provisions

Any party in interest, including the United States Trustee for the District of Delaware (the "U.S. Trustee"), could object to the Plan on the grounds that, among other things, the (i) the debtor release contained Article IX of the Plan is to be given without adequate consideration, (ii) the third-party release contained in Article IX of the Plan is not given consensually or in a permissible non-consensual manner, (iii) the exculpation contained in Article IX of the Plan cannot extend to non-estate fiduciaries, or (iv) the injunction contained in Article IX of the Plan is overly broad. In response to such an objection, the Bankruptcy Court could determine that any of these provisions are not valid under the Bankruptcy Code. If the Bankruptcy Court makes such a determination, the Plan could not be confirmed without modifying the Plan to alter or remove the applicable provision. This could result in substantial delay in Confirmation of the Plan or the Plan not being confirmed at all.

(j) The Debtors May Seek To Amend, Waive, Modify, or Withdraw the Plan at Any Time Prior to Confirmation

The Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, and consistent with the terms of the Plan, to amend the terms of the Plan or waive any conditions thereto if and to the extent such amendments or waivers are necessary or desirable to consummate the Plan. The potential impact of any such amendment or waiver on the Holders of Claims and Equity Interests cannot presently be foreseen but may include a change in the economic impact of the Plan on some or all of the proposed Classes or a change in the relative rights of such Classes. All Holders of Claims and Equity Interests will receive notice of such amendments or waivers required by applicable law and the Bankruptcy Court. If, after receiving sufficient acceptances, but prior to Confirmation of the Plan, the Debtors seek to modify the Plan, the previously solicited acceptances will be valid only if (1) all classes of adversely affected creditors and interest holders accept the modification in writing, or (2) the

Bankruptcy Court determines, after notice to designated parties, that such modification was *de minimis* or purely technical or otherwise did not adversely change the treatment of Holders of accepting Claims and Equity Interests or is otherwise permitted by the Bankruptcy Code.

(k) The Cases May Have Material Adverse Effects on the Debtors' Operations

The commencement of the Chapter 11 Cases could adversely affect the relationships between the Debtors and their respective customers, employees, partners, and other parties. While the Debtors expect to continue normal operations during the Chapter 11 Cases, such adverse effects could materially impair the Debtors' operations and adversely affect the Debtors' ability to reorganize and emerge.

(l) The Debtors Cannot Predict the Amount of Time Spent in Bankruptcy for the Purpose of Implementing the Plan, and Lengthy Bankruptcy Cases Could Disrupt the Debtors' Business, as Well as Impair the Prospect for Reorganization on the Terms Contained in the Plan

While the Debtors believe that the Chapter 11 Cases will be of short duration and will not be materially disruptive to the Debtors' business, there can be no assurance as to such timing or lack of disruptiveness. The Chapter 11 Cases could last considerably longer than anticipated if, for example, the certain lease concessions are not obtained, Confirmation is contested or the conditions to Confirmation or Consummation are not satisfied or waived.

Although the Plan is designed to minimize the length of the bankruptcy proceedings, it is impossible to predict with certainty the amount of time that the Debtors may spend in bankruptcy, and the Debtors cannot be certain that the Plan will be confirmed. Even if confirmed on a timely basis, a bankruptcy proceeding to confirm the Plan could itself have an adverse effect on the Debtors' business. There is a risk, due to uncertainty about the Debtors' futures that, among other things:

- customers could move to the Debtors' competitors;
- employees could be distracted from performance of their duties or more easily attracted to other career opportunities; and
- suppliers, vendors, or other business partners could terminate their relationships with the Debtors or demand financial assurances or enhanced performance, any of which could impair the Debtors' future prospects.

A lengthy bankruptcy case also would involve additional expenses and divert the attention of Management from the operation of the Debtors' business.

The disruption that the bankruptcy process would have on the Debtors' business could increase with the length of time it takes to complete the Chapter 11 Cases. If the Debtors are unable to obtain Confirmation of the Plan on a timely basis, because of a challenge to the Plan or otherwise, the Debtors may be forced to operate in bankruptcy for an extended period of time while they try to develop a different plan of reorganization that can be confirmed. A protracted

bankruptcy case could increase both the probability and the magnitude of the adverse effects described above.

(m) Other Parties in Interest Might Be Permitted to Propose Alternative Plans of Reorganization That May Be Less Favorable to Certain of the Debtors' Constituencies Than the Plan

Other parties in interest could seek authority from the Bankruptcy Court to propose an alternative plan of reorganization to the Plan. Under the Bankruptcy Code, a debtor in possession initially has the exclusive right to propose and solicit acceptances of a plan of reorganization for a period of 120 days from the Petition Date. However, such exclusivity period can be reduced or terminated upon order of the Bankruptcy Court. If such an order were to be entered, parties in interest other than the Debtors would then have the opportunity to propose alternative plans of reorganization.

If another party in interest were to propose an alternative plan of reorganization following expiration or termination of the Debtors' exclusivity period, such a plan may be less favorable to existing Holders of Claims and Equity Interests.

(n) The Debtors May Be Unsuccessful in Obtaining First Day Orders To Permit Them to Pay Their Vendors or Employees, or Continue Operating in the Ordinary Course of Business

The Debtors have attempted to address potential concerns of their customers, vendors, employees and other key parties in interest that might arise from the filing of Chapter 11 Cases through a variety of provisions incorporated into or contemplated by the Plan and relief to be sought at the outset of the Chapter 11 Cases, including the Debtors' intention to seek appropriate Bankruptcy Court orders to permit the Debtors to pay amounts owed to various critical vendors and employee obligations consistent with their ordinary course practices. However, there can be no guarantee that the Debtors will be successful in obtaining the necessary approvals of the Bankruptcy Court for such arrangements or for every party in interest the Debtors may seek to treat in this manner, and, as a result, the Debtors' business might suffer.

(o) The Bankruptcy Court May Not Approve the Debtors' Use of Cash Collateral or the DIP Facility

Upon commencing the Chapter 11 Cases, the Debtors will ask the Bankruptcy Court to authorize the Debtors to enter into postpetition financing arrangements and use cash collateral to fund the Chapter 11 Cases and to provide customary adequate protection to the Prepetition Secured Lenders under the applicable prepetition debt documents. Such access to postpetition financing and cash collateral will provide liquidity during the pendency of the Chapter 11 Cases. There can be no assurance that the Bankruptcy Court will approve the DIP Facility or such use of cash collateral on the terms requested. Moreover, if the Chapter 11 Cases take longer than expected to conclude, the Debtors may exhaust their available cash collateral. There is no assurance that the Debtors will be able to obtain an extension of the right to obtain further postpetition financing or use cash collateral, in which case, the liquidity necessary for the orderly functioning of the Debtors' business may be impaired materially.

(p) Certain Claims May Not Be Discharged and Could Have a Material Adverse Effect on the Debtors' Financial Condition and Results of Operations

The Bankruptcy Code provides that the confirmation of a plan of reorganization discharges a debtor from substantially all debts arising prior to confirmation. With few exceptions, all Claims that arise prior to the Debtors' filing of their Petitions or before confirmation of the plan of reorganization (a) would be subject to compromise or treatment under the plan of reorganization or (b) would be discharged in accordance with the terms of the plan of reorganization. Any Claims not ultimately discharged through a plan of reorganization could be asserted against the reorganized entity and may have an adverse effect on the Reorganized Debtors' financial condition and results of operations on a post-reorganization basis.

(q) The Debtors' Restructuring May Adversely Affect the Debtors' Tax Attributes

Under federal income tax law, a corporation is generally permitted to deduct from taxable income net operating losses ("NOLs") carried forward from prior years. Any NOLs remaining upon implementation of the Plan may be able to offset future taxable income for up to 20 years in the case of NOLs arising before 2018 and indefinitely for NOLs arising in taxable years that begin in or after 2018, thereby reducing their future aggregate tax obligations. NOLs arising before 2018 may offset 100% of future taxable income and NOLs arising in taxable years that begin 2018, 2019 or 2020 may be used to offset 100% of future taxable income, unless such NOLs are applied to a taxable year beginning on or after January 1, 2021, in which case such NOLs may be used to offset 80% of taxable income. As of December 31, 2019, the Debtors estimate that they have approximately $30.2 million of federal NOLs. These NOLs provide the potential for material future tax savings or other tax structuring possibilities in these Chapter 11 Cases.

Other significant tax attributes include tax credits and deferred interest deductions. The Debtors believe they have approximately $2.4 million in federal tax credit carryforwards. Generally, tax credit carryforwards may be used to offset federal taxable income of a corporation on a dollar-for-dollar basis. Thus, the Debtors' tax credit carryforwards also present the opportunity for material tax savings or other tax structuring possibilities. The Debtors also estimate that they have approximately $5.4 million of interest deductions that have been deferred under section 163(j) of the Code (the "163(j) Carryforwards"). These 163(j) Carryforwards also provide the potential for material future tax savings.

The Reorganized Debtors' ability to utilize their NOL carryforwards and other tax attributes to offset future taxable income and to reduce federal income tax liability is subject to certain additional requirements and restrictions. In general, such NOLs and other tax attributes could be reduced by the amount of cancellation of debt income ("COD Income") arising in a chapter 11 case under section 108 of the Internal Revenue Code of 1986, as amended (the "Tax Code") or to offset any taxable gains recognized by the Debtors attributable to the Restructuring Transactions. In addition, if the Debtors experience an "ownership change," as defined in section 382 of the Tax Code, then the Reorganized Debtors' ability to use the NOL carryforwards or other tax attributes may be substantially limited, which could have a negative impact on the Reorganized Debtors' financial position and results of operations. Generally, there

is an "ownership change" if one or more stockholders owning 5 percent or more of a corporation's stock have aggregate increases in their ownership of such stock of more than 50 percentage points over the prior three-year period. Following the implementation of a plan of reorganization, it is possible that an "ownership change" may be deemed to occur. Under sections 382 and 383 of the Tax Code, absent an applicable exception, if a corporation undergoes an "ownership change," the amount of its NOLs, tax credit carryforwards and 163(j) Carryforwards that may be utilized to offset future taxable income generally is subject to an annual limitation.

For a detailed description of the effect Consummation of the Plan may have on the Debtors' tax attributes, see the section entitled "Certain U.S. Federal Income Tax Consequences of the Plan to U.S. Holders" below.

7.3 Risks Relating to the Restructuring Transactions

(a) The Debtors Will Be Subject to Business Uncertainties and Contractual Restrictions Prior to the Effective Date

Uncertainty about the effects of the Plan on employees may have an adverse effect on the Debtors. These uncertainties may impair the Debtors' ability to retain and motivate key personnel and could cause customers and others that deal with the Debtors to defer entering into contracts with the Debtors or making other decisions concerning the Debtors or seek to change existing business relationships with the Debtors. In addition, the Debtors are highly dependent on the efforts and performance of their senior management team. If key employees depart because of uncertainty about their future roles and potential complexities of the Restructuring Transactions, the Debtors' business, financial condition, liquidity, and results of operations could be adversely affected.

(b) There Is Inherent Uncertainty in the Debtors' Financial Projections Such that the Reorganized Debtors May Not Be Able to Meet the Projections

The Financial Projections attached hereto as **Exhibit D** includes projections covering the Debtors' operations through [date], 2020. These projections are based on assumptions that are an integral part of the projections, including Confirmation and Consummation of the Plan in accordance with its terms, the anticipated future performance of the Debtors, industry performance, general business and economic conditions, and other matters, many of which are beyond the control of the Debtors and some or all of which may not materialize.

In addition, unanticipated events and circumstances occurring after the date hereof may affect the actual financial results of the Debtors' operations. These variations may be material and may adversely affect the value of the Reorganized Equity Interests and the ability of the Debtors to make payments with respect to their indebtedness. Because the actual results achieved may vary from projected results, perhaps significantly, the Financial Projections should not be relied upon as a guarantee or other assurance of the actual results that will occur.

Further, during the Chapter 11 Cases, the Debtors expect that their financial results will continue to be volatile as restructuring activities and expenses significantly impact the Debtors' consolidated financial statements. As a result, the Debtors' historical financial performance likely will not be indicative of their financial performance after the Petition Date. In addition, if

the Debtors emerge from the Chapter 11 Cases, the amounts reported in subsequent consolidated financial statements may materially change relative to historical consolidated financial statements, including as a result of revisions to the Debtors' operating plans pursuant to a plan of reorganization. The Debtors also may be required to adopt fresh start accounting, in which case their assets and liabilities will be recorded at fair value as of the fresh start reporting date, which may differ materially from the recorded values of assets and liabilities on the Debtors' consolidated balance sheets. The Debtors' financial results after the application of fresh start accounting also may be different from historical trends.

Lastly, the business plan was developed by the Debtors with the assistance of their advisors. There can be no assurances that the Debtors' business plan will not change, perhaps materially, as a result of decisions that the Debtors' boards of directors may make after reevaluating the strategic direction of the Debtors and their business plan. Any deviations from the Debtors' existing business plan would necessarily cause a deviation from the Financial Projections, and could result in materially different outcomes from those projected.

(c) Failure to Implement the Restructuring Transactions and Confirm and Consummate the Plan Could Negatively Impact the Debtors

If the Restructuring Transactions are not implemented, the Debtors may consider other restructuring alternatives available at that time, which may include the filing of an alternative chapter 11 plan, conversion to chapter 7, commencement of section 363 sales of the Debtors' assets, or any other transaction that would maximize value of the Debtors' estates. Any alternative restructuring proposal may be on terms less favorable to Holders of Claims against and Equity Interests in the Debtors than the terms of the Plan.

Any material delay in Confirmation of the Plan, or the Chapter 11 Cases, or the threat of rejection of the Plan by the Bankruptcy Court, would add substantial expense and uncertainty to the process.

If the Plan is not confirmed and consummated, the ongoing business of the Debtors may be adversely affected and there may be various consequences, including:

- the adverse impact to the Debtors' business caused by the failure to pursue other beneficial opportunities due to the focus on the Restructuring Transactions, without realizing any of the anticipated benefits of the Restructuring Transactions;

- the incurrence of substantial costs by the Debtors in connection with the Restructuring Transactions, without realizing any of the anticipated benefits of the Restructuring Transactions;

- the possibility, for the Debtors, of being unable to repay indebtedness when due and payable; and

- the Debtors pursuing non-prepackaged chapter 11 or chapter 7 proceedings, resulting in recoveries for creditors and interest holders that are less than

contemplated under the Plan, or resulting in no recovery for certain creditors and interest holders.

(d) Even if the Restructuring Transactions are Successful, the Debtors Will Continue to Face Risks

The Restructuring Transactions are generally designed to reduce the amount of the Debtors' cash interest expense and improve the Debtors' liquidity and financial and operational flexibility to generate long-term growth. Even if the Restructuring Transactions are implemented, the Debtors will continue to face a number of risks, including certain risks that are beyond the Debtors' control, such as changes in economic conditions, changes in the Debtors' industry, and changes in commodity prices. As a result of these risks and others, there is no guarantee that the Restructuring Transactions will achieve the Debtors' stated goals.

7.4 Risks Relating to the Reorganized Equity Interests

(a) The Value of the Reorganized Equity Interests

Despite the Debtors' best efforts to value the Reorganized Equity Interests, various uncertainties and contingencies, including market conditions, the Debtors' potential inability to implement their business plan or lack of a market for the Equity Interests may cause fluctuations or variations in value of the Reorganized Equity Interests not fully accounted for in the Plan. All of these factors are difficult to predict. Actual market prices of such securities at issuance will depend upon, among other things, prevailing interest rates, conditions in the financial markets and other factors that generally influence the prices of securities. Actual market prices of such securities also may be affected by other factors not possible to predict.

(b) The Plan Exchanges Senior Indebtedness for Junior Securities

If the Plan is confirmed and consummated, certain Holders of Claims will receive the Reorganized Equity Interests, as applicable. Thus, in agreeing to the Plan, certain of such Holders will be consenting to the exchange of their interests in senior debt, which has, among other things, a stated interest rate, a maturity date, and a liquidation preference over equity securities, for the Reorganized Equity Interests, which will be subordinate to all future creditor claims.

(c) A Liquid Trading Market for the Reorganized Equity Interests

The Debtors make no assurance that liquid trading markets for the Reorganized Equity Interests will develop. The liquidity of any market for the Reorganized Equity Interests will depend, among other things, upon the number of Holders of Reorganized Equity Interests, the Reorganized Debtors' financial performance, and the market for similar securities, none of which can be determined or predicted. Therefore, the Debtors cannot assure that an active trading market will develop or, if a market develops, what the liquidity or pricing characteristics of that market will be.

7.5 Risks Relating to the Debtors' Business

(a) The Debtors May Not Be Able To Implement the Business Plan

The Debtors may not achieve their business plan and financial restructuring strategy. In such event, the Reorganized Debtors may be unable to restructure their funded debt or be forced to sell all or parts of their business, develop and implement further restructuring plans not contemplated in this Disclosure Statement, or become subject to further insolvency proceedings.

(b) The Debtors' Financial Projections Are Subject to Inherent Uncertainty Due to the Numerous Assumptions Upon Which They Are Based

The Debtors' Financial Projections are based on numerous assumptions including: timely Confirmation and Consummation pursuant to the terms of the Plan; the anticipated future performance of the Debtors; industry performance; general business and economic conditions; and other matters, many of which are beyond the control of the Debtors and some or all of which may not materialize. In addition, unanticipated events and circumstances occurring subsequent to the date that this Disclosure Statement is approved by the Bankruptcy Court may affect the actual financial results of the Debtors' operations. These variations may be material and may adversely affect the ability of the Debtors to make payments with respect to indebtedness following Consummation. Because the actual results achieved throughout the periods covered by the projections may vary from the projected results, the projections should not be relied upon as an assurance of the actual results that will occur. Except with respect to the projections and except as otherwise specifically and expressly stated, this Disclosure Statement does not reflect any events that may occur subsequent to the date of this Disclosure Statement. Such events may have a material impact on the information contained in this Disclosure Statement. The Debtors do not intend to update the Financial Projections and therefore the Financial Projections will not reflect the impact of any subsequent events not already accounted for in the assumptions underlying the Financial Projections. Further, the COVID-19 pandemic could continue to have an adverse effect on the Debtors' business and results of operations.

(c) The Debtors May Not Be Able to Generate Sufficient Cash to Service All of Their Indebtedness

The Debtors' ability to make scheduled payments on, or refinance their debt obligations, depends on the Debtors' financial condition and operating performance, which are subject to prevailing economic, industry, and competitive conditions and to certain financial, business, legislative, regulatory, and other factors beyond the Debtors' control. The Debtors may be unable to maintain a level of cash flow from operating activities sufficient to permit the Debtors to pay the principal, premium, if any, and interest on their indebtedness, including, without limitation, borrowings in connection with emergence.

(d) Existing and Increased Competition in the Industry or Decreasing Demand for the Debtors' Products May Adversely Affect the Debtors' Business and Results of Operations

The Debtors compete with numerous other companies in the industry that offer similar products and provide similar services as those offered by the Debtors. The Debtors' competitors

may be able to adopt more aggressive pricing and promotional policies, adapt to changes in customer tastes or requirements more quickly, devote greater resources to the design, sourcing, distribution, marketing and sale of their products than the Debtors. In addition, the Debtors' competitors may seek to emulate facets of the Debtors' business strategy, which could result in a reduction of any competitive advantage or special appeal that the Debtors might possess. An inability to overcome potential competitive disadvantages or effectively market the Debtors' products relative to the Debtors' competitors could have an adverse effect on the Debtors' business and results of operations.

(e) The Debtors' Reliance on Suppliers May Impact the Debtors' Operation and Performance

The Debtors rely significantly on their suppliers, including one supplier in particular. Adverse changes in any of the relationships with their suppliers, or the inability to enter into new relationships with suppliers, could negatively impact the Debtors' operations and performance. The Debtors' current arrangements with suppliers may not remain in effect on current or similar terms, and the impact of changes to those arrangements may adversely impact the Debtors' revenue.

(f) The Debtors Must Continue to Retain, Motivate, and Recruit Executives and Other Key Employees, Which May Be Difficult in Light of Uncertainty Regarding the Plan, and Failure To Do So Could Negatively Affect the Debtors' Business

The Reorganized Debtors' success will depend, in part, on the efforts of their executive officers, their management team, and other key employees. These individuals possess sales, marketing, financial, administrative, and technological skills that are critical to the operation of the Debtors' business. If the Reorganized Debtors lose or suffer an extended interruption in the services of one or more of their executive officers, managers, or other key employees, the Reorganized Debtors' business, operational results, and financial condition may be negatively impacted.

(g) The Reorganized Debtors May Be Adversely Affected by Potential Litigation, Including Litigation Arising Out of the Chapter 11 Cases

In the future, the Debtors may become a party to litigation. In general, litigation can be expensive and time consuming to bring or defend against. Such litigation could result in settlements or damages that could significantly affect the Debtors' financial results. It is also possible that certain parties will commence litigation with respect to the treatment of their Claims under the Plan. It is not possible to predict the potential litigation that the Debtors may become party to, nor the final resolution of such litigation. The impact of any such litigation on the Reorganized Debtors' business and financial stability, however, could be material.

7.6 Certain Tax Implications of the Chapter 11 Cases and the Plan

Holders of Allowed Secured Loan Claims should carefully review Article X of this Disclosure Statement, "Certain U.S. Federal Income Tax Consequences," to determine how the

tax implications of the Plan and the Chapter 11 Cases may adversely affect the Debtors, Reorganized Debtors, and Holders of such Claims.

7.7 Disclosure Statement Disclaimer

(a) Information Contained Herein Is Solely for Soliciting Votes

The information contained in this Disclosure Statement is for the purpose of soliciting acceptances of the Plan and may not be relied upon for any other purpose. Specifically, this Disclosure Statement is not legal advice to any Person or Entity. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each reader should consult its own legal counsel and accountant with regard to any legal, tax, and other matters concerning its Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote to accept or reject the Plan and whether to object to Confirmation.

(b) Disclosure Statement May Contain Forward-Looking Statements

This Disclosure Statement may contain "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, as amended. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward-looking terminology such as "may," "expect," "anticipate," "estimate," or "continue," the negative thereof, or other variations thereon or comparable terminology.

The Debtors consider all statements regarding anticipated or future matters, including the following, to be forward-looking statements:

- any future effects as a result of the filing or pendency of the Chapter 11 Cases;
- financing plans;
- competitive position;
- business strategy;
- budgets;
- projected cost reductions;
- projected dividends;
- projected price increases;
- effect of changes in accounting due to recently issued accounting standards;
- projected and estimated liability costs;
- growth opportunities for existing products and services;
- results of litigation;
- disruption of operations;
- contractual obligations;
- projected general market conditions;
- plans and objectives of management for future operations;
- off-balance sheet arrangements;
- the Debtors' expected future financial position, liquidity, results of operations, profitability, and
- cash flows; and growth opportunities for

existing products and services.

Statements concerning these and other matters are not guarantees of the Debtors' future performance. The reader is cautioned that all forward-looking statements are necessarily speculative. The Valuation Analysis, the Liquidation Analysis, the recovery projections, and other information contained herein and attached hereto are estimates only, and the timing and amount of actual distributions to Holders of Allowed Claims and Equity Interests may be affected by many factors that cannot be predicted. Forward-looking statements represent the Debtors' estimates and assumptions only as of the date such statements were made. There are risks, uncertainties, and other important factors that could cause the Debtors' actual performance or achievements to be materially different from those they may project, and the Debtors undertake no obligation to update any such statement.

(c) No Legal, Business, or Tax Advice Is Provided to You by This Disclosure Statement

THIS DISCLOSURE STATEMENT IS NOT LEGAL, BUSINESS, OR TAX ADVICE TO YOU. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Holder of a Claim or Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax, and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation.

(d) No Admissions Made

The information and statements contained in this Disclosure Statement will neither (1) constitute an admission of any fact or liability by any entity (including the Debtors) nor (2) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Allowed Claims or Equity Interests, or any other parties in interest.

(e) Failure to Identify Litigation Claims or Projected Objections

No reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim or Equity Interest is, or is not, identified in this Disclosure Statement. All Parties, including the Debtors, reserve the right to continue to investigate Claims and Equity Interests and file and prosecute objections to Claims and Equity Interests.

(f) No Waiver of Right to Object or Right to Recover Transfers and Assets

The vote by a Holder of a Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Debtors to object to that Holder's Claim, or to bring Causes of Action or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any Claims or Causes of Action of the Debtors or their respective Estates are specifically or generally identified herein.

(g) Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors

Counsel to and other advisors retained by the Debtors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not independently verified the information contained herein.

(h) The Potential Exists for Inaccuracies and the Debtors Have No Duty to Update

The Debtors make the statements contained in this Disclosure Statement as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since such date. Although the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered by the Bankruptcy Court.

(i) No Representations Outside of this Disclosure Statement Are Authorized

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. In deciding whether to vote to accept or reject the Plan, you should not rely upon any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, unless otherwise indicated herein. You should promptly report unauthorized representations or inducements to the counsel to the Debtors and the U.S. Trustee.

ARTICLE VIII:

CONFIRMATION PROCEDURES

The following is a brief summary of the Confirmation process. Holders of Claims and Equity Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult with their own advisors.

8.1 The Confirmation Hearing

Under section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, may hold a hearing to confirm a plan of reorganization. The Debtors will request, on the Petition Date, that the Bankruptcy Court approve the Plan and Disclosure Statement at a joint hearing. The Confirmation Hearing may, however, be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served in accordance with the Bankruptcy Rules, without further notice to

parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. Subject to section 1127 of the Bankruptcy Code, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

Additionally, section 1128(b) of the Bankruptcy Code provides that a party in interest may object to Confirmation. The Debtors, in the same motion requesting a date for the Confirmation Hearing, will request that the Bankruptcy Court set a date and time for parties in interest to file objections to Confirmation of the Plan. An objection to Confirmation of the Plan must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the applicable order of the Bankruptcy Court so that it is actually received on or before the deadline to file such objections as set forth therein.

8.2 Confirmation Standards

Among the requirements for Confirmation of the Plan pursuant to Bankruptcy Code section 1129 are: (i) the Plan is in the "best interests" of holders of Claims; (ii) the Plan is feasible and (iii) the Plan is accepted by all Impaired Classes of Claims, or if rejected by an Impaired Class or if an Impaired Class is deemed to reject, the Plan "does not discriminate unfairly" and is "fair and equitable" as to the Class.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies all of the requirements of Bankruptcy Code section 1129. The Debtors believe that: (i) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11; (ii) the Debtors have complied or will have complied with all of the necessary requirements of chapter 11; and (iii) the Plan has been proposed in good faith.

8.3 Best Interests Test/Liquidation Analysis

As described above, section 1129(a)(7) of the Bankruptcy Code requires that each Holder of an Impaired Claim or Interest either (a) accept the Plan or (b) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. Based on the unaudited Liquidation Analysis attached hereto as **Exhibit B**, the Debtors believe that the value of any distributions if the Chapter 11 Cases were converted to cases under chapter 7 of the Bankruptcy Code would be no greater than the value of distributions under the Plan. As a result, the Debtors believe Holders of Claims and Equity Interests in all Impaired Classes will recover at least as much as a result of Confirmation of the Plan as they would recover through a hypothetical chapter 7 liquidation.

THE LIQUIDATION ANALYSIS HAS BEEN PREPARED SOLELY FOR USE IN THIS DISCLOSURE STATEMENT AND DOES NOT REPRESENT VALUES THAT ARE APPROPRIATE FOR ANY OTHER PURPOSE. NOTHING CONTAINED IN THE LIQUIDATION ANALYSIS IS INTENDED TO BE OR CONSTITUTES A CONCESSION BY OR ADMISSION OF ANY DEBTOR FOR ANY PURPOSE.

8.4 Feasibility

The Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan of reorganization is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtors have analyzed their ability to meet their obligations under the Plan. As part of this analysis, the Debtors have prepared the Financial Projections, which, together with the assumptions on which they are based, are attached hereto as **Exhibit D**. Based on such Financial Projections, the Debtors believe that they will be able to make all payments required under the Plan while conducting ongoing business operations. Therefore, Consummation of the Plan is not likely to be followed by liquidation or the need for further reorganization.

8.5 Confirmation Without Acceptance by All Impaired Classes

The Bankruptcy Code permits confirmation of a plan even if it is not accepted by all impaired classes, as long as (a) the plan otherwise satisfies the requirements for confirmation, (b) at least one impaired class of claims has accepted the plan without taking into consideration the votes of any insiders in such class and (c) the plan is "fair and equitable" and does not "discriminate unfairly" as to any impaired class that has not accepted the plan. These so-called "cram down" provisions are set forth in section 1129(b) of the Bankruptcy Code.

(a) No Unfair Discrimination

The no "unfair discrimination" test applies to Classes of Claims or Equity Interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Equity Interests. The Debtors believe the Plan and the treatment of all Classes of Claims and Equity Interests under the Plan satisfy the foregoing requirements for nonconsensual confirmation.

(b) 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 (or deemed rejecting) class, the test sets different standards depending upon the type of claims or equity interests in the class. A plan is fair and equitable as to a class of unsecured claims that rejects a plan if the plan provides (a) for each holder of a claim included in the rejecting class to receive or retain on account of that claim property that has a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) that the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property at all. A plan is fair and equitable as to a class of interests that rejects a plan if the plan provides (a) for each holder of an interest included in the rejecting class to receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of (i) the allowed amount of any fixed liquidation preference to which such interest holder is entitled, (ii) any fixed redemption price to which such interest holder is entitled, or (iii) the value of such interest; or (b) the holder of any interest that is junior

to the interests of the rejecting class will not receive or retain any property under the plan on account of such junior interest.

The Debtors submit that Confirmation of the Plan pursuant to the "cramdown" provisions of Bankruptcy Code section 1129(b), if necessary, is proper, as the Plan is structured so that it does not "discriminate unfairly" and satisfies the "fair and equitable" requirement. The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests under the Plan satisfy the foregoing requirements for nonconsensual Confirmation of the Plan.

8.6 Alternatives to Confirmation and Consummation of the Plan

If the Plan cannot be confirmed, the Debtors may seek to (a) prepare and present to the Bankruptcy Court an alternative chapter 11 plan for confirmation, (b) effect a merger or sale transaction, including, potentially, a sale of all or substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code, or (c) liquidate their assets and business under chapter 7 of the Bankruptcy Code. If the Debtors were to pursue a liquidation of their assets and business in chapter 7, the Debtors would convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, and a trustee would be appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation would have on creditors' recoveries and the Debtors is described in the unaudited Liquidation Analysis attached hereto as **Exhibit B**.

ARTICLE IX:

IMPORTANT SECURITIES LAW DISCLOSURE

9.1 Reorganized Equity Interests

The Plan provides for the Reorganized Equity Interests to be distributed to Holders of Allowed Secured Loan Claims in accordance with Article III of the Plan.

The Debtors believe that the Reorganized Equity Interests will be "securities," as defined in section 2(a)(1) of the Securities Act, section 101 of the Bankruptcy Code and any applicable Blue Sky Law. The Debtors further believe that the offer and sale of the Equity Interests pursuant to the Plan is, and subsequent transfers of the Equity Interests by the Holders thereof that are not "underwriters" (as defined in section 2(a)(11) of the Securities Act and in the Bankruptcy Code) will be, exempt from federal and state securities registration requirements under the Bankruptcy Code and any applicable state Blue Sky Law as described in more detail below.

9.2 Issuance of the Reorganized Equity Interests

All of the Reorganized Equity Interests issued pursuant to the Plan on account of Claims will be issued without registration under the Securities Act or any similar federal, state, or local law in reliance on Section 1145(a) of the Bankruptcy Code. Section 1145 of the Bankruptcy Code provides that Section 5 of the Securities Act and any state law requirements for the offer and sale of a security do not apply to the offer or sale of stock, options, warrants or other securities by a debtor if (a) the offer or sale occurs under a plan of reorganization, (b) the

recipients of the securities hold a claim against, an interest in, or claim for administrative expense against, the debtor, and (c) the securities are issued in exchange for a claim against or interest in a debtor or are issued principally in such exchange or partly for cash and property. The Debtors believe that the offer and sale of the Equity Interests in exchange for the Claims described above satisfy the requirements of section 1145(a) of the Bankruptcy Code. Accordingly, no registration statement will be filed under the Securities Act or any state securities laws. Recipients of the Equity Interests are advised to consult with their own legal advisors as to the availability of any exemption from registration under the Securities Act and any applicable state Blue Sky Law. As discussed below, the exemptions provided for in section 1145(a) do not apply to an entity that is deemed an "underwriter" as such term is defined in section 1145(b) of the Bankruptcy Code.

9.3 Resales of the Reorganized Equity Interests

Section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as one who, except with respect to "ordinary trading transactions" of an entity that is not an "issuer": (a) purchases a claim against, interest in, or claim for an administrative expense in the case concerning, the debtor, if such purchase is with a view to distribution of any security received or to be received in exchange for such claim or interest; (b) offers to sell securities offered or sold under a plan for the holders of such securities; (c) offers to buy securities offered or sold under a plan from the holders of such securities, if such offer to buy is (i) with a view to distribution of such securities and (ii) under an agreement made in connection with the plan, with the consummation of the plan, or with the offer or sale of securities under the plan; or (d) is an issuer of the securities within the meaning of section 2(a)(11) of the Securities Act. In addition, a person who receives a fee in exchange for purchasing an issuer's securities could also be considered an underwriter within the meaning of section 2(a)(11) of the Securities Act.

The definition of an "issuer" for purposes of whether a person is an underwriter under section 1145(b)(1)(D) of the Bankruptcy Code, by reference to section 2(a)(11) of the Securities Act, includes as "statutory underwriters" all "affiliates," which are all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. The reference to "issuer," as used in the definition of "underwriter" contained in section 2(a)(11) of the Securities Act, is intended to cover "Controlling Persons" of the issuer of the securities. "Control," as defined in rule 405 of the Securities Act, means to possess, directly or indirectly, the power to direct or cause to direct management and policies of a Person, whether through owning voting securities, contract, or otherwise. Accordingly, an officer or director of a reorganized debtor or its successor may be deemed to be a "controlling person" of the debtor or successor under a plan of reorganization, particularly if the management position or directorship is coupled with ownership of a significant percentage of the reorganized debtor's or its successor's voting securities.

Resales of the Reorganized Equity Interests offered, issued and distributed pursuant to the Plan in reliance on Section 1145 of the Bankruptcy Code by entities deemed to be "underwriters" are not exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law.

Under certain circumstances, Holders of Reorganized Equity Interests, issued and distributed pursuant to the Plan in reliance on Section 1145 of the Bankruptcy Code who are

deemed to be "underwriters" may be entitled to resell their Reorganized Equity Interests pursuant to the limited safe harbor resale provisions of Rule 144 of the Securities Act.

Generally, Rule 144 of the Securities Act would permit the public sale of securities received by such Person if the required holding period has been met and, under certain circumstances, current information regarding the issuer is publicly available and volume limitations, manner of sale requirements and certain other conditions are met. Whether any particular Person would be deemed to be an "underwriter" with respect to the Reorganized Equity Interests would depend upon various facts and circumstances applicable to that Person. Accordingly, the Debtors express no view as to whether any Person would be deemed an "underwriter" with respect to the Reorganized Equity Interests and, in turn, whether any Person may freely resell Reorganized Equity Interests. However, the Debtors do not intend to make publicly available the requisite information regarding the Debtors, and, as a result, after the holding period, Rule 144 will not be available for resales of the Reorganized Equity Interests by Persons deemed to be underwriters or otherwise.

Accordingly, the Debtors recommend that potential recipients of the Reorganized Equity Interests consult their own counsel concerning their ability to freely trade such securities without compliance with the federal law and any applicable state Blue Sky Law. In addition, these securities will not be registered under the Exchange Act or listed on any national securities exchange. The Debtors make no representation concerning the ability of a person to dispose of the Reorganized Equity Interests.

ARTICLE X

CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

10.1 Tax Background

The following discussion summarizes certain United States ("U.S.") federal income tax consequences of the implementation of the Plan to the Debtors, the Reorganized Debtors, and certain U.S. Holders (which, solely for purposes of this discussion, means the beneficial owners for U.S. federal income tax purposes) of certain Claims entitled to vote on the Plan. This summary is based on the Tax Code, the U.S. Treasury Regulations promulgated thereunder (the "Treasury Regulations"), judicial decisions and published administrative rules, and pronouncements of the Internal Revenue Service (the "IRS"), all as in effect on the date hereof (collectively, "Applicable Tax Law"). Changes in the rules or new interpretations of the rules may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. The Debtors have not requested, and do not intend to request, any ruling or determination from the IRS or any other taxing authority with respect to the tax consequences discussed herein, and the discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This summary does not address foreign, state, local, gift, or estate tax consequences of the Plan, nor does it purport to address all aspects of U.S. federal income taxation that may be relevant to a Holder in light of its individual circumstances or to a Holder that may be subject to special tax rules (such as Persons who are related to the Debtors within the meaning of the Tax Code, broker-dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, pass-through entities, beneficial owners of pass-through entities, trusts, governmental authorities or agencies, dealers and traders in securities, subchapter S corporations, Persons who hold Claims or who will hold consideration received under the Plan as part of a straddle, hedge, conversion transaction, or other integrated investment, persons using a mark-to-market method of accounting, Holders that are not U.S. Holders (as defined below), and Holders of Claims who are themselves in bankruptcy). Furthermore, this summary assumes that a Holder of a Claim holds only Claims in a single Class and holds a Claim only as a "capital asset" (within the meaning of Section 1221 of the Tax Code). This summary also assumes that the various debt and other arrangements to which any of the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. This summary does not discuss differences in tax consequences to Holders of Claims that act or receive consideration in a capacity other than any other Holder of a Claim of the same Class or Classes, and the tax consequences for such Holders may differ materially from that described below. This summary does not address the U.S. federal income tax consequences to Holders (a) whose Claims are Unimpaired or otherwise entitled to payment in full in Cash under the Plan, or (b) that are deemed to reject the Plan.

For purposes of this discussion, a "U.S. Holder" is a Holder of a Claim that is: (a) an individual citizen or resident of the United States for U.S. federal income tax purposes; (b) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the U.S., any state thereof or the District of Columbia; (c) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (d) a trust (i) if a court within the U.S. is able to exercise primary jurisdiction over the trust's administration and one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Tax Code) have authority to control all substantial decisions of the trust, or (ii) that has a valid election in effect under applicable Treasury Regulations to be treated as a "United States person" (within the meaning of Section 7701(a)(30) of the Tax Code).

If a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes) is a Holder of a Claim, the tax treatment of a partner (or other beneficial owner) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the partner (or other beneficial owner) and the entity. Partners (or other beneficial owners) of partnerships (or other pass-through entities) that are Holders of Claims should consult their tax advisors regarding the U.S. federal income tax consequences of the Plan.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR TAX ADVISORS AS TO THE FEDERAL, STATE, LOCAL, AND NON-U.S. INCOME, ESTATE, AND OTHER TAX CONSEQUENCES OF THE PLAN.

10.2 Certain U.S. Federal Income Tax Consequences to the Debtors and Reorganized Debtors

(a) Tax Consequences to the Debtors

The tax consequences of the implementation of the Plan to the Debtors will differ depending on whether the Restructuring Transactions are structured as a taxable sale of the assets or stock of any Debtor (a "Taxable Transaction") or as a recapitalization of the Debtors (a "Recapitalization Transaction"). It has not yet been determined how the Restructuring Transactions will be structured under Applicable Tax Law. Such decision will depend on, among other things, whether assets being sold (or deemed to be sold) pursuant to any Taxable Transaction have an aggregate fair market value in excess of their aggregate tax basis (i.e., a "built-in gain") or an aggregate fair market value less than their aggregate tax basis (i.e., a "built-in loss"), the amount of the expected reduction in the aggregate tax basis of such assets by excluded COD Income, whether sufficient tax attributes are available to offset any such built-in gain, future tax benefits associated with a step-up (if any) in the tax basis of the Debtors' assets as a result of a Taxable Transaction, whether any excess loss account of deferred intercompany transaction would be triggered, and the amount and character of any losses with respect to the stock of any applicable Debtor, in each case for U.S. federal, state, and local income tax purposes.

If the transactions undertaken pursuant to the Plan are structured as a Taxable Transaction, the Debtors would realize gain or loss upon the transfer (or deemed transfer) in an amount equal to the difference between the fair market value of the assets transferred (or deemed to be transferred) by the Debtors and the Debtors' tax basis in such assets. Realized gains, if any, may be offset by current-year losses and deductions, which may include interest deductions that may be (or become) available under Section 163(j) of the Tax Code, and losses that may be available with respect to the stock of the Debtors; provided that any such gain that is ordinary in nature may not be offset by capital losses. Any taxable gain remaining after such offsets would result in a cash tax obligation. The Debtors do not anticipate utilizing a Taxable Transaction if it would give rise to any material cash tax obligation; however, because the amount of gain recognized and availability of losses are subject to some uncertainty, the Debtors cannot be certain that only an immaterial cash tax liability would arise in a Taxable Transaction. If a Reorganized Debtor purchases (or is deemed to purchase) assets or stock of any Debtor pursuant to a Taxable Transaction, the Reorganized Debtor will take a fair market value basis in the transferred assets or stock. However, if a Taxable Transaction involves a purchase of stock, the Debtor whose stock is transferred will retain its basis in its assets, unless the Debtors or Reorganized Debtors timely make (and are eligible to make) certain elections provided for under the Tax Code to treat such stock purchase as the purchase of the Debtors' assets.

As of December 31, 2019, the Debtors estimate that they have approximately $30.2 million of federal losses NOLs and $2.4 million of federal tax credit carryforwards. The Debtors believe that they are currently generating additional tax losses, which will ultimately increase the Debtors' NOLs and other tax attributes. Any NOLs remaining upon implementation of the Plan may be able to offset future taxable income for up to 20 years in the case of NOLs arising in taxable years that began before 2018 and indefinitely for NOLs arising in taxable years that begin in or after 2018, thereby reducing its future aggregate tax obligations. NOLs arising in

taxable years that begin in 2018, 2019, or 2020 may also be used to offset 100% of future taxable income, unless the NOL is applied to a taxable year beginning on or after January 1, 2021, in which case the NOL may be used to offset 80% of taxable income. Any tax credit carryforwards remaining upon implementation of the Plan may be able to offset future taxable income for up to 20 years. As discussed below, however, the Debtors' NOLs and tax credit carryforwards could be significantly reduced upon implementation of the Plan.

The Debtors also estimate they have approximately $5.4 million of 163(j) Carryforwards. A portion of the 163(j) Carryforwards may be available to offset taxable gain in a Taxable Transaction. In a Taxable Transaction, the Reorganized Debtors will not be able to utilize any remaining 163(j) Carryforwards.

If the transactions contemplated by the Plan are structured as a Recapitalization Transaction, the Debtors would not be expected to recognize any taxable gain or loss as a result of the implementation of the Plan. Subject to the discussion below regarding attribute reduction as a result of COD Income, the Debtors' tax basis in its assets would remain unchanged. Further, the 163(j) Carryforwards may remain available for use following the implementation of the Plan, subject to the discussion below regarding Section 382 of the Tax Code.

(b) Cancellation of Indebtedness Income and Reduction of Tax Attributes

In general, absent an exception, the Debtors will realize and recognize COD Income upon satisfaction of their outstanding indebtedness for total consideration with a value less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied, over (b) the amount of Cash and the fair market value (or adjusted issue price, in the case of debt instruments) of other consideration received in satisfaction of such indebtedness at the time of the exchange.

Under Section 108 of the Tax Code, the Debtors will not be required to include any amount of COD Income in gross income if the Debtors are under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of debt occurs pursuant to that proceeding. Instead, as a consequence of such exclusion, the Debtors must reduce certain of their tax attributes by the amount of COD Income that they excluded from gross income pursuant to Section 108 of the Tax Code. Such reduction in tax attributes occurs only after the tax for the year of the debt discharge has been determined. In general, tax attributes will be reduced in the following order: (a) NOLs and NOL carryforwards, (b) general business credit carryovers, (c) minimum tax credit carryovers, (d) capital loss carryovers, (e) tax basis in assets (but not below the amount of liabilities to which the applicable Reorganized Debtor will remain subject immediately after the discharge) as further described in the following two paragraphs, (f) passive activity loss and credit carryovers, and (g) foreign tax credit carryovers. Alternatively, the Debtors may elect first to reduce the basis of their depreciable assets pursuant to Section 108(b)(5) of the Tax Code. Although not free from doubt, in the absence of contrary guidance, it appears to be the case that the 163(j) Carryforwards are not subject to reduction under these rules. The reduction in tax attributes occurs only after the taxable income (or loss) for the taxable year of the debt discharge has been determined and any excess COD Income over the amount of available tax attributes generally will not give rise to U.S. federal income tax and generally will have no other U.S. federal income tax impact.

Treasury Regulations applicable to an affiliated group of corporations, like the Debtors, provide that the tax attributes of each member that is excluding COD Income are first subject to reduction before reducing tax attributes of other members of such group. To the extent the debtor member's tax basis in stock of a lower-tier member of the affiliated group is reduced, a "look through rule" requires that a corresponding reduction be made to the tax attributes of the lower-tier member. If a debtor member's excluded COD Income exceeds its tax attributes, the excess COD Income is applied to reduce certain remaining consolidated tax attributes of the affiliated group.

The amount of COD Income, if any, and, accordingly, the amount of tax attributes required to be reduced, will depend on the fair market value (or, in the case of debt instruments, the adjusted issue price) of various forms of consideration to be received by Holders of Claims under the Plan. These amounts cannot be known with certainty until after the Effective Date and, as a result, the total amount of attribute reduction as a result of the Plan cannot be determined until after the Effective Date.

The attribute reduction rules described above would not be expected to apply to the tax basis of the assets of the Reorganized Debtors if a Taxable Transaction is consummated.

(1) Limitation on NOLs, Tax Credit Carryforwards, 163(j) Carryforwards and Other Tax Attributes

After giving effect to the reduction in tax attributes pursuant to excluded COD Income described above, the Reorganized Debtors' ability to use any remaining tax attributes post-emergence will be subject to certain limitations under Sections 382 and 383 of the Tax Code.

Under Sections 382 and 383 of the Tax Code, if the Debtors undergo an "ownership change," the amount of any remaining NOLs and NOL carryforwards, tax credit carryforwards, 163(j) Carryforwards, net unrealized built-in losses, and possibly certain other attributes (potentially including losses and deductions that have accrued economically but are unrecognized as of the date of the ownership change) of the Debtors allocable to periods prior to the Effective Date (collectively, the "Pre-Change Losses") that may be utilized to offset future taxable income generally are subject to an annual limitation. For this purpose, if a corporation (or consolidated group) has a net unrealized built-in loss at the time of an ownership change (taking into account most assets and items of "built-in" income and deductions), then generally built-in losses (including amortization or depreciation deductions attributable to such built-in losses) recognized during the following five years (up to the amount of the original net unrealized built-in loss) will be treated as Pre-Change Losses and similarly will be subject to the annual limitation. In general, a corporation's (or consolidated group's) net unrealized built-in loss will be deemed to be zero unless it is greater than the lesser of (a) $10.0 million, or (b) 15% of the fair market value of its assets (with certain adjustments) before the ownership change.

The rules of Sections 382 and 383 of the Tax Code are complicated, but as a general matter, the Debtors anticipate that it is likely that the issuance of Reorganized Equity Interests pursuant to the Plan will result in an "ownership change" of the Debtors for these purposes, in which case the Reorganized Debtors' use of the Pre-Change Losses will be subject to limitation unless an exception to the general rules of Section 382 of the Tax Code applies.

Section 382 is not expected to be relevant to the tax attributes of a Reorganized Debtor immediately after emergence in the event that the transactions undertaken pursuant to the plan are structured as a Taxable Transaction involving the acquisition of the assets of the Debtors.

A. General Section 382 Annual Limitation

In general, the amount of the annual limitation to which a corporation that undergoes an "ownership change" would be subject is equal to the product of (a) the fair market value of the stock of the corporation immediately before the "ownership change" (with certain adjustments), and (b) the "long-term tax-exempt rate" (which is the highest of the adjusted federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the ownership change occurs, currently .85% for October, 2020). The annual limitation may be increased to the extent that the Reorganized Debtors recognize certain built-in gains in their assets during the five-year period following the ownership change, or are treated as recognizing built-in gains pursuant to the safe harbors provided in IRS Notice 2003-65, as modified by IRS Notice 2018-30, to the extent that such safe harbors continue to be available pending the finalization of proposed regulations that would curtail such safe harbors. Section 383 of the Tax Code applies a similar limitation to capital loss carryforwards and tax credits. Any unused limitation may be carried forward, thereby increasing the annual limitation in the subsequent taxable year. As discussed below, however, special rules may apply in the case of a corporation that experiences an ownership change as the result of a bankruptcy proceeding.

Notwithstanding the rules described above, if subsequent to an ownership change, a debtor corporation and its subsidiaries do not continue the debtor corporation's historic business or use a significant portion of its historic business assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero.

B. Special Bankruptcy Exceptions

Special rules may apply in the case of a corporation that experiences an "ownership change" as a result of a bankruptcy proceeding. An exception to the foregoing annual limitation rules generally applies when shareholders and so-called "qualified creditors" of a debtor corporation in chapter 11 receive, in respect of their Claims, at least 50% of the vote and value of the stock of the debtor corporation (or a controlling corporation if also in chapter 11) as reorganized pursuant to a confirmed chapter 11 plan (the "382(l)(5) Exception"). If the requirements of the 382(l)(5) Exception are satisfied, a debtor's Pre-Change Losses would not be limited on an annual basis, but, instead, NOLs and 163(j) Carryforwards would be reduced by the amount of any interest deductions claimed by the debtor during the three taxable years preceding the effective date of the plan of reorganization, and during the part of the taxable year prior to and including the effective date of the plan of reorganization, in respect of all debt converted into stock pursuant to the reorganization. If the 382(l)(5) Exception applies and the Reorganized Debtors undergo another "ownership change" within two years after the Effective Date, then the Reorganized Debtors' Pre-Change Losses thereafter would be effectively eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable to a corporation in bankruptcy (either because the debtor corporation does not qualify for it or the debtor corporation otherwise elects

not to utilize the 382(l)(5) Exception), another exception will generally apply (the "382(l)(6) Exception"). Under the 382(l)(6) Exception, the annual limitation will be calculated by reference to the lesser of (a) the value of the debtor corporation's new stock (with certain adjustments) immediately after the ownership change or (b) the value of such debtor corporation's assets (determined without regard to liabilities) immediately before the ownership change. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an "ownership change" to be determined before the events giving rise to the change. The 382(l)(6) Exception also differs from the 382(l)(5) Exception in that, under it, a debtor corporation is not required to reduce its NOL carryforwards by the amount of interest deductions claimed within the prior three-year period, and a debtor corporation may undergo a change of ownership within two years without automatically triggering the elimination of its Pre-Change Losses. The resulting limitation would be determined under the regular rules for ownership changes.

The availability to the Reorganized Debtors of either the 382(l)(5) Exception or the 382(l)(6) Exception will depend on the structure of the transactions undertaken pursuant to the Plan.

(c) Other Income and Uncertainty of Debtors' Tax Treatment

The Debtors may incur other income for U.S. federal income tax purposes in connection with the Plan (including if the Debtors consummate Restructuring Transactions that are different from the transactions that are currently contemplated and described herein) that, unlike COD Income, generally will not be excluded from the Debtors' U.S. federal taxable income. In addition, the U.S. federal income tax considerations relating to the Plan are complex and subject to uncertainties. No assurance can be given that the IRS will agree with the Debtors' interpretations of the tax rules applicable to, or tax positions taken with respect to, the transactions undertaken to effect the Plan. If the IRS were to successfully challenge any such interpretation or position, the Debtors may recognize additional taxable income for U.S. federal income tax purposes, and the Debtors may not have sufficient deductions, losses or other attributes for U.S. federal income tax purposes to fully offset such income.

10.3 Certain U.S. Federal Income Tax Consequences of the Plan to U.S. Holders

The following discussion assumes that the Debtors will undertake the Restructuring Transactions currently contemplated by the Plan. Holders of Claims are urged to consult their tax advisors regarding the tax consequences of the Plan based on their individual circumstances.

The U.S. federal income tax consequences of the Plan to U.S. Holders of certain Claims will depend, in part, on whether the transactions undertaken pursuant to the Plan constitute, for U.S. federal income tax purposes, (a) a Taxable Transaction, or (b) a Recapitalization Transaction, The U.S. federal income tax consequences to U.S. Holders of certain Claims may further depend on (x) whether the Claims surrendered constitute "securities" for U.S. federal income tax purposes, and (y) whether the Debtor against which such Claims are asserted is the same entity that is issuing the consideration under the Plan (or, otherwise, an entity that is a "party to a reorganization" with the Debtor against which such Claims were asserted).

In a Taxable Transaction, the Debtors generally do not anticipate that the entity issuing consideration under the Plan will be the same entity as the Debtor against which a Claim is asserted (or an entity that is a "party to a reorganization" with such Debtor). As a result, the Debtors do not anticipate that "recapitalization" treatment (within the meaning of section 368(a)(1)(E) of the Code) will be applicable in a Taxable Transaction. Such treatment may, however, be applicable in a Recapitalization Transaction.

Neither the Code nor the Treasury Regulations promulgated pursuant thereto defines the term "security." Whether a debt instrument constitutes a "security" for U.S. federal income tax purposes is determined based on all the relevant facts and circumstances, but most authorities have held that the length of the term of a debt instrument at initial issuance is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof with respect to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into an equity interest of the obligor, whether payments of interest are fixed, variable, or contingent, and whether such payments are made on a current basis or accrued.

The character of any gain or loss recognized by a U.S. Holder as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim in such Holder's hands, whether the Claim constitutes a capital asset in the hands of the Holder, whether the Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim. If recognized gain is capital gain, it generally would be long term capital gain if the Holder held its Claim for more than one year at the time of the exchange. The deductibility of capital losses is subject to certain limitations as discussed below.

(a) Tax Consequences of the Consummation of the Plan.

(1) Treatment of Holders if the Allowed Secured Loan Claims are Treated as Securities

If the Allowed Secured Loan Claims are treated as securities then the exchange of such Claims should be treated as a "recapitalization" within the meaning of section 368(a)(1)(E) of the Code and should be partially or fully tax-free pursuant to Sections 354 and 356 of the Code.

A U.S. Holder of such a Claim should recognize gain (but not loss), to the extent of the lesser of (a) the amount of gain realized from the exchange, which should be equal to (i) the sum of (A) any Cash received, and (B) the fair market value (or issue price, in the case of debt instruments) of any non-Cash consideration minus (ii) the U.S. Holder's adjusted basis, if any, in the Claim, and (b) the sum of (i) any Cash received, and (ii) the fair market value (or issue price, in the case of debt instruments) of any non-Cash consideration that constitutes "other property" that is not permitted to be received under section 354 and 356 of the Code without recognition of gain.

With respect to non-Cash consideration that is treated as a "stock or security" of Reorganized Debtor, such U.S. Holder should obtain a tax basis in such consideration, equal to (a) the tax basis of the Claim surrendered, minus (b) the Cash and "other property" received, plus (c) the gain recognized (if any). The holding period for such non-Cash consideration should include the holding period for the exchanged Claims.

With respect to non-Cash consideration that is not treated as a "stock or security" of Reorganized Debtor, U.S. Holders should obtain a tax basis in such property equal to the property's fair market value (or issue price, in the case of debt instruments) as of the date such consideration is distributed to the U.S. Holder. The holding period for any such property should begin on the day following the receipt of such property.

For the treatment of the exchange to the extent a portion of the consideration received is allocable to accrued but unpaid interest, OID or market discount (which differs from the treatment described above), see the sections entitled "Accrued Interest (and OID)" and "Market Discount" below.

(2) Treatment of Holders if the Allowed Secured Loan Claims Are Not Treated as Securities

If the Allowed Secured Loan Claims are not treated as securities then the exchange of such Claims should be treated as a taxable exchange pursuant to section 1001 of the Code.

A U.S. Holder of an Allowed Secured Loan Claim who is subject to this treatment should recognize gain or loss equal to (a) the sum of (i) any Cash received, (ii) the fair market value (or issue price, in the case of debt instruments) of any non-Cash consideration, minus (b) the Holder's adjusted tax basis in its Allowed Secured Loan Claim.

Such U.S. Holder should obtain a tax basis in the non-Cash consideration received equal to the consideration's fair market value (or issue price, in the case of debt instruments) as of the date such consideration is distributed to the U.S. Holder. The holding period for any such property should begin on the day following the receipt of such consideration.

For the treatment of the exchange to the extent a portion of the consideration received is allocable to accrued but unpaid interest, OID or market discount (which differs from the treatment described above), see the sections entitled "Accrued Interest (and OID)" and "Market Discount" below.

(3) Accrued Interest and (OID)

A portion of the consideration received by U.S. Holders of an exchanged Claim may be attributable to accrued but unpaid interest (or OID) on such Claims. Such amount should be taxable to that U.S. Holder as ordinary interest income if such accrued interest has not been previously included in the Holder's gross income for U.S. federal income tax purposes. Conversely, U.S. Holders of Claims may be able to recognize a deductible loss to the extent that any accrued interest on the Claims was previously included in the Holder's gross income but was not paid in full by the Debtors. Such loss may be ordinary, but the tax law is unclear on this point. The tax basis of any non-cash consideration treated as received in satisfaction of accrued but unpaid interest (or OID) should equal the amount of such accrued but unpaid interest (or

OID). The holding period for such non-cash consideration should begin on the day following the receipt of such consideration.

If the fair market value of the consideration received by a U.S. Holder pursuant to the Plan is not sufficient to fully satisfy all principal and interest on Allowed Claims, the extent to which such consideration will be attributable to accrued but unpaid interest is unclear. Under the Plan, the aggregate consideration to be distributed to U.S. Holders of Allowed Claims in each Class will be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. The IRS could take the position that the consideration received by the U.S. Holder should be allocated in some way other than as provided in the Plan. Holders of Claims should consult their respective tax advisors regarding the proper allocation of the consideration received by them under the Plan between principal and accrued but unpaid interest.

HOLDERS OF CLAIMS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE PROPER ALLOCATION OF THE CONSIDERATION RECEIVED BY THEM UNDER THE PLAN AND THE U.S. FEDERAL INCOME TAX TREATMENT OF ACCRUED BUT UNPAID INTEREST.

(4) Market Discount

Under the "market discount" provisions of the Tax Code, some or all of any gain realized by a U.S. Holder of a Claim may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt instruments constituting the exchanged Claim. In general, a debt instrument is considered to have been acquired with "market discount" if it is acquired other than on original issue and if the U.S. Holder's adjusted tax basis in the debt instrument is less than (a) the sum of all remaining payments to be made on the debt instrument, excluding "qualified stated interest" or (b) in the case of a debt instrument issued with OID, its adjusted issue price, in each case, by at least a de minimis amount (equal to 0.25 percent of the sum of all remaining payments to be made on the debt instrument, excluding qualified stated interest, multiplied by the number of remaining complete years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of a Claim that had been acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while such Claim was considered to be held by the Holder (unless the Holder elected to include market discount in income as it accrued). To the extent that the Claims that were acquired with market discount are exchanged in a reorganization or other taxfree transaction for other property (as may occur pursuant to the Recapitalization Transaction), any market discount that accrued on the Claims (i.e., up to the time of the exchange) but was not recognized by the U.S. Holder is carried over to the property received therefor and any gain recognized on the subsequent sale, exchange, redemption, or other disposition of the property is treated as ordinary income to the extent of the accrued, but not recognized, market discount with respect to the exchanged debt instrument.

U.S. federal income tax laws enacted in December 2017 added section 451(b) of the Code. This new provision generally would require accrual method U.S. Holders that prepare an

"applicable financial statement" (as defined in section 451(b)(3) of the Code) to include certain items of income (such as market discount) no later than the time such amounts are reflected on such a financial statement. The application of this rule to income of a debt instrument with market discount is effective for taxable years beginning after December 31, 2018. However, the IRS issued Proposed Treasury Regulation Section 1.451-3 in November 2019, on which taxpayers generally may rely, confirming that taxpayers may continue to defer income (including market discount income) for tax purposes until there is a payment or sale at a gain. Accordingly, although market discount may have to be included in income currently as it accrues for financial accounting purposes, taxpayers may continue to defer the income for tax purposes. U.S. Holders are urged to consult their own tax advisors concerning the application of the market discount rules to their Claims.

(5) Issue Price

The consideration received by Holders of Allowed Secured Loan Claims, which may include some combination of the Reorganized Equity Interests and Exit Facility Loans, collectively, would likely be treated as an investment unit issued in exchange for the Allowed Secured Loan Claims to the extent any Exit Facility Loans are received on account of such Claims. In such case, the issue price of the Exit Facility Loans for purposes of the analysis herein will depend, in part, on the issue price of the investment unit, and the respective fair market values of the elements of consideration that compose the investment unit. The issue price of an investment unit is generally determined in the same manner as the issue price of a debt instrument. As a result, the issue price of the investment unit will depend on whether the investment unit is considered, for U.S. federal income tax purposes and applying rules similar to those applied to debt instruments, to be traded on an established securities market. In general, a debt instrument will be treated as traded on an established securities market if, at any time during the 31-day period ending 15 days after the issue date, (a) a "sales price" for an executed purchase of the debt instrument appears on a medium that is made available to issuers of debt instruments, persons that regularly purchase or sell debt instruments, or persons that broker purchases or sales of debt instruments, (b) a "firm" price quote for the debt instrument is available from at least one broker, dealer or pricing service for property, and the quoted price is substantially the same as the price for which the person receiving the quoted price could purchase or sell the property, or (c) there are one or more "indicative" quotes available from at least one broker, dealer or pricing service for property. Debt issues under $100.0 million, including the Exit Facility Loans, are not treated as traded for these purposes.

If the investment unit is considered to be traded on an established market, the issue price of the investment unit would be the fair market value of the investment unit on the date the Exit Facility Loans are issued. The law is unclear on whether an investment unit is treated as publicly traded if some, but not all, elements of such investment unit are publicly traded. If the investment unit is not publicly traded on an established market, but the Allowed Secured Loan Claims are publicly traded on an established market, the issue price of the investment unit may then be determined by reference to the fair market value of the Allowed Secured Loan Claims on the date the investment unit is issued. If neither the investment unit nor the Allowed Secured Loan Claims are publicly traded on an established market, then the issue price of the Exit Facility Loans would generally be determined under sections 1273(b)(4) or 1274 of the Code, as applicable. Assuming either the investment unit or the Allowed Secured Loan Claims are publicly traded, the issue price of an investment unit is allocated among the elements of

consideration making up the investment unit based on their relative fair market values, with such allocation determining the issue price of the Exit Facility Loans.

An issuer's application of these rules is binding on all holders unless a holder explicitly discloses a different allocation on a timely filed income tax return for the taxable year that includes the acquisition date of the relevant debt instrument.

(6) Limitation of Use of Capital Losses

U.S. Holders who recognize capital losses as a result of the distributions under the Plan will be subject to limits on their use of capital losses. For non-corporate U.S. Holders, capital losses may be used to offset any capital gains (without regard to holding periods) plus ordinary income to the extent of the lesser of (a) $3,000 ($1,500 for married individuals filing separate returns) or (b) the excess of the capital losses over the capital gains. Non-corporate U.S. Holders may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income for an unlimited number of years. For corporate U.S. Holders, losses from the sale or exchange of capital assets may only be used to offset capital gains. U.S. Holders who have more capital losses than can be used in a tax year may be allowed to carry over the excess capital losses for use in succeeding tax years. Corporate U.S. Holders may only carry over unused capital losses for the five years following the capital loss year, but are allowed to carry back unused capital losses to the three years preceding the capital loss year.

(b) Consequences of Holding and Disposing of the Exit Facility Loans

(1) Effect of Certain Contingencies

This discussion assumes that the Reorganized Debtor will take the position that the loans issued under the Exit Facility Credit Agreement (the "Exit Facility Loans") to Holders of Allowed Secured Loan Claims in exchange for their Allowed Secured Loan Claims are not subject to the Treasury Regulations applicable to contingent payment debt instruments. The Reorganized Debtor's position is binding on a U.S. Holder unless such Holder discloses its contrary position in the manner required by applicable U.S. Treasury Regulations. However, the Reorganized Debtors may take the position that the Exit Facility Loans are contingent payment debt instruments and, in any event, the IRS may take a position contrary to the Reorganized Debtor's position, which could adversely affect the amount, timing, and character of a U.S. Holder's income with respect to Exit Facility Loans. If the Exit Facility Loans were treated as contingent payment debt instruments, each U.S. Holder would be required to take into account interest using a constant yield method based on the issuer's "comparable yield," which generally is the rate at which the issuer could issue a fixed rate debt instrument with terms and conditions otherwise similar to the Exit Facility Loans. In addition, any gain recognized by a U.S. Holder in respect of a Exit Facility Loan would be treated as ordinary interest income. U.S. Holders should consult their own tax advisors regarding the potential application to the Exit Facility Loans of the contingent payment debt instrument rules and the consequences thereof. This discussion assumes that the Exit Facility Loans are not treated as contingent payment debt instruments.

(2) Acquisition Premium and Bond Premium

If a U.S. Holder of an Allowed Secured Loan Claim receives an initial tax basis in any Exit Facility Loan that is less than or equal to the stated redemption price at maturity of such debt instrument, but greater than the adjusted issue price of such instrument, the U.S. Holder should be treated as acquiring such debt instruments with an "acquisition premium." Unless an election is made, the U.S. Holder generally should reduce the amount of OID otherwise includible in gross income for an accrual period by an amount equal to the amount of OID otherwise includible in gross income multiplied by a fraction, the numerator of which is the excess of the U.S. Holder's initial tax basis in its interest in such debt instrument over such debt instrument's adjusted issue price, and the denominator of which is the excess of the sum of all amounts payable on such debt instrument over its adjusted issue price.

If a U.S. Holder of a Secured Loan Claim receives an initial tax basis in any Exit Facility Loan that exceeds the stated redemption price at maturity of such debt instrument, such U.S. Holder should be treated as acquiring such debt instrument with "bond premium." Such U.S. Holder generally may elect to amortize the bond premium over the term of such debt instrument on a constant yield method as an offset to interest (including any OID) when includible in income under such U.S. Holder's regular accounting method. If a U.S. Holder does not elect to amortize the premium, that premium may decrease the gain or increase the loss such U.S. Holder would otherwise recognize on disposition of such debt instrument.

(3) OID and Interest with Respect to the Exit Facility Loans

Cash interest on the Allowed Secured Loan Claims in indebtedness under the Exit Facility Loans will be includable by a U.S. Holder as ordinary interest income at the time it accrues or is received in accordance with such holder's regular method of accounting for U.S. federal income tax purposes.

A debt instrument is treated as issued with OID for U.S. federal income tax purposes if its issue price is less than its stated redemption price at maturity by more than a de minimis amount. A debt instrument's stated redemption price at maturity includes all principal and interest payable over the term of the debt instrument, other than "qualified stated interest." Stated interest payable at a fixed rate is "qualified stated interest" if it is unconditionally payable in cash at least annually. The terms of the Allowed Secured Loan Claims, including the extent to which they will be issued with OID, have not yet been determined; to the extent not all the interest on the Exit Facility Loans is unconditionally payable in cash at least annually, or to the extent the purchase price is less than the face amount of such debt, the Exit Facility Loans may be considered to be issued with OID. If the Exit Facility Loans are issued with OID, a U.S. Holder generally (i) will be required to include the OID in gross income as ordinary interest income as it accrues on a constant yield to maturity basis over the term of the Exit Facility Loans, in advance of the receipt of the cash attributable to such OID and regardless of the holder's method of accounting for U.S. federal income tax purposes, but (ii) will not be required to recognize additional income upon the receipt of any Cash payment on the Exit Facility Loans that is attributable to previously accrued OID that has been included in its income. If the amount of OID on the Exit Facility Loans is de minimis, rather than being characterized as interest, any payment attributable to the de minimis OID will be treated as gain from the sale of the Exit

Facility Loans, and a pro rata amount of such de minimis OID must be included in income as principal payments are received on the Exit Facility Loans.

As noted above, U.S. federal income tax laws enacted in December 2017 added section 451(b) of the Code. This new provision generally would require accrual method U.S. Holders that prepare an "applicable financial statement" (as defined in section 451(b)(3) of the Code) to include certain items of income (such as market discount) no later than the time such amounts are reflected on such a financial statement. The application of this rule to income of a debt instrument with market discount is effective for taxable years beginning after December 31, 2018. However, the IRS issued Proposed Treasury Regulation Section 1.451-3 in November 2019, on which taxpayers generally may rely, confirming that taxpayers may generally continue to report OID for tax purposes in conformity with the OID rules, even if such OID is included earlier on an "applicable financial statement." U.S. Holders are urged to consult their own tax advisors concerning the application of the OID rules to them.

If, pursuant to the rules described above, a U.S. Holder's initial tax basis in a Exit Facility Loan is greater than the issue price of such debt but less than the stated principal amount of such debt, such Exit Facility Loan will have an "acquisition premium." Under the acquisition premium rules, the amount of OID that must be included by the U.S. Holder in its gross taxable income with respect to the applicable Exit Facility Loan for any taxable year will be reduced by the portion of the acquisition premium properly allocable to that year. Alternatively, if a U.S. Holder's initial tax basis in the Exit Facility Loan exceeds its stated principal amount, the U.S. Holder will be considered to have acquired the Exit Facility Loan with "amortizable bond premium" and will not be required to include any OID in income. A U.S. Holder may generally elect to amortize the premium over the remaining term of the Exit Facility Loan on a constant yield method as an offset to stated interest when includible in income under such holder's regular accounting method. If a U.S. Holder elects to amortize bond premium, such holder must reduce its tax basis in the Exit Facility Loan by the amount of the premium used to offset stated interest. If a U.S. Holder does not elect to amortize the premium, that premium will decrease the gain or increase the loss otherwise recognized on disposition of the Exit Facility Loan. If, pursuant to the rules described above, a U.S. Holder's initial tax basis in the Exit Facility Loan is less than the issue price of such debt, see the above section, entitled "Market Discount."

(4) Sale, Exchange, Retirement or Other Disposition by a U.S. Holder.

A U.S. Holder's adjusted tax basis in a Exit Facility Loan received in exchange for a portion of their Allowed Secured Loan Claims generally will be its tax basis calculated as described under "—Treatment of Holders if the Allowed Secured Loan Claims are Treated as Securities" increased by the amount of any OID previously included in income and decreased by payments other than stated interest made with respect to the Exit Facility Loans.

A U.S. Holder generally will recognize capital gain or loss on the sale, exchange, retirement or other taxable disposition of a Exit Facility Loan equal to the difference, if any, between the amount realized on the sale, exchange, retirement or other disposition of the Exit Facility Loan (less any amounts attributable to accrued but unpaid interest, which will be subject to tax in the manner described above under "—Accrued Interest (and OID)" to the extent not previously so taxed), and the U.S. Holder's adjusted tax basis in the Exit Facility Loan.

Any gain or loss recognized on the sale, exchange, retirement, or other disposition of a Exit Facility Loan will be capital gain or loss, and will be long-term capital gain or loss if the U.S. Holder has held the Exit Facility Loan for more than one year as of the date of disposition. Long-term capital gain of a non-corporate U.S. Holder generally is taxed at preferential rates. The ability of a U.S. Holder to offset capital losses against ordinary income is limited.

The deductibility of capital losses is subject to certain limitations. Prospective investors should consult their own tax advisors as to the U.S. federal income tax consequences of disposing, of the Exit Facility Loans.

(c) Consequences of Owning and Disposing of the Reorganized Equity Interests

(1) Distributions on account of Reorganized Equity Interests

Any cash distributions made on account of the Reorganized Equity Interests will constitute dividends for U.S. federal income tax purposes to the extent of the current or accumulated earnings and profits of Reorganized Debtor as determined under U.S. federal income tax principles.

Under section 305 of the Tax Code, distributions in kind of additional Reorganized Equity Interests pursuant to the terms of the Reorganized Equity Interests may not constitute dividends for U.S. federal income tax purposes, but, as described below, if any Reorganized Equity Interests are treated as "preferred" stock under Section 305 of the Tax Code, there is a risk that such distributions and the resulting increases in the liquidation preference of such Reorganized Equity Interests will be treated as a deemed dividend to the extent of the Reorganized Debtors' earnings and profits. To the extent that a U.S. Holder receives distributions that would otherwise constitute dividends for U.S. federal income tax purposes but that exceed such current and accumulated earnings and profits, such distributions will be treated first as a non-taxable return of capital reducing the U.S. Holder's basis in its shares (determined on a share-by-share basis). Any such distributions in excess of the U.S. Holder's basis in its shares (determined on a share-by-share basis) generally will be treated as capital gain.

Distributions treated as dividends for U.S. federal income tax purposes paid to U.S. Holders that are corporations generally will be eligible for a dividends-received deduction. However, the dividends received deduction is only available if certain holding period requirements are satisfied. The length of time that a shareholder has held its stock is reduced for any period during which the shareholder's risk of loss with respect to the stock is diminished by reason of the existence of certain options, contracts to sell, short sales, or similar transactions. In addition, to the extent that a corporation incurs indebtedness that is directly attributable to an investment in the stock on which the dividend is paid, all or a portion of the dividends received deduction may be disallowed.

(2) Potential Constructive Distributions With Respect to Reorganized Preferred Stock

Under Section 305 of the Tax Code, holders of Equity Interests may be treated as receiving distributions with respect to their Equity Interests under Tax Code Section 301 under a variety of circumstances.

As an initial matter, certain provisions of Section 305 of the Tax Code apply only to Reorganized Equity Interests that constitute "preferred" stock for purposes of Section 305 of the Tax Code (as opposed to "common" stock for purposes of Section 305 of the Tax Code). The determination of whether stock constitutes "preferred" or "common" stock for purposes of Section 305 of the Tax Code depends in large part upon whether the stock participates significantly in corporate growth (such stock colloquially being referred to as "participating preferred stock"). Participating preferred stock is treated as common stock for purposes of Section 305 of the Tax Code and, accordingly, certain of the deemed distribution provisions of Section 305 of the Tax Code are generally inapplicable to such stock.

If the Reorganized Equity Interests are all treated as "common" stock for purposes of Section 305 of the Tax Code, any ordinary payment-in-kind distributions and preferred original issue discount ("Preferred OID") (i.e., the excess of redemption price over issue price), if any, generally should not be subject to the deemed distribution provisions of Section 305 of the Tax Code. In such case, however, the treatment of distributions made simultaneously or close in time to different classes of Reorganized Equity Interests is subject to potential uncertainty and could result in a deemed distribution under Section 305 of the Tax Code.

If any class of Reorganized Equity Interests is treated as "preferred" stock under Section 305 of the Tax Code, any Preferred OID on such Reorganized Equity Interests may be required to be recognized as a dividend over the term of such Reorganized Equity Interests on a constant-yield-to-maturity basis to the extent of the Reorganized Debtors' earnings and profits (and thereafter first as a return of capital which reduces basis and then, generally, capital gain, under the same rules described above under "Distributions on Reorganized Equity Interests," though any such amounts treated as a dividend may be ineligible for the reduced rate applicable to qualified dividend income or the dividends received deduction available to qualified corporations). Whether any such Preferred OID is required to be so treated, is a complex determination that may depend on factors including whether the applicable Reorganized Equity Interests have a fixed maturity date for redemption or are subject to certain put or call or similar rights.

Further, if any class of Reorganized Equity Interests is treated as "preferred" stock under Section 305 of the Tax Code, there is a risk that any payment-in-kind distributions and the resulting increases in the liquidation preference of such Reorganized Equity Interests may be treated as a deemed dividend to the extent of Reorganized Debtor's earnings and profits (as described above).

In addition to the above rules, under certain circumstances, any payment-in-kind distributions with respect to a class of Reorganized Equity Interests could be subject to treatment as a deemed distribution, even if such class of Reorganized Equity Interests otherwise constitutes "common stock" for purposes of Section 305 of the Tax Code. Such treatment could apply in the event distributions are made with respect to another class of Reorganized Equity Interests, because such distributions on the latter class of Reorganized Equity Interests, in conjunction with the payment-in-kind distributions with respect to the former class of Reorganized Equity Interests, could implicate Treasury Regulation Section 1.305-7 and the disproportionate distribution rule of Section 305 of the Tax Code.

Holders of Claims receiving the Reorganized Equity Interests are urged to consult their own tax advisors regarding the treatment of the Reorganized Equity Interests under Section 305 of the Tax Code.

(3) Sale, Redemption, or Repurchase of Reorganized Equity Interests

Unless a non-recognition provision applies, U.S. Holders generally will recognize capital gain or loss upon the sale, redemption, or other taxable disposition of the Reorganized Equity Interests. A U.S. Holder should recognize gain or loss in an amount equal to the difference between (x) the amount realized and (y) such U.S. Holder's adjusted basis in the Reorganized Equity Interests, as applicable, as determined in "—Treatment of Holders if the Allowed Secured Loan Claims Are Not Treated as Securities". Such capital gain will be long-term capital gain if at the time of the sale, exchange, retirement, or other taxable disposition, the U.S. Holder held the Reorganized Common Stock or Reorganized Preferred Stock, as applicable, for more than one year. Long-term capital gains of an individual taxpayer generally are taxed at preferential rates. The deductibility of capital losses is subject to certain limitations as described above.

If, however, there are unpaid accrued and declared dividends on Reorganized Equity Interests treated as "preferred" stock for purposes of Section 305 of the Tax Code as described above in "—Distributions on Reorganized Equity Interests" at the time of the sale, redemption, or other taxable disposition of such Reorganized Equity Interests, then, generally, the portion of the consideration attributable to those dividends may be treated as a dividend to the extent of the current or accumulated earnings and profits of Reorganized Debtor as determined under U.S. federal income tax principles (and, thereafter, first as a return of capital which reduces basis and then, generally, capital gain, under the same rules applicable to distributions in respect of the Reorganized Equity Interests).

10.4 Medicare Tax

Certain U.S. Holders that are individuals, estates, or trusts are required to pay an additional 3.8 percent tax on, among other things, interests and dividends and gains from the sale or other disposition of capital assets. U.S. Holders that are individuals, estates, or trusts should consult their tax advisors regarding the effect, if any, of this tax provision on their ownership and disposition of debt of, and equity interests in, the Debtors and Reorganized Debtors.

10.5 Information Reporting and Backup Withholding

The Debtors will withhold all amounts required by law to be withheld from payments of interest and dividends. The Debtors will comply with all applicable reporting requirements of the Tax Code. In general, information reporting requirements may apply to distributions or payments made to a Holder of a Claim under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding with respect to distributions or payments made pursuant to the Plan unless a U.S. Holder provides a properly executed IRS Form W-9. The current backup withholding rate is 24 percent. Backup withholding is not an additional tax but is, instead, an advance payment that may entitle the Holder to a refund from the IRS to the extent it results in an overpayment of tax, provided that the required information is provided to the IRS.

In addition, from an information reporting perspective, the Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

10.6 Importance of Obtaining Professional Tax Assistance

The foregoing discussion is intended only as a summary of certain U.S. federal income tax consequences of the Plan, does not discuss all aspects of U.S. federal income taxation that may be relevant to a particular holder of a Claim in light of such holder's circumstances and tax situation and is not a substitute for consultation with a tax professional. The above discussion is for informational purposes only and is not tax advice. The tax consequences of the Plan are complex and are in many cases uncertain and may vary depending on a claimant's particular circumstances. Accordingly, all holders of Claims and Equity Interests are strongly urged to consult their own tax advisors about the U.S. federal, state, local, and non-U.S. income and other tax consequences to them under the Plan.

ARTICLE XI:

CONCLUSION AND RECOMMENDATION

The Debtors believe that Confirmation and Consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all Holders of Claims entitled to vote to accept the Plan and to evidence such acceptance by returning their ballots so they will be received by the Solicitation Agent no later than 3:00 p.m. (prevailing Eastern Time) on October 25, 2020.

Dated: October 23, 2020

Respectfully submitted,

Rubio's Restaurants, Inc.
on behalf of itself and each of its Debtor affiliates

By: */s/ Melissa Kibler*
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EXHIBIT A

Joint Prepackaged Chapter 11 Plan of Reorganization

SOLICITATION VERSION

IMPORTANT: THE SOLICITATION MATERIALS ACCOMPANYING THE PLAN OF REORGANIZATION HAVE NOT BEEN APPROVED BY THE BANKRUPTCY COURT AS CONTAINING "ADEQUATE INFORMATION" WITHIN THE MEANING OF 11 U.S.C. § 1125(a). THE DEBTORS EXPECT TO SEEK AN ORDER OR ORDERS OF THE BANKRUPTCY COURT, AMONG OTHER THINGS: (1) APPROVING THE SOLICITATION OF VOTES AS HAVING BEEN IN COMPLIANCE WITH 11 U.S.C. § 1126(b); AND (2) CONFIRMING THE PLAN OF REORGANIZATION PURSUANT TO 11 U.S.C. § 1129.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	)	**Chapter 11**
RUBIO'S RESTAURANTS, INC., *et al.*,[1]	)	**Case No. 20-_____ (_____)**
Debtors.	)	**(Joint Administration Requested)**

JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF RUBIO'S RESTAURANTS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Rubio's Restaurants, Inc. (0303); MRRC Hold Co. (1242); Rubio's Restaurants of Nevada, Inc. (7609); and Rubio's Incentives, LLC (9359). The Debtors' mailing address is 2200 Faraday Avenue, Suite 250, Carlsbad, CA 92008.

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JOINT PREPACKAGED CHAPTER 11 PLAN OF REORGANIZATION OF RUBIO'S RESTAURANTS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Rubio's Restaurants, Inc.; MRRC Hold Co.; Rubio's Restaurants of Nevada, Inc.; and Rubio's Incentives, LLC (each a "Debtor" and, collectively, the "Debtors") propose this joint prepackaged plan of reorganization (the "Plan") for the resolution of the outstanding Claims against and Equity Interests in the Debtors pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used in the Plan and not otherwise defined have the meanings ascribed to such terms in Article I of the Plan.

Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Equity Interests pursuant to the Bankruptcy Code. The Debtors seek to consummate the Restructuring Transactions on the Effective Date of the Plan. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Equity Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors.

Reference is made to the Disclosure Statement, filed contemporaneously with the Plan, for a discussion of the Debtors' history, businesses, results of operations, historical financial information, projections and future operations, as well as a summary and analysis of the Plan and certain related matters, including distributions to be made under the Plan.

ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS ARE STRONGLY ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I.

DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME

Section 1.1 *Defined Terms.*

The following terms shall have the respective meanings specified below when used in capitalized form in the Plan:

1. "***Accrued Professional Compensation***" means, at any date, all accrued fees and reimbursable expenses (including success fees) for services rendered by all Retained Professionals in the Chapter 11 Cases through and including such date, to the extent that such fees and expenses have not been previously paid and regardless of whether a fee application has been filed for such fees and expenses and to the extent not disallowed under a Final Order.

2. "***Administrative Claims***" means any and all requests for payment of costs or expenses (other than DIP Claims) of the kind specified in Bankruptcy Code section 503(b) and entitled to priority under Bankruptcy Code section 507, including, but not limited to: (a) the

actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estates and operating the businesses of the Debtors; (b) Bankruptcy Fees; and (c) Cure Costs.

3. "***Administrative Claims Bar Date***" means the first Business Day that is the 45th day after notice of entry of the Confirmation Order is filed with the Bankruptcy Court or such later date as may be established by an order of the Bankruptcy Court.

4. "***Affiliate***" means an affiliate as defined in section 101(2) of the Bankruptcy Code, including non-Debtor Entities.

5. "***Allowed***" means, with respect to any Claim or Equity Interest, (a) any Claim or Equity Interest arising on or before the Effective Date (i) as to which no objection to allowance, priority, or secured status, and no request for estimation or other challenge, including pursuant to section 502(d) of the Bankruptcy Code or otherwise, has been interposed by the applicable objection deadline, or (ii) as to which any objection has been determined in favor of the respective Holder by Final Order, but only to the extent allowed by Final Order; (b) any Claim or Equity Interest that is compromised, settled, or otherwise resolved pursuant to the authority of the Debtors or the Reorganized Debtors; (c) any Claim or Equity Interest as to which the liability of the Debtors or Reorganized Debtors, as applicable, and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; or (d) any Claim or Equity Interest expressly allowed hereunder; *provided* that notwithstanding the foregoing, (x) unless expressly waived by the Plan, the Allowed amount of Claims or Equity Interests shall be subject to the limitations under or maximum amounts permitted by the Bankruptcy Code, including sections 502 or 503 of the Bankruptcy Code, to the extent applicable, and (y) the Reorganized Debtors shall retain all claims and defenses with respect to Claims.

6. "***Assets***" means, with respect to any Debtor, all of such Debtor's right, title and interest of any nature in property of any kind, wherever located, including as specified in section 541 of the Bankruptcy Code.

7. "***Assumed Executory Contracts and Unexpired Leases Schedule***" means the schedule (as may be amended), if any, of Executory Contracts and Unexpired Leases (including any amendments or modifications thereto) that will be assumed by the Debtors pursuant to the Plan and which will be included in the Plan Supplement; *provided* that the Consenting Secured Lenders shall have approved any assumptions, rejections or modifications of material Executory Contracts and Unexpired Leases.

8. "***Ballot***" means a ballot accompanying the Disclosure Statement upon which certain Holders of Impaired Claims entitled to vote shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the Plan and the procedures governing the solicitation process.

9. "***Bankruptcy Code***" means title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as may be amended.

10. "***Bankruptcy Court***" means the United States Bankruptcy Court for the District of Delaware, or such other court having jurisdiction over the Chapter 11 Cases or any proceeding within, or appeal of an order entered in, the Chapter 11 Cases.

11. "***Bankruptcy Fees***" means any and all fees or charges assessed against the Debtors' estates under section 1930 of title 28 of the United States Code.

12. "***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure, promulgated under section 2075 of title 28 of the United States Code, the Official Bankruptcy Forms or the local rules of the Bankruptcy Court, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court.

13. "***Business Day***" means any day, other than a Saturday, Sunday or a "legal holiday" (as such term is defined in Bankruptcy Rule 9006(a)).

14. "***Cash***" means the legal tender of the United States of America or the equivalent thereof.

15. "***Causes of Action***" means any and all actions, causes of action, suits, claims, Claims, interests, damages, remedies, demands, rights, debts, dues, sums of money, accounts, reckonings, rights to legal remedies, rights to equitable remedies, rights to payment, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, demands, obligations, liabilities, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, franchises and trespasses of any kind or character whatsoever of, or belonging to, the Estates, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, matured, unmatured, suspected, unsuspected, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or indirectly or derivatively, in Law, equity or otherwise. For the avoidance of doubt, "Causes of Action" includes, but is not limited to, (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by Law; (b) the right to object to or otherwise contest Claims or Equity Interests; (c) Claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; (d) such Claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state or foreign Law fraudulent transfer or similar Claim.

16. "***Chapter 11 Cases***" means (a) 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 (b) when used with reference to all Debtors, the jointly-administered cases pending for the Debtors in the Bankruptcy Court collectively.

17. "***Claim***" means a claim as defined in section 101(5) of the Bankruptcy Code against any Debtor, including Administrative Claims and DIP Claims, in each case whether or not asserted.

18. "***Claims Bar Date***" means, as applicable, the Administrative Claims Bar Date and any other date or dates to be established by an Order of the Bankruptcy Court by which Proofs of Claim must be filed.

19. "***Claims Register***" means the official register of Claims maintained by the Notice and Claims Agent.

20. "***Class***" means a group of Claims or Equity Interests classified together pursuant to section 1122(a)(1) of the Bankruptcy Code.

21. "***Confirmation***" means the entry of the Confirmation Order by the Bankruptcy Court on the docket of the Chapter 11 Cases.

22. "***Confirmation Date***" means the date upon which the Confirmation Order is entered on the docket maintained by the Bankruptcy Court pursuant to Bankruptcy Rule 5003.

23. "***Confirmation Hearing***" means the hearing to be held by the Bankruptcy Court to consider confirmation of the Plan under section 1129 of the Bankruptcy Code.

24. "***Confirmation Order***" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

25. "***Consenting Secured Lenders***" means those certain Holders of Loan Claims holding more than 66.6% of the aggregate amount of all outstanding Loan Claims.

26. "***Consenting Stakeholders***" means, collectively, the Consenting Secured Lenders and the Investor.

27. "***Consummation***" means the occurrence of the Effective Date.

28. "***Cure Cost***" means all amounts, including an amount of $0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) and other obligations required to cure any non-monetary defaults (the performance required to cure such non-monetary defaults and the timing of such performance will be described in reasonable detail in a notice of proposed assumption and assignment) under any Executory Contract or Unexpired Lease that is to be assumed by the Debtors pursuant to sections 365 and 1123 of the Bankruptcy Code.

29. "***Debtor***" has the meaning set forth in the introductory paragraph of the Plan.

30. "***Deferred Compensation Plan***" means (i) the Rubio's Restaurants, Inc. Deferred Compensation Plan, as amended and restated effective January 1, 2014, including any amounts payable pursuant to the terms thereof, and (ii) the Grantor Trust between First American Trust,

FSB and Rubio's, dated as of January 1, 2018, including any and all assets held in such trust pursuant to the terms thereof.

31. "***DIP Agent***" means GCI Capital Markets LLC, as sole agent under the DIP Facility, or any successor agents thereunder.

32. "***DIP Budget***" means the consolidated weekly operating budget of the Debtors as set forth in the DIP Credit Agreement.

33. "***DIP Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with the DIP Loans under the DIP Facility.

34. "***DIP Credit Agreement***" means that certain credit agreement evidencing the DIP Facility by and among Rubio's, as borrower, Holdings, Rubio's Restaurants of Nevada, Inc. and Rubio's Incentives, LLC, as guarantors, the DIP Agent, and the DIP Lenders, including all agreements, notes, instruments, and any other documents delivered pursuant thereto or in connection therewith, as may be amended, modified or supplemented from time to time, in accordance with the terms thereof.

35. "***DIP Facility***" means that superpriority, senior secured debtor in possession credit facility in an aggregate principal amount of up to $8 million, consisting of the DIP Loans.

36. "***DIP Facility Documents***" means the DIP Credit Agreement together with all documentation executed or delivered in connection therewith as may be amended, modified or supplemented from time to time, in accordance with the terms and conditions set forth therein.

37. "***DIP Lenders***" means those certain lenders party to the DIP Credit Agreement from time to time.

38. "***DIP Loans***" means the $8 million in term loans to be provided pursuant to the DIP Credit Agreement.

39. "***DIP Order***" means any orders entered by the Bankruptcy Court in these Chapter 11 Cases approving the DIP Facility.

40. "***Disclosure Statement***" means the disclosure statement for the Plan, including all exhibits and schedules thereto, as it may be amended from time to time, that is prepared and distributed in accordance with sections 1125, 1126(b), and 1145 of the Bankruptcy Code, Bankruptcy Rule 3018, and other applicable Law.

41. "***Disclosure Statement Order***" means the order of the Bankruptcy Court approving the Disclosure Statement.

42. "***Disputed***" means, with respect to any Claim or Equity Interest, except as otherwise provided herein, a Claim or Equity Interest that is not yet Allowed.

43. "***Distribution Agent***" means the Debtors or the Reorganized Debtors, or any Person designated by the Debtors or the Reorganized Debtors, in the capacity as distribution agent under the Plan.

44. "***Distribution Date***" means the date on which Holders of Claims are eligible to receive distributions under the Plan.

45. "***Effective Date***" means the date that is the first Business Day selected by the Debtors on which all conditions to the effectiveness of the Plan set forth in Article VIII hereof have been satisfied or waived in accordance with the terms of the Plan.

46. "***Entity***" means an "entity" as defined in section 101(15) of the Bankruptcy Code, and includes, for the avoidance of doubt, a Person.

47. "***Equity Holders Agreement***" means a stockholders agreement or limited liability company agreement, as applicable, with respect to the equity in the Reorganized Company, the governance of the Reorganized Company and the voting and transfer rights and obligations among the equity holders of the Reorganized Company, to be effective on the Effective Date, as may be amended, modified or supplemented from time to time.

48. "***Equity Interest***" means any issued, unissued, authorized, or outstanding shares of common stock, preferred stock, membership or limited liability company interests (whether certificated or uncertificated), or other instrument evidencing an ownership interest in a Debtor, whether or not transferable, together with any warrants, equity-based awards or contractual rights to purchase or acquire such equity interests at any time and all rights arising with respect thereto that existed immediately before the Petition Date.

49. "***Estates***" means, as to each Debtor, the estate created for the Debtor pursuant to section 541 of the Bankruptcy Code upon the commencement of the Debtor's Chapter 11 Cases.

50. "***Exculpated Parties***" means, collectively, in each case in its capacity as such: (a) each of the Debtors; (b) each of the Reorganized Debtors; (c) each of the Released Parties; and (d) with respect to each of the foregoing Entities in clauses (a) through (c), such Entity's Related Parties.

51. "***Executory Contract***" means a contract or lease to which one or more of the Debtors is a party that is subject to assumption, assumption and assignment or rejection under sections 365 or 1123 of the Bankruptcy Code.

52. "***Exit Agent***" means the administrative and collateral agent for the Exit Lenders under the Exit Facility Credit Agreement or any successor agent thereof.

53. "***Exit Conversion Amount***" means the amount of all obligations under the DIP Facility on the Effective Date.

54. "***Exit Facility***" means the senior secured credit facility in an aggregate principal amount equal to $52 million as set forth in the Exit Facility Documents.

55. "***Exit Facility Credit Agreement***" means that certain credit agreement by and among Rubio's, the other guarantors from time to time party thereto, the Exit Lenders, the Exit Agent, as administrative agent and collateral agent, and the other Entities party thereto from time to time.

56. "***Exit Facility Documents***" means the Exit Facility Credit Agreement and all other related agreements, notes, certificates, documents and instruments, and all exhibits, schedules and annexes thereto, entered into or delivered in connection with the Exit Facility Credit Agreement, and as may be amended, modified or supplemented from time to time, in accordance with the terms and conditions set forth in the Exit Facility Documents (as applicable).

57. "***Exit Lenders***" means those certain Prepetition Secured Lenders (together with their permitted assignees) and DIP Lenders, in their capacity as lenders under the Exit Facility Credit Agreement or their Affiliates.

58. "***Exit Term Loans***" means the term loans issued under the Exit Facility.

59. "***Final Order***" means, as applicable, an order, ruling or judgment of the Bankruptcy Court or any other court of competent jurisdiction, as applicable, which has not been reversed, vacated or stayed and as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or motion for reargument or rehearing is pending, or as to which any right to appeal, petition for certiorari, reargue, or rehear has been waived in writing in form and substance satisfactory to the Debtors or, on and after the Effective Date, the Reorganized Debtors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court, or other court of competent jurisdiction (as applicable) has been determined by the highest court to which such order was appealed, or certiorari, reargument or rehearing has been denied and the time to take any further appeal, petition for certiorari or move for reargument or rehearing has expired; *provided, however*, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules or applicable state or provincial court rules of civil procedure, may be filed with respect to such order, ruling, or judgment shall not cause an order, ruling, or judgment not to be a Final Order.

60. "***Footprint Notification Date***" means 7 calendar days prior to the Confirmation Hearing.

61. "***Funded Reserve Account***" means the segregated account established pursuant to the DIP Facility Documents for purposes of funding the Carveout (as defined in the DIP Facility Documents).

62. "***General Unsecured Claim***" means any unsecured Claim (other than an Administrative Claim, a DIP Claim, an Intercompany Claim, a Priority Tax Claim, or an Other

Priority Claim) against one or more of the Debtors, including (a) Claims arising from the rejection of Unexpired Leases and Executory Contracts to which a Debtor is a party; (b) Claims arising from any litigation or other court, administrative, or regulatory proceeding, including damages or judgments entered against, or settlement amounts owing by a Debtor related thereto; (c) the Secured Lender Deficiency Claims; and (d) all PPP Loan Claims to the extent not forgiven.

63. "***Governmental Unit***" means a "governmental unit" as defined in section 101(27) of the Bankruptcy Code.

64. "***Holder***" means the beneficial holder of any Claim or Equity Interest.

65. "***Holdings***" means MRRC Hold Co., a Delaware corporation.

66. "***Impaired***" means, with respect to a Claim or Equity Interest, such Claim or Equity Interest that falls within a Class of Claims or Equity Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

67. "***Indemnification Obligation***" means a Debtor's obligation to indemnify, reimburse, or otherwise hold financially harmless its Indemnified Parties with respect to or based upon any act or omission taken or omitted in any of the relevant capacities, or for or on behalf of any Debtor, pursuant to and to the maximum extent provided by such Debtor's respective certificates of incorporation, certificates of formation, bylaws, similar corporate documents, and applicable law, as in effect as of the Effective Date.

68. "***Indemnified Parties***" means the Debtors' current and former directors, officers, managers, employees, attorneys, other professionals, and agents, and such current and former directors', officers', managers', and employees' respective Affiliates to the extent set forth herein, that were employed or served in such capacity on or after the Petition Date and that are entitled to be indemnified by the Debtors pursuant to, among other things, the Debtors' bylaws, certificates of incorporation (or other formation documents), board resolutions, employment contracts, or other agreements.

69. "***Intercompany Claims***" means any and all Claims held by any Debtor against any other Debtor.

70. "***Intercompany Equity Interests***" means any and all Equity Interests in a Debtor held by another Debtor.

71. "***Investor***" means Mill Road Capital, L.P.

72. ***"Investment"*** means Investor's investment of $10 million for the purchase of equity in accordance with the terms of the Plan Supplement.

73. "***Law***" means any federal, state, local, or foreign "law" (including common Law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly

adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

74. "***Lien***" means a lien as defined in section 101(37) of the Bankruptcy Code.

75. "***Loan Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with the Prepetition Credit Agreement Documents, which Loan Claims shall be comprised of (a) the Secured Loan Claims and (b) the Secured Lender Deficiency Claims.

76. "***Management Incentive Plan***" means the management incentive plan described in Article IV of the Plan.

77. "***New Organizational Documents***" means, on or after the Effective Date, collectively, the (a) amended and restated certificates of incorporation or similar governing document of each Reorganized Debtor; (b) the Equity Holders Agreement; and (c) any other documents required to govern each Reorganized Debtor.

78. "***Notice and Claims Agent***" means Bankruptcy Management Solutions, Inc. (d/b/a Stretto) in its capacity as noticing, claims, and solicitation agent for the Debtors.

79. "***Opt-In Form***" means the form circulated to the Holders of General Unsecured Claims allowing them to opt in to the Releases.

80. "***Other Priority Claims***" means any and all Claims against any Debtor entitled to priority in right of payment under section 507(a) of the Bankruptcy Code that are not Administrative Claims or Priority Tax Claims.

81. "***Other Secured Claims***" means any Secured Claims against any Debtor that are not DIP Claims or Secured Loan Claims.

82. "***Paycheck Protection Program***" means that certain loan program originating from the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136, 135 Stat 281.

83. "***Person***" means a "person" as defined in section 101(41) of the Bankruptcy Code.

84. "***Petition Date***" means the date on which the Debtors each filed a petition for relief commencing the Chapter 11 Cases.

85. "***Plan***" means this joint plan of reorganization under chapter 11 of the Bankruptcy Code, including all exhibits and schedules to the Plan, and any Plan Supplement, as they may be amended, supplemented or modified from time to time in accordance with the terms hereof, the Bankruptcy Code and the Bankruptcy Rules.

86. "***Plan Documents***" means any and all of the documents, other than the Plan, to be executed, delivered, or performed in connection with the occurrence of the Effective Date, including, without limitation, insofar as such documents are not incorporated into the Plan through inclusion in the DIP Facility Documents, the Exit Facility Documents, and the Management Incentive Plan, subject to any consent rights set forth in the Plan.

87. "***Plan Supplement***" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan to be filed by the Debtors no later than the Plan Supplement Filing Date, as the same may be amended, modified, or supplemented, and including, without limitation, the following: (a) the identity of the known members of the Reorganized Board and the nature and compensation for any director who is an "insider" under the Bankruptcy Code; (b) the Exit Facility Documents; (c) the New Organizational Documents; (d) the Management Incentive Plan; (e) a schedule of Retained Causes of Action; (f) the Assumed Executory Contracts and Unexpired Leases Schedule; (g) all exhibits, attachments, supplements, annexes, schedules, and ancillary documents related to each of the foregoing; and (h) any additional documents filed with the Bankruptcy Court before the Effective Date as additional Plan Documents or amendments to the Plan Supplement, each of which shall be in form and substance reasonably acceptable to the Debtors, the Consenting Secured Lenders, and, in respect of (i) the Investment, (ii) the foregoing clauses (b), (c), (h) and (g) (as it relates to clauses (b) and (c)), and (iii) as may otherwise be agreed between the Consenting Secured Lenders and the Investor, the Investor.

88. "***Plan Supplement Filing Date***" means the date that is 14 calendar days prior to the Confirmation Hearing, or such later date as is determined by the Debtors.

89. "***PPP Loan Agreement***" means that certain unsecured loan agreement provided pursuant to the Paycheck Protection Program and dated as of April 14, 2020, by and among Rubio's, as borrower, and Sunwest Bank, as lender, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, in the amount of $10 million.

90. "***PPP Loan Claims***" means any and all Claims against any Debtor related to, arising out of, arising under, or arising in connection with, the PPP Loan Agreement.

91. "***Prepetition Agent***" means the administrative agent and sole bookrunner for the Lenders under the Prepetition Credit Agreement Documents or any successor agent thereof.

92. "***Prepetition Credit Agreement***" means that certain credit agreement, dated as of August 24, 2010 (as amended, restated, amended and restated, modified or supplemented from time to time), by and among Rubio's, successor-by-merger to MRRC Merger Co., as borrower, and the other Debtors, as guarantors, GCI Capital Markets LLC, as administrative agent, LEG Partners Debenture SBIC, L.P., LEG Partners III SBIC, L.P., GC SBIC IV, L.P. and United Insurance Company of America, as lenders (as amended, supplemented, restated or otherwise modified[2] prior to the Petition Date).

[2] Including pursuant to the (i) First Amendment to Credit Agreement, dated as of September 8, 2010, (ii) the Second Amendment to Credit Agreement, dated as of January 12, 2011, (iii) Third Amendment to Credit Agreement, dated as of April 8, 2011, (iv) Waiver and Fourth Amendment to Credit Agreement, dated as of

93. "***Prepetition Credit Agreement Documents***" means the Prepetition Credit Agreement together with any other agreements and documents executed or delivered in connection therewith, each as amended, restated, amended and restated, supplemented, or otherwise modified prior to the Petition Date.

94. "***Prepetition Secured Lenders***" means the lenders party to the Prepetition Credit Agreement.

95. "***Priority Tax Claims***" means any and all Claims against any Debtor of the kind specified in section 507(a)(8) of the Bankruptcy Code.

96. "***Professionals***" means (a) any and all professionals employed in the Chapter 11 Cases pursuant to sections 327, 328, or 1103 of the Bankruptcy Code or otherwise and (b) any and all professionals or other Entities seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

97. "***Professional Fee Claim***" means any Claim of a Professional seeking a payment of compensation for services rendered or reimbursement of expenses incurred on the Petition Date and through and including the Effective Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code.

98. "***Professional Fee Escrow Account***" means an interest-bearing escrow account in an amount equal to the Professional Fee Reserve Amount to be funded and maintained by the Reorganized Debtors on and after the Effective Date solely for the purpose of paying all Allowed and unpaid Professional Fee Claims.

99. "***Professional Fee Reserve Amount***" means the aggregate Accrued Professional Compensation through the Effective Date as reasonably estimated by the Retained Professionals in accordance with Article II of the Plan; *provided* that the Professional Fee Reserve Amount shall not exceed the unused portion of the amounts set forth in the DIP Budget unless consented to by the Consenting Secured Lenders.

January 25, 2012, (v) Fifth Amendment to Credit Agreement, dated as of November 22, 2013, (vi) Sixth Amendment to Credit Agreement, dated as of December 15, 2014, (vii) Seventh Amendment to Credit Agreement, dated as of March 28, 2016, (viii) Eighth Amendment to Credit Agreement, dated as of January 20, 2017, (ix) Ninth Amendment to Credit Agreement, dated as of August 15, 2017, (x) Waiver and Tenth Amendment to Credit Agreement, dated as of December 7, 2017, (xi) Eleventh Amendment to Credit Agreement, dated as of January 2, 2018, (xii) Twelfth Amendment to Credit Agreement, dated as of January 31, 2018, (xiii) Thirteenth Amendment to Credit Agreement, dated as of February 14, 2018, (xiv) Fourteenth Amendment to Credit Agreement, dated as of February 21, 2018, (xv) Fifteenth Amendment to Credit Agreement, dated as of October 9, 2018, (xvi) Sixteenth Amendment to Credit Agreement, dated as of December 30, 2018, (xvii) Seventeenth Amendment to Credit Agreement, dated as of April 29, 2019; (xviii) Eighteenth Amendment to Credit Agreement, dated as of May 31, 2019, (xix) Nineteenth Amendment to Credit Agreement, dated as of June 28, 2019, (xx) Twentieth Amendment to Credit Agreement, dated as of October 30, 2019, (xxi) Twenty-First Amendment to Credit Agreement, dated as of November 20, 2019, (xxii) Twenty-Second Amendment to Credit Agreement, dated as of November 29, 2019, (xxiii) Twenty-Third Amendment to Credit Agreement, dated as of December 20, 2019, (xxiv) Twenty-Fourth Amendment to Credit Agreement, dated as of January 14, 2020.

100. "***Proof of Claim***" means a "proof of claim," as defined in Bankruptcy Rule 3001, or a motion or request for payment of fees, costs or expenses made pursuant to section 503 of the Bankruptcy Code filed in any of the Debtors' Chapter 11 Cases.

101. "***Pro-Rata Share***" means with respect to any distribution on account of any Allowed Claim in any Class, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim bears to the aggregate amount of all Allowed Claims in such Class.

102. "***Reinstated***" or "***Reinstatement***" mean, with respect to Claims and Equity Interests, the treatment provided for in section 1124 of the Bankruptcy Code.

103. "***Related Parties***" means, with respect to any Entity, such Entity's predecessors, successors, assigns, affiliates (whether by operation of Law or otherwise) and subsidiaries, and each of their respective general partners, management companies, managed accounts or funds or investment vehicles, and each of the foregoing's respective current and former equity holders, officers, directors, managers, management committee directors, principals, shareholders, members, partners, general partners, employees, agents, advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, management companies, fund advisors, and other professionals, in each case acting in such capacity, including in their capacity as directors of the Debtors, as applicable.

104. "***Releases***" means the releases given by the Releasing Parties to the Released Parties under Article IX of the Plan.

105. "***Released Parties***" means, collectively, (a) each of the Debtors, (b) the DIP Agent, (c) the DIP Lenders; (d) the Prepetition Agent; (e) each Prepetition Secured Lender; (f) the Investor; (g) the Exit Agent; (h) each of the Exit Lenders; and (i) the Related Parties of each of the foregoing Entities in clauses (a) through (h) of this definition.

106. "***Releasing Parties***" means, collectively, (a) each of the Debtors, (b) the DIP Agent, (c) the DIP Lenders; (d) the Prepetition Agent; (e) each Prepetition Secured Lender; (f) each Holder of a General Unsecured Claim that elects to opt-in to the Release through an Opt-In Form; (g) the Investor; (h) the Exit Agent; (i) each of the Exit Lenders; and (j) the Related Parties of each of the foregoing Entities in clauses (a) through (i) of this definition.

107. "***Reorganized Board***" means the board of directors of Holdings, as determined in accordance with the New Organizational Documents.

108. "***Reorganized Company***" means Holdings and any successors thereto, by merger, consolidation or otherwise, as reorganized, on or after the Effective Date, including any new entity formed directly or indirectly acquire assets or equity of Holdings, in accordance with the Plan.

109. "***Reorganized Debtors***" means collectively, each of the Debtors and any successors thereto, by merger, consolidation or otherwise, as reorganized on or after the Effective Date, in accordance with the Plan.

110. "***Reorganized Equity Interests***" means the Equity Interests of the Reorganized Company authorized under the New Organizational Documents and issued pursuant to the Plan.

111. "***Restructuring Expenses***" means the reasonable and documented fees and expenses incurred by the DIP Agent and the Prepetition Agent, in connection with the Chapter 11 Cases and the Restructuring Transactions, as provided in the DIP Orders, including the fees and expenses of: (a) Goldberg Kohn Ltd., as counsel to the Prepetition Secured Lenders and DIP Agent; (b) McDermott Will & Emery as special counsel to the Prepetition Secured Lenders and DIP Agent; and (c) one local bankruptcy counsel to the DIP Agent; and in each case of (a)-(c) above, payable in accordance with the terms of the DIP Facility Documents.

112. "***Restructuring Transactions***" means the transactions described in Article IV of the Plan.

113. "***Retained Professional***" means an Entity: (a) employed in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Effective Date pursuant to (i) sections 327, 328, 329, 330, or 331 of the Bankruptcy Code or (ii) an order entered by the Bankruptcy Court authorizing such retention; or (b) for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

114. "***Rubio's***" means Rubio's Restaurants, Inc.

115. "***Schedules***" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs filed by the Debtors pursuant to section 521 of the Bankruptcy Code and in substantial conformance with the official bankruptcy forms, as the same may have been amended, modified or supplemented from time to time.

116. "***Secured Claim***" means any and all Claims against any Debtor that are secured by a Lien on, or security interest in, property of such Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, which Lien or right of setoff, as the case may be, is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law, but only to the extent of the value of the Holder's interest in such Debtor's interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

117. "***Secured Lender Deficiency Claims***" means the Claims for any remaining prepetition obligations arising under the Prepetition Credit Agreement after taking into account the Secured Loan Claims.

118. "***Secured Loan Claims***" means any and all Loan Claims against any Debtor that is a Secured Claim.

119. "***Securities Act***" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

120. "***Security***" has the meaning ascribed to such term in section 101(49) of the Bankruptcy Code.

121. "***Stamp or Similar Tax***" means any stamp tax, recording tax, personal property tax, conveyance fee, intangibles or similar tax, real estate transfer tax, sales tax, use tax, transaction privilege tax (including, without limitation, such taxes on prime contracting and owner-builder sales), privilege taxes (including, without limitation, privilege taxes on construction contracting with regard to speculative builders and owner builders), and other similar taxes imposed or assessed by any Governmental Unit.

122. "***Subordinated Claim***" means any Claim that is subject to (a) subordination under section 510(b) of the Bankruptcy Code or (b) equitable subordination as determined by the Bankruptcy Court in a Final Order, including, without limitation, any Claim for or arising from the rescission of a purchase, sale, issuance, or offer of a Security of any Debtor; for damages arising from the purchase or sale of such a Security; or for reimbursement, indemnification, or contribution allowed under section 502 of the Bankruptcy Code on account of such Claims.

123. "***Unexpired Lease***" means a lease to which one or more of the Debtors is a party that is subject to assumption, assumption and assignment or rejection under section 365 of the Bankruptcy Code.

124. "***Unimpaired***" means, with respect to any Claim or Equity Interest, such Claim or Equity Interest that is not Impaired.

125. "***U.S. Trustee***" means the United States Trustee for the District of Delaware.

Section 1.2 *Rules of Interpretation and Computation of Time.*

(a) For purposes herein: (i) 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; (ii) unless otherwise specified, any reference herein to a contract, 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; (iii) unless otherwise specified, any reference herein to an existing document or exhibit having been filed or to be filed shall mean that document or exhibit, as it may thereafter be amended, modified, or supplemented; (iv) unless otherwise specified, all references herein to "Articles" and "Sections" are references to Articles and Sections, respectively, of the Plan; (v) the words ''herein,'' "hereof," and ''hereto'' refer to the Plan in its

entirety rather than to a particular portion of the Plan; (vi) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitations, and shall be deemed to be followed by the words "without limitation"; (viii) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable state limited liability company Laws; (viii) 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 hereof; (ix) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (x) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; and (xi) references to docket numbers are references to the docket numbers of documents filed in the Chapter 11 Cases under the Bankruptcy Court's CM/ECF system.

(b) The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein, unless otherwise provided for herein.

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

(d) In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control. In the event of an inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II.

UNCLASSIFIED CLAIMS

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

Section 2.1 *Administrative Claims.*

(a) Unless otherwise agreed to by the Holder of an Allowed Administrative Claim and the applicable Debtor(s) or the Reorganized Debtor(s), as applicable, to the extent an Administrative Claim has not already been paid in full or otherwise satisfied during the Chapter 11 Cases and except as otherwise provided in this Article II, each Holder of an Allowed Administrative Claim shall receive in full and final satisfaction of its Allowed Administrative Claim an amount of Cash equal to the unpaid portion of such Allowed Administrative Claim: (i) if such Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date or as soon as reasonably practicable thereafter (or, if not then due, when such Administrative Claim is due or as soon as reasonably practicable thereafter); (ii) if such Administrative Claim is Allowed after the Effective Date, on the date such Administrative Claim is Allowed or as soon as reasonably practicable thereafter; (iii) at such time and upon such terms as may be agreed upon by the Holder of such Allowed Administrative Claim and the Debtors or the Reorganized

Debtors, as applicable; or (iv) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court.

(b) All requests for payment of an Administrative Claim (other than DIP Claims or Professional Fee Claims) that accrued on or before the Effective Date that were not otherwise accrued in the ordinary course of business must be filed with the Bankruptcy Court and served on the Debtors no later than the Administrative Claims Bar Date. Holders of Administrative Claims (other than DIP Claims or Professional Fee Claims) that are required to, but do not, file and serve a request for payment of such Administrative Claims by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, or the Reorganized Debtors, and such Administrative Claims shall be deemed discharged, compromised, settled, and released as of the Effective Date.

(c) The Reorganized Debtors, in their sole and absolute discretion, may settle Administrative Claims in the ordinary course of business without further Bankruptcy Court approval. The Debtors or the Reorganized Debtors, as applicable, may also choose to object to any Administrative Claim no later than 45 days after the Administrative Claims Bar Date, subject to extensions by the Bankruptcy Court, agreement in writing of the parties, or on motion of a party in interest approved by the Bankruptcy Court. Unless the Debtors or the Reorganized Debtors (or other party with standing) object to a timely-filed and properly served Administrative Claim, such Administrative Claim shall be deemed Allowed in the amount requested. In the event that the Debtors or the Reorganized Debtors object to an Administrative Claim, the parties may confer to try to reach a settlement and, failing that, the Bankruptcy Court shall determine whether such Administrative Claim should be allowed and, if so, in what amount.

Section 2.2 *Priority Tax Claims.*

Except to the extent that each Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each Holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on or before the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Debtors and the Holder of such Claim, or when such Allowed Priority Tax Claim becomes due and payable under applicable non-bankruptcy Law, or in the ordinary course of business.

Section 2.3 *Professional Fee Claims.*

(a) All final requests for payment of Professional Fee Claims must be filed no later than the first Business Day that is 45 days after the Effective Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

(b) On the Effective Date, the Reorganized Debtors shall establish (if not already established) and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount; *provided* that any amounts remaining in the Funded Reserve Account shall

be used to fund the Professional Fee Escrow Account. The Professional Fee Escrow Account shall be maintained in trust solely for the benefit of the Retained Professionals. Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors. No Liens, Claims, or Equity Interests shall encumber the Professional Fee Escrow Account in any way. The Reorganized Debtors shall be obligated to pay Allowed Professional Fee Claims in excess of the Professional Fee Escrow Amount in the event that the condition set forth in section 8.1(i) is satisfied. The amount of Professional Fee Claims owing to the Retained Professionals shall be paid in Cash to such Retained Professionals from funds held in the Professional Fee Escrow Account when such Professional Fee Claims are Allowed by an Order of the Bankruptcy Court; *provided* that in the event the Professional Fee Reserve Amount is insufficient to satisfy the Professional Fee Claims, (x) each Retained Professional shall receive its portion of the Professional Fee Escrow Account, allocated on the basis of the unused amounts set forth in the DIP Budget for such Retained Professional, from the Professional Fee Escrow Account and (y) the Reorganized Debtors shall be required to satisfy the Allowed amounts of the remainder of any outstanding Professional Fee Claims. When all such Allowed amounts owing to Retained Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court or any other Entity.

(c) The Retained Professionals shall reasonably estimate in good faith their Accrued Professional Compensation prior to and as of the Effective Date and shall deliver such estimate to the Debtors and the Consenting Secured Lenders no later than five Business Days before the anticipated Effective Date; *provided* that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Retained Professional. If a Retained Professional does not provide such estimate, the Reorganized Debtors may estimate the unbilled fees and expenses of such Retained Professional; *provided* that such estimate shall not be considered an admission or limitation with respect to the fees and expenses of such Retained Professional. The total amount estimated as of the Effective Date shall consist of the Professional Fee Reserve Amount; *provided* that the Debtors shall use Cash on hand to increase the amount of the Professional Fee Escrow Account to the extent fee applications are filed after the Effective Date in excess of the amount held in the Professional Fee Escrow Account based on such estimates.

(d) Except as otherwise specifically provided in the Plan, on and after the Confirmation Date, the Reorganized Debtors shall pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by such Debtor or Reorganized Debtor (as applicable) after the Confirmation Date in the ordinary course of business and without any further notice to or action, order or approval of the Bankruptcy Court. The Reorganized Debtors shall pay, within ten Business Days after submission of a detailed invoice to the Reorganized Debtors, such reasonable Claims for compensation or reimbursement of expenses incurred by the Retained Professionals of the Debtors. From and after the Confirmation Date, any requirement that Retained Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and each Debtor or Reorganized Debtor (as applicable) may employ and pay any Retained

Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

Section 2.4 *DIP Claims.*

(a) Subject to the DIP Orders, the DIP Claims shall be Allowed Claims in the full amount outstanding under the DIP Credit Agreement as of the Effective Date, including principal, interest, fees, costs, other charges, and expenses, and all other obligations related to the DIP Facility, if any.

(b) Notwithstanding anything to the contrary herein, in full and final satisfaction, settlement, release and discharge of and in exchange for release of all DIP Claims, on the Effective Date, the DIP Claims shall convert on a dollar-for-dollar basis into loans under, or otherwise paid or satisfied by, the Exit Facility pursuant to the Exit Facility Documents in an amount equal to the Exit Conversion Amount.

Section 2.5 *Statutory Fees.*

The Debtors and the Reorganized Debtors, as applicable, shall pay all quarterly fees under 28 U.S.C § 1930(a), plus any interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtors' or Reorganized Debtors' business, for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

Section 3.1 *Classification of Claims.*[3]

The Plan constitutes a separate chapter 11 plan of reorganization for each Debtor, and the classification of Claims and Equity Interests set forth herein shall apply separately to each of the Debtors. Except for the Claims addressed in Article II of the Plan (or as otherwise set forth herein), all Claims and Equity Interests are placed in Classes for each of the Debtors. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims, Priority Tax Claims, Professional Fee Claims, and DIP Claims, as described in Article II of the Plan.

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including for purposes of voting, Confirmation and distribution pursuant to the Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that such Claim or Equity Interest qualifies within the description of such Class and shall be deemed

[3] The Debtors reserve the right to separately classify Claims to the extent necessary to comply with any requirements under the Bankruptcy Code or applicable Law.

classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class.

The classification and the manner of satisfying all Claims under the Plan take into consideration (a) the existence of guarantees or alleged guarantees by the Debtors of obligations of other Debtors or Entities; and (b) that Debtors may be joint obligors with other Debtors or Entities with respect to the same obligation.

Section 3.2 *Class Identification.*

The following chart represents the classification of Claims and Equity Interests for each Debtor pursuant to the Plan.

Class	**Claims and Equity Interests**	**Status**	**Voting Rights**
Class 1	Other Priority Claims	Unimpaired	No (conclusively presumed to accept)
Class 2	Other Secured Claims	Unimpaired	No (conclusively presumed to accept)
Class 3	Secured Loan Claims	Impaired	Yes
Class 4	General Unsecured Claims	Impaired	No (deemed not to accept)
Class 5	Intercompany Claims	Unimpaired/ Impaired	No (conclusively presumed to accept or deemed not to accept)
Class 6	Subordinated Claims	Impaired	No (deemed not to accept)
Class 7	Equity Interests	Impaired	No (deemed not to accept)
Class 8	Intercompany Equity Interests	Impaired	No (deemed not to accept)

Section 3.3 *Treatment and Voting Rights of Claims and Equity Interests.*

Except to the extent that the Debtors and a Holder of an Allowed Claim or Allowed Equity Interest, as applicable, agree to less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of, and in exchange for, such Holder's Allowed Claim or Allowed Equity Interest. Unless otherwise indicated, the Holder of an Allowed Claim or Allowed Equity Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter, or, if payment is not due, in accordance with its terms in the ordinary course.

(a) *Class 1—Other Priority Claims.*

(i) *Classification*: Class 1 consists of all Other Priority Claims.

(ii) *Treatment:* Except to the extent that a Holder of an Allowed Other Priority Claim agrees to less favorable treatment, in exchange for full and final satisfaction, settlement, release, and discharge of each Other Priority Claim, each Holder of such Allowed Other Priority Claim shall (A) be paid in full in Cash on or as soon as reasonably practicable after (1) the Effective Date, (2) the date on which such Other Priority Claim becomes an Allowed Other Priority Claim, or (3) such other date as may be ordered by the Bankruptcy Court; or (B) receive such other recovery as is necessary to satisfy section 1129 of the Bankruptcy Code.

(iii) *Impairment and Voting:* Class 1 is Unimpaired and Holders of Other Priority Claims are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Priority Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Other Priority Claims.

(b) *Class 2—Other Secured Claims.*

(i) *Classification*: Class 2 consists of all Other Secured Claims.

(ii) *Treatment:* Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each Holder thereof shall receive: (A) payment in full in Cash; (B) delivery of the collateral securing any such Claim and payment of any interest required under section 506(b) of the Bankruptcy Code; (C) Reinstatement of such Claim; or (D) other treatment rendering such Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(iii) *Impairment and Voting*: Class 2 is Unimpaired and Holders of Other Secured Claims are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Allowed Other Secured Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Other Secured Claims.

(c) *Class 3—Secured Loan Claims.*

(i) *Classification*: Class 3 consists of Secured Loan Claims.

(ii) *Treatment*: Except to the extent that a Holder of an Allowed Secured Loan Claim agrees to less favorable treatment, on or as soon as is reasonably practicable after the Effective Date, in full and final satisfaction, compromise, settlement, release, and discharge of and in exchange for each Allowed Secured Loan Claim, each Holder thereof shall receive their Pro-Rata Share of: (A) a portion of the Exit Facility (after accounting for the Exit Conversion Amount) in a principal amount equal to $37 million and (B) the Reorganized Equity Interests.

(iii) *Impairment and Voting*: Secured Loan Claims are Impaired and are entitled to vote to accept or reject the Plan.

(d) *Class 4—General Unsecured Claims.*

(i) *Classification*: Class 4 consists of all General Unsecured Claims.

(ii) *Treatment:* On the Effective Date, all General Unsecured Claims shall be cancelled, released, and discharged, and shall be of no further force or effect. Therefore, Holders of General Unsecured Claims shall not receive any distribution on account of such General Unsecured Claims.

(iii) *Impairment and Voting*: General Unsecured Claims are Impaired and Holders of such Claims are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of General Unsecured Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such General Unsecured Claims.

(e) *Class 5—Intercompany Claims.*

(i) *Classification*: Class 5 consists of all Intercompany Claims.

(ii) *Treatment*: On the Effective Date, at the option of the Debtors, and the Consenting Secured Lenders, each Intercompany Claim shall be either (A) Reinstated or (B) cancelled, released and discharged without any distribution on account of such Claims.

(iii) *Impairment and Voting*: Holders of Intercompany Claims that are Reinstated are conclusively presumed to accept the Plan pursuant to section 1126(f) and Holders of Intercompany Claims that are cancelled, released and discharged under the Plan without any distribution are deemed not to accept pursuant to section 1126(g) of the Bankruptcy Code, respectively. Therefore, Holders of Allowed Intercompany Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Allowed Intercompany Claims.

(f) *Class 6—Subordinated Claims.*

(i) *Classification*: Class 6 consists of all Subordinated Claims, if any.

(ii) *Treatment*: On the Effective Date, all Subordinated Claims shall be cancelled, released, and discharged as of the Effective Date, and shall be of no further force or effect. Therefore, Holders of Subordinated Claims shall not receive any distribution on account of such Subordinated Claims.

(iii) *Impairment and Voting*: Subordinated Claims are Impaired and Holders of such Claims are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Subordinated Claims are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Subordinated Claims.

(g) *Class 7—Equity Interests.*

(i) *Classification*: Class 7 consists of all Equity Interests.

(ii) *Treatment*: On the Effective Date, all Equity Interests shall be cancelled without any distribution on account of such Equity Interests.

(iii) *Impairment and Voting*: Equity Interests are Impaired and Holders of such Equity Interests are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Equity Interests.

(h) *Class 8—Intercompany Equity Interests.*

(i) *Classification*: Class 8 consists of all Intercompany Equity Interests.

(ii) *Treatment*: On the Effective Date, the Intercompany Equity Interests shall be cancelled without any distribution on account of such Equity Interests; *provided, however*, that at the option of the Debtors and the Consenting Secured Lenders, the Intercompany Equity Interests may be Reinstated for administrative convenience.

(iii) *Impairment and Voting*: Holders of Intercompany Equity Interests are deemed not to have accepted the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, Holders of such Equity Interests are not entitled to vote to accept or reject the Plan, and the votes of such Holders will not be solicited with respect to such Intercompany Equity Interests.

Section 3.4 *Special Provision Governing Unimpaired Claims.*

Except as otherwise provided in the Plan, the DIP Orders, or the DIP Facility Documents, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights in respect of any Unimpaired Claim, including, but not limited to, all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

Section 3.5 *PPP Loan Claims.*

The Debtors have used the proceeds of the loans issued under the PPP Loan Agreement to pay "forgivable expenses" as that term is defined under the Paycheck Protection Program and CARES Act. Accordingly, the Debtors anticipate that the full amount of the PPP Loan Claims will be forgiven in accordance with applicable Law. To the extent any portion of the PPP Loan Claims are not forgiven, such portion of PPP Loan Claims shall be treated as General Unsecured Claims in Class 4 and shall be cancelled, released, and discharged as of the Effective Date, and of no further force or effect.

Section 3.6 *Voting; Presumptions; Solicitation.*

(a) *Acceptance by Certain Impaired Classes.* Only Holders of Allowed Claims in Class 3 are entitled to vote to accept or reject the applicable Plan. An Impaired Class of Claims shall have accepted the Plan if (i) the Holders of at least 66.6% in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders of more than one-half (1/2) in number of the Allowed Claims actually voting in such Class have voted to accept the Plan. Holders of Claims in Class 3 have received Ballots containing detailed voting instructions.

(b) *Conclusively Presumed Acceptance by Unimpaired Classes.* Holders of Claims in Class 1 and Class 2, and certain Holders of Claims in Class 6 are conclusively presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject the Plan and the vote of such Holders shall not be solicited.

(c) *Deemed Not To Accept by Certain Impaired Classes.* Holders of Claims and Equity Interests in Class 4, Class 5, Class 6, Class 7, and Class 8, and certain Holders of Claims in Class 6 are deemed not to accept the Plan pursuant to section 1126(g) of the Bankruptcy Code. Accordingly, such Holders are not entitled to vote to accept or reject the Plan and the vote of such Holders shall not be solicited.

(d) *Controversy Concerning Impairment.* If a controversy arises as to whether any Claims or Equity Interests, or any Class thereof, is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

Section 3.7 *Nonconsensual Confirmation.*

Because certain Class of Claims or Equity Interests entitled to vote on an applicable Plan are deemed not to vote to accept the Plan, the Debtors will seek Confirmation of the Plan under section 1129(b) of the Bankruptcy Code.

Section 3.8 *Subordinated Claims.*

The allowance, classification, and treatment of all Allowed Claims and Equity Interests, and the respective distributions and treatments under the Plan, shall take into account and conform to the relative priority and rights of the Claims and Equity 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, except where otherwise provided herein, the Debtors reserve the right to reclassify any Allowed Claim or Equity Interest in accordance with any contractual, legal, or equitable subordination rights relating thereto.

Section 3.9 *Intercompany Equity Interests.*

To the extent Reinstated under the Plan, distributions on account of Intercompany Equity Interests are not being received by Holders of such Intercompany Equity Interests on account of their Intercompany Equity Interests but for the purposes of administrative convenience and due to the importance of maintaining the corporate structure for the ultimate benefit of the Holders that receive the Reorganized Equity Interests in exchange for the Debtors' and Reorganized Debtors' agreement under the Plan to make certain distributions on account of such Holders' Allowed Claims.

Section 3.10 *No Waiver.*

Nothing contained in the Plan shall be construed to waive a Debtor's, Reorganized Debtor's or other Entity's right to object on any basis to any Claim, including after the Effective Date.

ARTICLE IV.

MEANS FOR IMPLEMENTATION OF THE PLAN

Section 4.1 *Compromise of Controversies.*

Pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classifications, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims, Equity Interests, Causes of Action, and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019.

Other than as specifically set forth herein, the Plan shall be deemed a motion to approve the good-faith compromise and settlement of all such Claims, Equity Interests, Causes of Action, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019, as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Subject to Article VI of the Plan, all distributions made to Holders of Allowed Claims and Allowed Equity Interests (as applicable) in any Class are intended to be and shall be final.

Section 4.2 *Sources of Consideration for Plan Distribution.*

The Debtors shall fund distributions under the Plan with (1) Cash on hand, including Cash from operations; (2) the proceeds of the DIP Loans; (3) the Exit Facility; and (4) the Reorganized Equity Interests. Cash payments to be made pursuant to the Plan will be made by the Reorganized Debtors. The Reorganized Debtors shall be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Reorganized Debtors to satisfy their obligations under the Plan. Except as set forth herein, any changes in intercompany account balances resulting from such transfers shall be accounted for and settled in accordance with the Debtors' historical intercompany account settlement practices and shall not violate the terms of the Plan.

From and after the Effective Date, subject to any applicable limitations set forth in any post-Effective Date agreement (including, without limitation, the Exit Facility Documents, the Equity Holders Agreement, the Reorganized Debtors shall have the right and authority without further order of the Bankruptcy Court to raise additional capital and obtain additional financing as the boards of directors of the applicable Reorganized Debtors deem appropriate.

Section 4.3 *Restructuring Transactions.*

On the Effective Date or as soon as reasonably practicable thereafter, the Reorganized Debtors may take all actions as may be reasonably necessary or appropriate to effect any transaction described in, approved by, contemplated by or necessary to effectuate the Plan and the Plan Supplement, including: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable Law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any property, right, liability, duty, or obligation on terms consistent with the terms of the Plan; (c) the filing of appropriate certificates of formation or incorporation, merger, or consolidation with the appropriate governmental authorities pursuant to applicable Law; and (d) all other actions that the Reorganized Debtors reasonably determine are necessary or appropriate. For the purposes of effectuating the Plan, none of the Restructuring Transactions contemplated herein shall constitute a change of control under any agreement, contract, or document of the Debtors.

Section 4.4 *Continued Corporate Existence.*

Except as otherwise provided in the Plan, or as otherwise may be agreed between the Debtors and the Consenting Secured Lenders, each of the Debtors, as Reorganized Debtors, shall

continue to exist on and after the Effective Date as a separate legal Entity with all of the powers available to such legal Entity under applicable Law and pursuant to the New Organizational Documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with such applicable Law. On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, without the need for approval of the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, take such action as permitted by applicable Law, and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (a) a Reorganized Debtor to be merged into another Reorganized Debtor or an Affiliate of a Reorganized Debtor; (b) a Reorganized Debtor to be dissolved; (c) the legal name of a Reorganized Debtor to be changed; (d) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter; or (e) the reincorporation of a Reorganized Debtor under the Law of jurisdictions other than the Law under which the Debtor currently is incorporated.

Section 4.5 *Corporate Action.*

(a) On the Effective Date, all actions contemplated by the Plan, the Plan Supplement, and the Restructuring Transactions shall be deemed authorized and approved in all respects, including: (i) the selection of the directors and officers of each of the Reorganized Debtors; (ii) the distribution of the Reorganized Equity Interests as provided herein or in the Plan Supplement Documents; (iii) the execution and entry into the Exit Facility Documents; and (iv) all other actions contemplated by the Plan (whether to occur before, on, or after the Effective Date) or Restructuring Transactions, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have timely occurred and shall be in effect and shall be authorized and approved in all respects, without any requirement of further action by the security holders, directors, or officers of the Debtors or the Reorganized Debtors or otherwise.

(b) On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and, as applicable, directed, to issue, execute, and deliver the agreements, documents, securities, certificates of incorporation, operating agreements, and instruments contemplated by the Plan and the Plan Supplement (or necessary or desirable to effect the transactions contemplated by the Plan and the Plan Supplement) in the name of and on behalf of the Reorganized Debtors, including the Reorganized Equity Interests, the Exit Facility Documents, and any and all agreements, documents, securities, and instruments relating to the foregoing.

(c) The authorizations and approvals contemplated by this Section 4.5 shall be effective notwithstanding any requirements under non-bankruptcy Law.

Section 4.6 *Vesting of Assets.*

Except as otherwise provided in the Plan or the Plan Documents, on the Effective Date, all Assets, including all Claims, rights, and Causes of Action, and any property acquired by the Debtors under or in connection with the Plan, shall vest in each respective Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests. Subject to the terms of the Plan, on and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Claims), Equity Interests, and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

Section 4.7 *Indemnification Provisions in Organizational Documents*.

As of the Effective Date, each Reorganized Debtor's bylaws or other organizational documents, as applicable, shall, to the fullest extent permitted by applicable Law, provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to, current and former managers, directors, officers, employees, or agents against any Claims or Causes of Action, whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. None of the Reorganized Debtors shall amend or restate its certificate of incorporation, bylaws, or similar organizational document after the Effective Date to terminate or materially adversely affect (a) any of the Reorganized Debtors' obligations referred to in this Section 4.7 or (b) the rights of such managers, directors, officers, employees, or agents referred to in this Section 4.7.

Section 4.8 *Cancellation of Existing Securities and Agreements.*

(a) On the Effective Date, except as otherwise specifically provided for in the Plan: (i) the obligations of the Debtors under any certificate, share, note, bond, agreement, indenture, purchase right, option, warrant, or other instrument or document directly or indirectly evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Equity Interest, including the Prepetition Credit Agreement (except such certificates, notes, or other instruments or documents evidencing indebtedness or obligations of the Debtors that are specifically Reinstated pursuant to the Plan, if any) shall be cancelled, terminated and of no further force or effect, without further act or action, and the Debtors and the Reorganized Debtors shall not have any continuing obligations thereunder; and (ii) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, 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 (except such agreements, certificates, notes, or other instruments evidencing indebtedness or obligations of the Debtors that are specifically Reinstated or assumed pursuant to the Plan, if any) shall be released and discharged.

(b) Notwithstanding such cancellation and discharge:

(i) Pursuant to Section 8.2 of the DIP Credit Agreement, all indemnification or other protections provided to any Indemnified Person (as defined therein) pursuant to the provisions in Article X and Article XII of the DIP Credit Agreement shall survive. The DIP Facility Documents shall also continue in effect for purposes of allowing the DIP Agent to (a) receive distributions from the Debtors under the Plan and to make further distributions to the Holders of the DIP Claims on account of such Claims, as set forth in Article VI of the Plan; (b) enforce its rights, Claims and interests with respect to the DIP Lenders; and (c) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of DIP Claims, including any rights to priority of payment with respect to the DIP Lenders; and (d) appear and be heard in the Chapter 11 Cases or in any other proceeding, including to enforce any obligation owed to the DIP Agent or Holders of DIP Claims under the Plan.

(ii) The Prepetition Credit Agreement Documents shall continue in effect solely for purposes of allowing the Prepetition Agent to: (a) receive distributions from the Debtors under the Plan and to make further distributions to the Holders of the Secured Loan Claims on account of such Claims, as set forth in Article VI of the Plan; (b) enforce its rights, Claims and interests with respect to the Prepetition Secured Lenders; (c) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of Secured Loan Claims, including any rights to priority of payment with respect to the Prepetition Secured Lenders; and (d) appear and be heard in the Chapter 11 Cases or in any other proceeding, including to enforce any obligation owed to the Agent or Holders of Secured Loan Claims under the Plan.

Section 4.9 *Approval of the Exit Facilities and Exit Facility Documents.*

(a) On the Effective Date, the Reorganized Debtors shall have total funded debt in the form of the Exit Facility in an initial aggregate amount equal to $52 million. The Reorganized Debtors may use the Exit Facility for any purpose permitted by the Exit Facility Documents, including the funding of obligations under the Plan and satisfaction of ongoing working capital needs.

(b) Confirmation of the Plan shall be deemed to constitute approval of the Exit Facility and the Exit Facility Documents (including all transactions contemplated thereby, such as any supplementation or additional syndication of the Exit Facility, and all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities and expenses provided for therein) and, subject to the occurrence of the Effective Date, authorization for the Reorganized Debtors to enter into and perform their obligations under the Exit Facility Documents and such

other documents as may be reasonably required or appropriate, in each case, in accordance therewith.

(c) The Exit Facility Documents shall constitute legal, valid, binding, and authorized obligations of the Reorganized Debtors, enforceable in accordance with their terms. The financial accommodations to be extended pursuant to the Exit Facility Documents are being extended, and shall be deemed to have been extended, in good faith, for legitimate business purposes, are reasonable, shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever, and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any other applicable non-bankruptcy Law.

(d) On the Effective Date, all of the Liens and security interests to be granted in accordance with the Exit Facility Documents: (i) shall be legal, binding, and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents; (ii) shall be deemed automatically perfected on the Effective Date, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents; and (iii) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and shall not constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy Law. The Reorganized Debtors and the Entities granted such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and perfect such Liens and security interests under the provisions of the applicable state, provincial, federal, or other Law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable Law to give notice of such Liens and security interests to third parties.

Section 4.10 *Issuance of Reorganized Equity Interests.*

(a) Shares of Reorganized Equity Interests shall be authorized under the New Organizational Documents, issued on the Effective Date and distributed as soon as practicable thereafter in accordance with the Plan. All of the Reorganized Equity Interests issuable in accordance with the Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable. The issuance of the Reorganized Equity Interests is authorized without the need for any further corporate action and without any further action by any Holder of a Claim or Equity Interest.

(b) All shares of common stock of Holdings outstanding prior to Consummation (including all rights exchangeable or exercisable for shares of common stock of Investor) shall be extinguished upon Consummation and holders thereof shall not receive any payment or property on account of any such shares of capital stock.

(c) On the Effective Date, the Reorganized Debtors and the Holders of Reorganized Equity Interests shall enter into the New Organizational Documents in substantially the form included in the Plan Supplement. The New Organizational Documents shall be deemed to be valid, binding, and enforceable in accordance with their terms, and each Holder of Reorganized Equity Interests shall be bound thereby, in each case without the need for execution by any party thereto other than the Reorganized Debtors.

Section 4.11 *Exemption from Registration Requirements.*

The issuance of the Reorganized Equity Interests under the Plan and/or the Plan Supplement shall be exempt from registration under the Securities Act and any other applicable securities Laws pursuant to section 1145 of the Bankruptcy Code. These Securities may be resold without registration under the Securities Act or other federal securities Laws pursuant to the exemption provided by section 4(a)(1) of the Securities Act, unless the Holder is an "underwriter" with respect to such Securities, as that term is defined in section 1145(b) of the Bankruptcy Code. In addition, such exempt Securities generally may be resold without registration under state securities Laws pursuant to various exemptions provided by the respective Laws of the several states.

Section 4.12 *Organizational Documents.*

Subject to Article V of the Plan, the Reorganized Debtors shall enter into such agreements and amend their corporate governance documents to the extent necessary to implement the terms and provisions of the Plan. The New Organizational Documents shall comply with section 1123(a)(6) of the Bankruptcy Code.

Section 4.13 *Exemption from Certain Transfer Taxes and Recording Fees.*

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfer from a Debtor to a Reorganized Debtor or to any Entity pursuant to, in contemplation of, or in connection with the Plan or pursuant to: (a) the issuance, distribution, transfer, or exchange of any debt, securities, or other interest in the Debtors or the Reorganized Debtors; (b) the creation, modification, consolidation, or recording of any mortgage, deed of trust or other security interest, or the securing of additional indebtedness by such or other means; (c) the making, assignment, or recording of any lease or sublease; or (d) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any Stamp or Similar Tax or governmental assessment, and the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment. Unless the Bankruptcy Court orders otherwise, all sales, transfers and assignments of owned and leased property approved by the Bankruptcy Court on or before the Effective Date shall be deemed to have been in furtherance of, or in connection with, the Plan.

Section 4.14 *Directors and Officers of the Reorganized Debtors.*

The members of the Reorganized Board will be designated in accordance with the Plan Supplement. Except to the extent that a member of the board of directors or board of managers, or the sole manager, as applicable, of a Debtor is designated in the Plan Supplement to serve as a director, manager or sole manager of such Reorganized Debtor on the Effective Date, the members of the board of directors or board of managers, or the sole manager, as applicable, of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to the Reorganized Debtors on or after the Effective Date, and each such director, manager, or sole manager shall be deemed to have resigned or shall otherwise cease to be a director, manager or sole manager of the applicable Debtor on the Effective Date. Each of the directors, managers, sole managers and officers of each of the Reorganized Debtors shall serve pursuant to the terms of the applicable New Organizational Documents of such Reorganized Debtor and may be designated, replaced or removed in accordance with such New Organizational Documents.

Section 4.15 *Management Incentive Plan.*

On the Effective Date, the Management Incentive Plan shall be deemed adopted by the Reorganized Board to grant select members of the management team of the Reorganized Company and its subsidiaries options exercisable in accordance with the terms of the Plan Supplement.

Section 4.16 *Effectuating Documents; Further Transactions.*

Prior to, on, and after the Effective Date, the Debtors and Reorganized Debtors and the directors, managers, officers, authorized persons, and members of the boards of directors or managers and directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and provisions of the Plan, the DIP Facility Documents, the Exit Facility Documents, the New Organizational Documents, and any securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorizations, actions, or consents except for those expressly required pursuant to the Plan.

The Confirmation Order shall, and shall be deemed to, pursuant to both section 1123 and section 363 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan.

Section 4.17 *Restructuring Expenses*

The Restructuring Expenses incurred, or estimated to be incurred, up to and including the Effective Date, but not paid pursuant to the DIP Orders or DIP Facility Documents, shall be paid in full in Cash on the Effective Date (to the extent not previously paid during the course of the Chapter 11 Cases) in accordance with, and subject to the Plan and the DIP Orders, without any requirement to file a fee application with the Bankruptcy Court, without the need for itemized

time detail, and without any requirement for Bankruptcy Court review or approval. All Restructuring Expenses to be paid on the Effective Date shall be estimated prior to and as of the Effective Date and such estimates shall be delivered to the Debtors at least five Business Days before the anticipated Effective Date (or such shorter period as the Debtors may agree); *provided*, that such estimate shall not be considered an admission or limitation with respect to such Restructuring Expenses. On or as soon as reasonably practicable after the Effective Date, final invoices for all Restructuring Expenses incurred prior to and as of the Effective Date shall be submitted to the Debtors. In addition, the Debtors and the Reorganized Debtors (as applicable) shall continue to pay pre- and post-Effective Date, when due and payable in the ordinary course, Restructuring Expenses related to implementation, consummation and defense of the Plan whether incurred before, on, or after the Effective Date.

Section 4.18 *Retained Causes of Action.*

Unless any Causes of Action or Claims against an Entity are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan, the DIP Orders, or by a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action or Claims in the ordinary course, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action and Claims shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors may pursue such retained Causes of Action or Claims, and may exercise any and all rights in connection therewith. For the avoidance of doubt, in no instance will any Cause of Action preserved pursuant to this Section 4.22 include any Claim or Cause of Action with respect to, or against, a Released Party.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as any indication that the Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against them. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein.

ARTICLE V.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Section 5.1 *Assumption and Rejection of Executory Contracts and Unexpired Leases.*

(a) All Executory Contracts and Unexpired Leases of the Debtors that are not otherwise assumed or rejected will be deemed rejected by the applicable Debtor or Reorganized Debtor in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than (i) those that are identified on the Assumed Executory Contracts and Unexpired Leases Schedule; (ii) those that have been previously assumed or rejected pursuant to a Final Order by the Debtors prior to the Effective Date; and (iii) those that are the subject of a motion seeking assumption or rejection as of the Effective Date. Each Executory

Contract and Unexpired Lease assumed pursuant to this Article V but not assigned to a third party shall be deemed to be assigned to a Reorganized Debtor, and be fully enforceable by, the applicable contracting Reorganized Debtor(s) in accordance with the terms thereof, except as otherwise modified by the provisions of the Plan, or by any order of the Bankruptcy Court.

(b) The Confirmation Order shall constitute an order of the Bankruptcy Court: (i) approving the assumption, assumption and assignment, or rejection, as the case may be, of Executory Contracts or Unexpired Leases, as described in the Plan and Plan Supplement, pursuant to Bankruptcy Code sections 365(a) and 1123(b)(2); (ii) providing that each assumption, assignment, or rejection, as the case may be, is in the best interest of the Reorganized Debtors, their Estates, and all parties in interest in the Chapter 11 Cases; and (iii) providing that the requirements for assumption or assumption and assignment of any Executory Contract or Unexpired Lease to be assumed have been satisfied. Unless otherwise indicated, all assumptions or rejections of Executory Contracts or Unexpired Leases pursuant to the Plan are effective as of the Effective Date.

(c) Except as otherwise provided herein or agreed to by the Debtors and the applicable counterparty, each assumed Executory Contract or Unexpired Lease shall include all modifications, amendments, supplements, restatements, or other agreements related thereto, and all rights related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests. To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto. Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease or the validity, priority, or amount of any Claims that may arise in connection therewith.

Section 5.2 *Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.*

(a) Any monetary defaults under each Executory Contract and Unexpired Lease to be assumed or assumed and assigned pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the Cure Cost in Cash on the Effective Date, subject to the limitation described in the following paragraph, or on such other terms as the parties to such Executory Contract or Unexpired Lease may otherwise agree. No later than the Plan Supplement Filing Date, to the extent not previously filed with the Bankruptcy Court and served on affected counterparties, the Debtors shall provide for notices of proposed assumption and proposed Cure Costs to be filed and served upon applicable contract and lease counterparties, together with procedures for objecting thereto and resolution of disputes by the Bankruptcy Court. Any objection by a contract or lease counterparty to a proposed assumption,

assumption and assignment, or related Cure Cost must be filed, served, and actually received by the Debtors within fourteen (14) days of such assumption or assumption and assignment.

(b) Any counterparty to an Executory Contract or Unexpired Lease that fails to object timely to the proposed assumption or Cure Cost shall be deemed to have assented to such assumption or Cure Cost. In the event of a dispute regarding (i) the amount of any Cure Cost, (ii) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365(b) of the Bankruptcy Code, if applicable, under the Executory Contract or the Unexpired Lease to be assumed or assumed and assigned, and/or (iii) any other matter pertaining to assumption and/or assignment, then the Bankruptcy Court shall hear such dispute prior to the assumption and/or assignment becoming effective, and the applicable Cure Costs associated therewith (if any) shall be paid following entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment and shall not prevent or delay implementation of the Plan or Effective Date; *provided* that the Debtors may settle any dispute regarding the amount of any Cure Cost without any further notice to any party or any action, order, or approval of the Bankruptcy Court; *provided, further,* that notwithstanding anything to the contrary herein, the Debtors reserve the right to either reject, any Executory Contract or Unexpired Lease within 30 days after the entry of a Final Order resolving an objection to assumption or assumption and assignment, determining the Cure Cost under an Executory Contract or Unexpired Lease that was subject to a dispute, or resolving any request for adequate assurance of future performance required to assume such Executory Contract or Unexpired Lease.

(c) Assumption or assumption and assignment of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise, and the payment of the Cure Cost, shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption or assumption and assignment. Any Proofs of Claim filed with respect to an Executory Contract or Unexpired Lease that has been assumed or assumed and assigned, and the Cure Cost paid, shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

Section 5.3 *Indemnification and Reimbursement Obligations.*

Any and all Indemnification Obligations of the Debtors, including pursuant to their corporate charters, agreements, bylaws, limited liability company agreements, memorandum and articles of association, or other organizational documents, or board resolutions, employment contracts or other agreements for the directors, officers, managers, employees, attorneys, other professionals and agents employed by the Debtors to indemnify current and former officers, directors, agents, or employees with respect to all present and future actions, suits, and proceedings against the Debtors based upon any act or omission for or on behalf of the Debtors shall remain in full force and effect to the maximum extent permitted by applicable Law and shall not be discharged, impaired, or otherwise affected by the Plan. All such obligations shall be deemed and treated as Executory Contracts that are assumed by the Debtors under the Plan and shall continue as obligations of the Reorganized Debtors. Any Claim based on the Debtors'

obligations in this Section 5.3 herein shall not be a Disputed Claim or subject to any objection, in either case, by reason of section 502(e)(1)(B) of the Bankruptcy Code or otherwise.

Section 5.4 *Claims Based on Rejection of Executory Contracts and Unexpired Leases (if Any).*

Unless otherwise provided by a Bankruptcy Court order, Proofs of Claim asserting Claims arising from the rejection of the Debtors' Executory Contracts and Unexpired Leases, if any, pursuant to the Plan or otherwise must be filed with the Notice and Claims Agent within 30 days after the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection. Proofs of Claim arising from the rejection or repudiation of the Debtors' Executory Contracts and Unexpired Leases, if any, that are not timely filed shall be disallowed automatically, forever barred from assertion, and shall not be enforceable against any Reorganized Debtor without the need for any objection by the Reorganized Debtors or further notice to or action, order, or approval of the Bankruptcy Court, and any Claim arising out of the rejection or repudiation 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. All Allowed Claims arising from the rejection of the Debtors' Executory Contract and Unexpired Leases, if any, shall constitute General Unsecured Claims and shall be treated in accordance with Article III of the Plan.

Section 5.5 *Contracts and Leases Entered Into After the Petition Date*.

Contracts and leases entered into after the Petition Date by any Debtor including any Executory Contracts and Unexpired Leases assumed by such Debtor, shall be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) that are not otherwise assumed or rejected will be deemed assumed by the applicable Debtor or Reorganized Debtor in accordance with the provisions and requirements of section 365 and 1123 of the Bankruptcy Code.

Section 5.6 *Employee Compensation and Benefit Programs.*

(a) Except as otherwise provided herein or in the Plan Supplement and except for any equity-based compensation or incentive plans, on and after the Effective Date, the Reorganized Debtors may, but are not required to, honor in the ordinary course of business: (i) any employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974) and any other contracts, agreements, policies, programs, and plans for, among other things, employment, compensation, health care, disability and other welfare benefits, deferred compensation benefits, severance policies and benefits, retirement benefits, workers' compensation insurance and accidental death and dismemberment insurance that as of immediately prior to the Petition Date are, and as of immediately prior to the Effective Date continue to be, sponsored, maintained, or contributed to by any of the Debtors for the directors, officers, employees and other service providers of any of the Debtors who served in such capacity at any time; *provided, however*, that notwithstanding the foregoing, the Reorganized Debtors shall assume and otherwise Reinstate the Deferred Compensation Plan on the Effective Date. Nothing contained herein shall entitle any person to any benefit or alleged entitlement

under any policy, program, or plan that has expired or been terminated before the Effective Date, or restore, reinstate, or revive any such expired benefit plan or alleged entitlement under any such expired benefit plan. Nothing herein shall limit, diminish, or otherwise alter the Reorganized Debtors' defenses, Claims, Causes of Action, or other rights with respect to any benefit plan, whether expired or unexpired.

(b) Except as otherwise provided herein, none of (i) the Debtors' emergence from chapter 11 of the Bankruptcy Code as contemplated by the Plan or (ii) the consummation of the transactions provided in the Plan (or otherwise contemplated by the Restructuring Transactions and the Plan to occur prior to or on or about the Effective Date), in each case alone or together with any other event, will (A) entitle any current or former director, officer, employee or other service provider of any of the Debtors to any payment or benefit, (B) accelerate the time of payment or vesting or trigger any payment or funding of compensation or benefits under, or increase the amount payable or trigger any other obligation under, any benefit plan or Expired benefit plan or (C) limit or restrict the right of the Debtors or Reorganized Debtors to merge, amend or terminate any benefit plan, in each case including as a result of a "change in control" or similar provision or as a result of giving rise to any person to terminate his or her service with the Debtors or Reorganized Debtors for "good reason" or similar provision.

Section 5.7 *Insurance Policies.*

All insurance policies pursuant to which any Debtor has any obligations in effect as of the Effective Date shall be deemed and treated as Executory Contracts pursuant to the Plan and shall be assumed and assumed and assigned to the respective Reorganized Debtors and shall continue in full force and effect thereafter in accordance with such policy's respective terms.

Section 5.8 *Reservation of Rights.*

Nothing contained in the Plan shall constitute an admission by the Debtors that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder.

ARTICLE VI.

PROVISIONS GOVERNING DISTRIBUTIONS

Section 6.1 *Distribution on Account of Claims and Equity Interests Allowed as of the Effective Date.*

Except as otherwise provided in the Plan or a Final Order, or as agreed to by the relevant parties, distributions under the Plan on account of Claims and Equity Interests Allowed on or before the Effective Date shall be made on the Distribution Date; *provided* that (a) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice and (b) in accordance with Article II of the Plan, Allowed Priority Tax Claims, unless

otherwise agreed, shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in accordance with the terms of any agreement between the Debtors and the Holder of such Claim, or as may be due and payable under applicable non-bankruptcy Law, or in the ordinary course of business.

Section 6.2 *Distribution on Account of Claims and Equity Interests Allowed After the Effective Date.*

(a) *Payments and Distributions on Disputed Claims*. Except as otherwise provided in the Plan, a Final Order, or as agreed to by the relevant parties, distributions under the Plan on account of Disputed Claims that become Allowed after the Effective Date shall be made on the first day that is 30 Business Days after the Disputed Claims become Allowed Claims; *provided* that (i) Disputed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors on or before the Effective Date that become Allowed after the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice and (ii) Disputed Priority Tax Claims that become Allowed Priority Tax Claims after the Effective Date shall be treated as Allowed Priority Tax Claims in accordance with Article IX of the Plan and paid.

(b) *Special Rules for Distributions to Holders of Disputed Claims*. Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the relevant parties, no payments or distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or agreement among the relevant parties, or by Final Order.

Section 6.3 *Timing and Calculation of Amounts to Be Distributed.*

Except as otherwise provided herein, on the Distribution Date, each Holder of an Allowed Claim shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class. Except as otherwise provided in the Plan, or any order of the Bankruptcy Court, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date.

Section 6.4 *Delivery of Distributions.*

(a) *Record Date for Distributions.* On the Distribution Date, the Claims Register shall be closed and any party responsible for making distributions shall be authorized and entitled to recognize only those Holders of Claims listed on the Claims Register as of the close of business on the Distribution Date. If a Claim is transferred twenty (20) or fewer days before the Distribution Date, the Distribution Agent shall make distributions to the transferee only to the extent practical and, in any event, only if the relevant transfer form contains an unconditional and explicit certification and waiver of any objection to the transfer by the transferor.

(b) *Delivery of Distributions in General*. Except as otherwise provided in the Plan, the Distribution Agent shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated in the Debtors' records as of the date of any such distribution, including the address set forth in any Proof of Claim filed by that Holder; *provided* that the manner of such distributions shall be determined at the discretion of the Reorganized Debtors.

(c) *Delivery of Distributions on Account of Secured Loan Claims*. The Prepetition Agent shall be deemed to be the holder of all Secured Loan Claims for purposes of distributions to be made hereunder, and all distributions on account of the Secured Loan Claims in Class 3 shall be made to the Prepetition Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan (as applicable), the Prepetition Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of Allowed Secured Loan Claims in Class 3 in accordance with the terms of the Prepetition Credit Agreement Documents and the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the Prepetition Agent shall not have any liability to any Entity with respect to distributions made or directed to be made by the Prepetition Agent.

(d) *Delivery of Distributions on Account of DIP Claims*. The DIP Agent shall be deemed to be the Holder of all DIP Claims for purposes of distributions to be made hereunder, and all distributions on account of such DIP Claims shall be made to the DIP Agent. As soon as practicable following compliance with the requirements set forth in Article VI of the Plan (as applicable), the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of the Holders of DIP Claims in accordance with the terms of the DIP Facility, subject to any modifications to such distributions in accordance with the terms of the Plan. Notwithstanding anything in the Plan to the contrary, and without limiting the exculpation and release provisions of the Plan, the DIP Agent shall not have any liability to any Entity with respect to distributions made or directed to be made by the DIP Agent.

Section 6.5 *Distributions by Distribution Agent (if any).*

(a) The Debtors and the Reorganized Debtors, as applicable, shall have the authority, in their sole discretion, to enter into agreements with one or more Distribution Agents to facilitate the distributions required hereunder. To the extent the Debtors and the Reorganized Debtors, as applicable, determine to utilize a Distribution Agent to facilitate the distributions under the Plan to Holders of Allowed Claims, any such Distribution Agent would first be required to: (i) affirm its obligation to facilitate the prompt distribution of any documents; (ii) affirm its obligation to facilitate the prompt distribution of any recoveries or distributions required under the Plan; (iii) waive any right or ability to setoff, deduct from or assert any lien or encumbrance against the distributions required under the Plan to be distributed by such Distribution Agent; and (iv) post a bond, obtain a surety or provide some other form of security for the performance of its duties, the costs and expenses of procuring which shall be borne by the Debtors or the Reorganized Debtors, as applicable.

(b) The Debtors or the Reorganized Debtors, as applicable, shall pay to the Distribution Agents all reasonable and documented fees and expenses of the Distribution Agents without the need for any approvals, authorizations, actions, or consents. The Distribution Agents

shall submit detailed invoices to the Debtors or the Reorganized Debtors, as applicable, for all fees and expenses for which the Distribution Agent seeks reimbursement and the Debtors or the Reorganized Debtors, as applicable, shall pay those amounts that they, in their sole discretion, deem reasonable, and shall object in writing to those fees and expenses, if any, that the Debtors or the Reorganized Debtors, as applicable, deem to be unreasonable. In the event that the Debtors or the Reorganized Debtors, as applicable, object to all or any portion of the amounts requested to be reimbursed in a Distribution Agent's invoice, the Debtors or the Reorganized Debtors, as applicable, and such Distribution Agent shall endeavor, in good faith, to reach mutual agreement on the amount of the appropriate payment of such disputed fees and/or expenses. In the event that the Debtors or the Reorganized Debtors, as applicable, and a Distribution Agent are unable to resolve any differences regarding disputed fees or expenses, either party shall be authorized to move to have such dispute heard by the Bankruptcy Court.

Section 6.6 *Minimum Distributions.*

Notwithstanding anything herein to the contrary, the Reorganized Debtors and the Distribution Agents shall not be required to make distributions or payments of less than $100 (whether Cash or otherwise) and shall not be required to make partial distributions or payments of fractions of dollars. Whenever any payment or distribution of a fraction of a dollar or fractional share of applicable equity interests under the Plan would otherwise be called for, the actual payment or distribution shall reflect a rounding of such fraction to the nearest whole dollar or share of applicable equity interests (up or down), with half dollars and half shares of applicable equity interests or less being rounded down.

Section 6.7 *Undeliverable Distributions.*

(a) *Holders of Certain Undeliverable Distributions.* If any distribution to a Holder of an Allowed Claim made in accordance herewith is returned to the Reorganized Debtors (or their Distribution Agent) as undeliverable, no further distributions shall be made to such Holder. Undeliverable distributions shall remain in the possession of the Reorganized Debtors, subject to Section 6.7(b) of the Plan, until such time as any such distributions become deliverable. Undeliverable distributions shall not be entitled to any additional interest, dividends, or other accruals of any kind on account of their distribution being undeliverable.

(b) *Failure to Claim Undeliverable Distributions.* No later than 60 days after a distribution has been made to each Holder of an Allowed Claim entitled to receive a distribution under the Plan, the Reorganized Debtors shall file with the Bankruptcy Court a list of the Holders of undeliverable distributions. This list shall be maintained and updated periodically in the sole discretion of the Reorganized Debtors for as long as the Chapter 11 Cases stay open. Any Holder of an Allowed Claim, irrespective of when a Claim becomes an Allowed Claim, that does not notify the Reorganized Debtors of such Holder's then current address in accordance herewith within 30 days after the filing of the list of Holders of undeliverable distributions shall have its Claim for such undeliverable distribution discharged and shall be forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtors or their property. Within 90 days after the mailing or other delivery of any such distribution checks, notwithstanding applicable escheatment Laws, all such distributions shall revert to the

Reorganized Debtors. Nothing contained herein shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

(c) *Failure to Present Checks*. Checks issued by the Reorganized Debtors (or their Distribution Agent) on account of Allowed Claims shall be null and void if not negotiated within 90 days after the issuance of such check. Any Holder of an Allowed Claim holding an un-negotiated check that does not request reissuance of such un-negotiated check within 90 days after the date of mailing or other delivery of such check shall have its Claim for such un-negotiated check discharged and be discharged and forever barred, estopped and enjoined from asserting any such Claim against the Reorganized Debtors or their property. Within 90 days after the mailing or other delivery of any such distribution checks, notwithstanding applicable escheatment Laws, all such distributions shall revert to the Reorganized Debtors. Nothing contained herein shall require the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

Section 6.8 *Compliance with Tax Requirements/Allocations.*

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

Section 6.9 *Surrender of Cancelled Instruments or Securities.*

On the Effective Date or as soon as reasonably practicable thereafter, each Holder of a certificate or instrument evidencing a Claim or Equity Interest that is discharged by the Plan shall be deemed to have surrendered such certificate or instrument to the Reorganized Debtors. Except as otherwise expressly provided in the Plan, such surrendered certificate or instrument shall be cancelled solely with respect to the Debtors and Reorganized Debtors, and such cancellation shall not alter the obligations or rights of any non-Debtor third parties vis-à-vis one another with respect to such certificate or instrument, including with respect to any indenture or agreement that governs the rights of the Holder of a Claim or Equity Interests, which shall continue in effect. Notwithstanding anything to the contrary herein, this paragraph shall not apply to certificates or instruments evidencing Claims that are Unimpaired under the Plan.

Section 6.10 *Claims Paid or Payable by Third Parties.*

(a) *Claims Payable by Insurance*. No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to any of the Debtors' insurance policies,

if any, until the Holder of such Allowed Claim has exhausted all remedies with respect to such insurance policies. To the extent that one or more of the Debtors' insurers satisfies or agrees to satisfy in full or in part a Claim, if any, then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claim objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

(b) *Applicability of Insurance Policies*. Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII.

PROCEDURES FOR RESOLVING DISPUTED CLAIMS OR EQUITY INTERESTS

Section 7.1 *Allowance of Claims and Equity Interests.*

(a) Except as provided in Article IX of the Plan, each of the Reorganized Debtors after the Effective Date shall have and retain any and all rights and defenses the Debtors had with respect to any Claim or Equity Interest immediately prior to the Effective Date, except with respect to any Claim deemed Allowed under the Plan.

(b) Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases prior to the Effective Date (including the Confirmation Order), no Claim shall become an Allowed Claim unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Court has entered a Final Order (including the Confirmation Order) in the Chapter 11 Cases allowing such Claim. All settled Claims approved prior to the Effective Date pursuant to a Final Order of the Bankruptcy Court, pursuant to Bankruptcy Rule 9019 or otherwise, shall be binding on all parties.

Section 7.2 *Prosecution of Objections to Claims.*

Except as otherwise specifically provided in the Plan or order of the Bankruptcy Court, and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Reorganized Debtors shall have the sole authority: (1) to file, withdraw, or litigate to judgment objections to Claims or Equity Interests; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

Section 7.3 *Estimation of Claims and Equity Interests.*

Before or after the Effective Date, the Debtors or Reorganized Debtors, as applicable, may (but are not required to) at any time request that the Bankruptcy Court estimate any Claim or Equity Interest pursuant to section 502(c) of the Bankruptcy Code or Bankruptcy Rule 3012 for any reason, regardless of whether any party previously has objected to such Claim or Equity Interest or whether the Bankruptcy Court has ruled on any such objection; and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Equity Interest, including during the litigation of any objection to any Claim or Equity Interest or during the appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim or Equity Interest 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 or Equity Interest, that estimated amount shall constitute a maximum limitation on such Claim or Equity Interest for all purposes under the Plan (including for purposes of distributions), and the relevant Reorganized Debtor may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Equity Interest. Each of the foregoing Claims and Equity Interests 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.

Section 7.4 *Adjustment to Claims and Equity Interests Without Objection.*

Any Claim or Equity Interest that has been paid or satisfied, or any Claim or Equity Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Reorganized Debtors without a claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

Section 7.5 *Disallowance of Certain Claims.*

Any Claims held by Entities from which property is recoverable under section 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed disallowed pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims and Equity Interests until such time as such Causes of Action against that Entity have been settled or an order of the Bankruptcy Court with respect thereto has been entered and all sums due have been turned over or paid to the Reorganized Debtors. All Proofs of Claim filed on account of an Indemnification Obligation to a director, officer or employee shall be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such Indemnification Obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order or approval of the Bankruptcy Court.

Except as provided herein or otherwise agreed, 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 shall not receive any distributions on account of such Claims.

Section 7.6 *Offer of Judgment.*

The Reorganized Debtors are authorized to serve upon a Holder of a Claim an offer to allow judgment to be taken on account of such Claim, and, pursuant to Bankruptcy Rules 7068 and 9014, Federal Rule of Civil Procedure 68 shall apply to such offer of judgment. To the extent the Holder of a Claim or Equity Interest must pay the costs incurred by the Reorganized Debtors after the making of such offer, the Reorganized Debtors are entitled to setoff such amounts against the amount of any distribution to be paid to such Holder without any further notice to or action, order, or approval of the Bankruptcy Court.

Section 7.7 *Amendments to Claims.*

On or after the Effective Date, except as provided herein, a Claim may not be filed or amended without the prior authorization of the Bankruptcy Court or the Reorganized Debtors, and, to the extent such prior authorization is not received, any such new or amended Claim filed shall be deemed disallowed in full and expunged without any further action.

ARTICLE VIII.

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

Section 8.1 *Conditions Precedent to the Effective Date.*

The Effective Date shall not occur unless and until each of the following conditions have occurred or been waived in accordance with the terms herein:

(a) the Bankruptcy Court shall have approved the Disclosure Statement, in a form reasonably acceptable to the Debtors, the Consenting Secured Lenders and the Investor, which consent shall not be unreasonably withheld, conditioned, or delayed, and the order approving the Disclosure Statement shall not have been stayed;

(b) the Confirmation Order shall have become a Final Order (unless otherwise waived by the Consenting Lenders), shall have been entered by December 31, 2020 (or such other later date as agreed to by the Consenting Secured Lenders in their sole discretion), shall be consistent in all material respects with this Plan, and shall otherwise be in a form reasonably acceptable to the Debtors, the Consenting Secured Lenders, and the Investor (and with respect to those provisions thereof that affect the rights, obligations, liabilities and duties of the DIP Agent or the Prepetition Agent, to the DIP Agent or the Prepetition Agent, as applicable), which consent as to the form of the Confirmation Order shall not be unreasonably withheld, conditioned, or delayed, and the Confirmation Order shall not have been stayed; *provided, however*, that the Confirmation Order may not conflict with the treatment of the DIP Claims and the Secured Loan Claims without the prior consent of the DIP Agent and the Holders of the Secured Loan Claims, which consent may be withheld in their respective sole discretion;

(c) all documents, certificates, and agreements necessary to implement the Plan shall have been executed and tendered for delivery to the required parties and, to the extent required, filed with the applicable Governmental Units in accordance with applicable Laws, and all conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date);

(d) all actions necessary to implement the Plan shall have been effected;

(e) the Bankruptcy Court shall have entered the DIP Orders, and the final DIP Order shall have become a Final Order, and the DIP Facility shall not have been terminated and shall continue to be in full force and effect in accordance with its terms;

(f) not later than the Footprint Notification Date, the Consenting Secured Lenders shall notify the Debtors that the (i) list of assumed Unexpired Leases, (ii) the list of the rejected Unexpired Leases, (iii) the terms of any amended, modified or otherwise renegotiated Unexpired Leases and (iv) the annualized savings resulting from (i)–(iii) ((i) through (iv) collectively, the "Go-Forward Footprint and Savings") are acceptable to the Consenting Secured Lenders; provided, however, that in the event that Consenting Secured Lenders do not provide such notice on or before the Footprint Notification Date, the Go-Forward Footprint and Savings shall be deemed acceptable to the Consenting Secured Lenders. After the Footprint Notification Date, no additional assumption, rejection or modification of Unexpired Leases shall have occurred without the consent of Consenting Secured Lenders.

(g) all governmental and material third party approvals and consents necessary in connection with the Restructuring Transactions shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose materially adverse conditions on the Restructuring Transactions;

(h) there shall be no ruling, judgment or order issued by any Governmental Unit making illegal, enjoining or otherwise preventing or prohibiting the consummation of the Restructuring Transactions;

(i) the aggregate amount of (i) all Allowed Professional Fee Claims approved by the Bankruptcy Court prior to the Effective Date, plus (ii) all Professional Fee Claims that have accrued as of the Effective Date but may become Allowed after the Effective Date shall not exceed the Professional Fee Reserve Amount (or such greater amount agreed to by the Consenting Secured Lenders in their sole discretion);

(j) the Professional Fee Escrow Account shall have been established and the Professional Fee Reserve Amount shall have been funded in accordance with this Plan; provided, for the avoidance of doubt, that the Professional Fee Escrow Account shall be funded in an amount set forth in the DIP Budget or such other amount to which the Consenting Secured Lenders consent;

(k) the Debtors shall have paid in full in Cash all Restructuring Expenses incurred or estimated to be incurred, through the Effective Date; and

(l) except as otherwise agreed by the Exit Agent in its sole discretion, the conditions to effectiveness of the Exit Facilities Documents have been satisfied or waived in accordance with the terms thereof, and the Exit Facilities Documents are in full force and effect and binding on all parties thereto.

Section 8.2 *Waiver of Conditions Precedent.*

The Debtors or the Reorganized Debtors, as applicable, with the consent of the Consenting Secured Lenders and the Investor, which consent shall not be unreasonably withheld, conditioned, or delayed (except as to Section 8.1(b) which may be withheld as therein provided), may waive any of the conditions to the Effective Date set forth above at any time, without any notice to parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than a proceeding to confirm the Plan. The failure of the Debtors or Reorganized Debtors, as applicable, to exercise any of the foregoing rights shall not be deemed a waiver of such rights or any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

Section 8.3 *Effect of Failure of Conditions Precedent.*

If the Effective Date does not occur, then upon notice by the Debtors to the Bankruptcy Court, that (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (c) nothing contained in the Plan, the Confirmation Order, or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims, Equity Interests, or Causes of Action; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other Entity.

Section 8.4 *Reservation of Rights.*

The Plan shall have no force or effect unless and until the Confirmation Order is entered. Prior to the Effective Date, none of the filing of the Plan, any statement or provision contained in the Plan, or action taken by the Debtors with respect to the Plan shall be, or shall be deemed to be, an admission or waiver of any rights of any Debtor or any other party with respect to any Claims or Equity Interests or any other matter.

Section 8.5 *Substantial Consummation of Plan.*

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

ARTICLE IX.

EFFECT OF PLAN CONFIRMATION

Section 9.1 *Binding Effect.*

Subject to the occurrence of the Effective Date, on and after the entry of the Confirmation Order, the provisions of the Plan shall bind and inure to the benefit of the Debtors, the Reorganized Debtors, the Consenting Stakeholders, and each Holder of a Claim against or Equity Interest in any Debtor or Reorganized Debtor and inure to the benefit of and be binding on such Debtor's, Reorganized Debtor's, the Consenting Stakeholders', and Holder's respective successors and assigns, regardless of whether the Claim or Equity Interest of such Holder is Impaired under the Plan and whether such Holder has accepted or rejected the Plan or is deemed to have accepted or rejected the Plan.

Section 9.2 *Discharge of Claims and Termination of Equity Interests; Compromise and Settlement of Claims, Equity Interests, and Controversies.*

(a) Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in full and final satisfaction, settlement, release, and discharge, effective as of the Effective Date, of all Equity Interests and Claims of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against the Debtors, the Reorganized Debtors or any of their Assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims, including demands, liabilities, and causes of action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim or Equity Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest is Allowed; or (iii) the Holder of such Claim or Equity Interest has accepted or rejected, or been deemed to accept or reject, the Plan. Except as otherwise provided herein, any default by the Debtors or their Affiliates with respect to any Claim or Equity Interest that existed immediately prior to or on account of the filing of the Chapter 11 Cases shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests subject to the Effective Date occurring, except as otherwise expressly provided in the Plan.

(b) Pursuant to Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims, Equity Interests, and controversies relating to the contractual,

legal, and subordination rights that a Holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Equity Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against the Debtors and their Estates and Causes of Action against other Entities.

Section 9.3 *Releases.*

(a) ***RELEASES BY THE DEBTORS*. PURSUANT TO SECTION 1123(B) OF THE BANKRUPTCY CODE, AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE EFFORTS OF THE RELEASED PARTIES TO FACILITATE THE EXPEDITIOUS REORGANIZATION OF THE DEBTORS AND THE IMPLEMENTATION OF THE RESTRUCTURING CONTEMPLATED BY THE PLAN, PURSUANT TO THE CONFIRMATION ORDER, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, AND ON AND AFTER THE EFFECTIVE DATE, EACH RELEASED PARTY SHALL BE DEEMED FOREVER RELEASED AND DISCHARGED BY EACH AND ALL OF THE DEBTORS, THE REORGANIZED DEBTORS, AND THEIR ESTATES FROM ANY AND ALL CLAIMS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF ANY OF THE DEBTORS, THE REORGANIZED DEBTORS, OR THEIR ESTATES, AS APPLICABLE, WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR FIXED, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, AT EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL OR STATE SECURITIES LAWS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THOSE THAT ANY OF THE DEBTORS, THE REORGANIZED DEBTORS, THE ESTATES OR THEIR AFFILIATES 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 EQUITY INTEREST IN, A DEBTOR OR OTHER ENTITY, BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE BUSINESS OPERATIONS OF THE DEBTORS, ACTIONS TAKEN BY THE DEBTORS' BOARD OF DIRECTORS, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN ANY DEBTOR AND ANY RELEASED PARTY, THE**

DEBTORS' IN- OR OUT-OF-COURT RESTRUCTURING EFFORTS, INTERCOMPANY TRANSACTIONS (OTHER THAN ANY INTERCOMPANY CLAIMS THAT HAVE BEEN REINSTATED AS CONTEMPLATED ABOVE), THE RESTRUCTURING, THE CHAPTER 11 CASES, THE FORMULATION, PREPARATION, DISSEMINATION, OR NEGOTIATION OF THE PLAN, INCLUDING THE ISSUANCE OR DISTRIBUTION OF SECURITIES PURSUANT TO THE PLAN, OR THE DISTRIBUTION OF PROPERTY UNDER THE PLAN OR ANY OTHER RELATED AGREEMENT, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE DIP FACILITY DOCUMENTS, THE EXIT FACILITY DOCUMENTS, OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, OTHER THAN CLAIMS OR LIABILITIES ARISING FROM ANY ACT OR OMISSION OF A RELEASED PARTY THAT CONSTITUTES FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; *PROVIDED* THAT THE FOREGOING RELEASE SHALL NOT APPLY TO ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHT OR OBLIGATION ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENTS (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) ENTERED INTO PURSUANT TO, IN CONNECTION WITH, OR CONTEMPLATED BY THE PLAN, AND ANY RIGHT TO ENFORCE THE PLAN AND CONFIRMATION ORDER IS NOT SO RELEASED.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE DEBTORS' RELEASE, WHICH INCLUDES BY REFERENCE EACH OF THE RELATED PROVISIONS AND DEFINITIONS CONTAINED IN THE PLAN, AND FURTHER, SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING THAT EACH DEBTOR RELEASE IS (1) IN EXCHANGE FOR THE GOOD AND VALUABLE CONSIDERATION PROVIDED BY THE RELEASED PARTIES; (2) A GOOD-FAITH SETTLEMENT AND COMPROMISE OF SUCH CLAIMS; (3) IN THE BEST INTERESTS OF THE DEBTORS AND ALL HOLDERS OF CLAIMS AND INTERESTS; (4) FAIR, EQUITABLE, AND REASONABLE; (5) GIVEN AND MADE AFTER DUE NOTICE AND OPPORTUNITY FOR HEARING; AND (6) A BAR TO ANY OF THE DEBTORS OR REORGANIZED DEBTORS OR THEIR RESPECTIVE ESTATES ASSERTING ANY CLAIM, CAUSE OF ACTION, OR LIABILITY RELATED THERETO, OF ANY KIND WHATSOEVER, AGAINST ANY OF THE RELEASED PARTIES OR THEIR PROPERTY.

(b) ***RELEASES BY HOLDERS OF CLAIMS AND EQUITY INTERESTS*****. AS OF THE EFFECTIVE DATE, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EACH OF THE RELEASING PARTIES (REGARDLESS OF WHETHER A RELEASING PARTY IS A RELEASED PARTY) SHALL BE DEEMED TO HAVE CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER, RELEASED AND DISCHARGED EACH DEBTOR, REORGANIZED DEBTOR AND EACH OTHER RELEASED PARTY FROM ANY AND ALL CLAIMS, EQUITY INTERESTS, OBLIGATIONS, RIGHTS, SUITS, DAMAGES, CAUSES OF ACTION, REMEDIES, AND LIABILITIES WHATSOEVER, WHETHER KNOWN OR**

UNKNOWN, FORESEEN OR UNFORESEEN, LIQUIDATED OR UNLIQUIDATED, CONTINGENT OR FIXED, MATURED OR UNMATURED, EXISTING OR HEREINAFTER ARISING, IN LAW, AT EQUITY, OR OTHERWISE, INCLUDING ANY DERIVATIVE CLAIMS, ASSERTED OR ASSERTABLE ON BEHALF OF ANY OF THE DEBTORS, THE REORGANIZED DEBTORS, EACH OTHER RELEASING PARTY OR THEIR ESTATES, THAT SUCH ENTITY WOULD HAVE BEEN LEGALLY ENTITLED TO ASSERT (WHETHER INDIVIDUALLY OR COLLECTIVELY), BASED ON OR RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS, THE BUSINESS OPERATIONS OF THE DEBTORS, ACTIONS TAKEN BY THE DEBTORS' BOARD OF DIRECTORS, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THE PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN ANY DEBTOR AND ANY RELEASED PARTY, THE DEBTORS' IN- OR OUT-OF-COURT RESTRUCTURING EFFORTS, INTERCOMPANY TRANSACTIONS, ENTRY INTO THE CHAPTER 11 CASES, THE FORMULATION, PREPARATION, DISSEMINATION, OR NEGOTIATION OF THE DISCLOSURE STATEMENT, THE PLAN, THE PLAN SUPPLEMENT, THE DIP FACILITY DOCUMENTS, THE EXIT FACILITY DOCUMENTS, OR OTHER DOCUMENTS OR ANY OTHER ACT OR OMISSION, TRANSACTION, AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE EFFECTIVE DATE, OTHER THAN CLAIMS OR LIABILITIES ARISING FROM ANY ACT OR OMISSION OF A RELEASED PARTY THAT CONSTITUTES FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; *PROVIDED* THAT THE FOREGOING RELEASE SHALL NOT APPLY TO ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHT OR OBLIGATION ARISING UNDER OR THAT IS PART OF THE PLAN OR ANY AGREEMENTS (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) ENTERED INTO PURSUANT TO, IN CONNECTION WITH, OR CONTEMPLATED BY THE PLAN, AND ANY RIGHT TO ENFORCE THE PLAN AND CONFIRMATION ORDER IS NOT SO RELEASED.

Section 9.4 *Exculpation and Limitation of Liability.*

(a) **UPON AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE DEBTORS AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS, INVESTMENT BANKERS, FINANCIAL ADVISORS, RESTRUCTURING CONSULTANTS AND OTHER PROFESSIONAL ADVISORS AND AGENTS SHALL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THE PLAN IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING SECTION 1125(E) OF THE BANKRUPTCY CODE.**

(b) **EXCEPT WITH RESPECT TO ANY ACTS OR OMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THE PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE,**

NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THE PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN OR ANY OTHER PREPETITION OR POSTPETITION ACT TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE RESTRUCTURING OF THE DEBTORS; *PROVIDED* THAT THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT; *PROVIDED, FURTHER*, THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH, THE PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT.

(c) **THE EXCULPATED PARTIES HAVE, AND UPON CONFIRMATION, SHALL BE DEEMED TO HAVE, PARTICIPATED IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING WITH REGARD TO THE DISTRIBUTIONS OF REORGANIZED EQUITY INTERESTS PURSUANT TO THE PLAN AND, THEREFORE, ARE NOT AND SHALL NOT BE LIABLE AT ANY TIME FOR THE VIOLATIONS OF ANY APPLICABLE LAW, RULE, OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN OR SUCH DISTRIBUTIONS MADE PURSUANT TO THE PLAN.**

Section 9.5 *Injunction.*

THE SATISFACTION, RELEASE AND DISCHARGE PURSUANT TO THIS ARTICLE IX OF THE PLAN SHALL ALSO ACT AS AN INJUNCTION AGAINST ANY ENTITY BOUND BY SUCH PROVISION AGAINST COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS OR ACT TO COLLECT, OFFSET, OR RECOVER ANY CLAIM OR CAUSE OF ACTION SATISFIED, RELEASED, OR DISCHARGED UNDER THE PLAN OR THE CONFIRMATION ORDER TO THE FULLEST EXTENT AUTHORIZED OR PROVIDED BY THE BANKRUPTCY CODE, INCLUDING, WITHOUT LIMITATION, TO THE EXTENT PROVIDED FOR OR AUTHORIZED BY SECTIONS 524 AND 1141 THEREOF.

Section 9.6 *Setoffs and Recoupment.*

(a) Except as otherwise provided herein or in the DIP Orders, each Reorganized Debtor pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), applicable bankruptcy or non-bankruptcy Law, or as may be agreed to by the Holder of an Allowed Claim, may set off or recoup against any Allowed Claim and the distributions to be

made pursuant to the Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature that the applicable Debtor or Reorganized Debtor may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to the Plan, a Final Order or otherwise); *provided* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to the Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action.

(b) In no event shall any Holder of Claims be entitled to set off or recoup any Claim against any Claim, right, or Cause of Action of a Debtor or a Reorganized Debtor, as applicable, unless such Holder has timely filed a Proof of Claim with the Bankruptcy Court preserving such setoff or recoupment in such Proof of Claim.

Section 9.7 *Release of Liens.*

(a) Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the applicable Reorganized Debtor and its successors and assigns.

(b) To the extent that any Holder of a Secured Loan Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any Liens or security interests to secure such Holder's Secured Loan Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

ARTICLE X.

RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

(a) Allow, disallow, determine, liquidate, classify, estimate or establish the priority, nature, validity, amount or secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance, priority or amount of Claims or Equity Interests;

(b) 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 Retained Professionals authorized pursuant to the Bankruptcy Code or the Plan;

(c) Resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Costs arising therefrom, including Cure Costs pursuant to section 365 of the Bankruptcy Code; (ii) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

(d) Ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

(e) 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;

(f) Adjudicate, decide or resolve any and all matters related to Causes of Action;

(g) Adjudicate, decide or resolve any and all matters related to section 1141 of the Bankruptcy Code;

(h) Resolve any and all avoidance or recovery actions under sections 105, 502(d), 542 through 551 and 553 of the Bankruptcy Code;

(i) Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

(j) Enter and implement such orders as may be necessary or appropriate to execute, implement, or Consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

(k) Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

(l) 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 enforcement of the Plan;

(m) Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

(n) 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 Equity Interest for amounts not timely repaid;

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

(p) Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

(q) Enter an order or final decree concluding or closing the Chapter 11 Cases;

(r) Adjudicate any and all disputes arising from or relating to distributions under the Plan;

(s) Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

(t) Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan (other than any dispute arising after the Effective Date under, or directly with respect to, the Exit Facilities Documents, the Management Incentive Plan, and the Investment, which such disputes shall be adjudicated in accordance with the terms of the Exit Facility Documents, and the respective documents evidencing the Management Incentive Plan and the Investment);

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

(v) Hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge, 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 prior to or after the Effective Date;

(w) Enforce all orders previously entered by the Bankruptcy Court; and

(x) Hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XI.

MISCELLANEOUS PROVISIONS

Section 11.1 *Immediate Binding Effect.*

Notwithstanding Bankruptcy Rules 3020(e), 6004(g), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan shall be immediately effective and

enforceable and deemed binding upon the Debtors, the Reorganized Debtors, and any and all Holders of Claims and Equity Interests (irrespective of whether Holders of such Claims or Equity Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan and any and all non-Debtor parties to Executory Contracts and Unexpired Leases. The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rule 3020(e) and 7062.

Section 11.2 *Payment of Statutory Fees.*

All fees payable pursuant to section 1930(a) of Title 28 of the U.S. Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code or as agreed to by the U.S. Trustee and Reorganized Debtors, shall be paid when due and payable for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed or closed, whichever occurs first.

Section 11.3 *Amendments.*

(a) *Plan Modifications*. Subject to the limitations contained in the Plan, the Debtors reserve the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules: (a) to amend or modify the Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (b) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with section 1127(b) of the Bankruptcy Code, or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan; *provided* that any amendments or modifications that affect the rights, obligations, liabilities and duties of the DIP Agent or the Prepetition Agent shall require the consent of the DIP Agent or the Prepetition Agent, as applicable.

(b) *Effect of Confirmation on Modifications*. Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

(c) *Certain Technical Amendments*. Prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan without further order or approval of the Bankruptcy Court; *provided* that such technical adjustments and modifications do not adversely affect the treatment of Holders of Claims or Equity Interests under the Plan.

Section 11.4 *Revocation or Withdrawal of Plan.*

Subject to the conditions to the Effective Date, the Debtors reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the entry of the Confirmation Order and to file subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if entry of the Confirmation Order

or the Effective Date does not occur, then: (a) the Plan with respect to such Debtor or Debtors shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant hereto shall be deemed null and void with respect to such Debtor or Debtors; and (c) nothing contained in the Plan with respect to such Debtor or Debtors shall: (i) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Entity; (ii) prejudice in any manner the rights of the Debtors or any other Entity; or (iii) constitute an admission of any sort by the Debtors or any other Entity.

Section 11.5 *Governing Law.*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal Law, rule or regulation is applicable, or to the extent that an exhibit, supplement, or other document related to the Plan (including, without limitation, the DIP Facility Documents and the Exit Facility Documents), provides otherwise, the Plan shall be governed by and construed in accordance with the Laws of the State of Delaware, without giving effect to the principles of conflict of Laws thereof that would require application of the Law of another jurisdiction.

Section 11.6 *Successors and Assigns.*

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

Section 11.7 *Severability.*

If, prior to the entry of the Confirmation Order, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtors, shall have the power to alter and interpret such term or provision to render 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 so altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remaining terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired, or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

Section 11.8 *Controlling Document.*

In the event of an inconsistency between the Plan and Disclosure Statement, the terms of the Plan shall control in all respects. The provisions of the Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effect the purposes of each; *provided* that if there is determined to be any inconsistency between any Plan provision and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of

such inconsistency, the provisions of the Confirmation Order shall govern and any such provision of the Confirmation Order shall be deemed a modification of the Plan and shall control and take precedence.

Section 11.9 *Filing of 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 appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or Reorganized Debtors, as applicable, and all Holders of Claims or Equity Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

Section 11.10 *Reservation of Rights.*

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

Section 11.11 *Service of Documents.*

After the Effective Date, any pleading, notice, or other document required by the Plan to be served on or delivered to the Reorganized Debtors shall also be served on:

Rubio's Restaurants, Inc.
2200 Faraday Avenue, Suite 250
Carlsbad, CA 92008
Attention: Marc Simon
E-mail: msimon@rubios.com

with copies to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Gregg M. Galardi and Cristine Pirro Schwarzman
E-mail: gregg.galardi@ropesgray.com and
cristine.schwarzman@ropesgray.com

Proposed Co-Counsel to the Debtors

and

Young Conaway Stargatt & Taylor, LLP
Rodney Square, 1000 North King Street
Wilmington, Delaware 19801
Attention: M. Blake Cleary, Edmon L. Morton,
Ryan M. Bartley, and Betsy L. Feldman
E-mail: mbcleary@ycst.com, emorton@ycst.com,
rbartley@ycst.com, and bfeldman@ycst.com

Proposed Co-Counsel to the Debtors

and

Goldberg Kohn Ltd.
55 East Monroe Street, Suite 3300
Chicago, IL 60603
Attention: Randall Klein and Yasamin Kaye
E-mail: randall.klein@goldbergkohn.com and
yasamin.kaye@goldbergkohn.com

Co-Counsel to the DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Secured Lenders

and

Richards, Layton & Finger, PA
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Attention: John Knight and Paul Heath
knight@rlf.com and heath@rlf.com

Co-Counsel to the DIP Agent, the DIP Lenders, the Prepetition Agent, and the Prepetition Secured Lenders

and

Foley Hoag LLP
155 Seaport Blvd., Suite 1600
Boston, MA 02210
Attention: Andrew Schwartz
E-mail: aschwartz@foleyhoag.com

Counsel to the Investor

and

Foley Hoag LLP
1301 Avenue of the Americas
New York, NY 10019
Attention: Alison Bauer
E-mail: abauer@foleyhoag.com

Counsel to the Investor

and

Office of the United States Trustee
844 King Street, Suite 2207, Lockbox 35
Wilmington, DE 19801
Attention.: John Schanne
E-mail: john.schanne@usdoj.gov

After the Effective Date, the Reorganized Debtors have authority to send a notice to Entities informing them that in order to continue to receive documents pursuant to Bankruptcy Rule 2002, they must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have filed such renewed requests.

Section 11.12 *Section 1125(e) of the Bankruptcy Code.*

As of the Confirmation Date, (a) the Debtors shall be deemed to have solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including section 1125(e) of the Bankruptcy Code, and any applicable non-bankruptcy Law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation and (b) the Debtors, the Consenting Secured Lenders, and the Investor and each of their respective Affiliates, agents, directors, officers, employees, advisors and attorneys shall be deemed to have participated in good faith, and in compliance with the applicable provisions of the Bankruptcy Code, in the offer and issuance of any securities under the Plan, and, therefore, are not, and on account of such offer, issuance and solicitation shall not be, liable at any time for any violation of any applicable Law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or the offer and issuance of any securities under the Plan.

Section 11.13 *Tax Reporting and Compliance.*

The Reorganized Debtors shall be authorized to request an expedited determination under section 505(b) of the Bankruptcy Code for all tax returns filed for, or on behalf of, the Debtors for any and all taxable periods ending after the Petition Date through, and including, the Effective Date.

Section 11.14 *Exhibits, Schedules, and Supplements.*

All exhibits, schedules, and supplements to the Plan are incorporated into and are a part of the Plan as if fully set forth herein.

Section 11.15 *Entire Agreement.*

Except as otherwise indicated, on the Effective Date, the Plan shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

Section 11.16 *Allocation of Payments.*

To the extent that any Allowed Claim entitled to distribution hereunder is comprised of indebtedness and accrued but unpaid interest thereon, such distribution shall, for all U.S. federal income tax purposes, be allocated to the principal amount of such Claim first, and then, to the extent that the consideration exceeds such principal amount, to the portion of such Claim representing accrued but unpaid interest (but solely to the extent that interest is an allowable portion of such Allowed Claim).

Section 11.17 *Conflicts.*

In the event of a conflict between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of a conflict between the Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order); *provided, that,* in the event any such conflict is a material conflict with the treatment of the Secured Loan Claims in Class 3 of the type that would require the Debtors to re-solicit the votes of Holders of Claims and Equity Interests in Class 3 against the Debtors under section 1127 of the Bankruptcy Code, the Plan shall control solely with respect to such provision giving rise to such material conflict. In the event of a conflict between the Confirmation Order (entered in accordance with Section 8.1(b) herein) and the Plan, the Confirmation Order shall control.

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EXHIBIT B

Liquidation Analysis

LIQUIDATION ANALYSIS

Section 1129(a)(7) of title 11 of the United States Code (the "Bankruptcy Code") requires that each Holder of an Impaired Allowed Claim or Interest either (i) accept the Plan or (ii) receive or retain under the Plan, property of a value, as of the Effective Date, that is not less than the value such Holder would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on the Effective Date of the Plan. This is referred to as the "Best Interests Test."

To demonstrate that the Plan satisfies the Best Interests Test under section 1129(a)(7), the Debtors[1] have prepared a hypothetical liquidation analysis (the "Liquidation Analysis"). The Liquidation Analysis estimates the realizable liquidation value of the Debtors' assets and estimates the distribution to creditors resulting from the liquidation. The Liquidation Analysis indicates that Holders of Allowed Claims in each Impaired Class will receive at least as much under the Plan as they would if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code. Therefore, the Debtors believe that the Plan satisfies the Best Interest Test set forth in section 1129(a)(7) of the Bankruptcy Code.

The Liquidation Analysis is predicated on the following assumptions: (a) the Debtors file a chapter 11 proceeding on October 26, 2020; (b) the Debtors obtain financing pursuant to the Interim and Final DIP Orders; (c) and the chapter 11 case is subsequently converted to a chapter 7 case on December 27, 2020 (the "Liquidation Date") and a chapter 7 trustee (the "Trustee") is appointed to convert all assets into cash.

The Liquidation Analysis is based on the Company's estimated book values as of September 27, 2020 unless otherwise noted. The book values are assumed to be representative of the value of the Debtors' assets and liabilities as of the Liquidation Date.

Under Chapter 7, the Debtors' assets would be subject to liquidation and values would be measured based on the premise that such assets are liquidated in an orderly fashion.

For purposes of this Liquidation Analysis, it is assumed that the Debtors' operations would cease immediately upon conversion to Chapter 7. The Trustee would then consolidate the Debtors' operations, retaining certain minimal operational, accounting, treasury, IT and other management services necessary to wind down the Estates and dispose of the Debtors' available property through piecemeal sales. The Trustee would commence a short two to three month marketing process, during which time all of the property of the Debtors' Estates would be sold. The amount of proceeds available from the liquidation of the property of the Estates would be the net proceeds (after accounting for costs associated with conducting the liquidation) from the sale of property of the Estates ("Liquidation Proceeds"). This Liquidation Analysis assumes that the Liquidation Proceeds would be distributed in accordance with section 726 of the Bankruptcy Code. The Liquidation Proceeds would be applied in the order of priority set forth in section 726

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them elsewhere in this Liquidation Analysis or in the Chapter 11 Plan of Reorganization of Rubio's Restaurants, Inc. and its Debtor Affiliates Under Chapter 11 of the Bankruptcy Code (as may be amended, supplemented, or otherwise modified from time to time, the "Plan"), as applicable.

of the Bankruptcy Code: (i) first, to the Holders of Allowed Secured Claims; (ii) second, to the holders of any Superpriority Administrative Claims; (iii) third, to holders of Administrative Expense Claims; (iv) fourth, to the holders of any other Priority Claims; and (v) fifth, to the holders of General Unsecured Claims.

The Liquidation Analysis does not include estimates for: (i) the tax consequences that may be triggered upon the liquidation and sale of property of the Debtors' Estates; (ii) damages as a result of breach or rejection of obligations incurred and leases and executory contracts assumed or entered into; or (iv) recoveries resulting from any potential preference, fraudulent transfer or other litigation or avoidance actions. More specific assumptions are detailed in the Notes below.

Estimating recoveries in any hypothetical Chapter 7 liquidation is an uncertain process involving the extensive use of estimates and assumptions which, although considered reasonable by management, are inherently subject to significant business, economic and competitive uncertainties and contingencies beyond the control of the Debtors or the Trustee. These values have not been subject to any review, compilation or audit by any independent accounting firm. In the event of a Chapter 7 liquidation, the actual results may vary materially from the estimates and projections set forth herein. Similarly, the actual amounts of Allowed Claims in a Chapter 7 liquidation could materially and significantly differ from the amounts of Claims estimated in this Liquidation Analysis.

LIQUIDATION ANALYSIS – SUMMARY OF RECOVERY

Based on P9 2020 Balance Sheet

Rubio's Coastal Grill
Hypothetical Liquidation Analysis - Consolidated
(USD$ 000's)

Asset Category	Est. Book Value	Rate		Estimated CH7 Recovery		Footnotes
	12/27/2020	Low	High	Low	High	
Liquidation Proceeds						
Cash Proceeds Available						
Cash and Equivalents	2,932	100%	100%	2,932	2,932	1
Total Net Cash Available	**2,932**			**2,932**	**2,932**	
Other Asset Proceeds Available						
Receivables	1,162	60%	65%	695	756	2
Inventory	1,832	6%	15%	105	275	3
Prepaid and Other Current Assets	2,105	0%	20%	7	418	4
Restricted Cash	3,540	5%	5%	169	169	5
Property & Equipment, net	29,321	0%	3%	-	904	6
Goodwill	5,549	0%	0%	-	-	
Under-market Leases	-	-	-	-	2,355	7
Intangible Assets	44	0%	0%	-	-	8
Other assets	5,556	31%	31%	1,748	1,748	9
Chapter 5 Causes of Action/Litigation Recoveries	-	0%	0%	-	-	10
Total Other Assets	**49,110**	**6%**	**13%**	**2,725**	**6,624**	
Total	**52,041**	**11%**	**18%**	**5,656**	**9,555**	
Costs to Liquidate						
Chapter 7 Trustee Fees Estimated at 3%				170	287	11
Chapter 7 Trustee Professionals and other				750	500	12
Chapter 7 Operational Wind-Down Costs				725	1,499	13
Accrued and Unpaid Sales Tax				1,343	1,343	14
Accrued Post-Petition PACA Claims				715	715	15
Chapter 7 Total Fees and Expenses/Trust Taxes				**3,702**	**4,343**	
Net Proceeds Available for Distribution				**1,954**	**5,212**	
DIP Loan				8,041	8,041	16
Adequate Protection – Diminution in Value				3,000	3,000	17
Net Proceeds After DIP/Adeq. Prot Claims				**(9,087)**	**(5,829)**	
Term Loan - Golub Capital	71,818	0.0%	0.0%			18
Line of Credit - Golub Capital	4,073	0.0%	0.0%			
Total Secured Claims	75,891	0.0%	0.0%			
Accrued Post-Petition Payroll and PTO	2,806	0.0%	0.0%			19
Accrued Post-Petition KEIP/KERP	415	0.0%	0.0%			20
Accrued Chapter 11 Professional Fees	-	0.0%	0.0%			21
Accrued Post-petition Accounts Payable	6,872	0.0%	0.0%			22
Unpaid Section 503(b)(9) Claims	150	0.0%	0.0%			23
Total Administrative Claims	10,243	0.0%	0.0%			
Employee Claims	639	0.0%	0.0%			24
Tax Claims	-	0.0%	0.0%			
Total Priority Unsecured Claims	639	0.0%	0.0%			
Unpaid Rent	7,200	0.0%	0.0%			25
Lease and Contract Rejection Claims	-	0.0%	0.0%			26
AP & Accruals	1,256	0.0%	0.0%			27
Gift Card Claims	2,594	0.0%	0.0%			28
Deferred Compensation	1,921	0.0%	0.0%			29
Litigation	-	0.0%	0.0%			
Sales Tax Penalty	32	0.0%	0.0%			
Payroll Tax Deferral	3,307	0.0%	0.0%			30
PPP	-	0.0%	0.0%			31
Total General Unsecured Claims	16,310	0.0%	0.0%			
Total Admin/Secured/Priority/GUC Claims	**103,082**	**0.0%**	**0.0%**			

ASSETS

1. Cash and Cash Equivalents: The amounts shown are the projected cash balances available to the Debtors as of the Liquidation Date, based on projected cash flows. The cash balances (i) assume professional fees accrued through the Liquidation Date have been funded to an escrow account, and are adjusted for the application of professional retainers and contingent fee provisions; and (ii) do not include any restricted cash or cash held in escrow accounts. Estimating a 100% recovery rate.

2. Receivables: Receivables were analyzed by the following major general ledger accounts. Recoveries range from 60% to 65%:

a) Receipts in Transit: Represents receipts for restaurant sales collected on (cash sales) or within one to two days (credit card sales) from the actual sale date. Approximately 77% of the receipts in transit relate to credit card sales, with proceeds net of fees, charge-backs and true-ups, and approximately 17% of the receipts are related to Third-Party Delivery applications (Uber Eats, Door Dash, Grub Hub, Post Mates, etc.) collected generally within seven (7) days. The remaining 6% is comprised of funds from cash restaurant sales deposited at local restaurant depository accounts. The amounts shown in the Liquidation Analysis reflect the Debtors' anticipated credit card and other receipts that the Debtors would receive within one to two days after the closing of the Debtors' restaurants, which is anticipated here to occur on the Liquidation Date. Recovery is estimated at 100%.

b) Other: The Debtors have other miscellaneous and tax receivables that the Debtors do not believe the Trustee would be able to collect in full. Recoveries range from 25% to 75%.

3. Inventory: Inventory includes the following categories, with average recoveries ranging from 6% to 15%:

a) Food and beverages: Due to its highly perishable nature and wide geographic dispersion, a substantial amount of the Debtors' food products on-site at their locations are not anticipated to generate any value. Applicable state law bars sale of beer in most jurisdictions, so these items would not generate proceeds.

b) Other: The Company holds other inventory including millwork, fryers and umbrellas, which are estimated to have a recovery of 0% to 10%. The Company has personal protective equipment (PPE), which is estimated to have a recovery of 25% to 75%.

4. Prepaid and Other Current Assets: Recoveries range from 0% to 20%.

a) Prepaid Insurance and Health Renewals: Represents premiums for various insurance policies including property, general liability, auto, health, etc. The prepaid items are assumed to be applied during the wind-down period with a recovery of 0% to 50% attributable to certain policies no longer needed as part of the liquidation or otherwise cancelled.

b) Prepaid Advertising and Marketing: It is assumed that the Trustee would recover 0% to 50% of prepaid advertising and marketing.

c) Other Prepaid Items: A 0% to 50% recovery is estimated on miscellaneous prepaid items, and no recovery is estimated on other prepaid items, including travel, rent, payroll and menus.

5. Restricted Cash: The Debtors maintain letters of credit for approximately $3.3 million to secure obligations under their Workers' Compensation programs. Collateral in excess of that amount, approximately 5%, is assumed to be recoverable as the underlying obligations are discharged.

6. Property and Equipment: Property and Equipment was analyzed in the following major groups. All recoveries are presented net of transaction specific costs, including commissions. Recoveries range from 0% to 3%.

a) Building: The Company owns the building for one store and leases the underlying land. Recoveries are incorporated in assumptions for under-market leases.

b) Corporate and Store Furniture, Fixtures and Equipment ("FF&E"): Based on recent experience with closing stores, and the saturated market for restaurant FF&E, the Debtors have estimated that in a wind-down scenario the recovery on restaurant furniture, fixtures and equipment would range from 0% to 2% of original cost after deducting liquidator expenses.

c) Smallwares: Cooking and service items, utensils, flatware, plates cups, glasses and other small food handling equipment are capitalized in property and equipment and are assumed to realize a 0% to 2% recovery.

b) Leasehold Improvements and Lease Acquisition Costs: Represents leasehold improvements such as building renovations and remodels, walk in freezers, exhaust hoods, floor and wall coverings, etc. at the Debtors' restaurants, comprising approximately 79% of the Debtors' fixed asset values. These leasehold improvements and lease acquisition costs are not projected to yield a recovery in liquidation other than through an assumption, assignment and sale of individual leases, which are addressed below.

7. Under-market leases: The Debtors estimate a recovery of $0 to $2.4 million after commissions, with the latter assuming that the top 20% of the locations would

generate proceeds with an average value of $80,000. The selling period is estimated at 60 days, during which total store occupancy costs of approximately $775,000 would be paid and are included in the Wind-Down Costs.

8. Intangible Assets: Includes liquor licenses to sell beer only, which are assumed to have no value.

9. Other Assets: Included in this category are deferred financing and transaction costs, licenses and permits (excluding liquor licenses valued separately) and deposits (liquor, utilities, prepayment of purchase orders). This category also includes approximately $2.8 million of cash collateral and escrows held directly by the Debtors' Workers Compensation insurers. These assets are deemed to have no value in a wind-down scenario. Finally, other assets include the company-owned life insurance policies supporting the Debtors' deferred compensation program, which have a cash value of $1.7 million.

10. Chapter 5 Causes of Action and Other Litigation: In a chapter 7 liquidation, the Trustee would consider pursuing various potential avoidance actions under chapter 5 of the Bankruptcy Code, including to recover any preference payments made to creditors during the 90-day period prior to the Petition Date, or within one year for payments to insiders. As the Debtors remained generally current with its vendors prior to filing, many of these transfers likely are subject to affirmative defenses. The Debtors have not estimated recoveries for any avoidance actions or other litigation.

ADMINISTRATIVE CLAIMS AND COSTS TO LIQUIIDATE

11. Chapter 7 Trustee Fees: The Trustee's fees have been estimated to be 3% of moneys disbursed or turned over to parties in interest in accordance with section 326 of the Bankruptcy Code.

12. Chapter 7 Trustee Professionals and Other: Estimated between $500,000 and $750,000 for accounting, tax, legal and other professionals.

13. Chapter 7 Operational Wind-Down Costs: Operational wind-down costs are expected to be approximately $725,000 to $1.5 million over the course of an eight-week wind-down period, depending upon whether leases are sold. To maximize recoveries on the Debtors' assets, minimize the amount of claims, and generally ensure an orderly chapter 7 liquidation, it is assumed that the Trustee will continue to employ a number of the Debtors' employees for a limited amount of time during the chapter 7 liquidation process.

Restaurant personnel will primarily be responsible for assisting the liquidator with preparing for the sale of inventory, furniture, fixtures, and equipment at the Debtors' restaurants as well as returning the leaseholds to the landlord or transferring locations to

buyers in the lease sales. The Debtors assume that field managers would remain for an average of one week.

The corporate personnel will primarily be responsible for oversight of the store closure process, finalization of employee benefit matters, cash collections, payroll and tax reporting, accounts payable and other books and records, and responding to certain legal matters related to the wind-down. The Debtors assume that approximately ten corporate personnel would remain for an average of eight weeks.

The Debtors anticipate that other store closure costs would be approximately $2,000 per location, and that rent and other headquarters costs would be approximately $100,000. Additionally, $775,000 in total store occupancy costs are assumed for a two month period for the units subject to sale.

14. Estimated Accrued and Unpaid Sales Tax: The Debtors estimate that accrued sales tax at the Liquidation Date would be approximately $1.3 million. The Debtors collect sales tax on customer sales and remit the proceeds to the respective taxing jurisdictions approximately one month after collection. These amounts are arguably trust funds and would be remitted to the taxing jurisdictions prior to any other claim, including any super-priority claims. Such taxes are also entitled to priority as administrative expenses.

15. PACA Claims: Claims under the Perishable Agricultural Commodities Act ("PACA") payable at the time of conversion are considered held in trust, and are anticipated to be approximately equivalent to 20% of the outstanding amounts payable to the Debtors' food distributor as of the Liquidation Date.

16. DIP Loan: The Debtors anticipate the full $8 million available under the DIP Facility will be outstanding as of the Liquidation Date. The DIP Facility is secured by liens on substantially all of the Debtors' assets and/or the proceeds thereof, and constitutes a super-priority administrative expense claim against the Debtors.

17. Adequate Protection – Diminution in Value: In the event that the Debtors would be forced to liquidate, the Prepetition Secured Lenders would have a significant adequate protection claim well in excess of the $3 million assumed, regardless of what valuation methodology is applied to the calculation of that adequate protection claim. Specifically, to determine the amount of the adequate protection claim, the Company would first use the proceeds from any sale or liquidation of any unencumbered assets on which the DIP Lenders have a first lien to pay down the DIP Financing and determine what proceeds would be available to pay the remaining secured claims of the Prepetition Secured Lenders.

18. Golub Capital Claims: Includes principal of $72.5 million and accrued interest and fees of $3.4 million as of the Petition Date for the term loan and revolving loan from Golub Capital.

19. Payroll and PTO: Includes estimated payroll for the week ending December 27, 2020 and paid time off ("PTO") earned in the two months since the Petition Date.

20. KEIP/KERP: Assumes that two-thirds of the non-discretionary Key Employee Incentive Plan ("KEIP") ($255,000) and all of the non-discretionary Key Employee Retention Plan ("KERP") ($160,000) are earned and payable.

21. Chapter 11 Professional Fees: The Debtors estimate that professional fees will be consistent with the Budget and will be held in escrow and subject to the Carve-Out (as defined in the Postpetition Loan Agreement). This analysis assumes that such funds will be sufficient to pay all outstanding professional fees.

22. Accrued Post-petition Accounts Payable: Estimated based on accounts payable as of September 27, 2020, adjusted for PACA Claims and financed insurance premiums.

23. Unpaid Section 503(b)(9) Claims: Estimated claims under Bankruptcy Code section 503(b)(9) for goods received in the 20 days prior to filing, based on estimated amounts outstanding at September 27, 2020, adjusted for anticipated payments pursuant to critical vendor or other orders of the court.

24. Employee Claims: Include PTO earned in the 180 days prior to the Petition Date.

25. Unpaid Rent: Includes deferred rent as of the Petition Date.

26. Lease and Contract Rejection Claims: Lease and contract rejection claims have not been estimated for purposes of this analysis.

27. Accounts Payable and Accruals: Based on estimated amounts outstanding at the Petition Date, adjusted for anticipated payments pursuant to critical vendor or other orders of the court, and 503(b)(9) claims.

28. Gift Card Claims: Based on accrued gift card balance at September 30, 2020, and includes approximately 1.04 million cards with an average balance of $2.49.

29. Deferred Compensation: Assumes that the Trustee would terminate the Debtors' non-qualified deferred compensation plan, and that participants would have a general unsecured claim.

30. Payroll Tax Deferral: Represents the employer portion of payroll taxes deferred by the Debtors through December 31, 2020 pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

31. PPP Loan: The Debtors borrowed $10 million from Sunwest Bank, as lender under the Payroll Protection Program administered by the Small Business Administration under the CARES Act. The Debtors estimate that they will qualify for 100% forgiveness based on compliance with certain employee retention metrics.

EXHIBIT C

Valuation Analysis

Valuation Analysis

THE INFORMATION CONTAINED HEREIN IS NOT A PREDICTION OR GUARANTEE OF THE ACTUAL MARKET VALUE THAT MAY BE REALIZED FROM ANY FUNDED INDEBTEDNESS OR SECURITIES TO BE ISSUED PURSUANT TO THE PLAN. THE INFORMATION IS PRESENTED SOLELY FOR THE PURPOSE OF PROVIDING ADEQUATE INFORMATION UNDER SECTION 1125 OF THE BANKRUPTCY CODE IN RESPECT OF THE SOLICITATION OF CLAIMS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT THE PLAN AND SHOULD NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE, INCLUDING THE PURCHASE OR SALE OF CLAIMS AGAINST THE DEBTORS OR ANY OF THEIR AFFILIATES.

Solely for the purposes of the Plan and the Disclosure Statement, Gower Advisers LLC ("Gower"),[1] as investment banker to the Debtors, has estimated a potential range of total enterprise value ("Enterprise Value") for the Reorganized Debtors *pro forma* for the restructuring transactions contemplated by the Plan (the "Valuation Analysis"). The Valuation Analysis is based on financial and other information provided to Gower by the Debtors' management and third-party advisors, the Financial Projections attached to the Disclosure Statement as **Exhibit C**,[2] and information provided by other sources.

The Valuation Analysis is as of October 20, 2020, with an assumed Effective Date of the Plan of December 31, 2020. The Valuation Analysis utilizes market data as of October 20, 2020. The valuation estimates set forth herein represent valuation analyses generally based on the application of customary valuation techniques to the extent deemed appropriate by Gower. In preparing its valuation, Gower considered a variety of factors and evaluated a variety of financial analyses, including (a) comparable companies analysis; (b) discounted cash flow analysis; and (c) precedent transactions analysis. Gower also: (a) reviewed certain historical financial information of the Debtors for recent years and interim periods; (b) reviewed certain financial and operating data of the Debtors, including the Financial Projections; (c) discussed the Debtors' operations and future prospects with the Debtors' senior management team and third-party advisors; (d) reviewed certain publicly available financial data for, and considered the market value of, public companies that Gower deemed generally relevant in analyzing the value of the Reorganized Debtors; (e) reviewed certain publicly available data for, and considered the market values implied therefrom, recent transactions in the restaurant industry involving companies comparable (in certain respects) to the Reorganized Debtors; and (f) considered certain economic and industry information that Gower deemed generally relevant to the Reorganized Debtors.

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the *Disclosure Statement for the Joint Prepackaged Plan of Reorganization of Rubio's Restaurants Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* to which this Valuation Analysis is annexed.

[2] The Debtors' management advised Gower that the Financial Projections were reasonably prepared in good faith and on a basis reflecting the Debtors' best estimates and judgments as to the future operating and financial performance of the Reorganized Debtors. The Valuation Analysis assumed that the actual performance of the Reorganized Debtors will correspond to the Financial Projections in all material respects. If the business performs at levels below or above those set forth in the Financial Projections, or if the Debtors or Reorganized Debtors are unable to obtain certain concessions from third party lease or contract counterparties, such performance may have a materially negative or positive impact, respectively, on the Valuation Analysis, estimated potential ranges of valuation of the Reorganized Debtors, and the Enterprise Value thereof.

Gower assumed and relied on the accuracy and completeness of all financial and other information furnished to it by the Debtors' management and other parties as well as publicly available information. The preparation of a valuation analysis is a complex analytical process involving subjective determinations about which methodologies of financial analysis are most appropriate and relevant to the subject company and the application of those methodologies to particular facts and circumstances in a manner that is not readily susceptible to summary description.

Based on the aforementioned analyses, and other information described herein and solely for purposes of the Plan, the estimated range of Enterprise Value of the Reorganized Debtors, collectively, as of an assumed Effective Date of January 1, 2021, is approximately $51 million to approximately $64 million (with the mid-point of such range being approximately $59 million).

For purposes of the Valuation Analysis, Gower assumed that no material changes that would affect estimated value occur between the date of the Disclosure Statement and the assumed Effective Date of the Plan. Gower's Valuation Analysis does not constitute an opinion as to the fairness from a financial point of view of the consideration to be received or paid under the Plan, of the terms and provisions of the Plan, or with respect to any other matters.

THE VALUATION ANALYSIS REFLECTS WORK PERFORMED BY GOWER ON THE BASIS OF INFORMATION IN RESPECT OF THE BUSINESSES AND ASSETS OF THE DEBTORS AVAILABLE TO GOWER AS OF OCTOBER 20, 2020. IT SHOULD BE UNDERSTOOD THAT, ALTHOUGH SUBSEQUENT DEVELOPMENTS MAY HAVE AFFECTED OR MAY AFFECT GOWER'S CONCLUSIONS IN RESPECT OF THE VALUATION ANALYSIS, GOWER DOES NOT HAVE ANY OBLIGATION TO UPDATE, REVISE, OR REAFFIRM ITS ESTIMATES OR THE VALUATION ANALYSIS AND DOES NOT INTEND TO DO SO.

GOWER DID NOT INDEPENDENTLY VERIFY THE FINANCIAL PROJECTIONS OR OTHER INFORMATION THAT GOWER USED IN THE VALUATION ANALYSIS, AND NO INDEPENDENT VALUATIONS OR APPRAISALS OF THE DEBTORS OR THEIR ASSETS OR LIABILITIES WERE SOUGHT OR OBTAINED IN CONNECTION THEREWITH. THE VALUATION ANALYSIS WAS DEVELOPED SOLELY FOR PURPOSES OF THE PLAN AND THE ANALYSIS OF POTENTIAL RELATIVE RECOVERIES TO CREDITORS THEREUNDER. THE VALUATION ANALYSIS REFLECTS THE APPLICATION OF VARIOUS VALUATION TECHNIQUES, DOES NOT PURPORT TO BE AN OPINION AND DOES NOT PURPORT TO REFLECT OR CONSTITUTE AN APPRAISAL, LIQUIDATION VALUE, OR ESTIMATE OF THE ACTUAL MARKET VALUE THAT MAY BE REALIZED THROUGH THE SALE OF ANY SECURITIES OR FUNDED DEBT TO BE ISSUED PURSUANT TO, OR ASSETS SUBJECT TO, THE PLAN, WHICH MAY BE SIGNIFICANTLY DIFFERENT THAN THE AMOUNTS SET FORTH IN THE VALUATION ANALYSIS.

THE VALUE OF AN OPERATING BUSINESS IS SUBJECT TO NUMEROUS UNCERTAINTIES AND CONTINGENCIES THAT ARE DIFFICULT TO PREDICT AND WILL FLUCTUATE WITH CHANGES IN FACTORS AFFECTING THE FINANCIAL

CONDITION AND PROSPECTS OF SUCH A BUSINESS. AS A RESULT, THE VALUATION ANALYSIS IS NOT NECESSARILY INDICATIVE OF ACTUAL OUTCOMES, WHICH MAY BE SIGNIFICANTLY MORE OR LESS FAVORABLE THAN THOSE SET FORTH HEREIN.

BECAUSE SUCH ESTIMATES ARE INHERENTLY SUBJECT TO UNCERTAINTIES, NONE OF THE DEBTORS, GOWER, OR ANY OTHER PERSON ASSUMES RESPONSIBILITY FOR THEIR ACCURACY. IN ADDITION, THE POTENTIAL VALUATION OF NEWLY ISSUED OR INCURRED FUNDED DEBT AND SECURITIES IS SUBJECT TO ADDITIONAL UNCERTAINTIES AND CONTINGENCIES, ALL OF WHICH ARE DIFFICULT TO PREDICT AND WILL DEPEND ON A NUMBER OF FACTORS.

THE SUMMARY SET FORTH HEREIN DOES NOT PURPORT TO BE A COMPLETE DESCRIPTION OF THE VALUATION ANALYSIS PERFORMED BY GOWER. THE PREPARATION OF A VALUATION ANALYSIS INVOLVES VARIOUS DETERMINATIONS AS TO THE MOST APPROPRIATE AND RELEVANT METHODS OF FINANCIAL ANALYSIS AND THE APPLICATION OF THESE METHODS IN THE PARTICULAR CIRCUMSTANCES AND, THEREFORE, SUCH AN ANALYSIS IS NOT READILY SUITABLE TO SUMMARY DESCRIPTION. THE VALUATION ANALYSIS PERFORMED BY GOWER IS NOT NECESSARILY INDICATIVE OF ACTUAL VALUES OR FUTURE RESULTS, WHICH MAY BE SIGNIFICANTLY MORE OR LESS FAVORABLE THAN THOSE DESCRIBED HEREIN.

GOWER IS ACTING AS INVESTMENT BANKER TO THE DEBTORS, AND HAS NOT BEEN AND WILL NOT BE RESPONSIBLE FOR, AND HAS NOT AND WILL NOT PROVIDE ANY TAX, ACCOUNTING, ACTUARIAL, LEGAL, OR OTHER SPECIALIST ADVICE TO THE DEBTORS OR ANY OTHER PARTY IN CONNECTION WITH THE DEBTORS' CHAPTER 11 CASES, THE PLAN OR OTHERWISE.

The Valuation Analysis does not constitute a recommendation to any Holder of Allowed Claims, or any other person as to how such person should vote or otherwise act with respect to the proposed Restructuring Transactions. Gower has not been requested to, and does not express any view as to, the potential value of the Reorganized Debtors' funded debt and securities on issuance or at any other time.

EXHIBIT D

Financial Projections

FINANCIAL PROJECTIONS

The financial projections for the Debtors are based on the Debtors' 2020–2025 business plan (the "Financial Projections") as informed by current and projected conditions in each of the Debtors' markets and business. The Financial Projections have been prepared on a consolidated basis, consistent with the Debtors' financial reporting practices, and include all Debtor and non-Debtor entities (hereafter defined as the "Company"). Projected financial statements have been included for the three-month period ending December 27, 2020 and for the fiscal years ending December 2021 through 2025 (the "Projection Period").

The Financial Projections were prepared by the Company's management with the assistance of the Debtors' advisors and are based upon a number of assumptions made by management with respect to the future performance of the Debtors' operations. **Although management has prepared the Financial Projections in good faith and believes the assumptions to be reasonable, there can be no assurance that such assumptions will be realized. As described in detail in the Disclosure Statement,[1] a variety of risk factors could affect the Debtors' financial results and should be considered. Accordingly, the Financial Projections should be reviewed in conjunction with consideration of the risk factors set forth in Article VII of the Disclosure Statement and the assumptions described herein, including all relevant qualifications and footnotes. Additionally, the Debtors do not anticipate that they will, and disclaim any obligation to, furnish updated projections to the holders of Claims or Equity Interests after the date of the Disclosure Statement, or to otherwise make such information public**.

The Debtors believe that the *Joint Prepackaged Plan of Reorganization of Rubio's Restaurants Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan") meets the feasibility requirements set forth in section 1129(a)(11) of the Bankruptcy Code, as Confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtors or any successor under the Plan. In connection with the formulation and development of the Plan and for the purposes of determining whether the Plan would satisfy this feasibility standard, the Debtors analyzed their ability to satisfy their financial obligations while maintaining sufficient liquidity and capital resources.

The Financial Projections were not prepared with a view toward compliance with published guidelines of the United States Securities and Exchange Commission or guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of prospective financial information. An independent auditor has not examined, compiled, or performed any procedures with respect to the prospective financial information contained in these Financial Projections and, accordingly, neither the Debtors nor any independent auditor has expressed an opinion or any other form of assurance on such information or the ability of the Debtors to meet the

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[1] *See Disclosure Statement for the Joint Prepackaged Plan of Reorganization of Rubio's Restaurants Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them elsewhere in this Liquidation Analysis or in the Disclosure Statement to which these Financial Projections are annexed.

Financial Projections. The Debtors' independent auditor assumes no responsibility for, and denies any association with, the prospective financial information.

Principal Assumptions for Financial Projections

The Financial Projections are based on, and assume the successful implementation of, the Debtors' long-term business plan. Both the business plan and the Financial Projections reflect numerous assumptions, including various assumptions regarding the anticipated future performance of the Reorganized Debtors, emergence from chapter 11 by December 31, 2020, industry performance, general business and economic conditions, and other matters, many of which are beyond the control of the Debtors. In addition, there is significant uncertainty regarding the disruption of business that may accompany a restructuring in the Bankruptcy Court. Therefore, although the Financial Projections are necessarily presented with numerical specificity, the actual results achieved during the Projection Period will likely vary from the projected results. These variations may be material. Accordingly, no representation can be or is being made with respect to the accuracy of the Financial Projections or the ability of the Reorganized Debtors to achieve the projected results of operations.

While the Debtors believe that the expectations are based on reasonable assumptions within the bounds of their knowledge of their business and operations, parties in interest are cautioned that any such forward-looking statements are not guarantees of future performance, and involve risks and uncertainties, and that actual results may differ materially from those contemplated by such forward-looking statements.

In deciding whether to vote to accept or reject the Plan, Holders of Claims entitled to vote to accept or reject the Plan must make their own determinations as to the reasonableness of such assumptions and the reliability of the Financial Projections. See Article VII of the Disclosure Statement entitled "Certain Factors to be Considered."

Safe Harbor Under the Private Securities Litigation Reform Act of 1995

The Financial Projections contain statements which constitute "forward-looking statements" within the meaning of the Securities Act and the United States Securities Exchange Act of 1934. Forward-looking statements in the Financial Projections include the intent, belief, or current expectations of the Debtors and management with respect to the timing of, completion of, and scope of the current restructuring, Plan, business plan, and market conditions, and the Debtors' future liquidity, as well as the assumptions upon which such statements are based.

While the Debtors believe that the expectations are based upon reasonable assumptions within the bounds of their knowledge of their business and operations, parties-in-interest are cautioned that any such forward-looking statements are not guarantees of future performance, involve risks and uncertainties, and that actual results may differ materially from those contemplated by such forward-looking statements.

Select Risk Factors Related to the Financial Projections

The Financial Projections are subject to inherent risks and uncertainties, most of which are difficult to predict and many of which are beyond the Debtors' management team's control. Many factors could cause actual results, performance, or achievements to differ materially from any future results, performance, or achievements expressed or implied by these forward-looking statements. A description of the risk factors associated with the Plan, the Disclosure Statement, and the Financial Projections is included in Article VII of the Disclosure Statement.

General Assumptions and Methodology

The Financial Projections, which are presented on a consolidated basis, include the Debtors' operations for the three months ending December 27, 2020 and for fiscal years 2021–2025. The Financial Projections for 2020 were developed by analyzing historical trends and adjusting them for operational changes made by management to drive efficiencies and overall growth. Specific growth drivers, including customer traffic, average guest check, marketing strategies and improved efficiencies have been incorporated. Furthermore, expansion into faster-growing off-premise categories are embedded in the revenue and margin assumptions.

The Financial Projections consist of the following unaudited pro forma financial statements for each year in the Projection Period: (1) projected income statements, (2) projected balance sheets, and (3) projected statements of cash flows.

Business Descriptions

The Debtors are operators and franchisors of limited service restaurants serving coastal Mexican cuisine, including The Original Fish Taco®, a Baja-style fish taco famously introduced in United States by co-founder Ralph Rubio in 1983, and an array of one-of-a-kind recipes with a focus on grilled seafood, tacos, and bowls. Rubio's menu includes responsibly sourced seafood options, all natural steak and all natural chicken raised without antibiotics. The Debtors operate or franchise approximately 170 restaurant locations under the Rubio's Coastal Grill concept in California, Arizona and Nevada. The Debtors employ more than 3,600 team members and corporate and other support staff, including at their restaurants and at their corporate offices located in Carlsbad, California. Over the years, the Rubio's brand concept has evolved and as the Debtors sought to appeal an ever broader customer base within the "quick-casual" segment of the restaurant industry.

Projected Income Statement Assumptions

A. Revenue

Order projections in the Financial Projections have been informed by recent market-specific trends, macro assumptions related to the COVID-19 pandemic, changes in sales mix driven by consumer behavior and potential opportunities forecasted by management. Projections of future sales are uncertain and inherently speculative and are subject to the risk factors noted herein.

B. Costs of Goods Sold

Costs of goods sold ("Costs of Goods Sold") consists of food cost, beverage cost (alcohol and non-alcohol), paper supplies and freight. Costs of Good Sold are projected using historical trends and are adjusted for operational efficiencies forecasted by management.

C. Labor

Labor consists of hourly labor and salaries, bonus and benefits related to unit-level managers. Labor projections are based on historical trends and are adjusted for a reduction in the Debtors' footprint.

D. Unit Operating Expenses

Unit Operating Expenses consist of operating supplies, office supplies, service contracts, repairs and maintenance, travel, utilities, credit card fees, delivery fees and other unit level operating costs. The Unit Operating Expenses are based on historical trends and reflect adjustments made by management to reflect a smaller footprint and added expenses as a result of the COVID-19 pandemic.

E. Advertising

Advertising costs consist of marketing and promotional costs to drive awareness, expand reach and increase traffic. The projected spend is based on historical trends and the Debtors' focus on regaining market share.

F. General & Administrative

General and administrative costs consist of expenses related to operating and providing the back-office support/systems to the restaurant portfolio. These costs are comprised of salaries and benefits for corporate employees, Regional Directors and District Managers. In addition to salaries and benefits these costs include system related expenses for IT platforms, payroll processing, recruiting, insurance, legal, T&E, etc.

G. Depreciation & Amortization

Depreciation expense is related to real property, personal property, intangible assets and other assets. Finite-lived intangible assets are amortized over their estimated remaining useful economic lives. All expenses are forecasted using straight line methods during the Projection Period.

H. Interest Expense

Interest expense is modeled based on the terms from Golub Capital LLC equal to LIBOR+8% per annum and a LIBOR floor of 1.25%.

I. Income Tax Expense

Income tax expense is forecasted assuming a 21% all-in tax-rate. The Debtors continue to evaluate the tax impacts of its financial reorganization and for purposes of these projections it is assumed that earnings are fully taxable going forward.

Projected Cash Flow Statement and Balance Sheet Assumptions

A. Changes in Working Capital

Changes in working capital are expected to be tied to growth in the business, and terms with customers and vendors are not expected to change significantly during the projection period.

B. Capital Expenditures

Capital expenditures include the Debtors' forecasts for restaurant maintenance and remodels, as well as corporate infrastructure upgrades. Run rate capital expenditures total approximately $2.5 million for the fiscal year ending December 2021, and $3.5 million for each of the fiscal years ending December 2022 through 2025.

C. Opening Cash Balance

Management expects to have approximately $10 million of cash on the Effective Date.

D. Debt

The pro-forma capital structure at exit includes a $52,000,000 senior secured credit facility, consisting of the following:

- $5,000,000 first out revolving loan facility;
- $10,000,000 first out term loan; and
- $37,000,000 last out term loan.

Income Statement						
	Fiscal Year Ending December					
($ in Millions)	Oct - Dec 2020E	FY 2021E	FY 2022E	FY 2023E	FY 2024E	FY 2025E
Revenue	**$ 46.6**	**$ 216.2**	**$ 224.2**	**$ 230.9**	**$ 236.7**	**$ 242.7**
% Growth			*3.7%*	*3.0%*	*2.5%*	*2.5%*
Costs of Goods Sold	(11.7)	(53.2)	(54.5)	(56.1)	(57.5)	(59.0)
Labor	(18.2)	(75.7)	(76.6)	(79.1)	(81.6)	(84.1)
Gross Profit	**$ 16.7**	**$ 87.3**	**$ 93.1**	**$ 95.7**	**$ 97.6**	**$ 99.6**
% Margin	*35.9%*	*40.4%*	*41.5%*	*41.4%*	*41.2%*	*41.0%*
Unit Operating Expenses	(6.9)	(31.4)	(31.4)	(32.1)	(32.8)	(33.4)
Occupancy	(5.9)	(23.3)	(23.6)	(23.9)	(24.1)	(24.4)
Advertising	(0.8)	(4.4)	(4.5)	(4.6)	(4.7)	(4.8)
Store Level EBITDA	**$ 3.2**	**$ 28.2**	**$ 33.6**	**$ 35.2**	**$ 36.0**	**$ 36.9**
% Margin	*6.8%*	*13.0%*	*15.0%*	*15.2%*	*15.2%*	*15.2%*
General & Administrative	(4.3)	(19.4)	(20.0)	(20.2)	(20.4)	(20.6)
Adjusted EBITDA	**$ (1.1)**	**$ 8.7**	**$ 13.6**	**$ 15.0**	**$ 15.6**	**$ 16.3**
% Margin	*(2.4%)*	*4.0%*	*6.1%*	*6.5%*	*6.6%*	*6.7%*
Depreciation & Amortization	(1.9)	(7.6)	(7.2)	(7.1)	(7.1)	(7.0)
Adjustments	(8.1)	-	-	-	-	-
Interest Expense	(2.5)	(4.5)	(3.9)	(3.5)	(2.8)	(1.7)
Other	36.9	10.0	-	-	-	-
Income Tax Expense	-	(0.2)	(0.8)	(1.2)	(1.4)	(1.7)
Net Income	**$ 23.2**	**$ 6.4**	**$ 1.7**	**$ 3.2**	**$ 4.3**	**$ 5.9**

Statement of Cash Flows						
	Fiscal Year Ending December					
($ in Millions)	Oct - Dec 2020E	FY 2021E	FY 2022E	FY 2023E	FY 2024E	FY 2025E
Operating Activities						
Net Income	23.2	6.4	1.7	3.2	4.3	5.9
Depreciation & Amortization	2.0	7.7	7.3	7.3	7.3	7.0
Changes in Working Capital	(8.2)	(0.8)	(1.0)	0.6	0.5	0.6
Other, net	(36.9)	(10.0)	0.0	0.0	0.0	0.0
Cash from Operations	**$ (19.9)**	**$ 3.4**	**$ 8.0**	**$ 11.1**	**$ 12.2**	**$ 13.5**
Investing Activities						
Capital Expenditures	(0.6)	(2.5)	(3.5)	(3.5)	(3.5)	(3.5)
Cash from Investing	**$ (0.6)**	**$ (2.5)**	**$ (3.5)**	**$ (3.5)**	**$ (3.5)**	**$ (3.5)**
Financing Activities						
Borrowing / (Repayment)	12.9	(3.5)	(6.8)	(7.5)	(8.7)	(10.0)
Payments for Debt Issuance Costs	(0.4)	(0.1)	(0.1)	(0.1)	-	-
Payment of Restricted Cash	(1.5)	(0.8)	-	-	-	-
Contributions from Stockholders	6.0	-	-	-	-	-
Cash from Financing	**$ 17.1**	**$ (4.3)**	**$ (6.9)**	**$ (7.6)**	**$ (8.7)**	**$ (10.0)**
Change in Cash	**$ (3.4)**	**$ (3.4)**	**$ (2.4)**	**$ 0.0**	**$ -**	**$ 0.0**

Balance Sheet						
	Fiscal Year Ending December					
($ in Millions)	2020E [1]	2021E	2022E	2023E	2024E	2025E
Cash	7.8	4.3	2.0	2.0	2.0	2.0
Restricted Cash	5.0	5.8	5.8	5.8	5.8	5.8
Net A/R	1.1	1.1	1.2	1.2	1.2	1.3
Inventories	1.9	1.7	1.7	1.8	1.8	1.9
Other Current Assets	2.0	2.6	2.6	2.7	2.8	2.9
Total Current Assets	**$ 17.8**	**$ 15.5**	**$ 13.3**	**$ 13.5**	**$ 13.6**	**$ 13.8**
Property, Plant & Equipment, net	28.0	22.9	19.2	15.6	12.0	8.5
Other Non Current Assets	11.1	11.1	11.1	11.1	11.1	11.1
Total Assets	**$ 56.9**	**$ 49.5**	**$ 43.6**	**$ 40.2**	**$ 36.8**	**$ 33.4**
A/P & Accrued Expenses	27.9	27.5	26.7	27.5	28.2	28.9
Other Liabilities	5.0	5.0	5.0	5.0	5.0	5.0
Total Liabilities (ex. Debt)	**$ 33.0**	**$ 32.6**	**$ 31.8**	**$ 32.6**	**$ 33.3**	**$ 34.0**
PPP Loan	10.0	-	-	-	-	-
Exit Facility Revolving Loan	3.0	-	2.7	0.5	-	-
Exit Facility Term Loans	46.7	46.2	36.7	31.4	23.5	13.4
Total Liabilities	**$ 92.7**	**$ 78.8**	**$ 71.2**	**$ 64.5**	**$ 56.7**	**$ 47.4**
Stockholders' Equity	**$ (35.7)**	**$ (29.3)**	**$ (27.5)**	**$ (24.3)**	**$ (19.9)**	**$ (14.0)**

Note:
[1] Post-Emergence numbers do not reflect Fresh Start Accounting.

EXHIBIT E

Corporate Organizational Chart