

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

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	:	
In re	:	Chapter 11
	:	
ALPHA ENTERTAINMENT LLC,	:	Case No. 20-10940 (LSS)
	:	
Debtor.¹	:	
	:	
	-X	

**DISCLOSURE STATEMENT FOR THE 1st AMENDED
CHAPTER 11 PLAN OF ALPHA ENTERTAINMENT LLC**

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Dated: November 2, 2020

¹ The last four digits of the Debtor's federal tax identification number are 7778. The Debtor's mailing address is 600 Steamboat Road, Suite 105, Greenwich, CT 06830.

DISCLAIMER

THE DISCLOSURE STATEMENT PROVIDES INFORMATION REGARDING THE CHAPTER 11 PLAN OF ALPHA ENTERTAINMENT LLC THAT THE DEBTOR IS SEEKING TO HAVE CONFIRMED BY THE BANKRUPTCY COURT. THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT IS INCLUDED FOR PURPOSES OF SOLICITING ACCEPTANCES TO, AND CONFIRMATION OF, THE PLAN, AND MAY NOT BE RELIED ON FOR ANY OTHER PURPOSE. APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.

THE DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS AND CERTAIN DOCUMENTS RELATING TO THE PLAN. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE AND PROVIDE ADEQUATE INFORMATION WITH RESPECT TO THE DOCUMENTS SUMMARIZED, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF, OR ARE INCONSISTENT WITH, THE PLAN, SUCH STATUTES, OR SUCH DOCUMENTS. TO THE EXTENT THERE IS ANY CONFLICT, INCONSISTENCY, OR DISCREPANCY BETWEEN THE TERMS AND PROVISIONS IN THE PLAN AND THE DISCLOSURE STATEMENT, THE PLAN SHALL GOVERN FOR ALL PURPOSES. ALL HOLDERS OF CLASS 3 GENERAL UNSECURED CLAIMS SHOULD READ THE DISCLOSURE STATEMENT AND THE PLAN, AND THE RESPECTIVE EXHIBITS ATTACHED THERETO, IN THEIR ENTIRETY BEFORE VOTING ON THE PLAN AND MAKING ANY ELECTIONS IN CONNECTION WITH THE PLAN WITH RESPECT TO RELEASES UNDER SECTION 11.11(b) OF THE PLAN, AS APPLICABLE.

THE STATEMENTS CONTAINED HEREIN HAVE BEEN MADE AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH HEREIN. ALTHOUGH THE DEBTOR HAS MADE AN EFFORT TO DISCLOSE WHERE CHANGES IN PRESENT CIRCUMSTANCES COULD REASONABLY BE EXPECTED TO AFFECT MATERIALLY ANY RECOVERIES UNDER THE PLAN, THE DEBTOR DOES NOT PURPORT TO PREDICT WITH ACCURACY CHANGES IN PRESENT CIRCUMSTANCES AND UNDERTAKES NO OBLIGATION TO AMEND THE DISCLOSURE STATEMENT TO REFLECT SUCH CIRCUMSTANCES.

THE DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THE DISCLOSURE STATEMENT HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE “SEC”) OR ANY FEDERAL, STATE, LOCAL OR FOREIGN REGULATORY AGENCY, NOR HAS THE SEC OR ANY OTHER SUCH AGENCY PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT.

THE DEBTOR MAKES STATEMENTS IN THE DISCLOSURE STATEMENT THAT MAY BE CONSIDERED FORWARD-LOOKING STATEMENTS UNDER FEDERAL SECURITIES LAWS. STATEMENTS CONCERNING THESE AND OTHER MATTERS ARE NOT GUARANTEES, REPRESENT THE DEBTOR’S ESTIMATES AND ASSUMPTIONS ONLY AS OF THE DATE SUCH STATEMENTS WERE MADE, AND INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES, AND OTHER KNOWN AND UNKNOWN FACTORS THAT COULD IMPACT THE PLAN OR DISTRIBUTIONS THEREUNDER. IN ADDITION TO STATEMENTS THAT EXPLICITLY DESCRIBE SUCH RISKS AND UNCERTAINTIES, READERS ARE URGED TO CONSIDER STATEMENTS LABELED WITH THE TERMS “BELIEVES,” “BELIEF,” “EXPECTS,” “INTENDS,” “ESTIMATES,” “ANTICIPATES,” “PLANS” OR SIMILAR TERMS TO BE UNCERTAIN AND FORWARD-LOOKING. CREDITORS AND OTHER INTERESTED PARTIES SHOULD ALSO REVIEW THE SECTION OF THE DISCLOSURE STATEMENT ENTITLED “RISK FACTORS” FOR A DISCUSSION OF CERTAIN FACTORS THAT MAY AFFECT THE PLAN AND DISTRIBUTIONS THEREUNDER.

VOTING DEADLINE

THE DEADLINE TO VOTE TO ACCEPT OR REJECT THE PLAN IS **5:00 P.M. (EASTERN TIME) ON DECEMBER 4, 2020**. TO BE COUNTED, THE VOTING AGENT MUST **ACTUALLY RECEIVE** YOUR BALLOT ON OR BEFORE THE VOTING DEADLINE IN THE FORM AND MANNER PROVIDED FOR IN THE DISCLOSURE STATEMENT ORDER (DEFINED BELOW) AND THE VOTING INSTRUCTIONS AND DESCRIBED HEREIN.

CONFIRMATION HEARING AND DEADLINE TO OBJECT TO THE PLAN

THE HEARING TO CONSIDER CONFIRMATION OF THE PLAN HAS BEEN SCHEDULED FOR **DECEMBER 11, 2020 AT 10:00 A.M. (EASTERN TIME)**. OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED (I) ON OR BEFORE **DECEMBER 4, 2020 AT 4:00 P.M. (EASTERN TIME)**, AND (II) IN ACCORDANCE WITH THE DISCLOSURE STATEMENT ORDER (DEFINED BELOW) AND THE CONFIRMATION HEARING NOTICE.

*****THE DEBTOR BELIEVES THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE RECOVERIES TO CREDITORS, AND IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS ESTATE AND INTERESTED PARTIES. FOR THESE REASONS, THE DEBTOR URGES HOLDERS OF CLASS 3 GENERAL UNSECURED CLAIMS WHO ARE ENTITLED TO VOTE ON THE PLAN TO TIMELY RETURN THEIR BALLOTS VOTING TO ACCEPT THE PLAN.*****

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
A. Overview of the Chapter 11 Case and the Plan	1
1. The Chapter 11 Case.....	1
2. General Structure of the Plan.....	3
3. Material Terms of the Plan	4
4. Summary of Treatment of Claims and Interests Under the Plan	4
B. Plan Voting Instructions and Procedures.....	5
1. Voting Rights.....	5
2. Solicitation Materials.....	6
3. Plan Voting Instructions and Procedures.....	7
4. Confirmation Hearing and Deadline for Objections to Confirmation.....	9
II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTOR.....	10
A. Corporate Structure.....	10
B. Business Overview.....	10
C. Prepetition Capital Structure.....	10
1. Secured Claims	11
2. Unsecured Debt.....	11
III. THE CHAPTER 11 CASE	12
A. First Day Orders.....	12
B. Sale.....	12
C. Executory Contracts and Unexpired Leases	12
D. Additional Orders.....	13
E. Appointment of Committee	13
F. Claims Process and Bar Dates	14
1. Schedules, Statements of Financial Affairs	14

2.	Claims Bar Dates	14
3.	Claims Reconciliation.....	14
IV.	SUMMARY OF THE CHAPTER 11 PLAN	15
A.	Purpose and Effect of the Plan.....	15
B.	Plan Administrator	16
1.	Appointment; Duties	16
2.	Plan Administrator Agreement	16
3.	Powers and Duties.....	16
4.	Compensation of the Plan Administrator.....	17
5.	Indemnification of the Plan Administrator and Related Parties	17
6.	Insurance	18
7.	Preservation of Retained Causes of Action	18
8.	Funding of Reserves	18
C.	Estimated Recoveries for Holders of General Unsecured Claims	18
D.	Treatment of Unclassified Claims	19
1.	Administrative Claims	19
2.	Professional Fee Claims.....	19
3.	Priority Tax Claims.....	19
E.	Classification and Treatment of Claims and Interests	20
1.	Class 1: Secured Claims.....	20
2.	Class 2: Priority Non-Tax Claims.....	20
3.	Class 3: General Unsecured Claims.....	20
4.	Class 4: Subordinated Claims	21
5.	Class 5: Interests	21
6.	Special Provisions Regarding Insurance.....	21
7.	Provision Governing Allowance and Defenses to Claims.....	23
F.	Acceptance or Rejection of the Plan.....	23

1.	Impaired Class of Claims Entitled to Vote	23
2.	Acceptance by an Impaired Class	23
3.	Presumed Acceptances by Unimpaired Classes	23
4.	Impaired Classes Deemed to Reject Plan	23
5.	Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code.....	24
6.	Elimination of Vacant Classes	24
G.	Implementation of the Plan	24
1.	Implementation of the Plan	24
2.	The Debtor’s Post-Effective Date Corporate Affairs.....	24
H.	Executory Contracts and Unexpired Leases	25
1.	Executory Contracts and Unexpired Leases	25
2.	Rejection Claims	25
I.	Provisions Governing Distributions.....	26
1.	Interest on Claims	26
2.	Distributions by Post-Effective Date Debtor	26
3.	Distributions for Claims Allowed as of the Effective Date	26
4.	Means of Cash Payment.....	26
5.	Fractional Distributions	27
6.	De Minimis Distributions	27
7.	Delivery of Distributions	27
8.	Withholding, Payment and Reporting Requirements with Respect to Distributions.....	27
9.	Setoffs	28
10.	No Distribution in Excess of Allowed Amounts	28
11.	Allocation of Distributions	28
12.	Forfeiture of Distributions	28

J.	Procedures for Resolving Disputed, Contingent and Unliquidated Claims and Distributions with Respect Thereto.....	29
1.	Claims Administration Responsibility	29
2.	Claim Objections	29
3.	No Distributions Pending Allowance	29
4.	Estimation of Contingent or Unliquidated Claims.....	30
5.	Amendments to Claims.....	30
K.	Conditions Precedent to the Occurrence of the Effective Date	30
1.	Conditions to Occurrence of the Effective Date	30
2.	Waiver of Conditions to the Occurrence of the Effective Date	31
3.	Effect of Non-Occurrence of Conditions to the Effective Date.....	31
L.	Retention of Jurisdiction.....	31
1.	Scope of Retained Jurisdiction.....	31
2.	Failure of the Bankruptcy Court to Exercise Jurisdiction.....	33
M.	Miscellaneous Plan Provisions	33
1.	Administrative Claims Bar Date	33
2.	Professional Fee Claims.....	33
3.	Payment of Statutory Fees; Filing of Quarterly Reports	34
4.	Dissolution of Committee	34
5.	Modifications and Amendments	34
6.	Severability of Plan Provisions.....	35
7.	Successors and Assigns.....	35
8.	Post-Effective Date Compromises and Settlements	35
9.	Binding Effect of Plan	35
10.	Non-Discharge of the Debtor; Injunction	35
11.	Releases and Related Matters	36

12.	Exculpation and Limitation of Liability	38
13.	Terms of Injunctions or Stays	38
14.	Revocation, Withdrawal or Non-Consummation	38
15.	Preservation of Retained Causes of Action	39
16.	Bar Date Order	39
17.	Section 1146 Exemption	39
18.	Conflicts with the Plan	40
19.	No Stay of Confirmation Order	40
V.	RISK FACTORS	40
A.	Risk of Amendment, Waiver, Modification or Withdrawal of the Plan	40
B.	Parties May Object to the Plan’s Classification of Claims and Interests	40
C.	The Debtor May Not Be Able to Obtain Confirmation of the Plan	40
D.	The Conditions Precedent to the Effective Date of the Plan May Not Occur	41
E.	General Unsecured Creditors May Recover Less Than Projected	41
F.	The Allowed Amount of Claims May Differ from Current Estimates	41
G.	Risks Related to Income Taxation	41
H.	Litigation	41
VI.	CONFIRMATION OF THE PLAN	42
A.	The Confirmation Hearing	42
B.	Requirements for Confirmation of the Plan	42
C.	Best Interests of Creditors	43
D.	Feasibility	44
E.	Acceptance by Impaired Classes	44
F.	Confirmation Without Acceptance by All Impaired Classes	44
1.	No Unfair Discrimination	45
2.	Fair and Equitable Test	45
G.	Alternatives to Confirmation and Consummation of the Plan	45
VII.	CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN	46

A. Certain Tax Consequences to Holders of Claims47

B. Certain Tax Consequences to the Debtor.....49

C. Importance of Obtaining Professional Tax Assistance50

VIII. RECOMMENDATION51

EXHIBITS

EXHIBIT A 1st Amended Chapter 11 Plan

EXHIBIT B Liquidation Analysis

*****THE DEBTOR ADOPTS AND INCORPORATES THE EXHIBITS ATTACHED
HERETO BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN*****

I. INTRODUCTION

Alpha Entertainment LLC (the “**Debtor**”), the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “**Chapter 11 Case**”), hereby submits the disclosure statement (the “**Disclosure Statement**”), pursuant to sections 1125 and 1126(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), in connection with the solicitation of votes on the *1st Amended Chapter 11 Plan of Alpha Entertainment LLC*, dated September 30, 2020 (as amended, supplemented and modified from time to time, the “**Plan**”). A copy of the Plan is attached hereto as **Exhibit A**.²

The purpose of the Disclosure Statement is to enable Creditors whose Claims are Impaired under the Plan and who are entitled to vote on the Plan to make an informed decision in exercising their right to accept or reject the Plan. The Disclosure Statement sets forth certain information regarding, among other things, the Debtor’s prepetition operating and financial history, its reasons for seeking protection under chapter 11 of the Bankruptcy Code, the course of the Chapter 11 Case, and the disposition of the Debtor’s Assets. The Disclosure Statement also describes, among other things, certain terms and provisions of the Plan (including the compromises and settlements provided for in the Plan), certain effects of Confirmation of the Plan, certain risk factors associated with the Plan, and the manner in which distributions will be made under the Plan. In addition, the Disclosure Statement discusses, among other things, the Confirmation process and the voting and election procedures that Holders of Claims entitled to vote under the Plan must follow for their votes on the Plan to be counted and their elections with respect to releases under Section 11.11(b) of the Plan, as applicable, to be effective.

A. **Overview of the Chapter 11 Case and the Plan**

1. **The Chapter 11 Case**

(a) ***General Background***

The Debtor, previously doing business as the XFL (the “**XFL**”), provided high-energy professional football, reimagined for the 21st century with many innovative elements designed to bring fans closer to the players and the game they love, during the time of year when they wanted more football. The league debuted on February 8, 2020 to immediate acclaim. Nearly 70,000 fans attended the opening weekend’s games, and more than 12 million viewers tuned in on television. Just weeks after the first XFL games were played, however, the worldwide COVID-19 pandemic forced every major American sports league to suspend, if not cancel, their seasons. On March 20, 2020, the XFL canceled the remainder of its inaugural season, costing the nascent league tens of millions of dollars in revenue. The impossibility of knowing when the pandemic would sufficiently abate and allow the league to restart only exacerbated the problems posed by the Debtor’s abrupt loss of revenue and unabated operating costs.

² Unless otherwise noted, all capitalized terms used but not defined herein shall have the meanings provided to them in the Plan. The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between the summary herein and the Plan, the Plan shall govern.

(b) *Chapter 11 Goals and the Appointment of the Independent Manager*

The Debtor, in consultation with its professional advisors, diligently evaluated a range of strategic alternatives to address the near-term liquidity challenges created by the COVID-19 pandemic. To address these challenges, the Debtor and its professional advisors, after considering all available strategic options, determined that the best course of action was to commence the Chapter 11 Case in order to pursue a robust and independent marketing and sale process to preserve and maximize the value of the Debtor's Estate. To that end, the Debtor, among other things, appointed an independent manager, John Brecker of Drivetrain, LLC, to oversee the Debtor's chapter 11 efforts and to negotiate and approve any sale, financing, or restructuring of the Debtor that involved any of the Debtor's insiders.

Prior to, and after the Petition Date, the Company relied heavily on its remaining management team to commence and maintain a strategic path toward a successful Chapter 11 Case. Led by the Company's President and Chief Operating Officer, Jeffrey Pollack, the Debtor's management team worked to reduce expenses, eliminate unnecessary costs to the Estate, and conserve the Company's cash. The Company's employees and independent manager provided critical services to the Company leading up to, and throughout, the Chapter 11 Case.

(c) *The Prepetition Note*

With no incoming game day and ticket sales receipts due to the 2020 XFL season cancellation and resulting shutdown of the XFL's normal operations, the Debtor required financing to preserve the value of its assets. To that end, on March 25, 2020, Vince K. McMahon, founder of the Debtor, agreed to provide rescue financing to the Debtor through the terms of a promissory note (as amended, the "**Prepetition Note**") secured by all of the Debtor's assets. The Prepetition Note initially provided up to \$7 million of liquidity, but was subsequently amended prior to the Petition Date to increase the maximum principal amount to \$9.0 million upon the Debtor determining additional funding was required. As of the Petition Date, \$8.25 million of funding was provided to the Debtor. The proceeds of the Prepetition Note enabled the Debtor to, among other things, engage in a sale and marketing process for the Debtor's assets (the "**Sale Process**"), pay employee wages and benefits and satisfy other critical and necessary obligations and expenses.

(d) *The Sale Process*

On April 21, 2020, the Debtor filed a motion for the entry of: (A) an order (i) approving bidding procedures in connection with the sale of the Debtor's assets (the "**Bidding Procedures**"); (ii) scheduling an auction for and hearing (the "**Sale Hearing**") on the approval of the proposed sale or disposition (the "**Sale**") of the Debtor's assets; (iii) approving notice of the respective date, time and place for the Auction and for the Sale Hearing; (iv) approving procedures for the assumption and assignment of certain executory contracts and unexpired leases; (v) approving the form and manner of notice; and (vi) granting related relief; and (B) an order authorizing and approving (i) the Sale free and clear of liens, claims, rights, encumbrances, and other interests; and (ii) the assumption and assignment of certain executory contracts and unexpired leases and (iii) related relief [D.I. 55] (the "**Bid Procedures Motion**"). On May 28, 2020, the Bankruptcy Court entered an order [D.I. 181] (the "**Bid Procedures Order**") approving the Bid Procedures Motion and the Bidding Procedures for the Sale.

To facilitate the Sale Process, the Debtor retained Houlihan Lokey Capital, Inc. (“**Houlihan Lokey**”). The Debtor, in consultation with Houlihan Lokey and its other professional advisors, worked extensively to implement a robust Sale Process. Houlihan Lokey contacted over 246 potential bidders, representing both financial and strategic buyers/investors; the list of parties included, among others, names suggested by the Debtor’s management and the Official Committee of Unsecured Creditors of Alpha Entertainment LLC (the “**Committee**”). The Debtor’s objective was to cast a wide net in an effort to attract multiple proposals either to purchase the Debtor’s assets and/or to invest in the Debtor’s business. Of the 246 potential bidders contacted, the Debtor executed confidentiality agreements with 35 parties, who subsequently received the confidential information memorandum and were granted access to a virtual data room containing additional diligence materials pertaining to the Debtor’s business.

By the Bid Deadline on July 30, 2020, the Debtor received two bids (each a “**Bid**” and together, the “**Bids**”). After reviewing the Bids and consulting with the Debtor’s prepetition lender and the Committee, the bid submitted by Alpha Opco, LLC (“**Alpha Opco**” and its bid, the “**Alpha Opco Bid**”) was deemed to be the only qualified bid. With only the Alpha Opco Bid being deemed a qualified bid in accordance with the Bidding Procedures, the Debtor cancelled the Auction and declared the Alpha Opco Bid as the successful Bid.

On August 7, 2020, the Court held the Sale Hearing, and consistent with the record at the Sale hearing, entered an order [D.I. 358] (the “**Sale Order**”) approving the Sale of substantially all of the Debtor’s assets to Alpha Opco for (i) a cash purchase price of \$15,000,000, (ii) assumption of various and specified liabilities related to the Debtor’s business and assets, and (iii) cure amount satisfaction of up to \$9,200,000 for contracts assumed and assigned to Alpha Opco in accordance with the Sale Order. The Sale of certain causes of action/claims against the Estate, listed on Schedule 2.2(k) to the Alpha Opco asset purchase agreement, were specifically excluded, while other causes of action/claims were included in the purchase of substantially all of the Debtor’s assets. The Sale successfully closed on August 21, 2020 and, in connection with the closing of the Sale, proceeds from the Sale were used to satisfy the Debtor’s obligations under the Prepetition Note.

2. General Structure of the Plan

The Plan provides for the disposition of the Debtor’s Assets and the distribution of the proceeds in accordance with the priorities and requirements of the Bankruptcy Code. As of the date of the Disclosure Statement, the Assets are largely Cash and the Retained Causes of Action.

The Plan provides for the appointment of a Plan Administrator as a means to implement the Plan. The Plan Administrator shall be empowered to, among other things, administer and liquidate all Assets, object to and settle Claims and prosecute Retained Causes of Action in accordance with the Plan. The Plan also provides for Distributions to Holders of Allowed Claims, including Administrative Claims, Professional Fee Claims, Priority Tax Claims, Secured Claims, Priority Non-Tax Claims and General Unsecured Claims. In addition, the Plan cancels all Interests in the Debtor, and provides for the dissolution and wind-up of the affairs of the Debtor.

3. Material Terms of the Plan

The following is an overview of certain material terms of the Plan:

- All Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Priority Tax Claims, Allowed Secured Claims and Allowed Priority Non-Tax Claims will be paid or otherwise satisfied in full as required by the Bankruptcy Code and provided for in the Plan, unless otherwise agreed to by the Holders of such Claims and the Post-Effective Date Debtor.
- Holders of Allowed General Unsecured Claims will receive their Pro Rata share of the General Unsecured Claim Distribution, unless less favorable treatment is otherwise agreed to by the Post-Effective Date Debtor and the Holders of such Claims.
- Holders of Subordinated Claims will not be entitled to any distribution or recovery on account of such Claims.
- As of the Effective Date, all Interests of any kind will be cancelled, and the Holders thereof will not receive or retain any property, interest in property or consideration under the Plan on account of such Interests.
- The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of each of the compromises and settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor, its Estate, Holders of Claims and other parties in interest, and are fair, equitable and reasonable.

4. Summary of Treatment of Claims and Interests Under the Plan

The table below summarizes the classification and treatment of Claims and Interests under the Plan.

IN CONNECTION WITH CONSIDERING THE PROJECTED RECOVERIES FOR ALLOWED GENERAL UNSECURED CLAIMS SET FORTH IN THE DISCLOSURE STATEMENT AND THE TABLE BELOW, PLEASE CONSIDER THE FOLLOWING:

• **RECOVERIES ARE ESTIMATES ONLY, AND ACTUAL RECOVERIES MAY MATERIALLY DIFFER.**

• **RECOVERY ESTIMATES ARE BASED PRIMARILY ON THE DEBTOR'S ESTIMATED DISTRIBUTIONS OF CASH AND DEPEND ON THE ALLOWANCE OR DISALLOWANCE OF CERTAIN CLAIMS ASSERTED AGAINST THE DEBTOR. RECOVERIES ON RETAINED CAUSES OF ACTION ARE NOT INCLUDED IN THESE RECOVERY ESTIMATES, BUT COULD MATERIALLY CHANGE THE ACTUAL RECOVERIES TO HOLDERS OF GENERAL UNSECURED CLAIMS. *SEE INFRA* SECTION IV.D FOR A MORE DETAILED DESCRIPTION OF THE ESTIMATED RECOVERIES.**

FOR A COMPLETE DESCRIPTION OF THE DEBTOR'S CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS, REFERENCE SHOULD BE MADE TO THE PLAN AND THE OTHER SECTIONS OF THE DISCLOSURE STATEMENT.

<u>Class</u>	<u>Claim or Interest</u>	<u>Summary of Treatment</u>	<u>Estimated Allowed Amount of Claims</u>	<u>Projected Recovery Under Plan</u>
1	Allowed Secured Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$2.65 million	100%
2	Allowed Priority Non-Tax Claims	Unimpaired <i>Deemed to Accept Plan</i>	\$700,000	100%
3	Allowed General Unsecured Claims	Impaired <i>Entitled to Vote on Plan</i>	\$38 million - \$57 million ³	8% - 12%
4	Subordinated Claims	Impaired <i>Deemed to Reject Plan</i>	N/A	N/A
5	Interests	Impaired <i>Deemed to Reject Plan</i>	N/A	N/A

*****THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF ALLOWED CLAIMS, AND THUS STRONGLY RECOMMENDS THAT YOU VOTE TO ACCEPT THE PLAN*****

B. Plan Voting Instructions and Procedures

1. Voting Rights

Under the Bankruptcy Code, only classes of claims or interests that are “impaired” and that are not deemed as a matter of law to have rejected a plan under section 1126 of the Bankruptcy Code are entitled to vote to accept or reject such plan. Any class that is “unimpaired” is not entitled to vote to accept or reject a plan, and is conclusively presumed to have accepted such plan. As set forth in section 1124 of the Bankruptcy Code, a class is “impaired” if the legal, equitable or

³ Except as otherwise set forth in the Plan, without limitation, the estimated amount of Allowed General Unsecured Claims does not account for any additional Claims against the Debtor that have yet to be Filed as a result of the rejection of executory contracts and unexpired leases, including, without limitation, the rejection of any such contracts and leases pursuant to the Plan or claims related to contracts and leases assumed in accordance with the Sale Order. The estimated amount of Allowed General Unsecured Claims does, however, take into account certain anticipated reductions or eliminations of Claims as part of the claims reconciliation process, and the anticipated disallowance or allowance of certain litigation Claims, if any, asserted by or against the Debtor. Thus, the total amount of Allowed General Unsecured Claims may be materially more or less than the estimate set forth in the Plan.

contractual rights attaching to the claims or equity interests of that class are modified or altered. Holders of claims or interests within an impaired class are entitled to vote to accept or reject a plan if such claims or interests are “allowed” under section 502 of the Bankruptcy Code.

Under the Bankruptcy Code, acceptance of a plan by a class of claims is determined by calculating the number and the amount of allowed claims voting to accept such plan. Acceptance by a class of claims requires more than one-half of the number of total allowed claims voting in the class to vote in favor of the plan, and at least two-thirds in dollar amount of the total allowed claims voting in the class to vote in favor of the plan; only those holders that actually vote to accept or reject the plan are counted for purposes of determining whether these dollar and number thresholds are met.

Pursuant to the Plan, Claims in Class 3 are Impaired by, and entitled to receive a Distribution under, the Plan, and only the Holders of Claims in Class 3 are entitled to vote to accept or reject the Plan. Only Holders of Claims in Class 3 as of November 4, 2020 (the “Voting Record Date”) may vote to accept or reject the Plan.

Pursuant to the Plan, Claims in Classes 1 and 2 are Unimpaired by the Plan, and Holders of such Claims are deemed to have accepted the Plan, and, therefore, are not entitled to vote on the Plan.

Pursuant to the Plan, Claims and Interests in Classes 4 and 5, respectively, will not receive or retain any property under the Plan on account of such Claims or Interests, as applicable, and, therefore, Holders of such Claims and Interests are deemed to reject the Plan and not entitled to vote on the Plan.

2. Solicitation Materials

The Debtor, with the approval of the Bankruptcy Court, has engaged Donlin, Recano & Company, Inc. (the “***Voting Agent***”) to serve as the voting agent to process and tabulate Ballots and to oversee the Plan voting and solicitation process generally. The following materials constitute the solicitation package (the “***Solicitation Package***”):

- The Disclosure Statement, including the Plan and any other exhibits annexed thereto;
- The Bankruptcy Court order approving the Disclosure Statement (the “***Disclosure Statement Order***”) (excluding exhibits);
- The Ballot and voting instructions (the “***Voting Instructions***”) to be used in connection with voting to accept or to reject the Plan;
- A pre-addressed, postage pre-paid return envelope; and
- The notice of, among other things, (a) the date, time and place of the hearing to consider Confirmation of the Plan and related matters, and (b) the deadline for filing objections to Confirmation of the Plan (the “***Confirmation Hearing Notice***”).

The Debtor, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order. The Disclosure Statement, the Disclosure Statement Order, the Confirmation Hearing Notice and the Plan will also be available at the Voting Agent's website for the Debtor's Chapter 11 Case at <https://www.donlinrecano.com/alpha>, by clicking on the tab on the left-hand side of the page titled "Plan and Disclosure Statement."

If you are the Holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Solicitation Package, or if you have any questions concerning voting procedures, you should contact the Voting Agent by submitting an inquiry via electronic mail to alphainfo@donlinrecano.com or in writing to Donlin, Recano & Company, Inc.: (i) if by First-Class Mail to Donlin, Recano & Company, Inc., Re: Alpha Entertainment LLC, P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, or (ii) if by hand delivery or overnight mail to Donlin, Recano & Company, Inc., Re: Alpha Entertainment LLC, 6201 15th Avenue, Brooklyn, NY 11219.

If your Claim is subject to a pending claim objection as of November 11, 2020, and you wish to vote on the Plan in the amount and priority as reflected on your timely filed proof of claim, you must File a motion before December 1, 2020 at 4:00 p.m. (ET), in accordance with the Disclosure Statement Order, pursuant to Bankruptcy Rule 3018(a) with the Bankruptcy Court for the temporary allowance of your Claim for Plan voting purposes, and your Claim or portion thereof, as applicable, must be temporarily allowed by the Bankruptcy Court for voting purposes by the Voting Deadline, or you will not be entitled to vote to accept or reject the Plan.

THE DEBTOR, ITS ESTATE AND THE POST-EFFECTIVE DATE DEBTOR, AS APPLICABLE, RESERVE THE RIGHT TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM FOR PLAN DISTRIBUTION PURPOSES OR OTHERWISE.

3. Plan Voting Instructions and Procedures

To ensure your vote on the Plan is counted and any Release Opt-Out is effective you must: (a) complete the Ballot in accordance with the instructions set forth therein; (b) indicate your decision either to accept or reject the Plan in the boxes indicated in the Ballot; (c) make a Release Opt-Out election, if applicable and desired; and (d) sign and submit the Ballot to the Voting Agent prior to the Voting Deadline (defined below) either in paper form at the address provided for therein, or electronically through the website created for the Chapter 11 Case by the Voting Agent, <http://www.donlinrecano.com/alpha> (the "**Online Voting Platform**"). ABSENT PRIOR CONSENT OF THE DEBTOR, BALLOTS SENT BY FACSIMILE OR ELECTRONIC TRANSMISSION (OTHER THAN THROUGH THE ONLINE VOTING PLATFORM) ARE NOT ALLOWED AND WILL NOT BE COUNTED.

The Bankruptcy Court has fixed November 4, 2020 as the Voting Record Date for the determination of the Holders of Claims who are entitled to (a) receive a Solicitation Package and (b) vote to accept or reject the Plan.

After carefully reviewing the Plan, the Disclosure Statement and the detailed Voting Instructions, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan in accordance with the Voting Instructions.

The deadline to vote on the Plan is December 4, 2020 at 5:00 p.m. (Eastern Time) (the “Voting Deadline”). For your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions, and received by the Voting Agent no later than the Voting Deadline.

Only the Holders of Claims in Class 3 as of the Voting Record Date are entitled to vote to accept or reject the Plan. Each Holder of a Claim must vote its entire Claim either to accept or reject the Plan and may not split such vote. It is important to follow the specific Voting Instructions.

Unless otherwise provided in the Voting Instructions or the Disclosure Statement Order, the following Ballots will not be counted in determining whether the Plan has been accepted or rejected:

- Any Ballot that fails to clearly indicate an acceptance or rejection, or that indicates both an acceptance and a rejection, of the Plan;
- Any Ballot received after the Voting Deadline, except by order of the Bankruptcy Court or if the Debtor has granted an extension of the Voting Deadline with respect to such Ballot;
- Any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- Any Ballot that is illegible or contains insufficient information to permit the identification of the Claim Holder;
- Any Ballot cast by an Entity that does not hold a Claim in the Voting Class;
- Any unsigned Ballot or Ballot without an original signature; and
- Any Ballot submitted by fax, email or electronic transmission (other than through the Online Voting Platform), unless approved by the Debtor in writing or otherwise ordered by the Bankruptcy Court.

The Ballot permits Holders of Class 3 General Unsecured Claims that vote to accept or reject the Plan the opportunity to opt out of the releases set forth in Section 11.11(b) of the Plan by checking the appropriate box on their Ballots to elect the Release Opt-Out.

Except as otherwise provided for in the Plan, (a) all Holders of Claims deemed to have accepted the Plan (i.e., Holders of Claims in Unimpaired Classes of Claims) that have not Filed an objection to the release in Section 11.11(b) of the Plan prior to December 4, 2020; and (b) all Holders of Claims in Class 3 that (i) vote to accept or reject the Plan and do not timely submit a Release Opt-Out indicating such Holder’s decision to not participate in the

releases set forth in Section 11.11(b) of the Plan, or (ii) do not vote to accept or reject the Plan, and either do not timely submit a Release Opt-Out, or do not File an objection to the releases in Section 11.11(b) of the Plan prior to December 4, 2020, are deemed to have forever released the Released Parties from any and all claims and causes of action to the extent provided for in Section 11.11(b) of the Plan.

Except as otherwise provided in the Disclosure Statement Order: any party who has previously delivered a valid Ballot for the acceptance or rejection of the Plan may revoke such Ballot and change its vote by delivering to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan; and any party who has delivered a valid Ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. In the case where multiple Ballots are received from the same Holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot. To be valid, a notice of withdrawal must (a) contain the description of the Claims to which it relates and the aggregate principal amount represented by such Claims; (b) be signed by the withdrawing party in the same manner as the Ballot being withdrawn; (c) contain a certification that the withdrawing party owns the Claims and possesses the right to withdraw the vote sought to be withdrawn; and (d) be actually received by the Voting Agent prior to the Voting Deadline. The Debtor's right to contest the validity of any such withdrawals of Ballots is expressly reserved.

ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.

If you have any questions about (a) the procedure for voting your Claim; (b) the Solicitation Package that you have received; or (c) the amount of your Claim, or if you wish to obtain, at your own expense (unless otherwise specifically required by Bankruptcy Rule 3017(d)), an additional copy of the Plan, the Disclosure Statement or any appendices or exhibits to such documents, please contact the Voting Agent at the address specified above. Copies of the Plan, Disclosure Statement and other documents Filed in this Chapter 11 Case may be obtained free of charge at the Voting Agent's website at <https://www.donlinrecano.com/alpha>. Documents Filed in this Chapter 11 Case may also be examined between the hours of 8:00 a.m. and 4:00 p.m., Eastern Time, Monday through Friday, at the Office of the Clerk of the Bankruptcy Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801.

The Voting Agent will process and tabulate Ballots received by the Voting Agent for the Classes entitled to vote to accept or reject the Plan, and will file a voting report in accordance with the Disclosure Statement Order.

4. Confirmation Hearing and Deadline for Objections to Confirmation

Objections to Confirmation of the Plan must be Filed and served on the Debtor and certain other entities, all in accordance with the Confirmation Hearing Notice, so that they are actually received by no later than **December 4, 2020 at 4:00 p.m. (Eastern Time)**. Unless objections to

Confirmation of the Plan are timely Filed and served in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court. For further information, refer to Section VI of the Disclosure Statement, “Confirmation of the Plan.”

II. GENERAL HISTORICAL INFORMATION ABOUT THE DEBTOR

Additional information regarding the Debtor’s business, its capital structure and the circumstances leading to the filing of this Chapter 11 Case is set forth in the *Declaration of Jeffrey N. Pollack in Support of the Debtor’s Chapter 11 Petition and First-Day Pleadings* [D.I. 8] (the “*First Day Declaration*”).

A. Corporate Structure

The Debtor is a Delaware limited liability company that, prior to the closing of the Sale, conducted business as the XFL. As of the Petition Date, the corporate ownership structure comprised of Class A and Class B shares divided among two parties: Vincent K. McMahon owned 100% of the Class A shares and 76.5% of the Class B shares, and World Wrestling Entertainment, Inc. owned the remaining 23.5% of Class B shares of the Debtor.

B. Business Overview

The XFL, as operated by the Debtor, was a professional football league with eight (8) teams in major markets across the United States. Prior to the Petition Date, as a result of the unforeseen circumstances brought on by COVID-19, the Debtor suspended league operations and terminated approximately 400 employees in various league operating and front-office roles, as well as approximately 500 football players. On the Petition Date, the Debtor’s workforce was comprised of eighteen (18) individuals. The Debtor’s corporate headquarters was in Stamford, Connecticut.

Unfortunately, the Debtor was not immune from the disruption of the global COVID-19 pandemic that shuttered much of the United States and forced every major American sports league to suspend, if not cancel, their seasons. As set forth above, on March 20, 2020, the Debtor made the difficult, but necessary, decision to cancel the remainder of the XFL’s inaugural season after just five weeks.

C. Prepetition Capital Structure

As of the Petition Date, the Debtor had an outstanding secured debt obligation owed to Mr. McMahon under the Prepetition Note executed on March 25, 2020. The Prepetition Note was in the original principal amount of \$7.0 million and was secured by a first-priority lien all of the Debtor’s assets. As of the Petition Date, the principal amount outstanding under the Prepetition Note was \$8.25 million.

The vast majority of the Debtor’s other liabilities were unsecured obligations owed to the Debtor’s lessors or licensors, former employees, players, coaches and trade vendors. The Debtor was party to numerous agreements under which the Debtor licensed the right to use the football stadiums, practice facilities, and office space that the league and its eight teams needed to operate. Additionally, the Debtor was party to a shared-services agreement with the WWE, through which

WWE provided the Debtor with a suite of services including management of the Debtor's treasury function and cash management system, tax and regulatory compliance services, and other services.

The Debtor's capital structure as of the Petition Date is generally described below:

1. Secured Claims

Prior to the Petition Date, a financing statement was filed against the Debtor by Mr. McMahon for obligations arising under the Prepetition Note. JP Morgan Chase also filed a financing statement in accordance with a letter of credit that was extended to the Debtor. Certain other parties filed financing statements for certain discrete security interests in miscellaneous technology and equipment in connection with the Debtor's day-to-day operations.

Other third parties, including state and local taxing authorities, also may possess statutory liens in certain of the Debtor's property or proceeds from the Sale during the Chapter 11 Case in accordance with applicable law.

2. Unsecured Debt

The Debtor has estimated the amount of Allowed General Unsecured Claims against the Debtor based on the Schedules and an analysis of Filed proofs of claim. As part of this analysis, the Debtor has, among other things: (a) eliminated duplicate and superseded proofs of claim; (b) adjusted the amount or priority classification of certain Claims against the Debtor; (c) discounted to \$0 the amounts of certain litigation claims against the Debtor (if applicable), including, without limitation, where the recovery, if any, on such claims would be limited to insurance proceeds available from any insurer of the Debtor; and (d) eliminated various proofs of claim and scheduled amounts that have been satisfied by the Debtor subsequent to the Petition Date, for example, claims paid pursuant to a "first-day" order.

After accounting for the foregoing, the Debtor estimates that Allowed General Unsecured Claims will total about \$38 - \$57 million. These Claims include, without limitation: (a) accrued and unpaid trade and other unsecured debt incurred in the ordinary course of the Debtor's business; (b) Claims by lessors for unpaid rent, rejection damages and other obligations under the Debtor's leases; and (c) Claims by vendors under contracts.

Except as otherwise set forth in the Plan, without limitation, the estimated amount of Allowed General Unsecured Claims does not account for any additional Claims against the Debtor that have yet to be Filed as a result of the rejection of executory contracts and unexpired leases, including, without limitation, the rejection of any such contracts and leases pursuant to the Plan or claims related to contracts and leases assumed in accordance with the Sale Order. The estimated amount of Allowed General Unsecured Claims does, however, take into account certain additional reductions or eliminations of Claims as part of the claims reconciliation process, and the anticipated disallowance or allowance of certain litigation Claims, if any, asserted by or against the Debtor. Thus, the total amount of Allowed General Unsecured Claims may be materially more or less than the estimate set forth in the Plan.

III. THE CHAPTER 11 CASE

On April 13, 2020, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. The Chapter 11 Case is being administered under the caption *In re Alpha Entertainment LLC*, Case No. 20-10940 (LSS). Upon commencement of the Chapter 11 Case, the automatic stay imposed under the Bankruptcy Code, with limited exceptions, enjoined the commencement or continuation of all collection efforts by Creditors and the enforcement of liens against property of the Debtor.

A. **First Day Orders**

On the Petition Date, the Debtor Filed certain “first day” motions and applications with the Bankruptcy Court seeking certain immediate relief to aid in the efficient administration of this Chapter 11 Case, and to facilitate the Debtor’s transition to debtor-in-possession status. The Bankruptcy Court held hearings on these first-day motions, and entered a series of customary orders in connection therewith.

B. **Sale**

The Debtor, in consultation with its professional advisors, investigated and analyzed a number of strategies to preserve and maximize the value of its Assets, including its intellectual property. The Debtor realized that its intellectual property was a critical component of the chapter 11 process.

While the Debtor extensively considered many restructuring options, it concluded that, under the circumstances of the Chapter 11 Case, the best way to maximize the value of its Estate and assets for the benefit of creditors was to conduct an orderly sale process of its intellectual property and other Assets. As a result, in May 2020, the Debtor commenced a nearly three-month competitive process to market its assets, solicit proposals and select a proposal(s) that would facilitate the Debtor’s goal of maximizing the value of its assets.

After conducting a comprehensive, competitive marketing and sale process with input and involvement from key creditor constituencies, the Debtor sought approval of the Sale. On August 7, 2020, the Bankruptcy Court entered an order approving the Sale [D.I. 358] (the “**Sale Order**”), and the Sale closed on August 21, 2020.

C. **Executory Contracts and Unexpired Leases**

As of the Petition Date, the Debtor was party to hundreds of executory contracts and unexpired leases. Such contracts and leases covered contracts with the Debtor’s employees, players, and coaches, an arrangement of real property leases, sponsorship agreements, and vendor contracts for day-to-day operation of the XFL. The Debtor undertook a thorough analysis of the executory contracts and unexpired leases and, pursuant to several motions, sought authority to reject numerous such contracts and leases [D.I. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 80, 186, 235, 256, 291, and 398] (the “**Rejection Motions**”). The Rejection Motions were approved by orders of the Bankruptcy Court [D.I. 116, 117, 118, 119, 120, 121, 122, 123, 124, 150, 222, 223, 224, 225, 279, 332, and 340]. Certain parties objected to the Rejection Motions and, as of the date hereof, the Debtor has been working with those parties toward a mutual resolution of those

objections. The remainder of the Debtor's executory contracts and unexpired leases will be assumed as provided in the Sale Order or rejected pursuant to the Plan or additional motions to assume or reject executory contracts and unexpired leases.

D. Additional Orders

On and shortly after the Petition Date, the Debtor also Filed a number of customary motions and applications to retain professionals and to streamline the administration of this Chapter 11 Case. The Bankruptcy Court entered the following orders granting such motions and applications:

- Order Authorizing the Retention and Employment of Young Conaway Stargatt & Taylor, LLP as Counsel for the Debtor, Effective as of the Petition Date [D.I. 112];
- Order Approving the Employment and Retention of Donlin, Recano & Company, Inc. as Administrative Advisor for the Debtor, Effective as of the Petition Date [D.I. 113];
- Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Retained Professionals [D.I. 114];
- Order Authorizing the Debtor to Retain and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Effective as of the Petition Date [D.I. 200];
- Order Authorizing Retention and Employment of Houlihan Lokey Capital, Inc. as Financial Advisor and Investment Banker to the Debtor Effective as of May 8, 2020 [D.I. 240]; and
- Order Establishing Bar Dates and Related Procedures for Filing Proofs of Claim, Including 503(b)(9) Claims, and Approving the Form and Manner of Notice Thereof [D.I. 286] (the "**Bar Date Order**");

E. Appointment of Committee

On April 23, 2020, the U.S. Trustee appointed the Committee in the Chapter 11 Case. The counsel to the Committee is Greenberg Traurig, LLP, and the investment banker and financial advisor to the Committee is Dundon Advisers LLC. The Committee consisted of Jonathan Hayes, '47 Brand LLC, NEP Sharpshooters LP, XOS Technologies Inc., CP Communications, Ticket Master, and DC Stadium.

The Committee Filed applications to retain professionals and the Bankruptcy Court entered the following orders granting such applications:

- Order Authorizing the Employment and Retention of Dundon Advisers LLC as Financial Advisor for the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to May 7, 2020 [D.I. 215]; and
- Order Authorizing the Employment and Retention of Greenberg Traurig, LLP as Counsel to the Official Committee of Unsecured Creditors of Alpha Entertainment LLC Effective as of April 28, 2020 [D.I. 233].

F. Claims Process and Bar Dates

1. Schedules, Statements of Financial Affairs

The Debtor Filed its Schedules as well as its Statements of Financial Affairs (collectively, the “**Schedules**”) on June 1, 2020 [D.I. 194 and 195]. On September 24, 2020, the Debtor filed a notice of amendment to certain of the Schedules [Docket No. 421].

2. Claims Bar Dates

On July 14, 2020, the Bankruptcy Court entered the Bar Date Order providing that, except as otherwise provided therein, the deadline for (a) all persons or entities (including, without limitation, individuals, partnerships, corporations, joint ventures and trusts) that assert a claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtor, including without limitation, any claims under section 503(b)(9) of the Bankruptcy Code, secured claims and priority claims, which arose prior to the Petition Date, to file a proof of any such claim was 5:00 p.m. (prevailing Eastern Time) on August 18, 2020 (the “**General Bar Date**”); and (b) all governmental units, as defined in section 101(27) of the Bankruptcy Code, to file a proof of any such claim was 5:00 p.m. (prevailing Eastern Time) on October 12, 2020 (the “**Government Bar Date**”).

The Bar Date Order also provides that if the Debtor amends or supplements the Schedules subsequent to the date of service of the Bar Date Notice (as defined in the Bar Date Order), then the Debtor shall give notice of any such amendment or supplement to the holders of claims affected thereby, and such holders shall be afforded the later of (a) the applicable Bar Date or (b) 5:00 p.m. (prevailing Eastern Time) on the date that is twenty-one (21) days from the date on which such notice is given, to file proofs of claim in respect of their claims (the “**Supplemental Bar Date**”).

Additionally, pursuant to the Bar Date Order, except as otherwise provided by another order of the Bankruptcy Court, any person or entity that holds a claim arising from the rejection of an executory contract or unexpired lease (a “**Rejection Damages Claim**”) must file a proof of claim on account of such Rejection Damages Claim on or before the later of (a) the General Bar Date or (b) 5:00 p.m. (prevailing Eastern Time) on the date that is thirty (30) days following the entry of the order approving the rejection of the executory contract or unexpired lease pursuant to which the entity asserting the Rejection Damages Claim is a party (the “**Rejection Damages Bar Date**” and collectively with the General Bar Date, the Government Bar Date and the Supplemental Bar Date, the “**Bar Dates**”).

Notice of the Bar Dates was provided by mail and publication in accordance with the procedures outlined in the Bar Date Order.

3. Claims Reconciliation

Over 550 proofs of claim have been filed against the Estate. As of the date of the Disclosure Statement, inclusive of amounts set forth in the Schedules and not superseded by filed proofs of claims, there are approximately \$74 million in Claims asserted against the Debtor and its Estate, including approximately \$54 million in General Unsecured Claims. *However, this amount does not reflect the actual liabilities owed by the Debtor, because, among other things, certain of these Claims are invalid claims for various reasons, including being filed after the*

applicable Bar Date and not likely to be Allowed Claims. The Claims that remain pending and unsatisfied against the Debtor as of the date hereof are, except as otherwise noted in the Plan, accounted for in the Liquidation Analysis (as defined below) attached hereto. As explained in the Plan and more fully below, the analysis reflects certain assumptions regarding, among other things, proofs of claim that are contingent and/or disputed, certain proofs of claim that have been filed in partially or wholly unliquidated amounts, and certain proofs of claim that assert invalid claims that are not likely to be Allowed Claims. The Liquidation Analysis also assumes that any claims objections pending as of the date of the Disclosure Statement will be granted. Because of these and other reasons, the amount of Claims against the Estate that will ultimately become Allowed Claims remains uncertain, but the Liquidation Analysis represents the best estimate of the Debtor at this time.

As provided in the Plan, the Post-Effective Date Debtor will continue the claims reconciliation process and, as a result, it is anticipated that additional claims objections will be filed.

IV. SUMMARY OF THE CHAPTER 11 PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Interests under the Plan, and is qualified in its entirety by reference to the Plan (as well as the exhibits thereto and definitions therein).

The statements contained in the Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Interests in the Debtor under the Plan and will, upon the occurrence of the Effective Date, be binding upon all Holders of Claims against and Interests in the Debtor, the Estate, all parties receiving property under the Plan, and other parties in interest.

A. Purpose and Effect of the Plan

Chapter 11 is the chapter of the Bankruptcy Code primarily used for business reorganization. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its stakeholders. Chapter 11 also allows a debtor to formulate and consummate a plan of liquidation. A plan of liquidation sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of liquidation by a bankruptcy court makes the plan binding upon the debtor and any creditor of or interest holder in the debtor, whether or not such creditor or interest holder (a) is impaired under or has accepted the plan or (b) receives or retains any property under the plan.

The Plan provides for the distribution of the Sale proceeds to various Holders of Allowed Claims as contemplated under the Plan and for the wind-up the Debtor's corporate affairs. The Plan also provides for the appointment of a Plan Administrator that will, among other things, administer and liquidate or otherwise resolve all Assets of the Debtor, including the Retained Causes of Action.

Under the Plan, Claims against, and Interests in, the Debtor are divided into Classes according to their relative priority and other criteria. If the Plan is confirmed by the Bankruptcy Court and consummated, the Allowed Claims and Interests of the various Classes will be treated in accordance with the provisions in the Plan for each such Class, and the Plan Administrator will make Distributions to Holders of Allowed Claims as provided in the Plan. A general description of the Classes of Claims and Interests created under the Plan, the treatment of those Classes under the Plan, and the property to be distributed under the Plan are described below.

B. Plan Administrator

1. Appointment; Duties

The Committee, in consultation with the Debtor, shall designate the Person who initially will serve as the Plan Administrator. The identity of the Plan Administrator shall be included in the Plan Supplement.

2. Plan Administrator Agreement

(a) Plan Administrator as a Fiduciary. The Plan Administrator shall be a fiduciary of each of the Estate and the Post-Effective Date Debtor, and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Plan Administrator Agreement.

(b) Provisions of the Plan Administrator Agreement and Confirmation Order. The Plan Administrator Agreement and the Confirmation Order shall provide that: (i) the Plan Administrator shall have no duties until the occurrence of the Effective Date, and on and after the Effective Date, shall be a fiduciary of each of the Post-Effective Date Debtor and the Estate; and (ii) if the Plan is withdrawn or otherwise abandoned prior to the occurrence of the Effective Date, the Plan Administrator position shall thereafter be dissolved.

3. Powers and Duties

(a) General Powers and Duties. From and after the Effective Date, pursuant to the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall be empowered and directed to: (i) take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Plan Administrator under the Plan or the Plan Administrator Agreement; (ii) comply with the Plan and the obligations hereunder; (iii) employ, retain or replace professionals to represent him or her with respect to his or her responsibilities; (iv) object to Claims as provided in the Plan, and prosecute such objections; (v) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment or allowance of any Claim; (vi) establish, replenish or release any reserves as provided in the Plan, as applicable; (vii) exercise such other powers as may be vested in the Plan Administrator pursuant to the Plan, the Plan Administrator Agreement or any other order of the Bankruptcy Court, including the Confirmation Order, or otherwise act on behalf of and for the Debtor and the Post-Effective Date Debtor from and after the Effective Date; (viii) file applicable tax returns for the Debtor; (ix) liquidate any of the Assets; and (x) prosecute, compromise, resolve or withdraw any of the Retained Causes of Action. The Plan Administrator may, without the need for further Court approval, retain legal counsel and financial advisors to advise him or her in the

performance of his or her duties, which counsel and advisors may be counsel and advisors for the Debtor and the Committee.

(b) Distributions. Pursuant to the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall make the required Distributions specified under the Plan and in accordance with the Plan.

4. Compensation of the Plan Administrator

The Estate and the Post-Effective Date Debtor shall pay the undisputed reasonable fees and expenses of the Plan Administrator and the Plan Administrator Professionals; *provided, however*, that the Plan Administrator and Plan Administrator Professionals shall be required to File with the Bankruptcy Court monthly fee statements (each a “**Monthly Fee Statement**”) and serve such Monthly Fee Statements on all parties that, as of the Filing thereof, have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. Holders of Claims and other parties in interest shall have ten (10) days from the filing of any such Monthly Fee Statement to raise any objections to the reasonableness of any fees or expenses sought therein. If a party objects to the reasonableness of any fees or expenses reflected in any Monthly Fee Statement, and such dispute is not resolved by agreement, the Plan Administrator or the affected Plan Administrator Professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such amounts, and the disputed portion of such Monthly Fee Statement shall not be paid until the dispute is resolved. The undisputed portion of such monthly Fee Statement shall be paid as provided herein. If no objections or responses to any Monthly Fee Statement are received by the Plan Administrator or the Plan Administrator Professionals, as applicable, within the objection period set forth in the Plan, the Estate and the Post-Effective Date Debtor shall be authorized to pay, in full, all amounts provided in such Monthly Fee Statement without further notice to any party or order of the Bankruptcy Court. The Plan Administrator shall include any amounts paid to the Plan Administrator and the Plan Administrator Professionals in the post-confirmation quarterly reports required filed with the Bankruptcy Court.

5. Indemnification of the Plan Administrator and Related Parties

The Debtor and the Post-Effective Date Debtor shall indemnify and hold harmless: (i) the Plan Administrator (solely in his or her capacity as such) and (ii) the Plan Administrator Professionals (collectively, the “**Indemnified Parties**”), with respect to any and all liabilities, losses, damages, claims, costs and expenses arising out of or due to their post-Effective Date actions or omissions, or consequences of such actions or omissions, taken in connection with the Plan, the Plan Administrator Agreement and the Confirmation Order, other than acts or omissions, or consequences of such post-Effective Date actions or omissions, resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud) or gross negligence. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (i) any payment on account of such claim shall be paid solely from the Estate and (ii) the legal fees and related costs incurred by counsel to the Plan Administrator in monitoring and participating in the defense of such claims giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Estate or any insurance. The indemnification provisions of the

Plan Administrator Agreement shall remain available to and be binding upon any former Plan Administrator or the estate of any decedent of the Plan Administrator and shall survive the termination of the Plan Administrator Agreement.

6. Insurance

The Plan Administrator shall be authorized to obtain and pay for, out of the funds of the Estate, all reasonably necessary insurance coverage for him or herself, his or her agents, representatives, employees or independent contractors and the Debtor, including, but not limited to, coverage with respect to: (i) any property that is or may in the future become the property of the Debtor or the Estate; and (ii) the liabilities, duties and obligations of the Plan Administrator and his or her agents, representatives, employees or independent contractors under the Plan Administrator Agreement, the latter of which insurance coverage may remain in effect for a reasonable period of time as determined by the Plan Administrator after the termination of the Plan Administrator Agreement.

7. Preservation of Retained Causes of Action

Except as expressly set forth in the Plan or the Confirmation Order, the Post-Effective Date Debtor shall retain all Retained Causes of Action and nothing contained in the Plan or the Confirmation Order shall be deemed to be a release, waiver or relinquishment of any such Retained Causes of Action. The Post-Effective Date Debtor or the Plan Administrator, as applicable, shall have, retain, reserve and be entitled to assert all such Retained Causes of Action as fully as if the Chapter 11 Case had not been commenced, and all of the Post-Effective Date Debtor's legal and equitable rights respecting any Claim that are not specifically waived or relinquished by the Plan, the Confirmation Order, or any Final Order (including settlement or other agreements authorized thereby) may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

8. Funding of Reserves

(a) Professional Fee Reserve. On or prior to the Effective Date, the Plan Administrator shall establish the Professional Fee Reserve as set forth in Section 11.2 of the Plan.

(b) Other Reserves. The Plan Administrator shall use Cash to establish and administer any other necessary reserves that may be required to effectuate the Plan and the Distributions to Holders of Allowed Claims hereunder or the Plan Administrator Agreement.

C. Estimated Recoveries for Holders of General Unsecured Claims

The Debtor estimates that Holders of Allowed General Unsecured Claims in this Chapter 11 Case should recover approximately 8 - 12% of the total amount of its Allowed General Unsecured Claims. The Debtor has calculated this projected recovery for Holders of General Unsecured Claims by taking into account, among other variables: (a) the total estimated amount of Allowed General Unsecured Claims; and (b) the total estimated amount of Cash available for Distributions to Holders of Allowed General Unsecured Claims. This estimate does not account for potential additional recoveries based on Retained Causes of Action and other Assets. Actual recoveries may differ from these projected recoveries as a result of, among other reasons:

(a) actual recoveries with respect to the Retained Causes of Action; (b) an increase in the total amount of Allowed Administrative or Priority Non-Tax Claims from current estimates; and (c) the total amount of Allowed General Unsecured Claims differing significantly from the current estimated amounts, including increases or reductions based on the rejection of executory contracts and unexpired leases of the Debtor. The Debtor estimates that the number of Allowed General Unsecured Claims is approximately \$38 - \$57 million.

After the Effective Date, the Plan Administrator may obtain additional Cash from (a) recoveries with respect to the Retained Causes of Action, and (b) any other potential recoveries with respect to the Debtor's other Assets. As of September 25, 2020, the Debtor's Cash on hand in the aggregate is approximately \$9.97 million, which includes \$2.31 million in restricted cash. However, the Cash has been or will be reduced by, among other things, (a) the Plan Administrator Professional Fees; (b) any other wind-down fees, costs and expenses of the Debtor; and (c) Claims required to be paid by the Estate pursuant to the Plan with priority over Allowed General Unsecured Claims. After considering all of these variables and others, the Debtor estimates Cash available for Distributions for Allowed General Unsecured Claims of approximately \$4.6 million. This does not take into account any potential recoveries with respect to the Retained Causes of Action that the Plan Administrator may pursue.

D. Treatment of Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Section 3.1 of the Plan.

1. Administrative Claims

Except as otherwise provided for in the Plan, the Confirmation Order, or separate order of the Bankruptcy Court, on, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing.

2. Professional Fee Claims

Professional Fee Claims shall be paid by the Post-Effective Date Debtor as set forth in Section 11.2 of the Plan.

3. Priority Tax Claims

In full satisfaction of such Claims, Holders of Allowed Priority Tax Claims shall be paid by the Post-Effective Date Debtor, at the Post-Effective Date Debtor's discretion, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period

not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs; and (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Post-Effective Date Debtor shall have agreed upon in writing.

E. Classification and Treatment of Claims and Interests

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, withdrawn or otherwise settled prior to the Effective Date.

1. Class 1: Secured Claims

On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive from the Post-Effective Date Debtor, at the discretion of the Post-Effective Date Debtor, in full satisfaction of such Allowed Secured Claim, (i) Cash equal to the value of such Claim; (ii) the return of the Holder's Collateral securing such Claim; (iii) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code; or (iv) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. ***Class 1 is Unimpaired, and therefore Holders of Secured Claims are conclusively presumed to have accepted the Plan.***

2. Class 2: Priority Non-Tax Claims

On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, the Holder of such Allowed Priority Non-Tax Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed Priority Non-Tax Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Non-Tax Claim; or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. ***Class 2 is Unimpaired, and therefore Holders of Priority Non-Tax Claims are conclusively presumed to have accepted the Plan.***

3. Class 3: General Unsecured Claims

On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed General Unsecured Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed General Unsecured Claim, (i) its Pro Rata share of the General Unsecured Claim Distribution, or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. ***Class 3 is Impaired, and therefore Holders of General Unsecured Claims are entitled to vote on the Plan.***

4. Class 4: Subordinated Claims

On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain any property or interest in property under the Plan on account of such Subordinated Claims. ***Class 4 is deemed to have rejected the Plan, and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.***

5. Class 5: Interests

As of the Effective Date, all Interests of any kind shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property or consideration under the Plan on account of such Interests. ***Class 5 is deemed to have rejected the Plan, and therefore Holders of Interests are not entitled to vote on the Plan.***

6. Special Provisions Regarding Insurance

Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Order, the Amended Operating Agreement, any bar date notice or claim objection, any other document related to any of the foregoing, or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, confers Bankruptcy Court jurisdiction, or requires a party to opt out of any releases):

(a) subject to Section 3.5(e) of the Plan, on the Effective Date, the Insurance Contracts shall vest, unaltered and in their entirety with the Post-Effective Date Debtor, and all debts, obligations, and liabilities of the Debtor (and, after the Effective Date, of the Post-Effective Date Debtor) thereunder, whether arising before or after the Effective Date, shall survive and shall not be amended, modified, waived, released, discharged or impaired in any respect, all such debts, obligations, and liabilities of the Debtor (and, after the Effective Date, of the Post-Effective Date Debtor) shall be satisfied by the Post-Effective Date Debtor in the ordinary course of business, and the Insurers shall not need to or be required to file or serve any objection to a proposed cure amount or a request, application, Claim, proof or motion for payment or allowance of any Claim or Administrative Claim and shall not be subject to any bar date or similar deadline governing cure amounts, proofs of Claim or Administrative Claims;

(b) for the avoidance of doubt, subject to the automatic stay under section 362 of the Bankruptcy Code and the injunction under Section 11.10 of the Plan, if there is available insurance, any party with rights against or under the applicable Insurance Contract, including, without limitation, the Estate, the Post-Effective Date Debtor and Holders of Insured Claims, may pursue such rights, and the Post-Effective Date Debtor may, but shall not be required to, move to limit an Insured Claim to the Face Amount of such Insured Claim less the total coverage available with respect to that Insured Claim under the Insurance Contracts; provided, however, that doing so in no way obligates an Insurer to pay any portion of the Insured Claim or otherwise alters an Insurer's coverage defenses; provided further, however, that, subject to Section 3.5(e) of the Plan, nothing alters or modifies the duty, if any, that Insurers have to pay Insured Claims covered by the Insurance Contracts and the Insurers' right to seek payment or reimbursement from the Debtor (or after the Effective Date, the Post-Effective Date Debtor); provided finally, however, the automatic

stay of Bankruptcy Code section 362(a) and the injunctions set forth in Article XI of the Plan, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (I) all current and former employees of the Debtor to proceed with any valid workers compensation claims they might have in the appropriate judicial or administrative forum; (II) direct action claims against an Insurer under applicable non-bankruptcy law to proceed with their claims; (III) the Insurers to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (A) any valid workers compensation claims, (B) claims where a claimant asserts a direct claim against any Insurer under applicable non-bankruptcy law, or an order has been entered by the Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its Insured Claim, and (C) all costs in relation to each of the foregoing; and (IV) the Insurers to cancel any Insurance Contracts, to the extent permissible under applicable non-bankruptcy and bankruptcy law, and in accordance with the terms of the Insurance Contracts (other than on the basis of any outstanding pre-petition claims against the Debtor, the Estate or the Post-Effective Date Debtor arising from or related to such Insurance Contracts);

(c) nothing in Section 3.5 of the Plan shall constitute a waiver of any causes of action the Debtor, its Estate or the Post-Effective Date Debtor may hold against any Entity, including any Insurers. Nothing in Section 3.5 of the Plan is intended to, shall or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a recovery from any Insurer in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; provided, however, that the Debtor, the Estate, and the Post-Effective Date Debtor do not waive, and expressly reserve their rights to assert that the proceeds of the Insurance Contracts are an Asset and property of the Estate to which they are entitled to the extent that the Debtor is entitled to assert first-party claims pursuant to the terms and conditions of the applicable Insurance Contract;

(d) subject to Section 3.5(e) of the Plan, nothing shall modify the scope of, or alter in any other way, the rights and obligations of the Insurers, the Debtor (or, after the Effective Date, the Post-Effective Date Debtor), or any other individual or entity, as applicable, under the Insurance Contracts, and all such rights and obligations shall be determined under the Insurance Contracts and applicable non-bankruptcy law as if the Chapter 11 Case had not occurred, and, for the avoidance of doubt, the Insurers shall retain any and all rights, claims and defenses to liability and/or coverage that they have under the Insurance Contracts, including the right to contest and/or litigate with any party, including the Debtor and the Post-Effective Date Debtor, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable Insurance Contract; and

(e) any payment, reimbursement or other financial or monetary obligations of the Debtor, the Estate or the Post-Effective Date Debtor owing to the Insurers under the Insurance Contracts, including, but not limited to, reimbursement for payments within a deductible, shall be satisfied solely from existing collateral and/or security, if any, held by the Insurers in the ordinary course and pursuant to the terms of the Insurance Contracts, and to the extent that any such collateral and/or security is insufficient to satisfy any such obligations, the Insurers shall have no recourse to the Debtor, its Estate or the Post-Effective Date Debtor, and hereby waive any and all claims against, and rights to a Distribution from, the Debtor, the Estate and the Post-Effective Date Debtor; provided, however, that nothing in Section 3.5(e) of the Plan shall modify the scope of, or alter in

any other way, (i) the rights of the Insurers to assert any setoff and recoupment rights in any proof of claim submitted in accordance with the Bar Date Order, (ii) the rights of any subrogee of an Insurer to assert a claim in accordance with the Bar Date Order, or (iii) the rights and defenses of the Debtor, the Estate, and the Post-Effective Date Debtor with respect to any proofs of claim asserted by the Insurers or a subrogee of an Insurer.

7. Provision Governing Allowance and Defenses to Claims

On and after the Effective Date, the Post-Effective Date Debtor shall have all of the Debtor's and the Estate's rights under section 558 of the Bankruptcy Code. Nothing under the Plan shall affect the rights and defenses of the Debtor, the Estate and the Post-Effective Date Debtor in respect of any Claim not Allowed by Final Order, including all rights in respect of legal and equitable objections, defenses, setoffs or recoupment against such Claims. The Post-Effective Date Debtor may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estate or the Post-Effective Date Debtor may have against the Claim Holder, including, without limitation, Avoidance Actions, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Post-Effective Date Debtor of any such Claim it may have against such Claim Holder. The Post-Effective Date Debtor may (i) designate any Claim as Allowed at any time from and after the Effective Date and (ii) may designate any Claim as a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

F. Acceptance or Rejection of the Plan

1. Impaired Class of Claims Entitled to Vote

Only the votes of Holders of Claims in Class 3 shall be solicited with respect to the Plan.

2. Acceptance by an Impaired Class

In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, Classes 3 shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-half ($\frac{1}{2}$) in number of the Claims allowed for purposes of Plan voting pursuant to the Disclosure Statement Order that have timely and properly voted to accept or reject the Plan.

3. Presumed Acceptances by Unimpaired Classes

Class 1 and Class 2 are Unimpaired under the Plan. *Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and, therefore, the votes of the Holders of such Claims shall not be solicited.*

4. Impaired Classes Deemed to Reject Plan

Holders of Subordinated Claims and Interests in Class 4 and Class 5 are not entitled to receive or retain any property or interests in property under the Plan. *Under section 1126(g) of*

the Bankruptcy Code, such Holders are deemed to have rejected the Plan, and, therefore, the votes of such Holders shall not be solicited.

5. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code

Because at least one Impaired Class is deemed to have rejected the Plan, the Debtor will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

6. Elimination of Vacant Classes

Any Class of Claims that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of a Claim allowed for purposes of Plan voting pursuant to the Disclosure Statement Order, shall be deemed eliminated from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

G. Implementation of the Plan

1. Implementation of the Plan

The Plan will be implemented by, among other things, the appointment of the Plan Administrator and the making of Distributions from the Assets, including, without limitation, all Cash and the proceeds, if any, from the Retained Causes of Action, by the Post-Effective Date Debtor in accordance with the Plan and the Plan Administrator Agreement.

Except as otherwise provided in the Plan, on and after the Effective Date, all Assets of the Estate, including all claims, rights, Retained Causes of Action and any property acquired by the Debtor under or in connection with the Plan, shall vest in the Post-Effective Date Debtor, free and clear of all Claims, Liens, charges, other encumbrances and Interests.

2. The Debtor's Post-Effective Date Corporate Affairs

(a) Debtor's Officers and Managers

On the Effective Date, the Debtor's officers and managers shall be terminated automatically without the need for any corporate action or approval and without the need for any corporate filings, and shall have no continuing obligations to the Debtor following the occurrence of the Effective Date.

(b) Dissolution and Cancellation of the Debtor

On the Effective Date, the Plan Administrator shall be the sole member of the Post-Effective Date Debtor and appointed to manage the Post-Effective Date Debtor, in accordance with the Amended Operating Agreement, the Plan, and the Plan Administrator Agreement. Following the implementation of the Plan, the administration and distribution of the Debtor's Assets in accordance with the terms of the Plan, and the winding down of the Post-Effective Date

Debtor's affairs, without the need for any further order or action of the Bankruptcy Court, the Post-Effective Date Debtor will be dissolved and its affairs will be wound up in accordance with Delaware law. The Plan Administrator is authorized to take all actions reasonably necessary to dissolve the Post-Effective Date Debtor, and neither the Plan Administrator nor the Post-Effective Date Debtor shall be required to pay any taxes or fees in order to cause such dissolution and termination of the Post-Effective Date Debtor's existence.

H. Executory Contracts and Unexpired Leases

1. Executory Contracts and Unexpired Leases

Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtor that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the Confirmation Order, as of the Effective Date, other than the Insurance Contracts. For the avoidance of doubt, any post-petition consulting or transition services agreements shall not be deemed rejected as of the Effective Date. ***Any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtor's claims and noticing agent, Donlin, Recano & Company, LLC ("DRC") (i) electronically, through the online Proof of Claim Form available at <http://www.donlinrecano.com/alpha> or (ii) by First-Class Mail, Hand Delivery or Overnight Mail at the applicable address below, within thirty (30) days of the Effective Date, and shall also serve such proof of claim upon the Plan Administrator.***

If by First-Class Mail:

Donlin, Recano & Company, Inc.
Re: Alpha Entertainment LLC
P.O. Box 199043
Blythebourne Station
Brooklyn, NY 11219

If by Hand Delivery or Overnight Mail:

Donlin, Recano & Company, Inc.
Re: Alpha Entertainment LLC
6201 15th Avenue
Brooklyn, NY 11219

2. Rejection Claims

Any Rejection Claims arising from the Plan that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of the Plan, the Post-Effective Date Debtor may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

I. Provisions Governing Distributions

1. Interest on Claims

Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan or the Confirmation Order, post-petition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

2. Distributions by Post-Effective Date Debtor

The Plan Administrator or its designee, on behalf of the Post-Effective Date Debtor, shall serve as the disbursing agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Post-Effective Date Debtor may hire professionals or consultants to assist with making Distributions). The Post-Effective Date Debtor shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan, the Confirmation Order and the Plan Administrator Agreement. The Post-Effective Date Debtor shall not be required to give any bond or surety or other security for the performance of the Plan Administrator's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

3. Distributions for Claims Allowed as of the Effective Date

Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the initial distribution date by the Post-Effective Date Debtor. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan and the Plan Administrator Agreement. No Distribution shall be made on account of, without limitation, any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the schedules as contingent, unliquidated, disputed or in a zero amount, and for which a proof of claim has not been timely filed; or (iii) is evidenced by a proof of claim that has been amended by a subsequently filed proof of claim.

4. Means of Cash Payment

(a) Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Post-Effective Date Debtor, by wire, check or such other method as the Post-Effective Date Debtor deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Post-Effective Date Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to the Plan in the form of checks issued by the Post-Effective Date Debtor shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof. Requests for reissuance of any check within ninety days (90) of the date of the issuance thereof shall be made directly to the Post-Effective Date Debtor.

(b) For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

5. Fractional Distributions

Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

6. De Minimis Distributions

Notwithstanding anything to the contrary contained in the Plan, the Post-Effective Date Debtor shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$100. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$100 shall be forever barred from asserting such Claim against the Estate.

7. Delivery of Distributions

All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Case (subject to, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Post-Effective Date Debtor) or, in the absence of a filed-proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Post-Effective Date Debtor shall use reasonable efforts to determine such Holder's then-current address, but shall have no affirmative obligation to locate such current address. If the Post-Effective Date Debtor cannot determine, or is not notified of, a Holder's then-current address within ninety (90) days after the Effective Date, the Distribution reserved for such Holder shall be deemed an unclaimed Distribution. The responsibility to provide the Post-Effective Date Debtor a current address of a Holder of Claims shall always be the responsibility of such Holder. Except as set forth above, nothing contained in the Plan shall require the Post-Effective Date Debtor to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Post-Effective Date Debtor shall be held in trust on behalf of the Holder of the Allowed Claim to which they are payable by the Post-Effective Date Debtor until the earlier of the date that such undeliverable Distributions are claimed by such Holder and ninety (90) days after the date the undeliverable Distributions were made. The Post-Effective Date Debtor shall have no obligation to recognize the sale or transfer of any Claim that occurs after the Confirmation Date.

8. Withholding, Payment and Reporting Requirements with Respect to Distributions

All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment and reporting requirements. The Post-Effective Date Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment and reporting requirements. The Post-Effective Date Debtor may require, in the Post-Effective Date

Debtor's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Post-Effective Date Debtor the appropriate Form W-8 or Form W-9, as applicable, to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Estate in connection with such Distribution; and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Post-Effective Date Debtor for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Estate in connection with such Distribution.

9. Setoffs

The Post-Effective Date Debtor may, but shall not be required to, set off against any Claim, any payments, Retained Causes of Actions or other Distributions to be made by the Post-Effective Date Debtor pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtor or the Estate may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Estate or the Post-Effective Date Debtor of any such claim that it may have against such Holder, provided further, that if the Post-Effective Date Debtor set off any Avoidance Action or Retained Cause of Action against the recovery to any Holder of a Claim pursuant to Section 7.9 of the Plan, the Post-Effective Date Debtor shall not be deemed to have impaired, estopped, waived, or released any rights to prosecute the same such Avoidance Action or Retained Cause of Action against any other Person or Entity.

10. No Distribution in Excess of Allowed Amounts

Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

11. Allocation of Distributions

All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

12. Forfeiture of Distributions

If the Holder of an Allowed Claim fails to cash a check payable to it within the time period set forth in Section 7.4(a) of the Plan, fails to claim an undeliverable Distribution within the time limit set forth in Section 7.7 of the Plan, or fails to complete and return to the Post-Effective Date Debtor the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the written request by the Post-Effective Date Debtor for the completion and return to it of the appropriate form pursuant to Section 7.8 of the Plan, then such Holder shall be deemed to have

forfeited its right to any Distributions from the Estate (or the proceeds thereof) and the Post-Effective Date Debtor. The forfeited Distributions shall become unrestricted Assets, and shall be redistributed to Holders of Allowed Claims in accordance with the terms of the Plan after reserving as necessary for payment of expenses of the Plan Administrator and otherwise in compliance with the Plan and the Plan Administrator Agreement. In the event the Post-Effective Date Debtor determines, in the Post-Effective Date Debtor's sole discretion, that any such amounts are too small in total to economically redistribute to the Holders of Allowed Claims, the Post-Effective Date Debtor may instead donate such amounts to a charitable organization(s), free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

J. Procedures for Resolving Disputed, Contingent and Unliquidated Claims and Distributions with Respect Thereto

1. Claims Administration Responsibility

Except as otherwise specifically provided in the Plan and the Plan Administrator Agreement, after the Effective Date, the Post-Effective Date Debtor shall have the authority (a) to file, withdraw or litigate to judgment objections to Claims; (b) to settle, compromise or Allow any Claim or Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; (c) to amend the Schedules in accordance with the Bankruptcy Code; and (d) 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. Any agreement entered into by the Post-Effective Date Debtor in accordance with the terms of the Plan and the Confirmation Order with respect to the allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

2. Claim Objections

All objections to Claims (other than (i) Administrative Claims and (ii) Professional Fee Claims, which Professional Fee Claims shall be governed by Section 11.2 of the Plan) shall be Filed on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Post-Effective Date Debtor on or before the Claim Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 as of the filing of such motion. The Filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a final order is entered by the Bankruptcy Court. In the event that such a motion to extend the Claim Objection Deadline is denied, the Claim Objection Deadline shall be the later of the then-current Claim Objection Deadline (as previously extended, if applicable) or thirty (30) days after entry of a Final Order denying the motion to extend the Claim Objection Deadline.

3. No Distributions Pending Allowance

Notwithstanding any other provision of the Plan or the Plan Administrator Agreement, no payments or Distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by a Final Order, and the Disputed Claim has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor or the Post-Effective Date

Debtor on account of a Retained Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

4. Estimation of Contingent or Unliquidated Claims

The Post-Effective Date Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the Claims objection, estimation and resolution procedures in Section 8 are cumulative and are not necessarily exclusive of one another.

5. Amendments to Claims

On or after the Effective Date, a Claim may not be filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Post-Effective Date Debtor and any such new or amended Claim filed without prior authorization shall be deemed disallowed in full and expunged without any further action. Any Claims filed after the applicable deadlines in the Bar Date Order or the Plan shall be automatically deemed disallowed in full and expunged without further action, unless otherwise ordered by the Bankruptcy Court.

K. Conditions Precedent to the Occurrence of the Effective Date

1. Conditions to Occurrence of the Effective Date

The Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived, as applicable, pursuant to Section 9.3 of the Plan:

- (a) the Bankruptcy Court shall have entered the Confirmation Order;
- (b) the Confirmation Order shall not be subject to any stay;
- (c) the Plan Administrator Agreement shall have been executed, and a Plan Administrator shall have been appointed;
- (d) the Amended Operating Agreement shall have been executed;
- (e) the Professional Fee Reserve shall be funded in Cash pursuant to and in accordance with Sections 5.5.1 and 11.2 of the Plan in an amount agreed to by the Debtor and the Committee or, if there is a dispute concerning the amount of the funding required, in an amount fixed by the Bankruptcy Court; and

(f) all actions, documents, and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date shall be reasonably satisfactory to the Debtor and the Committee, and such actions, documents, and agreements shall be effective or executed and delivered.

2. Waiver of Conditions to the Occurrence of the Effective Date

The conditions to the Effective Date set forth in Section 9.1 of the Plan, other than 9.1(a), may be waived in writing by mutual written agreement, including by electronic mail, of the Debtor and the Committee at any time without further Order.

3. Effect of Non-Occurrence of Conditions to the Effective Date

If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.1 and 9.2 of the Plan, the Debtor reserves all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to Section 9.3 of the Plan, (i) the Plan shall be null and void in all respects; and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or any Interests, or (b) prejudice in any manner the rights of the Debtor, the Estate or any other Person or Entity.

L. Retention of Jurisdiction

1. Scope of Retained Jurisdiction

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to do the following:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim not otherwise Allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

(c) hear and determine all matters with respect to the assumption, assignment or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and any agreement or order of the Bankruptcy Court with respect to the sale of the Debtor's Assets prior

to the Effective Date and enforce remedies upon any default under the Plan and any such sale agreement or order;

(e) hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters that are pending as of the Effective Date, that are arising out of, under or related to, the Chapter 11 Case, including, without limitation, the Retained Causes of Action;

(f) enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created, executed or contemplated in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) 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 the implementation, consummation or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such Orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, any agreement or Final Order of the Bankruptcy Court, or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with any of the foregoing documents and Orders;

(l) enforce, interpret and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(m) except as otherwise limited in the Plan, recover all Assets of the Debtor, wherever located;

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

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(p) resolve any cases, controversies, suits or disputes related to the Estate, including, but not limited to, the Debtor's Assets; and

(q) enter a final decree closing the Chapter 11 Case.

2. Failure of the Bankruptcy Court to Exercise Jurisdiction

If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, including the matters set forth in Section 10.1 of the Plan, the provisions of Article X of the Plan shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

M. Miscellaneous Plan Provisions

1. Administrative Claims Bar Date

All requests for payment of an Administrative Claim (other than a Section 503(b)(9) Claim) arising on or after the Petition Date must be Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtor, and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date. In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

2. Professional Fee Claims

(a) All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtor and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtor, counsel to the Committee, counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional); (b) all Professional Fee Claims shall be paid by the Estate to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On or before the Effective Date, the Debtor shall establish the Professional Fee Reserve, which shall only be used to pay Professional Fee Claims, unless and until all Professional Fee Claims have been paid in full, otherwise satisfied or withdrawn. The Professional Fee Reserve shall vest in the Estate and shall be maintained by the Post-Effective Date Debtor in accordance with the Plan and the Plan Administrator Agreement. The Estate shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtor and the Committee and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims. If the Debtor and the Committee are unable to agree on the amount in which the Professional Fee Reserve is to be funded, the Debtor and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released back to the Estate to be used for other purposes consistent with the Plan and the Plan Administrator Agreement.

3. Payment of Statutory Fees; Filing of Quarterly Reports

All fees payable pursuant to section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Estate, the Post-Effective Date Debtor and the Plan Administrator in the ordinary course. The Post-Effective Date Debtor and the Plan Administrator shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code until the Chapter 11 Case is closed, dismissed or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to section 1930 of title 28 of the United States Code.

4. Dissolution of Committee

On the Effective Date, the Committee shall dissolve and all members, ex officio members, employees, attorneys, financial advisors, other Professionals or other agents thereof shall be released from all rights and duties arising from or related to the Chapter 11 Case or the Plan and its implementation, and the retention or employment of the Committee's attorneys and financial advisors and other agents shall terminate, provided, however, that the Committee shall continue in existence and its Professionals shall continue to be retained with respect to (i) applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code and (ii) any appeals of the Confirmation Order.

5. Modifications and Amendments

(a) The Debtor may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments or modifications to the Plan must comply with section 1127 of the Bankruptcy Code. The Debtor shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

(b) After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtor or the Post-Effective Date Debtor, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

6. Severability of Plan Provisions

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan 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, is valid and enforceable pursuant to its terms.

7. 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, personal representative, successor or assign of such Entity.

8. Post-Effective Date Compromises and Settlements

From and after the Effective Date, the Post-Effective Date Debtor may compromise and settle Claims against the Debtor and the Estate, as well as the Retained Causes of Action, without any further approval by or notice to the Bankruptcy Court.

9. Binding Effect of Plan

Upon the Effective Date, section 1141 of the Bankruptcy Code shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by section 1141(e) of the Bankruptcy Code.

10. Non-Discharge of the Debtor; Injunction

In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtor. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests. As such, no Person or Entity holding a Claim or Interest may receive any payment from, or seek recourse against, any Assets or property of the Debtor and the Estate or the Post-Effective Date Debtor other than Assets or property required to be distributed to that Person or Entity under the Plan. As of the Effective Date, all parties are precluded from asserting against any Assets or property of the Debtor, the Estate and the Post-Effective Date Debtor any Claims, rights, causes of action, liabilities or Interests based upon any act, omission, transaction or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or the Confirmation Order, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

(a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Estate, the Post-Effective Date Debtor, their successors and assigns and any of their Assets and properties;

(b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, the Estate, the Post-Effective Date Debtor, their successors and assigns and any of their Assets and properties;

(c) creating, perfecting or enforcing any encumbrance of any kind against the Debtor, the Estate, the Post-Effective Date Debtor, their successors and assigns and any of their Assets and properties;

(d) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtor, the Estate, the Post-Effective Date Debtor or their successors and assigns, or against any of their Assets and properties, except to the extent that a right to setoff or subrogation is asserted in a timely filed proof of claim; or

(e) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim, Interest or cause of action released or settled hereunder.

From and after the Effective Date, all Persons and Entities are permanently enjoined from commencing or continuing in any manner against the Debtor, the Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their Assets and properties, any suit, action or other proceeding, on account of or respecting any claim, interest, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.

11. Releases and Related Matters

(a) **Releases by Debtor.** As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of the Chapter 11 Case and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and the Chapter 11 Case, the Released Parties are deemed forever released by the Debtor and the Estate, and anyone claiming by or through the Debtor and the Estate, from any and all claims, interests, obligations, rights, suits, damages, causes of action, (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtor and the Estate, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right or on behalf of the Holder of any Claim or Interest, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Estate, the Chapter 11 Case,

the Plan, the Disclosure Statement or related agreements, instruments or other documents in the Chapter 11 Case.

(b) Releases by Holders of Claims. As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of the Chapter 11 Case and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and the Chapter 11 Case, and subject to Section 11.11(d) of the Plan, each of the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtor and the Estate, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Releasing Party would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Estate, the Chapter 11 Case, the Plan, the Disclosure Statement or related agreements, instruments or other documents; provided, however, that nothing in the Plan shall be deemed a waiver or release of any right of any such Releasing Parties to receive a Distribution pursuant to the terms of the Plan; provided further, however, that the foregoing provisions of this release in Section 11.11(b) of the Plan shall not operate to waive, release or otherwise impair any causes of action arising from criminal acts, willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. For the avoidance of doubt, notwithstanding anything to the contrary in the Plan, the foregoing release by the Releasing Parties is not, and shall not be deemed to be, in exchange for a waiver of the Debtor's rights or claims against the Releasing Parties, including the Debtor's rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any Claim or Interest, and all such rights and claims are expressly reserved. Notwithstanding any of the foregoing, nothing in Section 11.11(b) of the Plan is intended to limit or otherwise modify any releases or waivers that are separately provided for in any other Final Order (including settlement or other agreements authorized thereby) of the Bankruptcy Court.

(c) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval of the releases set forth in Section 11.11 of the Plan; and (ii) the Bankruptcy Court's findings that, among other things, such releases are (1) in the best interests of the Debtor, the Estate and all Holders of Claims that are Releasing Parties, (2) fair, equitable and reasonable, (3) given and made after due notice and opportunity for objection and hearing, (4) consensual, (5) supported by consideration, and (6) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(d) Each Holder of a Claim in a Class deemed to accept the Plan and Class 3 shall be a Releasing Party and, as such, provides the releases set forth in Section 11.11(b) of the Plan, unless such Holder timely submits a Release Opt-Out indicating such Holder's decision to

not participate in the releases set forth in Section 11.11(b) of the Plan, or Files an objection to the releases in Section 11.11(b) of the Plan prior to the deadline to object to Confirmation of the Plan.

12. Exculpation and Limitation of Liability

On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Case, the formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation or consummation of the Plan, the Disclosure Statement, the Plan Administrator Agreement or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with the Plan, or the administration of the Plan or the Assets and property to be distributed under the Plan, or for any act taken or omitted to be taken on or after the Petition Date and prior to or on the Effective Date; *provided, however*, that the exculpation provisions of Section 11.12 of the Plan shall not apply to acts or omissions constituting actual fraud, willful misconduct or gross negligence by such Exculpated Party, as determined by a Final Order. The Confirmation Order and the Plan shall serve as a permanent injunction against any Person or Entity seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to Section 11.12 of the Plan.

13. Terms of Injunctions or Stays

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force and effect.

14. Revocation, Withdrawal or Non-Consummation

The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Interests in, the Debtor, or any Avoidance Actions, Retained Causes of Action or other claims by or against the Debtor or any Entity, (ii) prejudice in any manner the rights of any Debtor or any Entity in any further proceedings involving the Debtor or (iii) constitute an admission of any sort by the Debtor or any other Entity.

15. Preservation of Retained Causes of Action

(a) Vesting of Causes of Action.

Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtor may hold against any Person or Entity shall vest upon the Effective Date in the Post-Effective Date Debtor.

Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Post-Effective Date Debtor shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in accordance with the terms of the Plan and the Plan Administrator Agreement and without further order of or notice to the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Case.

(b) Reservation of Causes of Action.

Unless a Retained Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order or any Final Order, the Debtor, the Estate and the Post-Effective Date Debtor expressly reserve such Retained Cause of Action for later adjudication by the Post-Effective Date Debtor, including, without limitation, Retained Causes of Action of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist. Therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like, shall apply to such Retained Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or Confirmation Order, except where such Retained Causes of Action have been expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Post-Effective Date Debtor which agreement, by its terms, is not subject to Bankruptcy Court approval.

16. Bar Date Order

Nothing in the Plan extends or otherwise modifies a bar date established in the Bar Date Order or other Final Order of the Bankruptcy Court.

17. Section 1146 Exemption

Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

18. Conflicts with the Plan

In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement and any other Order in the Chapter 11 Case, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; provided, however, that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

19. No Stay of Confirmation Order

The Debtor will request that the Bankruptcy Court waive any stay of enforcement of the Confirmation Order otherwise applicable, including, without limitation, pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

V. RISK FACTORS

A. Risk of Amendment, Waiver, Modification or Withdrawal of the Plan

The Debtor, the Post-Effective Date Debtor, or the Plan Administrator, as applicable, reserve the right, in accordance with the Bankruptcy Code, 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 that 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 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.

B. Parties May Object to the Plan's Classification of Claims and Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of the Claims and Interests under the Plan complies with this requirement. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion or that parties will not object to the proposed classification.

C. The Debtor May Not Be Able to Obtain Confirmation of the Plan

The Debtor may not receive the requisite acceptances to confirm the Plan. In the event that votes with respect to Claims in the Class entitled to vote are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtor intends to seek Confirmation of the Plan by the Bankruptcy Court. However, if the requisite acceptances are not received, the Debtor may not be able to obtain Confirmation of the Plan. Even if the requisite acceptances of the Plan are received, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under section 1129 of the Bankruptcy Code has not been met.

If the Plan is not confirmed by the Bankruptcy Court, there can be no assurance that any alternative plan of liquidation would be on terms as favorable to Holders of Allowed Claims as the terms of the Plan. In addition, there can be no assurance that the Debtor will be able to successfully develop, prosecute, confirm and consummate an alternative plan that is acceptable to the Bankruptcy Court and the Debtor's creditors.

D. The Conditions Precedent to the Effective Date of the Plan May Not Occur

As more fully set forth in the Plan, the Effective Date is subject to a number of conditions precedent. If such conditions precedent are not met or waived, the Effective Date will not occur.

E. General Unsecured Creditors May Recover Less Than Projected

The Cash available for Distributions to Holders of Allowed General Unsecured Claims may be reduced by, among other things, the prior payment of (a) the Plan Administrator Expenses; (b) any other wind-down fees, costs and expenses of the Debtor; and (c) Allowed Claims required to be paid by the Estate pursuant to the Plan with priority over Allowed General Unsecured Claims.

F. The Allowed Amount of Claims May Differ from Current Estimates

There can be no assurance that the estimated Allowed Claim amounts set forth in the Plan and herein are correct, and the actual amount of Allowed Claims may differ from the estimates. The estimated amounts are subject to certain risks, uncertainties and assumptions. Should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, the actual amount of Allowed Claims may vary from those estimated in the Disclosure Statement. Furthermore, a number of additional claims may be Filed, including on account of rejection damages for executory contracts and unexpired leases rejected pursuant to the Plan. Any such claims may result in a greater amount of Allowed General Unsecured Claims than estimated in the Disclosure Statement.

G. Risks Related to Income Taxation

There are several income tax considerations, risks and uncertainties associated with the Plan. Interested parties should read carefully the discussions set forth in Article VII of the Disclosure Statement regarding certain United States federal income tax consequences of the transactions proposed by the Plan.

H. Litigation

As is the case with most litigation, the outcomes of any litigation involving the Debtor, or any other Retained Cause of Action commenced, or preserved, prior to the Effective Date, are difficult to assess or quantify.

VI. CONFIRMATION OF THE PLAN

A. The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on December 11, 2020 at 11:00 A.M. (Eastern Time), before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801. The Confirmation Hearing Notice, which sets forth the time, date and place of the Confirmation Hearing, has been included along with the Disclosure Statement. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or in a notice of agenda for the Confirmation Hearing Filed with the Bankruptcy Court.

Objections to Confirmation of the Plan must be Filed and served so that they are actually received by no later than December 4, 2020 at 4:00 p.m. (Eastern Time). Unless objections to Confirmation of the Plan are timely served and Filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.

B. Requirements for Confirmation of the Plan

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

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtor believes that: (a) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (b) the Debtor has complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (c) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the following applicable Confirmation requirements of section 1129 of the Bankruptcy Code, along with any other such requirements:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to this Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment:

(1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.

- Each Holder of a Claim in an Impaired Class of Claims has either (1) accepted the Plan; or (2) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code.
- Except to the extent a different treatment is agreed to, the Plan provides that all Allowed Administrative Claims, Allowed Professional Fee Claims, Allowed Tax Claims, Allowed Secured Claims and Allowed Priority Non-Tax Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable or otherwise satisfied in accordance with the Plan.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

C. Best Interests of Creditors

Often called the “best interests of creditors” test, section 1129(a)(7) of the Bankruptcy Code requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (a) has accepted the plan or (b) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the Effective Date.

Here, the costs of liquidation under chapter 7 of the Bankruptcy Code would include, among other things, the statutory fees payable to a chapter 7 trustee, and the fees that would be payable to additional attorneys and other professionals that such a trustee may engage, which amounts would have to be paid before anything is paid to Holders of Allowed General Unsecured Claims.

Conversion to chapter 7 of the Bankruptcy Code would also mean the establishment of a new claims bar date, which could result in, among other things, new Claims being asserted against the Estate, thereby diluting the recoveries of Allowed General Unsecured Claims.

As more fully set forth in the hypothetical liquidation analysis (the “*Liquidation Analysis*”)⁴ attached hereto as **Exhibit B**, the Debtor estimates that it will have approximately \$4.6 million of Cash available in the Estate upon the Effective Date. The Debtor believes that such

⁴ *The Liquidation Analysis was prepared by the Debtor in consultation with its professional advisors. Underlying the Liquidation Analysis are a number of estimates and assumptions that, although carefully developed and considered reasonable by the Debtor and its professional advisors, are inherently subject to significant economic uncertainties beyond such parties’ control. The Liquidation Analysis is also based on assumptions with regard to liquidation decisions that are subject to change.*

amount will exceed the amount of expenses that will be incurred in implementing the Plan and winding up the affairs of the Debtor and its Estate, in accordance with the Plan and the Plan Administrator Agreement. After considering the effects that a chapter 7 liquidation would have on the funds available for distribution to Holders of Allowed Claims, including, among other things, fees payable to a chapter 7 trustee, the Debtor believes that Holders of Allowed Claims will receive not less than such Holders would receive if this Chapter 11 Case was converted to a chapter 7 case.

In light of the foregoing, the Debtor believes that confirmation of the Plan will provide each Holder of an Allowed Claim with a greater recovery than such Holder would receive pursuant to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

D. Feasibility

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor, or any successor to the Debtor (unless such liquidation or reorganization is proposed in the plan). This requirement is satisfied as the Plan proposes a liquidation of the Debtor's Assets, and the Debtor believes the Debtor's Cash (and any additional proceeds from the liquidation of the Debtor's remaining Assets) will be sufficient to allow the Plan Administrator to make all payments required to be made under the Plan.

E. Acceptance by Impaired Classes

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

A class is "impaired" unless a plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-half ($\frac{1}{2}$) in number of allowed claims in that class, counting only those claims that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in dollar amount and a majority in number actually voting on the Plan cast their Ballots in favor of acceptance.

F. Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a Bankruptcy Court to confirm a plan even if all impaired classes have not accepted it, if the plan has been accepted by at least one impaired class of claims, determined without including the acceptance of the plan by any insider. Notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be

confirmed, at the plan proponent's request, in a procedure commonly known as "cramdown," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Because at least one Impaired Class is deemed to have rejected the Plan, the Debtor will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

1. No Unfair Discrimination

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

2. Fair and Equitable Test

The "fair and equitable" test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status vis-à-vis another class (*e.g.*, secured versus unsecured claims, or unsecured claims versus interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending upon the type of claims or interests in such rejecting class. The Debtor submits that the Plan meets the "fair and equitable" test.

G. Alternatives to Confirmation and Consummation of the Plan

The Debtor believes that the Plan affords Holders of Allowed General Unsecured Claims the potential for a greater recovery on the Debtor's Assets than a chapter 7 liquidation, and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances of the Voting Classes of Claims are not received, or no Plan is confirmed and consummated, the theoretical alternatives to the Plan include (i) formulation of an alternative plan or plans of liquidation, or (ii) liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

The Debtor believes that the Plan enables Holders Allowed General Unsecured Claims to realize the greatest possible recovery under the circumstances, and, as compared to any alternative plan of liquidation, has the greatest chance of being confirmed and consummated.

This Chapter 11 Case may also be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to complete the liquidation of the

Debtor's Assets for distribution to Creditors in accordance with the priorities established by the Bankruptcy Code. As described above, the Debtor believes that the Plan will provide each Holder of an Allowed General Unsecured Claim with a greater recovery than such Holder would receive with respect to a liquidation of the Debtor's Assets under chapter 7 of the Bankruptcy Code.

VII. CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

This discussion is provided for information purposes only, and is based on provisions of the Internal Revenue Code of 1986, as amended (the "**IRC**"), Treasury Regulations promulgated thereunder, judicial authorities, and current administrative rulings and practice, all as in effect on the date hereof. Legislative, judicial, or administrative changes or interpretations enacted or promulgated after the date hereof could alter or modify the analyses set forth below with respect to the United States federal income tax consequences of the Plan. Any such changes or interpretations may be retroactive and could significantly, and adversely, affect the United States federal income tax consequences of the Plan.

The following summary is limited to Holders that are United States persons within the meaning of the IRC. For purposes of the following discussion, a "**United States person**" is any of the following:

- (i) An individual who is a citizen or resident of the United States;
- (ii) A corporation created or organized under the laws of the United States or any state or political subdivision thereof;
- (iii) An estate, the income of which is subject to federal income taxation regardless of its source; or
- (iv) A trust that (a) is subject to the primary supervision of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust or (b) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

This discussion does not address all aspects of United States federal income taxation that may be relevant to a particular Holder in light of such Holder's particular facts and circumstances, or to certain types of Holders subject to special treatment under the IRC. Examples of Holders subject to special treatment under the IRC include, without limitation, governmental entities and entities exercising governmental authority, foreign companies, persons who are not citizens or residents of the United States, banks and certain other financial institutions, broker-dealers, insurance companies, tax-exempt organizations, real estate investment trusts, small business

investment companies, regulated investment companies, persons that have a functional currency other than the United States dollar, and persons holding Claims that are a hedge against, or that are hedged against, currency risk or that are part of a straddle, constructive sale, or conversion transaction. This discussion does not address the state, local, or foreign tax consequences of the Plan with respect to any such Holders.

The tax treatment of Holders of Claims and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and the Distributions provided for by the Plan may vary depending upon several factors, including without limitation: (i) whether the Claim or portion thereof constitutes a Claim for principal or interest; (ii) the type of consideration, if any, received by the Holder in exchange for the Claim, and whether the Holder receives Distributions under the Plan in more than one taxable year; (iii) whether the Holder is a citizen or resident of the United States for tax purposes, is otherwise subject to United States federal income tax on a net basis, or falls into any special class of taxpayers, such as those that are excluded from this discussion as noted above; (iv) the manner in which the Holder acquired the Claim; (v) the length of time that the Claim has been held; (vi) whether the Claim was acquired at a discount; (vii) whether the Holder has taken a bad debt deduction or a worthless securities deduction with respect to the Claim or any portion thereof in the current or prior taxable years; (viii) whether the Holder has previously included in gross income accrued but unpaid interest with respect to the Claim; (ix) the method of tax accounting of the Holder; (x) whether the Claim is an installment obligation for United States federal income tax purposes; and (xi) whether the “market discount” rules apply to the Holder. Therefore, each Holder should consult such Holder’s own tax advisor for tax advice with respect to that Holder’s particular situation and circumstances, and the particular tax consequences to such Holder of the transactions contemplated by the Plan.

A significant amount of time may elapse between the date of the Disclosure Statement and the receipt of a final Distribution under the Plan. Events occurring after the date of the Disclosure Statement, such as new or additional tax legislation, court decisions, or administrative changes, could affect the United States federal income tax consequences of the Plan and the transactions contemplated thereunder. No ruling has been or will be sought from the IRS with respect to any of the tax aspects of the Plan, and no opinion of counsel has been or will be obtained by the Debtor with respect thereto. No representations are being made regarding the particular tax consequences of confirmation or implementation of the Plan as to any Holder of a Claim. This discussion is not binding upon the IRS or other taxing authorities. The IRS or another taxing authority could assert, and a court sustain, a different position from any discussed herein and no assurance is given as to whether such a different position will or will not be asserted.

A. Certain Tax Consequences to Holders of Claims

A Holder of an Allowed Claim will generally recognize gain or loss equal to the difference between the Holder’s adjusted basis in its Allowed Claim and the amount realized by the Holder in respect of its Allowed Claim. Over time and on a cumulative basis, the amount realized generally will equal the aggregate amount of the Cash (and the fair market value of property, if any) distributed to the Holder by the Plan Administrator, less the amount, if any, attributable to accrued but unpaid interest. A Holder of an Allowed Claim will generally recognize ordinary income to the extent that the amount of Cash or property received (or deemed received) under the

Plan is attributable to interest that accrued on a Allowed Claim but was not previously paid by the Debtor or included in income by the Holder of the Allowed Claim.

The character of any gain or loss recognized by a Holder will depend upon a number of factors, including the status of the Holder, the nature of the Allowed Claim in the Holder's hands, whether the Allowed Claim was purchased at a discount, whether and to what extent the Holder has previously claimed a bad debt deduction with respect to the Allowed Claim, and the Holder's holding period of the Allowed Claim. If the Allowed Claim in the Holder's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. Such gain or loss will constitute long-term capital gain or loss if the Holder held such Allowed Claim for longer than one year or short-term capital gain or loss if the Holder held such Allowed Claim for one year or less. Any capital loss realized generally may be used by a corporate Holder only to offset capital gains and by an individual Holder only to the extent of capital gains plus a certain limited statutorily proscribed amount of ordinary income in any single taxable year, currently \$3,000.

A Holder of an Allowed Claim who receives, in respect of the Holder's Allowed Claim, an amount that is less than that Holder's tax basis in such Allowed Claim may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor, and the instrument with respect to which a deduction is claimed. Holders of Allowed Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction. A Holder that has previously recognized a loss or deduction in respect of that Holder's Allowed Claim may be required to include in gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the Holder's adjusted basis in such Allowed Claim.

Holders of Allowed Claims who were not previously required to include any accrued but unpaid interest with respect to an Allowed Claim may be treated as receiving taxable interest income to the extent any consideration they receive under the Plan is allocable to such interest. A Holder previously required to include in gross income any accrued but unpaid interest with respect to an Allowed Claim may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan.

A Holder of an Allowed Claim constituting an installment obligation for tax purposes may be required to currently recognize any gain remaining with respect to such obligation if, pursuant to the Plan, the obligation is considered to be satisfied at other than face value or distributed, transmitted, sold, or otherwise disposed of within the meaning of IRC Section 453B.

Under backup withholding rules, a Holder of an Allowed Claim may be subject to backup withholding with respect to payments made pursuant to the Plan unless such Holder: (i) is a corporation or is otherwise exempt from backup withholding and, when required, demonstrates this fact; or (ii) provides a correct taxpayer identification and certifies under penalty of perjury that (a) the taxpayer identification number is correct and (b) the Holder is not subject to backup withholding because of failure to report all dividend and interest income. Any amount withheld under such rules will be credited against the Holder's federal income tax liability.

Holders of Subordinated Claims and Claims that are not Allowed (“*Disallowed Claims*”) will not receive any Distribution under the Plan. Accordingly, because such a Holder may receive an amount that is less than that Holder’s tax basis in such Claim, such Holder may be entitled to a bad debt deduction under IRC Section 166(a). The rules governing the character, timing, and amount of a bad debt deduction place considerable emphasis on the facts and circumstances of the Holder, the obligor, and the instrument with respect to which a bad debt deduction is claimed. Holders of Subordinated Claims and Disallowed Claims, therefore, are urged to consult their tax advisors with respect to the ability to take a bad debt deduction.

B. Certain Tax Consequences to the Debtor

1. Federal Taxation Issues Related to Corporations and Pass-Through Entities in General

In general, for United States federal income tax law purposes, an entity can be taxable as a corporation or association, a partnership, or disregarded. The primary differences between corporations and partnerships for tax purposes are how an entity’s items of income, gain, deduction, and loss are taxed. Generally, corporations are treated as independent tax-paying entities, unaffected by the personal characteristics of the corporation’s shareholders or changes in the composition of such shareholders as a result of transfers of stock from one or more shareholders to other existing or new shareholders. As separate taxpayers, corporations are liable for any tax on items of income and gain earned by such corporation and such taxable amounts are reduced by any deductions and losses available to the corporation. When amounts are distributed from a corporation to shareholders, the amount so distributed to the shareholders is taxable to the shareholders giving rise to double taxation, *i.e.*, once at the corporate level and again at the shareholder level. Partnerships, on the other hand, are not entities subject to income tax. Instead, partnerships are pass-through entities and each partner’s allocable share of items of income, gain, deduction, and loss pass through to the partners. The partners are taxed on their allocable share of such items without regard to whether any income is actually distributed to such partners. Limited liability companies with more than one member are, by default, taxable as partnerships unless an election to be taxed as a corporation is made. Certain entities, *e.g.*, single member limited liability companies, absent an election to be taxable as a corporation, are disregarded for tax purposes. Items of income, gain, loss, and deduction of a disregarded entity are treated, for tax purposes, as if they are earned or incurred directly by the owner of the disregarded entity. Limited liability companies with more than one member and partnerships are permitted to elect to be taxed as corporations by making a so-called “check-the-box” election. If such a check-the-box election is made, the electing limited liability company or partnership is treated as a corporation for tax purposes, the entity is taxable on income and gain, and income of the entity is not taxable to the members or partners until such time as when distributions are made to such members or partners. All items of income, gain, deduction, and loss of a partnership flow through to the members of a partnership in accordance with each member’s allocable share.

2. *Cancellation of Indebtedness Income*

Under the IRC, a taxpayer generally must include in gross income the amount of any cancellation of indebtedness income (“**COD Income**”) realized during the taxable year. Section 108 of the IRC provides an exception to this general rule, however, if the cancellation occurs in a case under the Bankruptcy Code or the taxpayer is insolvent at the time the COD Income arises. In the case of a pass-through entity the determination of insolvency is made at the partner level. For example, if an insolvent limited liability company that is taxable as a partnership realizes COD Income, a member of such insolvent limited liability company will be required to recognize and pay tax on that member’s allocable share of the limited liability company’s COD Income unless the member is itself insolvent.

Where COD Income is excluded from taxable income IRC Section 108 requires the amount of COD Income so excluded from gross income to be applied to reduce certain tax attributes of the taxpayer or, in the case of a pass-through entity, the owner of such entity if such owner is insolvent and permitted to exclude such COD Income from taxable income. The tax attributes of the taxpayer or, in the case of a pass-through entity, the owner of such entity, that may be subject to reduction include the net operating losses and net operating loss carryovers (collectively, “**NOLs**”), certain tax credits and tax credit carryovers, capital losses and capital loss carryovers, tax bases in assets, and passive activity loss carryovers. Section 108 of the IRC further provides that a taxpayer does not realize COD Income from cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to a deduction.

Under the Plan, Holders of certain Allowed Claims are expected to receive less than full payment in respect of their Claims, and Holders of Subordinated Claims and Disallowed Claims are expected to receive no payment. The Debtor’s liability to the Holders of such Claims in excess of the amount satisfied by Distributions under the Plan will be canceled, and therefore will result in COD Income to the Debtor. The owners of the equity interests in the Debtor will be required to recognize their respective allocable shares of COD Income of the Debtor unless such owners are themselves insolvent. If such owners are insolvent, the exclusion of the COD Income will result in a reduction of certain tax attributes, such as any NOLs, of an insolvent equity owner.

C. **Importance of Obtaining Professional Tax Assistance**

THE FOREGOING DISCUSSION IS: (I) INTENDED ONLY AS A SUMMARY OF CERTAIN INCOME TAX CONSEQUENCES OF THE PLAN; (II) NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL; AND (III) FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES TO EACH HOLDER ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER’S PARTICULAR CIRCUMSTANCES. ACCORDINGLY, HOLDERS ARE STRONGLY URGED TO CONSULT WITH SUCH HOLDERS’ TAX ADVISORS REGARDING THE FEDERAL, STATE, LOCAL, AND FOREIGN INCOME TAX CONSEQUENCES OF THE PLAN.

VIII. RECOMMENDATION

IN THE OPINION OF THE DEBTOR, THE PLAN IS SUPERIOR AND PREFERABLE TO ANY ALTERNATIVE.

ACCORDINGLY, THE DEBTOR, AS THE PLAN PROPONENT, RECOMMEND THAT HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN AND SUPPORT CONFIRMATION OF THE PLAN.

Dated: November 2, 2020

DEBTOR

By: /s/ *John Brecker*
John Brecker, Independent Manager
Alpha Entertainment LLC

EXHIBIT A TO DISCLOSURE STATEMENT

1st Amended Chapter 11 Plan

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

	-X	
	:	
In re	:	Chapter 11
	:	
ALPHA ENTERTAINMENT LLC,	:	Case No. 20-10940 (LSS)
	:	
Debtor.¹	:	
	:	
	-X	

1st AMENDED CHAPTER 11 PLAN OF ALPHA ENTERTAINMENT LLC

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Counsel to the Debtor and Debtor in Possession

Dated: November 2, 2020

¹ The last four digits of the Debtor's federal tax identification number are 7778. The Debtor's mailing address is 600 Steamboat Road, Suite 105, Greenwich, CT 06830.

1st AMENDED CHAPTER 11 PLAN OF ALPHA ENTERTAINMENT LLC

INTRODUCTION²

The Debtor hereby proposes the Plan, which provides for, among other things, the resolution of Claims against and Interests in the Debtor. Reference is made to the Disclosure Statement for, among other things, (i) a discussion of the Debtor's history, business and properties; (ii) a summary and analysis of the Plan, including the compromises and settlements provided for in the Plan; and (iii) certain related matters, including certain risk factors relating to the consummation of the Plan and Distributions to be made under the Plan.

The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

All Holders of Claims who are entitled to vote on the Plan are encouraged to read the Plan and the Disclosure Statement, and the respective exhibits attached thereto, in their entirety before voting to accept or reject the Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code, Bankruptcy Rule 3019, and Section 11.5 of the Plan, the Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan.

No solicitation materials, other than the Disclosure Statement and related materials transmitted therewith, have been approved for use in soliciting acceptances and rejections of the Plan. Nothing in the Plan should be construed as constituting a solicitation of acceptances of the Plan unless and until the Disclosure Statement has been approved by the Bankruptcy Court and distributed to Holders of Claims to the extent required by section 1125 of the Bankruptcy Code.

THE DEBTOR BELIEVES THAT THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND ITS ESTATE, AND ENCOURAGES ALL PARTIES TO VOTE TO ACCEPT THE PLAN.

² Capitalized terms not defined in this Introduction shall have the meanings ascribed to them in the Plan.

ARTICLE I

DEFINED TERMS AND RULES OF INTERPRETATION

For purposes of the Plan, except as expressly provided or unless the context otherwise requires:

(a) all capitalized terms used in the Plan and not otherwise defined in the Plan, the Bankruptcy Code or the Bankruptcy Rules, shall have the meanings ascribed to them in this Article I of the Plan;

(b) any capitalized term used in the Plan that is not defined in the Plan, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable;

(c) whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine, and the feminine gender shall include the masculine;

(d) any reference in the Plan to an existing document or exhibit means such document or exhibit as it may be amended, modified or supplemented from time to time;

(e) unless otherwise specified, all references in the Plan to sections, articles, schedules, and exhibits are references to sections, articles, schedules and exhibits of or to the Plan;

(f) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan;

(g) captions and headings to articles and sections are inserted for convenience of reference only, and are not intended to be a part of or to affect the interpretation of the Plan; and

(h) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

The capitalized terms used in the Plan shall have following meanings:

1.1 Administrative Claim: A Claim (other than Professional Fee Claims, but, for the avoidance of doubt, including Ordinary Course Professional Fee Claims) arising under sections 365, 503(b), 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code, to the extent not previously paid, otherwise satisfied or withdrawn, including, but not limited to, fees and charges assessed against the Estate under chapter 123 of title 28 of the United States Code.

1.2 Allowed: With respect to any Claim, except as otherwise provided herein: (a) a Claim that has been scheduled by the Debtor on its Schedules as other than disputed, contingent or unliquidated and as to which no contrary proof of claim has been filed; (b) a Claim that is set forth in a timely filed proof of claim as to which no objection has been filed on or before the Claim Objection Deadline, and which is not otherwise a Disputed Claim; (c) a Claim that has been allowed by a Final Order; (d) a Claim that is allowed: (i) in any stipulation executed by the Debtor

prior to the Effective Date and approved by the Bankruptcy Court; (ii) in any stipulation executed by the Post-Effective Date Debtor on or after the Effective Date; or (iii) in any contract, instrument, indenture or other agreement entered into or assumed by Debtor in connection with and in accordance with the Plan; or (e) a Claim that is allowed pursuant to the terms of the Plan.

1.3 Allowed Claim, or Allowed [] Claim: A Claim that has been Allowed.

1.4 Amended Operating Agreement: The Third Amended and Restated Operating Agreement of Alpha Entertainment LLC, to be effective as of the Effective Date of the Plan, the substantially final form of which shall be included in the Plan Supplement.

1.5 APA: That certain Asset Purchase Agreement, dated August 17, 2020, between the Debtor and Alpha Opco, LLC (as may be amended, including all schedules and exhibits thereto).

1.6 Assets: Any and all right, title and interest of the Debtor and its Estate in and to property of whatever type or nature and wherever located, including, and without limitation, all real, personal, mixed, intellectual, tangible or intangible property and any proceeds thereof.

1.7 Avoidance Actions: Any and all avoidance or equitable subordination or recovery actions under sections 105(a), 502(d), 510, 542 through 551 and 553 of, and otherwise under, the Bankruptcy Code or any similar federal, state or common law causes of action; *provided, however*, that any and all such actions that were sold to the Buyer pursuant to the Sale Order and APA shall not constitute “Avoidance Actions” for purposes hereof.

1.8 Ballot: The ballot form distributed to each Holder of a Claim entitled to vote to accept or reject the Plan.

1.9 Bankruptcy Code: Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as may be amended).

1.10 Bankruptcy Court: The United States Bankruptcy Court for the District of Delaware, or in the event such court ceases to exercise jurisdiction over the Chapter 11 Case, such court or adjunct thereof that exercises jurisdiction over the Chapter 11 Case in lieu of the United States Bankruptcy Court for the District of Delaware.

1.11 Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure (as may be amended).

1.12 Bar Date Order: That certain order of the Bankruptcy Court entered on July 14, 2020 [D.I. 286].

1.13 Business Day: Any day, excluding Saturdays, Sundays or “legal holidays” (as defined in Bankruptcy Rule 9006(a)(6)) on which commercial banks are open for business in Wilmington, Delaware.

1.14 Buyer: Alpha Opco, LLC.

1.15 Cash: Cash and cash equivalents in certified or immediately available U.S. funds, including but not limited to bank deposits, checks and similar items.

1.16 Causes of Action: Includes, without limitation, any and all of the Debtor's actions, causes of action, Avoidance Actions, controversies, liabilities, obligations, rights, suits, damages, judgments, Claims and demands whatsoever, whether known or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, whether assertible by the Debtor directly, indirectly, derivatively or in any representative or other capacity, now existing or hereafter arising, in law, equity or otherwise, based in whole or in part upon any act, failure to act, error, omission, transaction, occurrence or other event arising or occurring prior to or after the Petition Date.

1.17 Chapter 11 Case: The voluntary chapter 11 bankruptcy case commenced by the Debtor, which is being administered under case caption *In re Alpha Entertainment LLC*, Case No. 20-10940 (LSS).

1.18 Claim: A claim, as defined in section 101(5) of the Bankruptcy Code, against the Debtor or its Estate whether or not asserted or Allowed, whether or not arising before or after the Effective Date.

1.19 Claim Objection Deadline: The date that is one hundred and eighty (180) days after the Effective Date, subject to extension as set forth in Section 8.2 of the Plan.

1.20 Class: A category of Claims or Interests designated pursuant to the Plan.

1.21 Collateral: Any property or interest in property of the Estate that is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

1.22 Committee: The Official Committee of Unsecured Creditors appointed by the U.S. Trustee in the Chapter 11 Case, as it may be reconstituted from time to time.

1.23 Confirmation: Entry by the Bankruptcy Court of the Confirmation Order.

1.24 Confirmation Date: The date upon which the Confirmation Order is entered by the Bankruptcy Court.

1.25 Confirmation Hearing: Collectively, the hearing or hearings held by the Bankruptcy Court on confirmation of the Plan, as such hearing or hearings may be continued from time to time.

1.26 Confirmation Order: The Order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.27 Creditor: Any Holder of a Claim.

1.28 Debtor: Alpha Entertainment LLC.

1.29 Disclosure Statement: The *Disclosure Statement for the 1st Amended Chapter 11 Plan of Alpha Entertainment LLC*, dated as of November 2, 2020, and all exhibits thereto, as the same may be amended, modified or supplemented.

1.30 Disclosure Statement Order: The Final Order of the Bankruptcy Court [D.I. ____] approving the Disclosure Statement as containing adequate information, pursuant to section 1125(a) of the Bankruptcy Code, and authorizing the Debtor to solicit acceptances of the Plan.

1.31 Disputed Claim: Any Claim: (i) listed on the Schedules as unliquidated, disputed or contingent, unless a proof of claim has been Filed in a liquidated and non-contingent amount; (ii) included in a proof of claim as to which an objection or request for estimation has been filed, or as to which the Debtor or the Post-Effective Date Debtor, as applicable, or other parties in interest in accordance with applicable law, retain the ability to interpose a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Plan and the Confirmation Order; or (iii) which is otherwise disputed by Debtor or the Post-Effective Date Debtor, as applicable, in accordance with applicable law and for which the objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order. To the extent that a Claim is held by a Holder that is or may be liable to the Debtor, the Estate or the Post-Effective Date Debtor on account of a Retained Cause of Action, such Claim shall be a Disputed Claim unless and until such Retained Cause of Action has been settled or withdrawn or has been determined by a Final Order.

1.32 Distribution: The transfer of Cash or other property by the Post-Effective Date Debtor under the Plan to the Holders of Allowed Claims.

1.33 Effective Date: The date that is the first Business Day on which each condition set forth in Article IX of the Plan has been satisfied or waived as set forth therein.

1.34 Entity: Shall have the meaning set forth in section 101(15) of the Bankruptcy Code. Unless otherwise specified herein, any reference to an Entity as a Holder of a Claim or Interest includes such Entity's successors, assigns and affiliates.

1.35 Estate: The chapter 11 estate of the Debtor created pursuant to section 541 of the Bankruptcy Code.

1.36 Exculpated Parties: Each of, solely in their capacities as such, and solely in connection with Section 11.12 of the Plan: (a) the Debtor and the Estate; (b) the Debtor's employees, officers, directors, and managers; (c) the Professionals retained by the Debtor pursuant to an Order of the Bankruptcy Court; (d) the Committee; (e) the present and former members of the Committee, but solely in their capacity as members of the Committee; and (f) the Professionals retained by the Committee pursuant to an Order of the Bankruptcy Court.

1.37 File, Filed or Filing: File, filed or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Case.

1.38 Face Amount: When used in reference to an Allowed Claim, the amount of such Claim that is Allowed, and, when used in reference to a Disputed Claim, (a) the liquidated amount set forth in the proof of claim or request for payment relating to the Disputed Claim (if any); (b) an amount agreed to by the Post-Effective Date Debtor and the Holder of the Disputed Claim; or (c) if a request for estimation is Filed with respect to such Disputed Claim, the amount at which such Disputed Claim is estimated by the Bankruptcy Court.

1.39 Final Decree: Any Order entered pursuant to section 350 of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rule 3022-1 closing the Chapter 11 Case.

1.40 Final Order: An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, that is not subject to stay or appeal, and for which the applicable time within which to take such action has expired, or for which such actions has been adjudicated by the highest court with jurisdiction over the matter.

1.41 General Unsecured Claim: Any unsecured, non-priority Claim against the Debtor or the Estate.

1.42 General Unsecured Claim Distribution: The aggregate amount of Cash or proceeds realized from the Assets of the Estate, including, without limitation, the proceeds of any Retained Causes of Action, available for Distribution Pro Rata to holders of Allowed General Unsecured Claims, after the payment, or appropriate reserves have been established, in full satisfaction of wind-down costs, Allowed Unclassified Claims, Allowed Secured Claims and Allowed Priority Non-Tax Claims.

1.43 Holder: The Person that is the owner of record of a Claim or Interest, as applicable.

1.44 Impaired: Any Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.45 Initial Distribution: The Distributions made to Holders of Allowed Claims as soon as practicable after the Effective Date in accordance with the terms of the Plan.

1.46 Insurance Contract: All insurance policies that have been issued at any time to or provide coverage to the Debtor and all agreements, documents or instruments relating thereto, *excluding* any such policies that are, or have been, assumed and assigned to the Buyer on or before the Effective Date pursuant to the APA, the Sale Order, and section 365 of the Bankruptcy Code.

1.47 Insured Claim: Any Claim or portion of a Claim (other than a Claim held by an employee of the Debtor for workers' compensation coverage under the workers' compensation program applicable in the particular state in which the employee is employed by the Debtor) that is insured under any Insurance Contract, but only to the extent of such coverage.

1.48 Insurer: Any company or other entity that issued an Insurance Contract, any third party administrator, and any respective predecessors and/or affiliates thereof.

1.49 Interests: All previously issued and outstanding limited liability company membership interests, partnership units or other interests in the Debtor outstanding immediately prior to the Effective Date, including, without limitation, treasury stock and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to convert, exchange, exercise for or otherwise receive such limited liability company membership interests, partnership units or other interests.

1.50 Lien: Any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage or hypothecation to secure payment of a debt or performance of an obligation, other than,

in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

1.51 Local Rules: The Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as amended from time to time.

1.52 Order: An order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case or the docket of any other court of competent jurisdiction.

1.53 Ordinary Course Professional: Any OCP, as that term is defined in that certain *Order Authorizing the Debtor to Retain and Compensate Certain Professionals Utilized in the Ordinary Course of Business, Effective as of the Petition Date* [D.I. 200].

1.54 Ordinary Course Professional Fee Claim: A Claim of an Ordinary Course Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through and including the Effective Date.

1.55 Person: An individual or Entity, limited liability company, corporation, partnership, association, trust or unincorporated organization, joint venture or other person or a government or any agency or political subdivision thereof.

1.56 Petition Date: April 13, 2020, the date on which the Debtor Filed its voluntary chapter 11 petition for relief in the Bankruptcy Court.

1.57 Plan: This *1st Amended Chapter 11 Plan of Alpha Entertainment LLC*, dated as of September 30, 2020, and all exhibits thereto, including, without limitation, the Plan Supplement, as the same may be amended, modified or supplemented.

1.58 Plan Administrator: Such person or entity designated by the Committee, in consultation with the Debtor, prior to the Confirmation Date and approved by the Bankruptcy Court pursuant to the Confirmation Order to (a) administer the Plan in accordance with its terms and the Plan Administrator Agreement; (b) be the sole officer and/or responsible Person for the Debtor and Post-Effective Date Debtor from and after the Effective Date; (c) be the sole member of the Post-Effective Date Debtor in accordance with the Amended Operating Agreement; and (d) take such other actions as may be authorized under the Plan and the Plan Administrator Agreement, and any successor thereto.

1.59 Plan Administrator Agreement: The agreement by and among the Debtor, the Post-Effective Date Debtor and the Plan Administrator specifying the rights, duties and responsibilities of the Plan Administrator under the Plan.

1.60 Plan Administrator Professionals: The agents, financial advisors, attorneys, consultants, independent contractors, representatives and other professionals of the Plan Administrator or the Post-Effective Date Debtor (in each case, solely in their capacities as such).

1.61 Plan Administrator Professional Fees: The reasonable fees and expenses of the Plan Administrator Professionals employed by the Plan Administrator.

1.62 Plan Supplement: The ancillary documents necessary to the implementation and effectuation of the Plan, including the Plan Administrator Agreement and the Amended Operating Agreement, which shall be Filed on or before the date that is seven (7) days prior to the Voting Deadline.

1.63 Post-Effective Date Debtor: The Debtor, on and after the Effective Date.

1.64 Priority Non-Tax Claim: A Claim that is entitled to priority under section 507(a) of the Bankruptcy Code, other than an Administrative Claim and a Priority Tax Claim.

1.65 Priority Tax Claim: A Claim that is entitled to priority under section 507(a)(8) of the Bankruptcy Code.

1.66 Professional: Any professional (other than an Ordinary Course Professional) employed in the Chapter 11 Case pursuant to sections 327, 328, 1103 or 1104 of the Bankruptcy Code or any professional or other Person (in each case, other than an Ordinary Course Professional) seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to section 503(b)(3) or 503(b)(4) of the Bankruptcy Code.

1.67 Professional Fee Claim: A Claim of a Professional for compensation or reimbursement of costs and expenses relating to services incurred during the period from the Petition Date through and including the Effective Date.

1.68 Professional Fee Reserve: The reserve established and funded by the Debtor on or prior to the Effective Date, in consultation with the Committee, pursuant to Section 11.2 of the Plan.

1.69 Pro Rata: The proportion that the Allowed Claim in a particular Class bears to the aggregate amount of (a) Allowed Claims in such Class as of the date of determination, plus (b) Disputed Claims in such Class as of the date of determination, in their aggregate Face Amounts or such other amount: (i) as calculated by the Post-Effective Date Debtor on or before the date of any such Distribution; (ii) as determined by an Order of the Bankruptcy Court estimating such Disputed Claim; or (iii) as directed by a Final Order of the Bankruptcy Court.

1.70 Rejection Claim: Any Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to the Plan and the Confirmation Order.

1.71 Related Parties: With respect to any Person or Entity, such Person's or Entity's current and former (i) officers, (ii) managers, (iii) directors, (iv) employees, (v) lenders, (vi) partners, (vii) affiliates, (iv) professionals, (v) advisors, (vi) agents, (vii) members, (viii) shareholders, and (ix) other representatives, including, without limitation, attorneys, accountants, consultants, investment bankers and financial advisors and the successors, assigns or heirs of such Person or Entity.

1.72 Released Parties: Each solely in their capacities as such, (a) the Debtor and the Estate; (b) the Debtor's current and former officers and managers; and (c) to the extent not included in the foregoing, each of the preceding entities' respective Related Parties; *provided, however*, that neither Vincent K. McMahon nor Oliver Luck shall be Released Parties for purposes of the releases

set forth in section 11.11(a) of the Plan; and *provided further that* Oliver Luck shall not be a Released Party for purposes of the releases set forth in Section 11.11(b) of the Plan.

1.73 Release Opt-Out: The item set forth in the Ballots, due by the Voting Deadline, pursuant to which Holders of Claims in Class 3 that vote to accept or reject the Plan may opt out of the releases set forth in Section 11.11(b) of the Plan.

1.74 Releasing Parties: (a) all Holders of Claims deemed hereunder to have accepted the Plan (i.e., Holders of Claims in Unimpaired Classes of Claims) that have not Filed an objection to the release in Section 11.11(b) of the Plan prior to the deadline to object to Confirmation of the Plan; and (b) all Holders of Claims in Class 3 that (i) vote to accept or reject the Plan and do not timely submit a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.11(b) of the Plan, or (ii) do not vote to accept or reject the Plan, and either do not timely submit a Release Opt-Out, or do not File an objection to the releases in Section 11.11(b) of the Plan prior to the deadline to object to Confirmation of the Plan; *provided, however*, that Holders of Claims in Class 3 whose Ballots are returned to the Debtor or its agent as undeliverable, or to whom the Debtor or its agent did not mail a Ballot, shall not be deemed to participate in the releases set forth in Section 11.11(b) of the Plan, which entities, if any, shall be set forth in a notice Filed with the Bankruptcy Court by the Debtor or the Plan Administrator within five (5) business days of the Effective Date.

1.75 Retained Causes of Action: All rights, including rights of setoff and rights of recoupment, refunds, claims, counterclaims, demands, Causes of Action, and rights to collect damages of the Debtors against third parties, including, without limitation: (a) Oliver Luck; (b) all litigation, arbitration or other types of adversarial or dispute resolution proceeding disclosed on the Debtor's Schedules and *Statements of Financial Affairs*; and (c) all litigation, arbitration or other types of adversarial or dispute resolution proceedings arising in law, equity or pursuant to any other theory of law and all other rights (including, without limitation, defenses, cross-claims and counter-claims), regardless of whether they (or the facts underlying them) were disclosed in the Debtor's Schedules, *Statements of Financial Affairs*, or otherwise during the Chapter 11 Case, against or related to any party that (i) owed to the Debtor or the Estate a fiduciary, contractual or statutory duty, whether imposed by law or in equity; (ii) committed a tort or other unlawful or actionable conduct against or related to the Debtor or the Estate; and (iii) received a payment, obligation or other consideration from the Debtor or the Estate that may be avoided under chapter 5 of the Bankruptcy Code and other similar state law claims and causes of action, but excluding all rights, including rights of setoff and rights of recoupment, refunds, claims, counterclaims, demands, and rights to collect damages of the Debtor against third parties released or waived under the Plan, the Confirmation Order or any Final Order, including, without limitation, pursuant to the Sale Order, and further excluding any and all rights, including rights of setoff and rights of recoupment, refunds, claims, counterclaims, demands, and rights to collect damages of the Debtor against third parties that were sold to the Buyer pursuant to the APA and the Sale Order.

1.76 Sale Order: That certain Order (I) *Approving and Authorizing the Sale of Certain of the Debtor's Assets Free and Clear of All Encumbrances*, (II) *Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*, and (III) *Granting Related Relief* [D.I. 358].

1.77 Schedules: The Schedules of Assets and Liabilities Filed by the Debtor, as such Schedules may be amended from time to in accordance with Bankruptcy Rule 1009.

1.78 Section 503(b)(9) Claim: A Claim that is entitled to priority under section 503(b)(9) of the Bankruptcy Code.

1.79 Secured Claim: A Claim that is (i) secured by a valid, perfected and enforceable Lien on property in which the Debtor or the Estate has an interest that is not subject to avoidance, or (ii) subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Creditor's interest in such property or to the extent of the amount subject to setoff, as applicable, all as determined pursuant to sections 506(a) and 1111(b) of the Bankruptcy Code and other applicable law.

1.80 Subordinated Claim: Any Claim or Interest that is subordinated to General Unsecured Claims pursuant to section 510 of the Bankruptcy Code or a Final Order of the Bankruptcy Court.

1.81 Unimpaired: Any Class of Claims that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

1.82 Unclassified Claims: Any Administrative Claims, Professional Fee Claims and Priority Tax Claims.

1.83 U.S. Trustee: The Office of the United States Trustee for the District of Delaware.

1.84 Voting Deadline: The date and time by which all Ballots to accept or reject the Plan must be received to be counted as set by the Disclosure Statement Order.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 Unclassified Claims. Holders of the following Claims are not entitled to vote on the Plan:

1. *Administrative Claims*
2. *Professional Fee Claims*
3. *Priority Tax Claims*

2.2 Unimpaired Classes of Claims. Holders of Claims in the following Unimpaired Classes of Claims are deemed to have accepted the Plan and, therefore, are not entitled to vote on the Plan:

1. *Secured Claims (Class 1)*
2. *Priority Non-Tax Claims (Class 2)*

2.3 Impaired/Voting Class of Claims. Holders of Claims in the following Impaired Class of Claims are entitled to vote on the Plan:

1. *General Unsecured Claims (Class 3)*

2.4 Impaired/Non-Voting Classes of Claims and Interests. Holders of Claims and Interests in the following Impaired Classes of Claims and Interests are deemed to have rejected the Plan and, therefore, are not entitled to vote on the Plan:

1. *Subordinated Claims (Class 4)*

2. *Interests (Class 5)*

ARTICLE III

TREATMENT OF CLAIMS AND INTERESTS

3.1 Unclassified Claims.

3.1.1 Administrative Claims. Except as otherwise provided for herein, the Confirmation Order, or separate order of the Bankruptcy Court, on, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which an Administrative Claim becomes an Allowed Administrative Claim, the Holder of such Allowed Administrative Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing.

3.1.2 Professional Fee Claims. Professional Fee Claims shall be paid by the Post-Effective Date Debtor as set forth in Section 11.2 of the Plan.

3.1.3 Priority Tax Claims. In full satisfaction of such Claims, Holders of Allowed Priority Tax Claims shall be paid by the Post-Effective Date Debtor, at the Post-Effective Date Debtor's discretion, as follows: (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Tax Claim on the later of the Effective Date or thirty (30) days following the date on which such Priority Tax Claim becomes an Allowed Priority Tax Claim; (b) in regular installment payments in Cash over a period not exceeding five (5) years after the Petition Date, plus interest on the unpaid portion thereof at the rate determined under applicable non-bankruptcy law as of the calendar month in which the Confirmation Date occurs; and (c) such other treatment as to which the Holder of an Allowed Priority Tax Claim and the Post-Effective Date Debtor shall have agreed upon in writing.

3.2 Unimpaired Classes of Claims.

3.2.1 Class 1: Secured Claims. On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Secured Claim becomes an Allowed Secured Claim, the Holder of such Allowed Secured Claim shall receive from the Post-Effective Date Debtor, at the discretion of the Post-Effective Date Debtor, in full satisfaction of such Allowed Secured Claim, (i) Cash equal to the value of such Claim; (ii) the return of the Holder's Collateral securing such Claim; (iii) such Claim reinstated pursuant to sections 1124(1) or 1124(2) of the Bankruptcy Code; or (iv) such other less favorable treatment

as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. ***Class 1 is Unimpaired, and therefore Holders of Secured Claims are conclusively presumed to have accepted the Plan.***

3.2.2 Class 2: Priority Non-Tax Claims. On, or as soon as reasonably practicable after, the later of (i) the Effective Date and (ii) thirty (30) days following the date on which a Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, the Holder of such Allowed Priority Non-Tax Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed Priority Non-Tax Claim, either (i) Cash equal to the unpaid portion of the Face Amount of such Allowed Priority Non-Tax Claim; or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. ***Class 2 is Unimpaired, and therefore Holders of Priority Non-Tax Claims are conclusively presumed to have accepted the Plan.***

3.3 Impaired/Voting Class of Claims.

3.3.1 Class 3: General Unsecured Claims. On, or as soon as reasonably practicable after, the Effective Date, the Holder of an Allowed General Unsecured Claim shall receive from the Post-Effective Date Debtor, in full satisfaction of such Allowed General Unsecured Claim, (i) its Pro Rata share of the General Unsecured Claim Distribution, or (ii) such other less favorable treatment as to which such Holder and the Post-Effective Date Debtor shall have agreed upon in writing. ***Class 3 is Impaired, and therefore Holders of General Unsecured Claims are entitled to vote on the Plan.***

3.4 Impaired/Non-Voting Classes of Claims and Interests.

3.4.1 Class 4: Subordinated Claims. On the Effective Date, Holders of Subordinated Claims shall not be entitled to, and shall not receive or retain, any property or interest in property under the Plan on account of such Subordinated Claims. ***Class 4 is deemed to have rejected the Plan, and therefore Holders of Subordinated Claims are not entitled to vote on the Plan.***

3.4.2 Class 5: Interests. As of the Effective Date, all Interests of any kind shall be deemed cancelled, and the Holders thereof shall not receive or retain any property, interest in property or consideration under the Plan on account of such Interests. ***Class 5 is deemed to have rejected the Plan, and therefore Holders of Interests are not entitled to vote on the Plan.***

3.5 Special Provisions Regarding Insurance. Notwithstanding anything to the contrary in the Disclosure Statement, the Plan, the Plan Supplement, the Confirmation Order, any bar date notice or claim objection, any other document related to any of the foregoing, or any other order of the Bankruptcy Court (including, without limitation, any other provision that purports to be preemptory or supervening, grants an injunction, discharge or release, confers Bankruptcy Court jurisdiction, or requires a party to opt out of any releases):

(a) subject to Section 3.5(e) below, on the Effective Date, the Insurance Contracts shall vest, unaltered and in their entirety with the Post-Effective Date Debtor, and all debts, obligations, and liabilities of the Debtor (and, after the Effective Date, of the Post-Effective Date Debtor) thereunder, whether arising before or after the Effective Date, shall survive and shall not be amended, modified, waived, released, discharged or impaired in any respect, all such debts,

obligations, and liabilities of the Debtor (and, after the Effective Date, of the Post-Effective Date Debtor) shall be satisfied by the Post-Effective Date Debtor in the ordinary course of business, and the Insurers shall not need to or be required to file or serve any objection to a proposed cure amount or a request, application, Claim, proof or motion for payment or allowance of any Claim or Administrative Claim and shall not be subject to any bar date or similar deadline governing cure amounts, proofs of Claim or Administrative Claims;

(b) for the avoidance of doubt, subject to the automatic stay under section 362 of the Bankruptcy Code and the injunction under Section 11.10 of the Plan, if there is available insurance, any party with rights against or under the applicable Insurance Contract, including, without limitation, the Estate, the Post-Effective Date Debtor and Holders of Insured Claims, may pursue such rights, and the Post-Effective Date Debtor may, but shall not be required to, move to limit an Insured Claim to the Face Amount of such Insured Claim less the total coverage available with respect to that Insured Claim under the Insurance Contracts; *provided, however*, that doing so in no way obligates an Insurer to pay any portion of the Insured Claim or otherwise alters an Insurer's coverage defenses; *provided further, however*, that, subject to Section 3.5(e) below, nothing alters or modifies the duty, if any, that Insurers have to pay Insured Claims covered by the Insurance Contracts and the Insurers' right to seek payment or reimbursement from the Debtor (or after the Effective Date, the Post-Effective Date Debtor); *provided finally, however*, the automatic stay of Bankruptcy Code section 362(a) and the injunctions set forth in Article XI of the Plan, if and to the extent applicable, shall be deemed lifted without further order of the Bankruptcy Court, solely to permit: (I) all current and former employees of the Debtor to proceed with any valid workers compensation claims they might have in the appropriate judicial or administrative forum; (II) direct action claims against an Insurer under applicable non-bankruptcy law to proceed with their claims; (III) the Insurers to administer, handle, defend, settle, and/or pay, in the ordinary course of business and without further order of the Bankruptcy Court, (A) any valid workers compensation claims, (B) claims where a claimant asserts a direct claim against any Insurer under applicable non-bankruptcy law, or an order has been entered by the Bankruptcy Court granting a claimant relief from the automatic stay to proceed with its Insured Claim, and (C) all costs in relation to each of the foregoing; and (IV) the Insurers to cancel any Insurance Contracts, to the extent permissible under applicable non-bankruptcy and bankruptcy law, and in accordance with the terms of the Insurance Contracts (other than on the basis of any outstanding pre-petition claims against the Debtor, the Estate or the Post-Effective Date Debtor arising from or related to such Insurance Contracts);

(c) nothing in this Section 3.5 shall constitute a waiver of any causes of action the Debtor, its Estate or the Post-Effective Date Debtor may hold against any Entity, including any Insurers. Nothing in this Section 3.5 is intended to, shall or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a recovery from any Insurer in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; *provided, however*, that the Debtor, the Estate, and the Post-Effective Date Debtor do not waive, and expressly reserve their rights to assert that the proceeds of the Insurance Contracts are an Asset and property of the Estate to which they are entitled to the extent that the Debtor is entitled to assert first-party claims pursuant to the terms and conditions of the applicable Insurance Contract;

(d) subject to Section 3.5(e) below, nothing shall modify the scope of, or alter in any other way, the rights and obligations of the Insurers, the Debtor (or, after the Effective Date, the Post-

Effective Date Debtor), or any other individual or entity, as applicable, under the Insurance Contracts, and all such rights and obligations shall be determined under the Insurance Contracts and applicable non-bankruptcy law as if the Chapter 11 Case had not occurred, and, for the avoidance of doubt, the Insurers shall retain any and all rights, claims and defenses to liability and/or coverage that they have under the Insurance Contracts, including the right to contest and/or litigate with any party, including the Debtor and the Post-Effective Date Debtor, the existence, primacy and/or scope of liability and/or available coverage under any alleged applicable Insurance Contract; and

(e) any payment, reimbursement or other financial or monetary obligations of the Debtor, the Estate or the Post-Effective Date Debtor owing to the Insurers under the Insurance Contracts, including, but not limited to, reimbursement for payments within a deductible, shall be satisfied solely from existing collateral and/or security, if any, held by the Insurers in the ordinary course and pursuant to the terms of the Insurance Contracts, and to the extent that any such collateral and/or security is insufficient to satisfy any such obligations, the Insurers shall have no recourse to the Debtor, its Estate or the Post-Effective Date Debtor, and hereby waive any and all claims against, and rights to a Distribution from, the Debtor, the Estate and the Post-Effective Date Debtor; *provided, however*, that nothing in this Section 3.5(e) shall modify the scope of, or alter in any other way, (i) the rights of the Insurers to assert any setoff and recoupment rights in any proof of claim submitted in accordance with the Bar Date Order, (ii) the rights of any subrogee of an Insurer to assert a claim in accordance with the Bar Date Order, or (iii) the rights and defenses of the Debtor, the Estate, and the Post-Effective Date Debtor with respect to any proofs of claim asserted by the Insurers or a subrogee of an Insurer.

3.6 Provision Governing Allowance and Defenses to Claims. On and after the Effective Date, the Post-Effective Date Debtor shall have all of the Debtor's and the Estate's rights under section 558 of the Bankruptcy Code. Nothing under the Plan shall affect the rights and defenses of the Debtor, the Estate and the Post-Effective Date Debtor in respect of any Claim not Allowed by Final Order, including all rights in respect of legal and equitable objections, defenses, setoffs or recoupment against such Claims. The Post-Effective Date Debtor may, but shall not be required to, setoff against any Claim (for purposes of determining the Allowed amount of such Claim on which Distribution shall be made) any claims of any nature whatsoever that the Estate or the Post-Effective Date Debtor may have against the Claim Holder, including, without limitation, Avoidance Actions and Preference Actions, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Post-Effective Date Debtor of any such Claim it may have against such Claim Holder. The Post-Effective Date Debtor may (i) designate any Claim as Allowed at any time from and after the Effective Date and (ii) may designate any Claim as a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN

4.1 Impaired Class of Claims Entitled to Vote. Only the votes of Holders of Claims in Class 3 shall be solicited with respect to the Plan.

4.2 Acceptance by an Impaired Class. In accordance with section 1126(c) of the Bankruptcy Code, and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class shall have accepted the Plan if the Plan is accepted by the Holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-half ($\frac{1}{2}$) in number of the Claims allowed for purposes of Plan voting pursuant to the Disclosure Statement Order that have timely and properly voted to accept or reject the Plan.

4.3 Presumed Acceptances by Unimpaired Classes. Class 1 and Class 2 are Unimpaired under the Plan. *Under section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Unimpaired Classes are conclusively presumed to have accepted the Plan, and therefore the votes of the Holders of such Claims shall not be solicited.*

4.4 Impaired Classes Deemed to Reject Plan. Holders of Subordinated Claims and Interests in Class 4 and Class 5 are not entitled to receive or retain any property or interests in property under the Plan. *Under section 1126(g) of the Bankruptcy Code, such Holders are deemed to have rejected the Plan, and therefore the votes of such Holders shall not be solicited.*

4.5 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code. Because at least one Impaired Class is deemed to have rejected the Plan, the Debtor will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan, the Plan Supplement or any schedule or exhibit, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

4.6 Elimination of Vacant Classes. Any Class of Claims that does not contain, as of the date of the commencement of the Confirmation Hearing, a Holder of a Claim allowed for purposes of Plan voting pursuant to the Disclosure Statement Order shall be deemed eliminated from the Plan for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

ARTICLE V

IMPLEMENTATION OF THE PLAN AND THE PLAN ADMINISTRATOR

5.1 Implementation of the Plan. The Plan will be implemented by, among other things, the appointment of the Plan Administrator and the making of Distributions from the Assets, including, without limitation, all Cash and the proceeds, if any, from the Retained Causes of Action, by the Post-Effective Date Debtor in accordance with the Plan and the Plan Administrator Agreement.

Except as otherwise provided in the Plan, on and after the Effective Date, all Assets of the Estate, including all claims, rights, Retained Causes of Action and any property acquired by the Debtor under or in connection with the Plan, shall vest in the Post-Effective Date Debtor, free and clear of all Claims, Liens, charges, other encumbrances and Interests.

5.2 The Debtor's Post-Effective Date Corporate Affairs.

5.2.1 Debtor's Officers and Managers. On the Effective Date, the Debtor's officers and managers shall be terminated automatically without the need for any corporate action or approval

and without the need for any corporate filings, and shall have no continuing obligations to the Debtor following the occurrence of the Effective Date.

5.3 Dissolution and Cancellation of the Debtor.

On the Effective Date, the Plan Administrator shall be the sole member of the Post-Effective Date Debtor and appointed to manage the Post-Effective Date Debtor, in accordance with the Amended Operating Agreement, the Plan, and the Plan Administrator Agreement. Following the implementation of the Plan, the administration and distribution of the Debtor's Assets in accordance with the terms of the Plan, and the winding down of the Post-Effective Date Debtor's affairs, without the need for any further order or action of the Bankruptcy Court, the Post-Effective Date Debtor will be dissolved and its affairs will be wound up in accordance with Delaware law. The Plan Administrator is authorized to take all actions reasonably necessary to dissolve the Post-Effective Date Debtor, and neither the Plan Administrator nor the Post-Effective Date Debtor shall be required to pay any taxes or fees in order to cause such dissolution and termination of the Post-Effective Date Debtor's existence.

5.4 Plan Administrator.

5.4.1 Appointment; Duties. The Committee, in consultation with the Debtor, shall designate the Person who initially will serve as the Plan Administrator. The identity of the Plan Administrator shall be included in the Plan Supplement.

5.4.2 Plan Administrator Agreement.

(a) Plan Administrator as a Fiduciary. The Plan Administrator shall be a fiduciary of the Estate and the Post-Effective Date Debtor, and shall be compensated and reimbursed for expenses as set forth in, and in accordance with, the Plan Administrator Agreement.

(b) Provisions of the Plan Administrator Agreement and Confirmation Order. The Plan Administrator Agreement and the Confirmation Order shall provide that: (i) the Plan Administrator shall have no duties until the occurrence of the Effective Date, and on and after the Effective Date shall be a fiduciary of the Post-Effective Date Debtor and the Estate; and (ii) if the Plan is withdrawn or otherwise abandoned prior to the occurrence of the Effective Date, the Plan Administrator position shall thereafter be dissolved.

5.4.3 Powers and Duties of Plan Administrator.

(a) General Powers and Duties. From and after the Effective Date, pursuant to the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall be empowered and directed to: (i) take all steps and execute all instruments and documents necessary to make Distributions to Holders of Allowed Claims and to perform the duties assigned to the Plan Administrator under the Plan or the Plan Administrator Agreement; (ii) comply with the Plan and the obligations hereunder; (iii) employ, retain or replace professionals to represent him or her with respect to his or her responsibilities; (iv) object to Claims as provided in the Plan, and prosecute such objections; (v) compromise and settle any issue or dispute regarding the amount, validity, priority, treatment or allowance of any Claim; (vi) establish, replenish or release any reserves as provided in the Plan, as applicable; (vii) exercise such other powers as may be vested in the Plan

Administrator pursuant to the Plan, the Plan Administrator Agreement or any other order of the Bankruptcy Court, including the Confirmation Order, or otherwise act on behalf of and for the Debtor and the Post-Effective Date Debtor from and after the Effective Date; (viii) file applicable tax returns for the Debtor; (ix) liquidate any of the Assets; and (x) prosecute, compromise, resolve or withdraw any of the Retained Causes of Action. The Plan Administrator may, without the need for further Court approval, retain legal counsel and financial advisors to advise him or her in the performance of his or her duties, which counsel and advisors may be counsel and advisors for the Debtor and the Committee.

(b) Distributions. Pursuant to the terms and provisions of the Plan and the Plan Administrator Agreement, the Plan Administrator shall make the required Distributions specified under the Plan and in accordance with the Plan.

5.4.4 Compensation of the Plan Administrator. The Estate and the Post-Effective Date Debtor shall pay the undisputed reasonable fees and expenses of the Plan Administrator and the Plan Administrator Professionals; *provided, however*, that the Plan Administrator and Plan Administrator Professionals shall be required to File with the Bankruptcy Court monthly fee statements (each a “**Monthly Fee Statement**”) and serve such Monthly Fee Statements on all parties that, as of the Filing thereof, have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. Holders of Claims and other parties in interest shall have ten (10) days from the filing of any such Monthly Fee Statement to raise any objections to the reasonableness of any fees or expenses sought therein. If a party objects to the reasonableness of any fees or expenses reflected in any Monthly Fee Statement, and such dispute is not resolved by agreement, the Plan Administrator or the affected Plan Administrator Professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such amounts, and the disputed portion of such Monthly Fee Statement shall not be paid until the dispute is resolved. The undisputed portion of such monthly Fee Statement shall be paid as provided herein. In no objections or responses to any Monthly Fee Statement are received by the Plan Administrator or the Plan Administrator Professionals, as applicable, within the objection period set forth herein, the Estate and the Post-Effective Date Debtor shall be authorized to pay, in full, all amounts provided in such Monthly Fee Statement without further notice to any party or order of the Bankruptcy Court. The Plan Administrator shall include any amounts paid to the Plan Administrator and the Plan Administrator Professionals in the post-confirmation quarterly reports required filed with the Bankruptcy Court.

5.4.5 Indemnification of the Plan Administrator and Related Parties. The Debtor and the Post-Effective Date Debtor shall indemnify and hold harmless: (i) the Plan Administrator (solely in his or her capacity as such); and (ii) the Plan Administrator Professionals (collectively, the “**Indemnified Parties**”), with respect to any and all liabilities, losses, damages, claims, costs and expenses arising out of or due to their post-Effective Date actions or omissions, or consequences of such actions or omissions, taken in connection with the Plan, the Plan Administrator Agreement and the Confirmation Order, other than acts or omissions, or consequences of such post-Effective Date actions or omissions, resulting from such Indemnified Party’s bad faith, willful misconduct (including, without limitation, actual fraud) or gross negligence. To the extent that an Indemnified Party asserts a claim for indemnification as provided above, (i) any payment on account of such claim shall be paid solely from the Estate and (ii) the legal fees and related costs incurred by counsel to the Plan Administrator in monitoring and participating in the defense of such claims

giving rise to the asserted right of indemnification shall be advanced to such Indemnified Party (and such Indemnified Party undertakes to repay such amounts if it ultimately shall be determined that such Indemnified Party is not entitled to be indemnified therefore) out of the Estate or any insurance. The indemnification provisions of the Plan Administrator Agreement shall remain available to and be binding upon any former Plan Administrator or the estate of any decedent of the Plan Administrator and shall survive the termination of the Plan Administrator Agreement.

5.4.6 Insurance. The Plan Administrator shall be authorized to obtain and pay for, out of the funds of the Estate, all reasonably necessary insurance coverage for him or herself, his or her agents, representatives, employees or independent contractors and the Debtor, including, but not limited to, coverage with respect to: (i) any property that is or may in the future become the property of the Debtor or the Estate; and (ii) the liabilities, duties and obligations of the Plan Administrator and his or her agents, representatives, employees or independent contractors under the Plan Administrator Agreement, the latter of which insurance coverage may remain in effect for a reasonable period of time as determined by the Plan Administrator after the termination of the Plan Administrator Agreement.

5.4.7 Preservation of Retained Causes of Action. Except as expressly set forth in the Plan or the Confirmation Order, the Post-Effective Date Debtor shall retain all Retained Causes of Action and nothing contained in the Plan or the Confirmation Order shall be deemed to be a release, waiver or relinquishment of any such Retained Causes of Action. The Post-Effective Date Debtor or the Plan Administrator, as applicable, shall have, retain, reserve and be entitled to assert all such Retained Causes of Action as fully as if the Chapter 11 Case had not been commenced, and all of the Post-Effective Date Debtor's legal and equitable rights respecting any Claim that are not specifically waived or relinquished by the Plan, the Confirmation Order, or any Final Order (including settlement or other agreements authorized thereby) may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

5.5 Funding of Reserves.

5.5.1 Professional Fee Reserve. On the Effective Date, the Plan Administrator shall establish the Professional Fee Reserve as set forth in Section 11.2 of the Plan.

5.5.2 Other Reserves. The Plan Administrator shall use Cash to establish and administer any other necessary reserves that may be required to effectuate the Plan and the Distributions to Holders of Allowed Claims hereunder or the Plan Administrator Agreement, including the Disputed Claims Reserve.

ARTICLE VI

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

6.1 Executory Contracts and Unexpired Leases. Subject to the occurrence of the Effective Date, all executory contracts and unexpired leases of the Debtor that have not been assumed, assumed and assigned, or rejected, prior to the Effective Date, or are not subject to a motion to assume or reject Filed before the Effective Date, shall be deemed rejected pursuant to the Confirmation Order, as of the Effective Date, other than the Insurance Contracts. For the

avoidance of doubt, any post-petition consulting or transition services agreements shall not be deemed rejected as of the Effective Date. *Any Creditor asserting a Rejection Claim shall File a proof of claim with the Debtor's claims and noticing agent, Donlin, Recano & Company, LLC ("DRC") (i) electronically, through the online Proof of Claim Form available at <http://www.donlinrecano.com/alpha> or (ii) by First-Class Mail, Hand Delivery or Overnight Mail at the applicable address below, within thirty (30) days of the Effective Date, and shall also serve such proof of claim upon the Plan Administrator.*

If by First-Class Mail:

Donlin, Recano & Company, Inc.
Re: Alpha Entertainment LLC
P.O. Box 199043
Blythebourne Station
Brooklyn, NY 11219

If by Hand Delivery or Overnight Mail:

Donlin, Recano & Company, Inc.
Re: Alpha Entertainment LLC
6201 15th Avenue
Brooklyn, NY 11219

6.2 Rejection Claims. Any Rejection Claims arising from the Plan that are not timely Filed pursuant to Section 6.1 of the Plan shall be forever disallowed and barred. If one or more Rejection Claims are timely Filed pursuant to Section 6.1 of the Plan, the Post-Effective Date Debtor may File an objection to any Rejection Claim on or prior to the Claim Objection Deadline.

ARTICLE VII

PROVISIONS GOVERNING DISTRIBUTIONS

7.1 Interest on Claims. Except to the extent provided in section 506(b) of the Bankruptcy Code, the Plan or the Confirmation Order, post-petition interest, penalties or fees shall not accrue or be paid on Allowed Claims, and no Holder of an Allowed Claim shall be entitled to interest accruing on any Allowed Claim from and after the Petition Date.

7.2 Distributions by Post-Effective Date Debtor. The Plan Administrator or its designee, on behalf of the Post-Effective Date Debtor, shall serve as the disbursing agent under the Plan with respect to Distributions to Holders of Allowed Claims (provided that the Post-Effective Date Debtor may hire professionals or consultants to assist with making Distributions). The Post-Effective Date Debtor shall make all Distributions required to be made to such Holders of Allowed Claims pursuant to the Plan, the Confirmation Order and the Plan Administrator Agreement. The Post-Effective Date Debtor shall not be required to give any bond or surety or other security for the performance of the Plan Administrator's duties as disbursing agent unless otherwise ordered by the Bankruptcy Court.

7.3 Distributions for Claims Allowed as of the Effective Date. Except as otherwise provided herein or as ordered by the Bankruptcy Court, all Distributions to be made on account of Claims

that are Allowed Claims as of the Effective Date shall be made on the initial distribution date by the Post-Effective Date Debtor. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to the terms and conditions of the Plan and the Plan Administrator Agreement. No Distribution shall be made on account of, without limitation, any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date; (ii) is listed in the schedules as contingent, unliquidated, disputed or in a zero amount, and for which a proof of claim has not been timely filed; or (iii) is evidenced by a proof of claim that has been amended by a subsequently filed proof of claim.

7.4 Means of Cash Payment.

(a) Cash payments under the Plan shall be made, at the option, and in the sole discretion, of the Post-Effective Date Debtor, by wire, check or such other method as the Post-Effective Date Debtor deems appropriate under the circumstances. Cash payments to foreign creditors may be made, at the option, and in the sole discretion, of the Post-Effective Date Debtor, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to the Plan in the form of checks issued by the Post-Effective Date Debtor shall be null and void if not cashed within ninety (90) days of the date of the issuance thereof. Requests for reissuance of any check within ninety days (90) of the date of the issuance thereof shall be made directly to the Post-Effective Date Debtor.

(b) For purposes of effectuating Distributions under the Plan, any Claim denominated in foreign currency shall be converted to U.S. Dollars pursuant to the applicable published exchange rate in effect on the Petition Date.

7.5 Fractional Distributions. Notwithstanding anything in the Plan to the contrary, no payment of fractional cents shall be made pursuant to the Plan. Whenever any payment of a fraction of a cent under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole penny (up or down), with half cents or more being rounded up and fractions less than half of a cent being rounded down.

7.6 De Minimis Distributions. Notwithstanding anything to the contrary contained in the Plan, the Post-Effective Date Debtor shall not be required to distribute, and shall not distribute, Cash or other property to the Holder of any Allowed Claim if the amount of Cash or other property to be distributed on account of such Claim is less than \$100. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than \$100 shall be forever barred from asserting such Claim against the Estate.

7.7 Delivery of Distributions. All Distributions to Holders of Allowed Claims shall be made at the address of such Holder as set forth in the claims register maintained in the Chapter 11 Case (subject to, after the Effective Date, a change of address notification provided by a Holder in a manner reasonably acceptable to the Post-Effective Date Debtor) or, in the absence of a filed-proof of claim, the Schedules. If a Distribution is returned as undeliverable, the Post-Effective Date Debtor shall use reasonable efforts to determine such Holder's then-current address, but shall have no affirmative obligation to locate such current address. If the Post-Effective Date Debtor cannot determine, or is not notified of, a Holder's then-current address within ninety (90) days after the Effective Date, the Distribution reserved for such Holder shall be deemed an unclaimed

Distribution. The responsibility to provide the Post-Effective Date Debtor a current address of a Holder of Claims shall always be the responsibility of such Holder. Except as set forth above, nothing contained in the Plan shall require the Post-Effective Date Debtor to attempt to locate any Holder of an Allowed Claim. Amounts in respect of undeliverable Distributions made by the Post-Effective Date Debtor shall be held in trust on behalf of the Holder of the Allowed Claim to which they are payable by the Post-Effective Date Debtor until the earlier of the date that such undeliverable Distributions are claimed by such Holder and ninety (90) days after the date the undeliverable Distributions were made. The Post-Effective Date Debtor shall have no obligation to recognize the sale or transfer of any Claim that occurs after the Confirmation Date.

7.8 Withholding, Payment and Reporting Requirements with Respect to Distributions.

All Distributions under the Plan shall, to the extent applicable, comply with all tax withholding, payment and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority, and all Distributions shall be subject to any such withholding, payment and reporting requirements. The Post-Effective Date Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment and reporting requirements. The Post-Effective Date Debtor may require, in the Post-Effective Date Debtor's sole and absolute discretion and as a condition to the receipt of any Distribution, that the Holder of an Allowed Claim complete and return to the Post-Effective Date Debtor the appropriate Form W-8 or Form W-9, as applicable, to each Holder. Notwithstanding any other provision of the Plan, (a) each Holder of an Allowed Claim that is to receive a Distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations, on account of such Distribution, and including, in the case of any Holder of a Disputed Claim that has become an Allowed Claim, any tax obligation that would be imposed upon the Estate in connection with such Distribution; and (b) no Distribution shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements reasonably satisfactory to the Post-Effective Date Debtor for the payment and satisfaction of such withholding tax obligations or such tax obligation that would be imposed upon the Estate in connection with such Distribution.

7.9 Setoffs. The Post-Effective Date Debtor may, but shall not be required to, set off against any Claim, any payments, Retained Causes of Actions or other Distributions to be made by the Post-Effective Date Debtor pursuant to the Plan in respect of such Claim, any claims of any nature whatsoever that the Debtor or the Estate may have against the Holder of such Claim; *provided, however,* that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor, the Estate or the Post-Effective Date Debtor of any such claim that it may have against such Holder, provided further, that if the Post-Effective Date Debtor set off any Avoidance Action or Retained Cause of Action against the recovery to any Holder of a Claim pursuant to this Section 7.9, the Post-Effective Date Debtor shall not be deemed to have impaired, estopped, waived, or released any rights to prosecute the same such Avoidance Action or Retained Cause of Action against any other Person or Entity.

7.10 No Distribution in Excess of Allowed Amounts. Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution of a value as of the Effective Date in excess of the Allowed amount of such Claim.

7.11 Allocation of Distributions. All Distributions received under the Plan by Holders of Claims shall be deemed to be allocated first to the principal amount of such Claim as determined for United States federal income tax purposes and then to accrued interest, if any, with respect to such Claim.

7.12 Forfeiture of Distributions. If the Holder of an Allowed Claim fails to cash a check payable to it within the time period set forth in Section 7.4(a) of the Plan, fails to claim an undeliverable Distribution within the time limit set forth in Section 7.7, or fails to complete and return to the Post-Effective Date Debtor the appropriate Form W-8 or Form W-9 within one hundred twenty (120) days of the written request by the Post-Effective Date Debtor for the completion and return to it of the appropriate form pursuant to Section 7.8, then such Holder shall be deemed to have forfeited its right to any Distributions from the Estate (or the proceeds thereof) and the Post-Effective Date Debtor. The forfeited Distributions shall become unrestricted Assets, and shall be redistributed to Holders of Allowed Claims in accordance with the terms of the Plan after reserving as necessary for payment of expenses of the Plan Administrator and otherwise in compliance with the Plan and the Plan Administrator Agreement. In the event the Post-Effective Date Debtor determines, in the Post-Effective Date Debtor's sole discretion, that any such amounts are too small in total to economically redistribute to the Holders of Allowed Claims, the Post-Effective Date Debtor may instead donate such amounts to a charitable organization(s), free of any restrictions thereon, notwithstanding any federal or state escheat laws to the contrary.

ARTICLE VIII

PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS AND DISTRIBUTIONS WITH RESPECT THERETO

8.1 Claims Administration Responsibility. Except as otherwise specifically provided in the Plan and the Plan Administrator Agreement, after the Effective Date, the Post-Effective Date Debtor shall have the authority (a) to file, withdraw or litigate to judgment objections to Claims; (b) to settle, compromise or Allow any Claim or Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; (c) to amend the Schedules in accordance with the Bankruptcy Code; and (d) 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. Any agreement entered into by the Post-Effective Date Debtor in accordance with the terms of the Plan and the Confirmation Order with respect to the allowance of any Claim shall be conclusive evidence and a final determination of the Allowance of such Claim.

8.2 Claim Objections. All objections to Claims (other than (i) Administrative Claims and (ii) Professional Fee Claims, which Professional Fee Claims shall be governed by Section 11.2 of the Plan) shall be Filed on or before the Claim Objection Deadline, which date may be extended by the Bankruptcy Court upon a motion filed by the Post-Effective Date Debtor on or before the Claim Objection Deadline with notice only to those parties entitled to notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 as of the filing of such motion. The Filing of a motion to extend the Claim Objection Deadline shall automatically extend the Claim Objection Deadline until a final order is entered by the Bankruptcy Court. In the event that such a motion to extend the Claim Objection Deadline is denied, the Claim Objection Deadline shall be the later of the

then-current Claim Objection Deadline (as previously extended, if applicable) or thirty (30) days after entry of a Final Order denying the motion to extend the Claim Objection Deadline.

8.3 No Distributions Pending Allowance. Notwithstanding any other provision of the Plan or the Plan Administrator Agreement, no payments or Distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by a Final Order, and the Disputed Claim has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor or the Post-Effective Date Debtor on account of a Retained Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

8.4 Estimation of Contingent or Unliquidated Claims. The Post-Effective Date Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal relating to any such objection. In the event the Bankruptcy Court so estimates any contingent or unliquidated Claim, that estimated amount shall constitute the Allowed amount of such Claim. All of the Claims objection, estimation and resolution procedures in Section 8 are cumulative and are not necessarily exclusive of one another.

8.5 Amendments to Claims. On or after the Effective Date, a Claim may not be filed or amended to increase liability or to assert new liabilities without the prior authorization of the Bankruptcy Court or the Post-Effective Date Debtor and any such new or amended Claim filed without prior authorization shall be deemed disallowed in full and expunged without any further action. Any Claims filed after the applicable deadlines in the Bar Date Order or the Plan shall be automatically deemed disallowed in full and expunged without further action, unless otherwise ordered by the Bankruptcy Court.

ARTICLE IX

CONDITIONS PRECEDENT TO THE OCCURRENCE OF THE EFFECTIVE DATE

9.1 Conditions to the Occurrence of the Effective Date. The Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived, as applicable, pursuant to Section 9.3 of the Plan:

- (a) the Bankruptcy Court shall have entered the Confirmation Order;
- (b) the Confirmation Order shall not be subject to any stay;
- (c) the Plan Administrator Agreement shall have been executed, and a Plan Administrator shall have been appointed;
- (d) the Amended Operating Agreement shall have been executed;

(e) the Professional Fee Reserve shall be funded in Cash pursuant to and in accordance with Sections 5.6 and 11.2 of the Plan in an amount agreed to by the Debtor and the Committee or, if there is a dispute concerning the amount of the funding required, in an amount fixed by the Bankruptcy Court; and

(f) all actions, documents, and agreements necessary to implement the provisions of the Plan to be effectuated on or prior to the Effective Date shall be reasonably satisfactory to the Debtor and the Committee, and such actions, documents, and agreements shall be effective or executed and delivered.

9.2 Waiver of Conditions to the Occurrence of the Effective Date. The conditions to the Effective Date set forth in Section 9.1 of the Plan, other than 9.1(a), may be waived in writing by mutual written agreement, including by electronic mail, of the Debtor and the Committee at any time without further Order.

9.3 Effect of Non-Occurrence of Conditions to the Effective Date. If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 9.1 and 9.2 of the Plan, the Debtor reserves all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated. If the Confirmation Order is vacated pursuant to this Section 9.3 of the Plan, (i) the Plan shall be null and void in all respects; and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or any Interests, or (b) prejudice in any manner the rights of the Debtor, the Estate or any other Person or Entity.

ARTICLE X

RETENTION OF JURISDICTION

10.1 Scope of Retained Jurisdiction. Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, and except as otherwise ordered by the Bankruptcy Court, the Bankruptcy Court shall retain jurisdiction over all matters arising out of, or related to, the Chapter 11 Case and the Plan to the fullest extent permitted by law, including, among other things, jurisdiction to do the following:

(a) allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim not otherwise Allowed under the Plan, including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the allowance or priority of Claims;

(b) hear and determine all applications for compensation and reimbursement of expenses of Professionals under the Plan or under sections 327, 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

(c) hear and determine all matters with respect to the assumption, assignment or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation or allowance of any Claims arising therefrom;

(d) effectuate performance of and payments under the provisions of the Plan and any agreement or order of the Bankruptcy Court with respect to the sale of the Debtor's Assets prior to the Effective Date and enforce remedies upon any default under the Plan and any such sale agreement or order;

(e) hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters that are pending as of the Effective Date, that are arising out of, under or related to, the Chapter 11 Case, including, without limitation, the Retained Causes of Action;

(f) enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created, executed or contemplated in connection with the Plan, the Disclosure Statement or the Confirmation Order;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan, including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(h) consider any modifications of the Plan, cure any defect or omission, or reconcile any inconsistency in any Order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(i) 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 the implementation, consummation or enforcement of the Plan or the Confirmation Order;

(j) enter and implement such Orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;

(k) hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, any agreement or Final Order of the Bankruptcy Court, or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with any of the foregoing documents and Orders;

(l) enforce, interpret and determine any disputes arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(m) except as otherwise limited herein, recover all Assets of the Debtors, wherever located;

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

(o) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(p) resolve any cases, controversies, suits or disputes related to the Estates, including, but not limited to, the Debtor's Assets; and

(q) enter a final decree closing the Chapter 11 Case.

10.2 Failure of the Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising, or declines to exercise, jurisdiction or is otherwise without jurisdiction over any matter arising in, arising under, or related to the Chapter 11 Case, including the matters set forth in Section 10.1 of the Plan, the provisions of this Article X shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

ARTICLE XI

MISCELLANEOUS PROVISIONS

11.1 Administrative Claims Bar Date. *All requests for payment of an Administrative Claim (other than a Section 503(b)(9) Claim) arising on or after the Petition Date must be Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtor, and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date.* In the event of an objection to allowance of an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim.

11.2 Professional Fee Claims. (a) *All final requests for payment of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code must be made by application Filed with the Bankruptcy Court and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtor and counsel to the U.S. Trustee no later than thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court.* Objections to such applications must be Filed and served on counsel to the Plan Administrator, counsel to the Post-Effective Date Debtor, counsel to the Committee, counsel to the U.S. Trustee and the requesting Professional on or before the date that is fourteen (14) days after the date on which the applicable application was served (or such longer period as may be allowed by Order of the Bankruptcy Court or by agreement with the requesting Professional); (b) all Professional Fee Claims shall be paid by the Estate to the extent approved by Order of the Bankruptcy Court within five (5) Business Days from entry of such Order. On or before the Effective Date, the Debtor shall establish the Professional Fee Reserve, which shall only be used to pay Professional Fee Claims, unless and until all Professional Fee Claims have been paid in full, otherwise satisfied or withdrawn. The Professional Fee Reserve shall vest in the Estate and shall be maintained by the Post-Effective Date Debtor in accordance with the Plan and the Plan Administrator Agreement. The Estate shall fund the Professional Fee Reserve on the Effective Date in an amount that is agreed upon by the Debtor and the Committee and that approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims. If the Debtor and the Committee are unable to agree on the amount in which the Professional Fee Reserve is to be funded, the Debtor and the Committee shall submit the issue to the Bankruptcy Court, which, following notice and a hearing, shall fix the amount of the required Professional Fee Reserve. Any excess funds in the Professional Fee Reserve shall be released back to the Estate to be used for other purposes consistent with the Plan and the Plan Administrator Agreement.

11.3 Payment of Statutory Fees; Filing of Quarterly Reports. All fees payable pursuant to section 1930 of title 28 of the United States Code prior to the Effective Date shall be paid on or before the Effective Date. All such fees that arise after the Effective Date shall be paid by the Estate, the Post-Effective Date Debtor and the Plan Administrator in the ordinary course. The Post-Effective Date Debtor and the Plan Administrator shall have the obligation to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code until the Chapter 11 Case is closed, dismissed or converted. Notwithstanding anything to the contrary in the Plan, the U.S. Trustee shall not be required to file any proofs of claim with respect to quarterly fees payable pursuant to section 1930 of title 28 of the United States Code.

11.4 Dissolution of Committee. On the Effective Date, the Committee shall dissolve and all members, ex officio members, employees, attorneys, financial advisors, other Professionals or other agents thereof shall be released from all rights and duties arising from or related to the Chapter 11 Case or the Plan and its implementation, and the retention or employment of the Committee's attorneys and financial advisors and other agents shall terminate, *provided, however*, that the Committee shall continue in existence and its Professionals shall continue to be retained with respect to (i) applications Filed or to be Filed pursuant to sections 330 and 331 of the Bankruptcy Code and (ii) any appeals of the Confirmation Order.

11.5 Modifications and Amendments.

(a) The Debtor may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. All alterations, amendments or modifications to the Plan must comply with section 1127 of the Bankruptcy Code. The Debtor shall provide parties in interest with notice of such amendments or modifications as may be required by the Bankruptcy Rules or Order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

(b) After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtor or the Post-Effective Date Debtor, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement approved with respect to the Plan or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan. Such proceedings must comply with section 1127 of the Bankruptcy Code. To the extent required, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or an order of the Bankruptcy Court. A Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended, modified or clarified, if the proposed alteration, amendment, modification or clarification does not materially and adversely change the treatment of the Claim of such Holder.

11.6 Severability of Plan Provisions. If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original

purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan 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, is valid and enforceable pursuant to its terms.

11.7 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, personal representative, successor or assign of such Entity.

11.8 Post-Effective Date Compromises and Settlements. From and after the Effective Date, the Post-Effective Date Debtor may compromise and settle Claims against the Debtor and the Estate, as well as the Retained Causes of Action, without any further approval by or notice to the Bankruptcy Court.

11.9 Binding Effect of Plan. Upon the Effective Date, section 1141 of the Bankruptcy Code shall become applicable with respect to the Plan and the Plan shall be binding on all parties to the fullest extent permitted by section 1141(a) of the Bankruptcy Code.

11.10 Non-Discharge of the Debtors; Injunction. In accordance with section 1141(d)(3) of the Bankruptcy Code, the Plan does not discharge the Debtor. Section 1141(c) of the Bankruptcy Code nevertheless provides, among other things, that the property dealt with by the Plan is free and clear of all Claims and Interests. As such, no Person or Entity holding a Claim or Interest may receive any payment from, or seek recourse against, any Assets or property of the Debtor and the Estate or the Post-Effective Date Debtor other than Assets or property required to be distributed to that Person or Entity under the Plan. As of the Effective Date, all parties are precluded from asserting against any Assets or property of the Debtor, the Estate and the Post-Effective Date Debtor any Claims, rights, causes of action, liabilities or Interests based upon any act, omission, transaction or other activity that occurred before the Effective Date except as expressly provided in the Plan or the Confirmation Order.

Except as otherwise expressly provided for in the Plan or the Confirmation Order, all Persons and Entities are permanently enjoined, on and after the Effective Date, on account of any Claim or Interest, from:

(a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor, the Estate, the Post-Effective Date Debtor, their successors and assigns and any of their Assets and properties;

(b) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the Debtor, the Estate, the Post-Effective Date Debtor, their successors and assigns and any of their Assets and properties;

(c) creating, perfecting or enforcing any encumbrance of any kind against the Debtor, the Estate, the Post-Effective Date Debtor, their successors and assigns and any of their Assets and properties;

(d) asserting any right of setoff or subrogation of any kind against any obligation due from the Debtor, the Estate, the Post-Effective Date Debtor or their successors and assigns, or against any of their Assets and properties, except to the extent that a right to setoff or subrogation is asserted in a timely filed proof of claim; or

(e) commencing or continuing in any manner any action or other proceeding of any kind in respect of any Claim, Interest or cause of action released or settled hereunder.

From and after the Effective Date, all Persons and Entities are permanently enjoined from commencing or continuing in any manner against the Debtor, the Estate, the Post-Effective Date Debtor, the Released Parties, their successors and assigns and any of their Assets and properties, any suit, action or other proceeding, on account of or respecting any claim, interest, demand, liability, obligation, debt, right, cause of action, interest or remedy released or to be released pursuant to the Plan or the Confirmation Order.

11.11 Releases and Related Matters.

(a) **Releases by Debtor.** As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of the Chapter 11 Case and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and the Chapter 11 Case, the Released Parties are deemed forever released by the Debtor and the Estate, and anyone claiming by or through the Debtor and the Estate, from any and all claims, interests, obligations, rights, suits, damages, causes of action, (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtor and the Estate, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtor or the Estate would have been legally entitled to assert in their own right or on behalf of the Holder of any Claim or Interest, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Estate, the Chapter 11 Case, the Plan, the Disclosure Statement or related agreements, instruments or other documents in the Chapter 11 Case.

(b) **Releases by Holders of Claims.** As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of the Chapter 11 Case and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan and the Chapter 11 Case, and subject to Section 11.11(d) of the Plan, each of the Releasing Parties shall be deemed to have conclusively, absolutely,

unconditionally, irrevocably and forever, released the Released Parties from any and all claims, interests, obligations, rights, suits, damages, causes of action (including any and all causes of action under chapter 5 of the Bankruptcy Code), remedies and liabilities whatsoever, including any derivative claims or claims asserted or assertible on behalf of the Debtor and the Estate, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereafter arising, in law, equity or otherwise, that such Releasing Party would have been legally entitled to assert (whether individually or collectively), based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Estate, the Chapter 11 Case, the Plan, the Disclosure Statement or related agreements, instruments or other documents; *provided, however*, that nothing herein shall be deemed a waiver or release of any right of any such Releasing Parties to receive a Distribution pursuant to the terms of the Plan; *provided further, however*, that the foregoing provisions of this release in Section 11.11(b) of the Plan shall not operate to waive, release or otherwise impair any causes of action arising from criminal acts, willful misconduct, actual fraud, or gross negligence of such applicable Released Party as determined by Final Order of the Bankruptcy Court or any other court of competent jurisdiction. For the avoidance of doubt, notwithstanding anything to the contrary herein, the foregoing release by the Releasing Parties is not, and shall not be deemed to be, in exchange for a waiver of the Debtor's rights or claims against the Releasing Parties, including the Debtor's rights to assert setoffs, recoupments or counterclaims, or to object or assert defenses to any Claim or Interest, and all such rights and claims are expressly reserved. Notwithstanding any of the foregoing, nothing in this Section is intended to limit or otherwise modify any releases or waivers that are separately provided for in any other Final Order (including settlement or other agreements authorized thereby) of the Bankruptcy Court.

(c) Entry of the Confirmation Order shall constitute (i) the Bankruptcy Court's approval of the releases set forth in this Section 11.11; and (ii) the Bankruptcy Court's findings that, among other things, such releases are (1) in the best interests of the Debtor, the Estate and all Holders of Claims that are Releasing Parties, (2) fair, equitable and reasonable, (3) given and made after due notice and opportunity for objection and hearing, (4) consensual, (5) supported by consideration, and (6) a bar to any of the Releasing Parties asserting any released claim against any of the Released Parties.

(d) Each Holder of a Claim in a Class deemed to accept the Plan and Class 3 shall be a Releasing Party and, as such, provides the releases set forth in Section 11.11(b) of the Plan, unless such Holder timely submits a Release Opt-Out indicating such Holder's decision to not participate in the releases set forth in Section 11.11(b) of the Plan, or Files an objection to the releases in Section 11.11(b) of the Plan prior to the deadline to object to Confirmation of the Plan.

11.12 Exculpation and Limitation of Liability. On the Effective Date, for good and valuable consideration, the adequacy of which is hereby confirmed, to the maximum extent permitted by law, none of the Exculpated Parties shall have or incur any liability to any Person or Entity, including, without limitation, to any Holder of a Claim or an Interest, for any act or omission in connection with, relating to, or arising out of the Chapter 11 Case, the

formulation, negotiation, preparation, dissemination, solicitation of acceptances, implementation, confirmation or consummation of the Plan, the Disclosure Statement, the Plan Administrator Agreement or any contract, instrument, release or other agreement or document created, executed or contemplated in connection with the Plan, or the administration of the Plan, or the Assets and property to be distributed under the Plan, or for any act taken or omitted to be taken on or after the Petition Date and prior to or on the Effective Date; *provided, however*, that the exculpation provisions of this Section 11.12 shall not apply to acts or omissions constituting actual fraud, willful misconduct or gross negligence by such Exculpated Party, as determined by a Final Order. The Confirmation Order and the Plan shall serve as a permanent injunction against any Person or Entity seeking to enforce any claim or cause of action against the Exculpated Parties that has been exculpated pursuant to this Section 11.12 of the Plan.

11.13 Term of Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date (including any injunctions or stays contained in or arising from the Plan or the Confirmation Order), shall remain in full force and effect.

11.14 Revocation, Withdrawal or Non-Consummation. The Debtor reserves the right to revoke or withdraw the Plan at any time prior to the Confirmation Date and to file subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan prior to the Confirmation Date, or if Confirmation or the Effective Date does not occur, then (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims) and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims against, or any Interests in, the Debtor, or any Avoidance Actions, Retained Causes of Action or other claims by or against the Debtor or any Entity, (ii) prejudice in any manner the rights of any Debtor or any Entity in any further proceedings involving the Debtor or (iii) constitute an admission of any sort by the Debtor or any other Entity.

11.15 Computation of Time. In computing any period of time prescribed or allowed by the Plan, the provisions of Rule 9006(a) of the Bankruptcy Rules shall apply.

11.16 Headings. The headings of articles, paragraphs and subparagraphs of the Plan are inserted for convenience only and shall not affect the interpretation of any provision of the Plan.

11.17 Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules), and except as otherwise provide herein, the laws of (a) the State of Delaware shall govern the construction and implementation of the Plan and (except as may be provided otherwise in any such agreements, documents or instruments) any agreements, documents and instruments executed in connection with the Plan and (b) the laws of the state of formation of the Debtor shall govern corporate governance matters with respect to the Debtor; in each case without giving effect to the principles of conflicts of law thereof.

11.18 Notices. Following the Effective Date, all pleadings and notices Filed in the Chapter 11 Case shall be served solely on (i) the Post-Effective Date Debtor and their counsel, (ii) the U.S. Trustee, (iii) any party whose rights are affected by the applicable pleading or notice and (iv) any party Filing a request with the Bankruptcy Court in the Chapter 11 Case to receive notices and papers in the Chapter 11 Case following the Effective Date.

11.19 Preservation of Retained Causes of Action.

11.19.1 Vesting of Causes of Action.

(a) Except as otherwise provided in the Plan or Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, any Retained Causes of Action that the Debtor may hold against any Person or Entity shall vest upon the Effective Date in the Post-Effective Date Debtor.

(b) Except as otherwise provided in the Plan or Confirmation Order, after the Effective Date, the Post-Effective Date Debtor shall have the exclusive right to institute, prosecute, abandon, settle or compromise any Retained Causes of Action, in accordance with the terms of the Plan and the Plan Administrator Agreement and without further order of or notice to the Bankruptcy Court, in any court or other tribunal, including, without limitation, in an adversary proceeding filed in the Chapter 11 Case.

11.19.2 Reservation of Causes of Action. Unless a Retained Cause of Action against a Holder or other Person or Entity is expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order or any Final Order, the Debtor, the Estate and the Post-Effective Date Debtor expressly reserve such Retained Cause of Action for later adjudication by the Post-Effective Date Debtor, including, without limitation, Retained Causes of Action of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believes to exist. Therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise), laches or the like, shall apply to such Retained Causes of Action upon or after the entry of the Confirmation Order or Effective Date based on the Disclosure Statement, Plan, or Confirmation Order, except where such Retained Causes of Action have been expressly waived, relinquished, released, compromised or settled in the Plan, the Confirmation Order, a Final Order of the Bankruptcy Court or, following the Effective Date, in a written agreement duly executed by the Post-Effective Date Debtor which agreement, by its terms, is not subject to Bankruptcy Court approval.

11.20 Bar Date Order. Nothing herein extends or otherwise modifies a bar date established in the Bar Date Order or other Final Order of the Bankruptcy Court.

11.21 Section 1146 Exemption. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan or the making or delivery of any instrument of transfer pursuant to, in implementation of, or as contemplated by the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in

implementation of, or as contemplated by the Plan, shall not be taxed under any state or local law imposing a stamp tax, transfer tax or any similar tax or fee.

11.22 Conflicts with the Plan. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement and any other Order in the Chapter 11 Case, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence; *provided, however*, that the Confirmation Order shall control and take precedence in the event of any inconsistency between the Confirmation Order, any provision of the Plan, and any of the foregoing documents.

11.23 No Stay of Confirmation Order. The Debtor will request that the Bankruptcy Court waive any stay of enforcement of the Confirmation Order otherwise applicable, including, without limitation, pursuant to Bankruptcy Rules 3020(e), 6004(h) and 7062.

ARTICLE XII

REQUEST FOR CONFIRMATION

12.1 Request for Confirmation. The Debtor requests Confirmation of the Plan in accordance with section 1129(b) of the Bankruptcy Code.

IN WITNESS WHEREOF, the Debtor has executed the Plan this 2nd day of November, 2020.

By: /s/ John Brecker

John Brecker, Independent Manager
Alpha Entertainment LLC

EXHIBIT B TO DISCLOSURE STATEMENT

Liquidation Analysis

ALPHA ENTERTAINMENT LLC - LIQUIDATION ANALYSIS

The Debtor believes that the Plan satisfies section 1129(a)(7) of the Bankruptcy Code and that each Holder of an Allowed General Unsecured Claim will receive value under the Plan on the Effective Date that is not less than the value such Holder would receive if the Debtor liquidated under chapter 7 of the Bankruptcy Code. This liquidation analysis (this “Liquidation Analysis”) and the conclusions set forth herein represent the Debtor’s best judgment regarding the results of such a liquidation. This Liquidation Analysis was prepared for the sole purpose of assisting the Bankruptcy Court in making the findings required under section 1129(a)(7) of the Bankruptcy Code and should not be used for any other purpose. Nothing contained in this liquidation analysis is intended as or constitutes a concession or admission for any purpose other than the presentation of a hypothetical chapter 7 liquidation analysis for purposes of meeting the requirements of section 1129(a)(7) of the Bankruptcy Code. Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Plan.

The Liquidation Analysis reflects the estimated Cash proceeds, net of liquidation-related costs, that would be realized if the Debtor liquidated under chapter 7 of the Bankruptcy Code. Also reflected is an analysis of estimated cash proceeds available under the Plan for purposes of comparison. A number of estimates and assumptions underlie the analysis that, while considered reasonable, are inherently subject to significant uncertainties and contingencies beyond the control of the Debtor, its management and its advisors. Independent accountants have not examined or reviewed this Liquidation Analysis. THERE CAN BE NO ASSURANCE THAT THE VALUES REFLECTED IN THE LIQUIDATION ANALYSIS WOULD BE REALIZED IF THE DEBTOR WAS, IN FACT, TO LIQUIDATE UNDER CHAPTER 7.

The Liquidation Analysis contains an estimate of the value of Claims that ultimately will become Allowed Claims. The Debtor has not completed a final evaluation of, nor has the Bankruptcy Court determined, the amount of each such Claim. Accordingly, the final amount of Allowed Claims may differ from the Claim amounts presented in this liquidation analysis.

Upon information and belief, the Debtor does not believe that any variance between the estimates contained herein and the final Allowed Claims would have a material effect on the liquidation analysis for purposes of section 1129(a)(7) of the Bankruptcy Code.

<i>Alpha Entertainment LLC - Chapter 7 Liquidation Analysis</i>				
Projected Effective Date/Conversion Date - December 11, 2020				
		Chapter 7	Plan Treatment	Note
A. Estimated Proceeds				
	Cash	\$7,090,340.00	\$7,090,340.00	1
	Miami Air International, Inc. Settlement ¹	\$1,524,799.76	\$1,524,799.76	
	Total Estimated Proceeds	\$8,615,139.76	\$8,615,139.76	2
B. Estimated Secured Claims				
	Secured Claims	\$2,658,319.04	\$2,658,319.04	3
	Estimated Total Distributions for Secured Claims	\$2,658,319.04	\$2,658,319.04	
C. Estimated Administrative Expense and Priority Claims				
	Unpaid Pre-Effective Date Administrative Expense Claims	\$119,567.52	\$119,567.52	
	Unpaid Priority Non-Tax and Priority Tax Claims	\$929,358.29	\$929,358.29	
	Estimated Total Distributions for Administrative Expense and Priority Claims	\$1,048,925.81	\$1,048,925.81	
D. Estimated Post-Conversion/Post-Effective Date Fees and Expenses				
	Chapter 7 Trustee Fees (3%)	\$256,360.20		4
	Chapter 7 Trustee Professional Fees and Expenses	\$350,000.00		
	Chapter 11 Plan Administrator Compensation, Fees and Expenses		\$225,000.00	5
	Chapter 11 U.S. Trustee Fees		\$100,000.00	
	Estimated Total Post-Conversion/Post-Effective Date Fees and Expenses	\$606,360.20	\$325,000.00	
	Estimated Total Proceeds Available for General Unsecured Claims	\$4,301,534.71	\$4,582,894.91	
E. Estimated Distributions to Unsecured Creditors: Chapter 7 vs. Chapter 11				
	General Unsecured Claims	\$45,768,215.65	\$45,768,215.65	6
	Estimated Total Distributions for General Unsecured Claims	\$4,301,534.71	\$4,582,894.91	
	Estimated Recovery Percentage for General Unsecured Claims	9.39%	10.01%	

¹ The Debtor reached a settlement with Miami Air International, Inc. ("Miami Air") in its chapter 7 bankruptcy case to recoup amounts deposited into escrow in accordance with a contractual agreement between the Debtor and Miami Air (the "Settlement"). The Debtor will seek Court approval of the Settlement, and upon the entry of an order approving the Settlement, the Debtor will receive \$1,524,799.76 to be distributed in accordance with the Plan.

Notes for Liquidation Analysis

1. Consists of the Debtor's projected Cash on hand as of December 11, 2020, which includes approximately \$2.3 million in restricted cash.
2. This Liquidation Analysis assumes that there will not be any recoveries from the prosecution and/or settlement of Retained Causes of Action.
3. According to the Debtor's review, which remains subject to further updates and verification, the only valid Secured Claims are certain obligations secured by prepetition letters of credit, as well as security deposits held by certain of the Debtor's former landlords. The Claim of the Debtor's prepetition lender (the "Prepetition Lender"), which was in the principal amount of \$8.25 million and secured by all of the Debtor's assets, was paid in full from proceeds of the Sale, upon the closing of the Sale.
4. Chapter 7 trustee fee estimated at 3.0% of total proceeds available for distribution.
5. The institutional case knowledge of the Professionals would likely result in a faster process and lower overall professional fees than conversion to chapter 7.
6. The estimated General Unsecured Claims pool is based on a review of the Schedules and filed proofs of Claim. The Debtor believes these Claims ultimately may aggregate to a lower amount after taking into account (i) the elimination of duplicate Claims, (ii) the amounts allowed for priority status under the Bankruptcy Code, (iii) all limitations or defenses under the Bankruptcy Code, (iv) offsetting Claims, and (v) the elimination of cure Claims paid by the Sale. For the Plan and this Liquidation Analysis, these Claim estimates exclude potential unfiled executory contract rejection Claims because the Buyer, pursuant to the Sale Order, has an extended period in which it can assume or reject the Debtor's executory contracts or unexpired leases and that period has not expired as of the time of preparing this Liquidation Analysis.