IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
INDIANAPOLIS DOWNS, LLC, *et al.*,[1]	Case No. 11-11046 (BLS)
Debtors.	(Joint Administration)

DISCLOSURE STATEMENT WITH RESPECT TO THE JOINT PLAN OF REORGANIZATION OF INDIANAPOLIS DOWNS, LLC AND INDIANA DOWNS CAPITAL CORP. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

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DATED: April 25, 2012

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are Indianapolis Downs, LLC (5457) and Indiana Downs Capital Corp. (3803). The Debtors' address is 4300 N. Michigan Road, Shelbyville, IN 46176.

THIS DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE UNDER SECTION 1125(b) OF THE BANKRUPTCY CODE FOR USE IN THE SOLICITATION OF ACCEPTANCES OF THE PLAN DESCRIBED HEREIN. ACCORDINGLY, THE FILING AND DISTRIBUTION OF THIS DISCLOSURE STATEMENT IS NOT INTENDED, AND SHOULD NOT BE CONSTRUED, AS A SOLICITATION OF ACCEPTANCES OF SUCH PLAN. THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THIS DISCLOSURE STATEMENT CONTAINS "ADEQUATE INFORMATION" WITHIN THE MEANING OF SECTION 1125(a) OF THE BANKRUPTCY CODE.

DISCLAIMER

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE JOINT PLAN OF REORGANIZATION OF INDIANAPOLIS DOWNS, LLC AND INDIANA DOWNS CAPITAL CORP. PROPOSED BY THE DEBTORS AND MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

EXCEPT AS OTHERWISE PROVIDED HEREIN, CAPITALIZED TERMS NOT OTHERWISE DEFINED IN THIS DISCLOSURE STATEMENT HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN. UNLESS OTHERWISE NOTED, ALL DOLLAR AMOUNTS PROVIDED IN THIS DISCLOSURE STATEMENT AND THE PLAN ARE GIVEN IN UNITED STATES DOLLARS.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATING TO THE PLAN, CERTAIN EVENTS THAT HAVE OCCURRED IN THE CHAPTER 11 CASES, AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTORS BELIEVE THAT ALL SUCH SUMMARIES ARE FAIR AND ACCURATE AS OF THE DATE HEREOF, SUCH SUMMARIES ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF THE UNDERLYING DOCUMENTS AND TO THE EXTENT THAT THEY MAY CHANGE AS PERMITTED BY THE PLAN AND APPLICABLE LAW. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT, EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE FINANCIAL INFORMATION, IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD-LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS, AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. EXCEPT WITH RESPECT TO THE PRO FORMA FINANCIAL PROJECTIONS PREPARED BY THE DEBTORS' MANAGEMENT SET FORTH IN THE ATTACHED EXHIBIT B (THE "**PROJECTIONS**") AND EXCEPT AS OTHERWISE SPECIFICALLY AND EXPRESSLY STATED HEREIN, THIS DISCLOSURE STATEMENT DOES NOT REFLECT ANY EVENTS THAT MAY OCCUR SUBSEQUENT TO THE DATE HEREOF AND THAT MAY HAVE A MATERIAL IMPACT ON THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS DO NOT UNDERTAKE ANY OBLIGATION TO, AND DO NOT INTEND TO, UPDATE THE PROJECTIONS; THUS, THE PROJECTIONS WILL NOT REFLECT THE IMPACT OF ANY SUBSEQUENT EVENTS NOT ALREADY ACCOUNTED FOR IN THE ASSUMPTIONS UNDERLYING THE PROJECTIONS. FURTHER, THE DEBTORS DO NOT ANTICIPATE

THAT ANY AMENDMENTS OR SUPPLEMENTS TO THIS DISCLOSURE STATEMENT WILL BE DISTRIBUTED TO REFLECT SUCH OCCURRENCES. ACCORDINGLY, THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCE IMPLY THAT THE INFORMATION HEREIN IS CORRECT OR COMPLETE AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF. MOREOVER, THE PROJECTIONS ARE BASED ON ASSUMPTIONS THAT, ALTHOUGH BELIEVED TO BE REASONABLE BY THE DEBTORS, MAY DIFFER FROM ACTUAL RESULTS.

ALL HOLDERS OF CLAIMS OR INTERESTS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, THE EXHIBITS ANNEXED TO THE PLAN, THE PLAN SUPPLEMENT DOCUMENTS ONCE FILED, THE RESTRUCTURING SUPPORT AGREEMENT THE RESTRUCTURING TERM SHEET AND THIS DISCLOSURE STATEMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE UNITED STATES BANKRUPTCY CODE AND RULE 3016(C) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW. THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "**SEC**"), OR ANY STATE SECURITIES COMMISSION, AND NEITHER THE SEC NOR ANY STATE SECURITIES COMMISSION HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OR CLAIMS OF THE DEBTORS IN THESE CASES SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER APPLICABLE EVIDENTIARY RULES. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS IN THESE CASES. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR WITH RESPECT

TO ANY QUESTIONS OR CONCERNS REGARDING TAX, SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, EACH HOLDER IS HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE; (B) SUCH DISCUSSION IS INCLUDED HEREIN BY THE DEBTORS IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

TABLE OF CONTENTS

Page

TABLE OF EXHIBITS

I. INTRODUCTION

Indianapolis Downs, LLC ("**Indianapolis Downs**"), and Indiana Downs Capital Corp. ("**IDCC**"), as debtors and debtors-in-possession (collectively, the "**Debtors**"), submit this disclosure statement (the "**Disclosure Statement**") pursuant to section 1125 of title 11 of the United States Code (the "**Bankruptcy Code**"), for use in the solicitation of votes on the Joint Plan of Reorganization of Indianapolis Downs, LLC and Indiana Downs Capital Corp. under Chapter 11 of the Bankruptcy Code, dated April 25, 2012 (as amended or modified pursuant to its terms, the "**Plan**"). A copy of the Plan is attached as Exhibit A to this Disclosure Statement. All capitalized terms used in this Disclosure Statement but not otherwise defined herein have the meanings ascribed to such terms in Article I of the Plan.

This Disclosure Statement sets forth certain information regarding the Debtors' prepetition operating and financial history, their reasons for seeking protection and reorganization under chapter 11 of the Bankruptcy Code, significant events that have occurred during the Chapter 11 Cases and the anticipated organization, operations, and financing of the Debtors upon their successful emergence from bankruptcy protection. This Disclosure Statement also describes certain terms and provisions of the Plan, the marketing process and the Sale Transaction to be conducted simultaneously with the Plan, certain effects of Confirmation of the Plan, certain risk factors associated with the Plan and the securities that may be issued under the Plan, and the manner in which Distributions will be made under the Plan. In addition, this Disclosure Statement discusses the Confirmation process and the voting procedures that Holders of Claims and Interests entitled to vote under the Plan must follow for their votes to be counted.

The Debtors engaged in extensive negotiations with the Restructuring Support Parties regarding the potential terms of the Debtors' restructuring. As a result of those negotiations, the Debtors determined it was in the best interest of their estates to pursue the Sale Transaction, while simultaneously pursuing the Confirmation of the Plan. To that end, the Debtors and the Restructuring Support Parties agreed to the material terms of the Debtors' restructuring process and entered into the Restructuring Support Agreement and the Restructuring Term Sheet to memorialize their agreement upon such process. The Restructuring Support Agreement is not binding upon the Debtors until this Disclosure Statement is approved by the Bankruptcy Court and even after such approval, is subject to certain termination events relating to, among other things, certain fiduciary requirements.

In order to pursue the Sale Transaction, the Debtors, in consultation with, and through, their professionals began a marketing process on March 26, 2012, which was designed to elicit the highest or otherwise best offer for the Assets. The Debtors, through their investment bankers, have contacted thirty-two (32) parties and have entered into non-disclosure agreements with twelve (12) of those interested parties thus far. The Debtors will provide those parties that executed a non-disclosure agreement with certain confidential information to allow those potentially interested parties to properly evaluate the Assets and submit an initial indication of interest. The deadline for submission of initial indications of interest was April 23, 2012. Upon receipt of the initial indications of interest offers, the Debtors, in consultation with their advisors and the advisors to the Restructuring Support Parties, will evaluate the initial indications of interest and the Debtors will determine the best path forward. The Debtors may select a stalking horse bidder at that time. If a stalking horse bidder is selected, the Debtors anticipate filing the

Sales Procedures Motion, which shall include negotiated bid protections and proceeding to an Auction. If a stalking horse bidder is not selected, or if the Debtors fail to receive sufficient interest, or insufficient offers, for the Assets, the Debtors will instead forgo an Auction and anticipate moving forward with the Recapitalization as described in more detail in the Plan.

THE DEBTORS BELIEVE THAT THE PLAN WILL ENABLE THEM TO SUCCESSFULLY REORGANIZE AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS AND THEIR CREDITORS AND EQUITY HOLDERS. THE DEBTORS URGE HOLDERS TO VOTE TO ACCEPT THE PLAN.

II. OVERVIEW OF THE PLAN

The following is a brief overview of the material provisions of the Plan and is qualified in its entirety by reference to the full text of the Plan. For a more detailed description of the terms and provisions of the Plan, see Article VI of this Disclosure Statement, entitled "Summary of the Plan of Reorganization."

The Plan designates five (5) Classes of Claims and one (1) Class of Interests in each of the Debtors. These Classes take into account the differing nature and priority of the various Claims and Interests under the Bankruptcy Code. The Plan contemplates that the Debtors will engage in a marketing process to determine whether a Sale Transaction can be achieved at a level of Consideration acceptable to the Restructuring Support Parties. In the event such a Sale Transaction cannot be achieved, the Plan provides for a recapitalization of the Debtors which will result in the Holders of the Prepetition Second Priority Notes and Prepetition Third Priority Notes owning the equity of the Reorganized Debtors (the "**Recapitalization**"). Distributions under the Plan will be determined by whether the Debtors ultimately consummate a Sale Transaction or the Recapitalization.

The Debtors believe that the Plan provides the best means currently available for the Debtors' emergence from chapter 11.

A. General Structure of the Plan and the Sale Transaction

The Debtors engaged in extensive negotiations with the Restructuring Support Parties regarding the terms of the structure of both the Plan which provides for a Sale Transaction at certain levels of Consideration or the Recapitalization if those levels of Consideration cannot be achieved. The Debtors began marketing the Assets on March 26, 2012 in an effort to determine whether a Sale Transaction that is acceptable to the Restructuring Support Parties and the Debtors can be achieved. Prior to the hearing on this Disclosure Statement, the Debtors intend to make a determination, in consultation with the Restructuring Support Parties, as to whether to move forward with the Sale Transaction (which could include the selection of a stalking horse bidder) or whether to proceed with the Recapitalization. If the Debtors determine that moving forward with the Sale Transaction is advisable, the Debtors anticipated filing the Sales Procedures Motion with this Court and conducting an Auction. However, if the Debtors fail to receive sufficient interest in the Assets, the Debtors will proceed with the Recapitalization provided for in the Plan. For a more detailed description of the terms

and provisions of the Sale Transaction, see Article VI of this Disclosure Statement, entitled "Summary of the Sale Transaction."

B. Material Terms of the Plan

Claims are treated generally in accordance with the priorities established under the Bankruptcy Code. Claims that have priority status under the Bankruptcy Code or that are secured by valid Liens on Collateral are to be paid in full, Reinstated or otherwise treated as provided in the Plan.

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

- The Debtors will be reorganized pursuant to the Plan and continue in operation unless a Sale Transaction is consummated.

- Allowed Administrative Claims and Priority Tax Claims will be paid in full as required by the Bankruptcy Code, unless otherwise agreed to by the Debtors (with the consent of the Restructuring Support Parties) and the Holders of such Claims.

- DIP Claims will be paid in full in Cash on the Effective Date.

- Allowed Other Priority Claims will be paid in full in Cash on or as soon as practicable after the later of the Effective Date or the date on which such Other Priority Claim is Allowed, unless otherwise agreed to by the Debtors (with the consent of the Restructuring Support Parties) and the Holders of such Claims.

- Allowed Other Secured Claims will either be reinstated in accordance with section 1124(2) of the Bankruptcy Code or will be paid in full in Cash on or as soon as practicable after the later of the Effective Date or the date on which such Other Secured Claim is Allowed, unless otherwise agreed to by the Debtors (with the consent of the Restructuring Support Parties) and the Holders of such Claims.

- Each Holder of a Class 3 Claim, shall receive, in full and complete settlement, release, and discharge of such Claim; (a) if a Sale Transaction occurs: its Pro Rata Share of the Net Sales Proceeds less the Required Third Lien Recovery Payment; provided, that a Holder of Class 3 Claims shall not recover more than its Allowed Class 3 Claim; or (b) if a Sale Transaction does not occur: its Pro Rata Share of (i) all of the New Second Lien Term Loan, or in the alternative, all of the proceeds from the Alternative Second Lien Financing; (ii) the percentage of the New Unsecured PIK Term Loan set forth in the Restructuring Term Sheet; and (iii) the percentage of the New Series A Warrants set forth in the Restructuring Term Sheet.

- Each Holder of an Allowed Class 4 Claim, in full and complete settlement, release, and discharge of such Claim; (a) if a Sale Transaction occurs: (x) its Pro Rata Share of the Required Third Lien Recovery Payment; and (y) its Pro Rata Share of any Net Sales Proceeds exceeding the Second Lien Full Payment Amount plus the Required Third Lien Recovery Payment; provided, that a Holder of Class 4 Claims shall not recover more than its Allowed Class 4 Claim; or (b) if a Sale Transaction does not occur its Pro Rata Share of (i) the percentage of the New Unsecured PIK Term Loan set forth in the Restructuring Term Sheet; (ii) the percentage of the New Series A Warrants set forth in the Restructuring Term Sheet; and (iii) the percentage of the New Series B Warrants set forth in the Restructuring Term Sheet.

- Each Holder of a General Unsecured Claim against Indianapolis Downs and/or IDCC shall not be entitled to receive or retain any monetary distributions or other property on account of such Claims under the Plan. All Allowed General Unsecured Claims against Indianapolis Downs and/or IDCC shall be deemed, settled, cancelled and extinguished on the Effective Date.

- Each Holder of an Allowed Interest in Indianapolis Downs shall not receive or retain any Distribution or other Property on account of such Interests. All Interests in Indianapolis Downs and all stock certificates, instruments, and other documents evidencing such Interests in Indianapolis Downs shall be cancelled as of the Effective Date.

- Each Holder of an Interest in IDCC shall not be entitled to receive or retain any monetary distributions or other property on account of such Interests under the Plan. As a matter of convenience the Debtors may elect to leave the Interests of IDCC in place on or after the Effective Date.

C. Summary of Treatment of Claims and Interests under the Plan

The table below summarizes the classification and treatment of the Claims and Interests under the Plan. Estimated Claim amounts are calculated as of the Petition Date. Estimated percentage recoveries are also set forth below for certain Classes of Claims. Estimated percentage recoveries have been calculated based upon a number of assumptions, including the estimated amount of Allowed Claims in each Class.

For certain Classes of Claims, the actual amounts of Allowed Claims could materially exceed or could be materially less than the estimated amounts shown in the table that follows. The Debtors have not yet fully reviewed and analyzed all Claims and Interests. Estimated Claim amounts for each Class set forth below are based upon the Debtors' review of their books and records and Filed Proofs of Claim, and include estimates of a number of Claims that are contingent, disputed, and/or unliquidated.

Description and Amount of Claims or Interests	Summary of Treatment
Unclassified: Administrative Claims[2] Estimated Aggregate Allowed amount of Administrative Claims exclusive of Professional Fee Claims: $7,500,000-$10,000,000	• Unimpaired • Except to the extent that an Allowed Administrative Claim has been paid prior to the Effective Date, or is otherwise provided for in the Plan, and unless otherwise agreed to by the Debtors (with the consent of the Restructuring Support Parties) and the Holder of an Allowed Administrative Claim, all Holders of an Allowed Administrative Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash on or as soon as is reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court and (iii) the date such Allowed Administrative Claim becomes due and payable; provided, however, that in the event a Sale Transaction is not consummated, the Debtors shall pay Allowed Administrative Claims in the ordinary course of business. In the event a Sale Transaction is consummated, Allowed Administrative Claims shall not include any Claims assumed under the Asset Purchase Agreement. • Administrative Claims are Unimpaired and are therefore not entitled to vote on the Plan. • Estimated Recovery 100%
Unclassified: Priority Tax Claims Estimated Aggregate Allowed amount of Priority Tax Claims: $1,000,000-$6,500,000	• Unimpaired • Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Effective Date or unless otherwise agreed to by the Debtors (with the consent of the Restructuring Support Parties) and the Holder of an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall, at the sole option of the Debtors or the Debtor Representative (with the consent of the Restructuring Support Parties if the payment is

[2] This estimate does not include Professional Fee Claims, exit financing fee estimates or ordinary course payables.

Description and Amount of Claims or Interests	Summary of Treatment
	other than as set forth in clause (i) below), as applicable, receive on account of such Allowed Priority Tax Claim and in full and complete settlement, release, and discharge of such Claim: (i) Cash in the amount equal to such Allowed Priority Tax Claim on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court; or (ii) Cash equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code (or such lesser rate as is agreed to by the Holder of such Allowed Priority Tax Claim), payable over a period ending no later than five (5) years from the Petition Date pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, however, that the Debtor Representative reserves the right to prepay such amounts at any time under the latter option. • Priority Tax Claims are Unimpaired and are therefore not entitled to vote on the Plan. • Estimated Recovery 100%
Unclassified: DIP Claims Estimated Aggregate Allowed amount of DIP Claims: $98,000,000-$101,000,000	• Unimpaired. • On the Effective Date, each Holder of an Allowed DIP Claim in full and complete settlement, release, and discharge of such Claim, shall be paid in full in Cash all outstanding principal and accrued but unpaid interest, costs, fees and expenses owing as of the Effective Date, or any other amounts due and owing under the DIP Credit Documents. The DIP Claims shall be Allowed in the amount set forth in the Plan Supplement. • DIP Claims are Unimpaired and are therefore not entitled to vote on the Plan. • Estimated Recovery: 100%
Professional Fee Claims	• All final requests for payment of Professional Fee

Description and Amount of Claims or Interests	Summary of Treatment
Estimated Aggregate Allowed amount of Professional Fee Claims: $6,000,000-$9,000,000	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 the Debtor Representative and the Restructuring Support Parties, their counsel and other necessary parties-in-interest **no later than sixty (60) days after notice of the Effective Date having been entered on the docket**, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on the Debtor Representative and the Restructuring Support Parties, their counsel and the requesting Professional or other Entity on or before the date that is thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable application was served. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court. • Professional Fee Claims are Unimpaired and are therefore not entitled to vote on the Plan. • Estimated Recovery: 100%
Classes 1A and 1B: Other Priority Claims - Indianapolis Downs and Other Priority Claims - IDCC Estimated Aggregate Allowed amount of Class 1 Claims: $300	• Unimpaired • Class 1 consists of Other Priority Claims against the Debtors. • The legal, equitable and contractual rights of the Holders of Allowed Class 1 Claims will be unaltered by the Plan. Unless otherwise agreed to by the Holder of an Allowed Class 1 Claim and the Debtors (with the consent of the Restructuring Support Parties), each Holder of an Allowed Class 1 Claim shall receive in full, final and complete satisfaction, settlement, release and discharge of such Allowed Class 1 Claim, payment of the Allowed Class 1 Claim in full in Cash on, or as

Description and Amount of Claims or Interests	Summary of Treatment
	soon as is reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court. • Class 1 Claims are Unimpaired and are therefore not entitled to vote on the Plan. • Estimated Recovery: 100%
Classes 2A and 2B: Other Secured Claims - Indianapolis Downs and Other Secured Claims – IDCC Estimated Aggregate Allowed amount of Class 2 Claims: $0-$4,000,000	• Unimpaired • Class 2 consists of Other Secured Claims against the Debtors. • On, or as soon as is reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court, each Holder of an Allowed Class 2 Claim shall receive, in full and complete settlement, release and discharge of such Claim, in the sole discretion of the Debtors or the Debtor Representative (with the consent of the Restructuring Support Parties), as applicable: (i) reinstatement and unimpairment of its Allowed Class 2 Claim in accordance with section 1124(2) of the Bankruptcy Code (notwithstanding any contractual provision or applicable non-bankruptcy law that entitles the Holder of an Allowed Class 2 Claim to demand or receive payment of such Allowed Class 2 Claim prior to the stated maturity of such Allowed Class 2 Claim from and after the occurrence of a default), or (ii) in exchange for such Other Secured Claim, either (a) Cash in the full amount of such Allowed Class 2 Claim, including any postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (b) the proceeds of the sale or disposition of the collateral securing such Allowed Class 2 Claim to the extent of the value of the Holder's secured interest in such collateral, (c) the collateral securing such Allowed Class 2 Claim and any interest on such Allowed Class 2 Claim required to be paid pursuant to section 506(b) of

Description and Amount of Claims or Interests	Summary of Treatment
	the Bankruptcy Code or (d) such other Distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code. • Class 2 Claims are Unimpaired, and therefore are not entitled to vote on the Plan. • Estimated Recovery: 100%
Classes 3A and 3B: Prepetition Second Priority Note Claims - Indianapolis Downs and Prepetition Second Priority Guarantee Claims - IDCC	• Impaired • Class 3 consists of the Prepetition Second Priority Note Claims against the Indianapolis Downs and the Prepetition Second Priority Guarantee Claims against the IDCC. • Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment, each Holder of such Allowed Class 3 Claim shall receive, in full and final satisfaction, settlement, release and compromise of such Claim: (A) if a Sale Transaction occurs: its Pro Rata Share of the Net Sales Proceeds less the Required Third Lien Recovery Payment; provided, that a Holder of Class 3 Claims shall not recover more than its Allowed Class 3 Claim; or (B) if a Sale Transaction does not occur: its Pro Rata Share of (a) all of the New Second Lien Term Loan, or in the alternative, all of the proceeds from the Alternative Second Lien Financing; (b) the percentage of the New Unsecured PIK Term Loan set forth in the Restructuring Term Sheet; and (c) the percentage of the New Series A Warrants set forth in the Restructuring Term Sheet. • Class 3 is Impaired, and Holders of Class 3 Claims will be entitled to vote to accept or reject the Plan.
Classes 4A and 4B Prepetition Third Priority Note Claims - Indianapolis Downs and Prepetition Third Priority	• Impaired • Class 4 consists of the Prepetition Third Priority

Description and Amount of Claims or Interests	Summary of Treatment
Guarantee Claims - IDCC	Note Claims against the Debtors. • Except to the extent that a Holder of an Allowed Class 4 Claim agrees to a less favorable treatment, each Holder of such Allowed Class 4 Claim shall receive, in exchange for full and final satisfaction, settlement, release and compromise of such Claim: (A) if a Sale Transaction occurs: (x) its Pro Rata Share of the Required Third Lien Recovery Payment; and (y) its Pro Rata Share of any Net Sales Proceeds exceeding the Second Lien Full Payment Amount plus the Required Third Lien Recovery Payment; provided, that a Holder of Class 4 Claims shall not recover more than its Allowed Class 4 Claim; or (B) if a Sale Transaction does not occur: its Pro Rata Share of (a) the percentage of the New Unsecured PIK Term Loan set forth in the Restructuring Term Sheet; (b) the percentage of the New Series A Warrants set forth in the Restructuring Term Sheet; and (c) the percentage of the New Series B Warrants set forth in the Restructuring Term Sheet. • Class 4 is Impaired, and Holders of Class 4 Claims will be entitled to vote to accept or reject the Plan.
Classes 5A and 5B: General Unsecured Claims - Indianapolis Downs and General Unsecured Claims – IDCC Estimated Aggregate Allowed amount of Class 5 Claims: Approximately $9,000,000-$24,000,000	• Impaired • Class 5 consists of all General Unsecured Claims against the Debtors. • Holders of Class 5 Claims shall not be entitled to receive or retain any monetary distributions or other property on account of such Claims under the Plan. Pursuant to the Plan, all Allowed General Unsecured Claims against Indianapolis Downs and all Allowed General Unsecured Claims against IDCC shall be deemed, settled, cancelled and extinguished on the Effective Date. Class 5 is Impaired, and Holders of Allowed Class 5 Claims shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of

Description and Amount of Claims or Interests	Summary of Treatment
	the Bankruptcy Code, and, accordingly, the Holders of Allowed Class 5 Claims shall not be entitled to vote to accept or reject the Plan. • Estimated Recovery: 0%
Class 6A: Interests in Indianapolis Downs	• Impaired • Class 6A consists of Interests in Indianapolis Downs. • On the Effective Date, each Holder of an Allowed Interest in Indianapolis Downs shall not receive or retain any Distribution or other property on account of such Interests under the Plan. All Interests in Indianapolis Downs and all stock certificates, instruments, and other documents evidencing such Interests in Indianapolis Downs shall be cancelled as of the Effective Date. • Class 6A is Impaired, and the Holders of Allowed Class 6A Interests shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, accordingly, shall not be entitled to vote to accept or reject the Plan. • Estimated Recovery: 0%
Class 6B: Interests in IDCC	• Impaired • Class 6B consists of all Interests in IDCC. • As of the Effective Date, each Holder of an Allowed IDCC Interest shall not be entitled to receive or retain any Distribution or other property on account of such Interests under the Plan; provided that as a matter of convenience the Reorganized Debtors may elect to leave the Interests of IDCC in place on or after the Effective Date so long as such Interests consist only of common stock and are owned (legally and beneficially) solely by Reorganized Indianapolis Downs. • Class 6B is Impaired, and the Holders of Allowed

Description and Amount of Claims or Interests	Summary of Treatment
	Class 6B Interests shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code, and, accordingly, shall not be entitled to vote to accept or reject the Plan. • Estimated Recovery: 0%

THE DEBTORS BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES POSSIBLE FOR HOLDERS OF CLAIMS AND INTERESTS IN THE DEBTORS AND THUS **STRONGLY RECOMMEND** THAT YOU VOTE TO **ACCEPT** THE PLAN.

THE RESTRUCTURING SUPPORT PARTIES REPRESENT IN EXCESS OF 66 2/3% OF THE CLASS 3 AND CLASS 4 CLAIMS AND HAVE INDICATED THAT THEY ALSO SUPPORT THE PLAN, SUBJECT TO THE RESTRUCTURING SUPPORT AGREEMENT, AND **STRONGLY RECOMMEND** THAT YOU VOTE TO **ACCEPT** THE PLAN.

III. PLAN VOTING INSTRUCTIONS AND PROCEDURES

A. Notice to Holders of Claims and Interests in the Debtor

APPROVAL BY THE BANKRUPTCY COURT OF THIS DISCLOSURE STATEMENT MEANS THAT THE BANKRUPTCY COURT HAS FOUND THAT THIS DISCLOSURE STATEMENT CONTAINS INFORMATION OF A KIND AND IN SUFFICIENT AND ADEQUATE DETAIL AS FAR AS IS REASONABLY PRACTICABLE IN LIGHT OF THE NATURE AND HISTORY OF THE DEBTORS TO ENABLE HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT WHETHER TO ACCEPT OR REJECT THE PLAN. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTEE OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

IF THE PLAN IS APPROVED BY THE REQUISITE VOTE OF HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE AND IS SUBSEQUENTLY CONFIRMED BY THE BANKRUPTCY COURT, THE PLAN WILL BIND ALL HOLDERS OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS, WHETHER OR NOT THEY WERE ENTITLED TO VOTE OR DID VOTE ON THE PLAN AND WHETHER OR NOT THEY RECEIVE OR RETAIN ANY DISTRIBUTIONS OR PROPERTY UNDER THE PLAN. THUS ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS ENTITLED TO VOTE ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT

AND ITS APPENDICES, SUPPLEMENTS AND EXHIBITS CAREFULLY AND IN THEIR ENTIRETY BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE PLAN.

THIS DISCLOSURE STATEMENT AND THE PLAN ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN. NO SOLICITATION OF VOTES MAY BE MADE EXCEPT AFTER DISTRIBUTION OF THIS DISCLOSURE STATEMENT, AND NO PERSON HAS BEEN AUTHORIZED TO DISTRIBUTE ANY INFORMATION CONCERNING THE DEBTORS OTHER THAN THE INFORMATION CONTAINED HEREIN OR THEREIN. NO SUCH INFORMATION SHOULD BE RELIED UPON IN MAKING A DETERMINATION TO VOTE TO ACCEPT OR REJECT THE PLAN.

B. Voting Rights

Under the Bankruptcy Code acceptance of a plan of reorganization by a Class of Claims or Interests is determined by calculating the number and the amount of Claims or Interests voting to accept, based on the actual total Allowed Claims or Interests voting on the Plan. Acceptance by a Class requires more than one-half of the number of total Allowed Claims or Interests in the Class to vote in favor of the Plan and at least two-thirds in dollar amount of the total Allowed Claims or Interests in the Class to vote in favor of the Plan.

Pursuant to the Plan, Class 3 Claims and Class 4 Claims are Impaired by, and entitled to receive a Distribution under, the Plan, and only the Holders of Claims in those Classes are entitled to vote to accept or reject the Plan.

Under the Bankruptcy Code, Creditors are not entitled to vote if their contractual rights are Unimpaired by the Plan or if they will receive no distribution of property under the Plan.

Pursuant to the Plan, **Class 1 Claims** and **Class 2 Claims** are Unimpaired by the Plan, and such Holders are conclusively presumed to have accepted the Plan and are therefore not entitled to vote to accept or reject the Plan. **Class 5 Claims** and Interests in **Class 6A** and **Class 6B** are Impaired by the Plan and are not receiving a Distribution, therefore such Holders are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

Pursuant to section 105(a) of the Bankruptcy Code and rule 3003(c)(2) of the Bankruptcy Rules, any Holder of a Claim or an Interest (a) that is either (i) not scheduled or (ii) scheduled at zero, as unknown or as disputed, contingent or unliquidated, and (b) that is not the subject of a Proof of Claim or proof of Interest Filed by the applicable Bar Date set by the Bankruptcy Court will not be treated by the Debtors as a Creditor with respect to such Claim or an Interest Holder with respect to such Interest for purposes of voting on or objecting to the Plan.

In terms of calculating the amount of Claims for voting purposes, (a) Claims will be counted in the amount Allowed by the Plan if such Claims are Allowed in the Plan; (b) Claims will be counted in the amount listed on the Schedules if (i) the Claim is not scheduled as

unliquidated, contingent, disputed or undetermined, and (ii) no Proof of Claim or Proof of Interest has been timely filed; and (c) Claims will be counted in the amount listed in a timely filed Proof of Claim or Proof of Interest if (i) the Claim amount is not contingent and unliquidated, and (ii) the Claim is not subject to an objection; or (iii) a Holder of a Claim temporarily allowed under rule 3018 of the Bankruptcy Rules, shall be deemed deleted from the Plan for all purposes, including for purposes of determining acceptance of the Plan by such Class under section 1129(a)(8) of the Bankruptcy Code.

With respect to alleged Creditors who have timely Filed Proofs of Claim and/or proofs of Interest in wholly unliquidated, unknown or uncertain amounts that are not the subject of an objection, such ballots shall be counted in determining whether the numerosity requirement of section 1126(c) of the Bankruptcy Code has been met, but shall be ascribed a value of one dollar ($1.00) for voting purposes only in determining whether the aggregate Claim amount requirement has been met.

C. Solicitation Materials

In soliciting votes for the Plan pursuant to this Disclosure Statement, the Debtors, through its voting agent, Epiq (the "**Voting Agent**"), will send to Holders of Claims or Interests who are entitled to vote a solicitation package (the "**Solicitation Package**"), which shall include, among other things copies of (a) this Disclosure Statement and the Plan, (b) the notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan ((i) and (ii) collectively, the "**Confirmation Hearing Notice**"), (c) one or more ballots (and return envelopes) to be used in voting to accept or to reject the Plan, and (d) other materials as authorized by the Bankruptcy Court, as more fully set forth in the Solicitation Procedures Order.

Prior to the Confirmation Hearing, the Debtors intend to file a Plan Supplement that includes, among other things, the Plan Supplement Documents. As the Plan Supplement is updated or otherwise modified, such modified or updated documents will be made available on the Debtors' restructuring website set forth herein.

If you are the Holder of a Claim or Interest who believes you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent:

If by first class mail:

Indianapolis Downs, LLC Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
FDR Station, PO Box 5012
New York, New York 10150-5012

If by hand delivery or overnight mail:

Indianapolis Downs, LLC Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC

757 Third Avenue, 3rd Floor
New York, New York 10017

D. Voting Procedures, Ballots, and Voting Deadline

The voting record date (the "**Voting Record Date**") is June 28, 2012. The Voting Record Date is the date for (1) determining the Holders of Claims in (a) the Voting Classes, who are entitled to receive Solicitation Packages and vote to accept or reject the Plan, and (b) the Non-Voting Classes, who shall receive a Non-Voting Package and (2) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of a Claim. The Voting Record Date and all of the Debtors' solicitation and voting procedures shall apply to all of the Debtors' Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

Each Ballot has been coded to reflect the Class of Claims it represents. Accordingly, in voting to accept or reject the Plan, you must use only the coded Ballot(s) sent to you with this Disclosure Statement.

All votes to accept or reject the Plan must be cast by using the Ballot enclosed with this Disclosure Statement. UNLESS THE DEBTORS DETERMINE OTHERWISE IN THEIR SOLE AND ABSOLUTE DISCRETION IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN AUGUST 3, 2012 EASTERN TIME (THE "**VOTING DEADLINE**") AT THE FOLLOWING ADDRESS:

If by first class mail:

Indianapolis Downs, LLC Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
FDR Station, PO Box 5012
New York, New York 10150-5012

If by hand delivery or overnight mail:

Indianapolis Downs, LLC Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, New York 10017

UNLESS OTHERWISE PROVIDED IN THE INSTRUCTIONS ACCOMPANYING THE BALLOTS, BALLOTS CAST BY FACSIMILE, E-MAIL OR OTHER ELECTRONIC MEANS WILL NOT BE ACCEPTED. BALLOTS THAT ARE RECEIVED BUT NOT SIGNED WILL NOT BE COUNTED. ANY BALLOT THAT IS

PROPERLY EXECUTED BY THE HOLDER OF A CLAIM BUT THAT DOES NOT CLEARLY INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN OR ANY BALLOT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN WILL NOT BE COUNTED FOR PURPOSES OF ACCEPTING OR REJECTING THE PLAN. DO NOT RETURN ANY STOCK CERTIFICATES, DEBT INSTRUMENTS, OR OTHER EVIDENCES OF YOUR CLAIM WITH YOUR BALLOT.

EXCEPT AS OTHERWISE PROVIDED HEREIN, IN THE MOTION TO APPROVE THE DISCLOSURE STATEMENT AND ITS RELATED EXHIBITS: (A) IF NO HOLDERS OF CLAIMS ELIGIBLE TO VOTE IN A PARTICULAR CLASS VOTE TO ACCEPT OR REJECT THE PLAN, THE PLAN SHALL BE DEEMED ACCEPTED BY THE HOLDERS OF SUCH CLAIMS IN SUCH CLASS: AND (B) ANY CLASS OF CLAIMS THAT DOES NOT HAVE A HOLDER OF AN ALLOWED CLAIM OR INTEREST OR A CLAIM TEMPORARILY ALLOWED BY THE BANKRUPTCY COURT AS OF THE DATE OF THE CONFIRMATION HEARING SHALL BE DEEMED ELIMINATED FROM THE PLAN FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN AND FOR PURPOSES OF DETERMINING ACCEPTANCE OR REJECTION OF THE PLAN BY SUCH CLASS PURSUANT TO SECTION 1129(A)(8) OF THE BANKRUPTCY CODE.

EACH HOLDER OF A CLAIM MUST VOTE ALL OF ITS WITHIN A PARTICULAR CLASS EITHER TO ACCEPT OR REJECT THE PLAN AND MAY NOT SPLIT SUCH VOTES. BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM WILL CERTIFY TO THE BANKRUPTCY COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLASS OF CLAIMS, SUCH OTHER BALLOTS INDICATED THE SAME VOTE TO ACCEPT OR REJECT THE PLAN.

IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED ON SUCH HOLDER'S BALLOT AND THE ACCOMPANYING INSTRUCTIONS.

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, this Disclosure Statement, the Plan Supplement or any appendices or exhibits to such documents, please contact the Voting Agent the address specified above or (646) 282-2400.

For further information and general instructions on voting to accept or reject the Plan, see Article XII of this Disclosure Statement and the instructions accompanying your Ballot.

THE DEBTORS URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT THE PLAN BY COMPLETING THEIR BALLOTS AND RETURNING THEM BY THE VOTING DEADLINE. IF YOU VOTE TO ACCEPT OR REJECT THE PLAN, AND YOU DO NOT MARK YOUR BALLOT TO INDICATE YOUR REFUSAL TO GRANT THE THIRD PARTY RELEASE IN ARTICLE XI OF THE PLAN, YOU ARE AUTOMATICALLY

DEEMED TO CONSENT TO THE THIRD PARTY RELEASE IN ARTICLE XI OF THE PLAN. IF YOU DO NOT SUBMIT A VOTE AND DO NOT RETURN A BALLOT THAT HAS BEEN MARKED TO INDICATE YOUR REFUSAL TO GRANT THE THIRD PARTY RELEASE IN ARTICLE XI OF THE PLAN, YOU WILL BE BOUND BY THE THIRD PARTY RELEASE CONTAINED IN ARTICLE XI OF THE PLAN.

E. Confirmation Hearing and Deadline for Objections to Confirmation

Pursuant to section 1128(a) of the Bankruptcy Code, the Bankruptcy Court, after notice, may 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 Confirmation Hearing will commence on August 10, 2012 at [--:--] prevailing Eastern Time, before the Honorable Brendan L. Shannon. United States Bankruptcy Judge in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court or a notice of adjournment filed with the Bankruptcy Court and served on the master service list and the Entities who have filed an objection to the Plan ("**Plan Objection**"), without further notice to parties in interest. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing.

The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

All Plan Objections must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest in accordance with the Disclosure Statement Order so that they are received on or before the deadline to file Plan Objections.

F. Confirmation Hearing and Deadline for Objections to Confirmation

The Confirmation Order shall approve all provisions, terms, and conditions of the Plan, unless such provisions, terms or conditions are otherwise satisfied or waived pursuant to the Plan provisions described in Article VII herein.

IV. GENERAL INFORMATION CONCERNING THE DEBTORS

A. Overview of Debtors' Corporate History

Indianapolis Downs operates a "racino," which is a combined race track and casino, at a 283 acre site in Shelbyville, Indiana. The facility is located approximately twenty-five miles from Indianapolis and is the closest casino to the downtown Indianapolis area The racino is an entertainment complex comprised of the Indiana Live! Casino (the "**Casino**"), with 83,000 feet of gaming space, and the Indiana Downs racetrack (the "**Track**"), which is a one-mile race track. The facility collectively employs up to approximately 1,110 individuals during normal operations and 1,300 individuals during the racing season. The facility operates high-tech slot machines and electronic table games including blackjack, roulette and craps, and poker, and several branded dining and entertainment options. The Track, which opened in December 2002,

offers live racing seven months out of the year (April through November) and a full-card simulcast wagering facility year round featuring thoroughbred, quarter-horse and harness races from across the country. In addition, the Track houses a full-service restaurant and lounge, an arcade, a gift shop, facilities for entertaining, and a family entertainment center. Indianapolis Downs' business operations currently generate revenue from pari-mutuel operations at the Track, gaming operations at the Casino, food and beverage sales, and other operations at both facilities.

The Track began conducting live pari-mutuel races and participating in simulcasting in December 2002. The Track is one of only two facilities in the state of Indiana that is licensed by the Indiana Horse Racing Commission to conduct live pari-mutuel races and to participate in simulcasting. The pari-mutuel segment the Track's operations consists of pari-mutuel wagering on live thoroughbred, standard-bred and quarter horse races from April through November of each year. A full-card simulcast wagering facility at the Track features thoroughbred and harness races from across the country throughout the year. In addition to conducting live wagering during the "peak season," the Track simulcasts the Shelbyville races to other racetracks. The Track also offers a full-service restaurant with seating for approximately 375 guests, an arcade, a gift shop, and facilities that can be rented for business entertaining, including a casual event party room and luxury track-side suites. Beginning in 2003 and 2004, respectively, the Track began operating two satellite off-track betting facilities in Evansville, Indiana and Clarksville, Indiana (the "**OTB Facilities**"). The OTB facility located in Evansville, Indiana closed in June, 2012.

In June 2008, the Casino began operating a gaming facility featuring slot machines and electronic table games adjacent to the racetrack operation. While the current permanent gaming facility was being developed, on June 9, 2008, the Casino opened its doors in a temporary 70,000 square foot facility which held 1,898 slot machines. Upon completion of the permanent facility, operations ceased at the temporary facility and, on March 13, 2009, the grand opening of the Casino took place. The Casino offers 1,995 electronic gaming machines, including approximately 25 electronic table games (blackjack, roulette and craps), a poker room, several branded dining and entertainment options and a recently opened banquet room. The Casino's gaming floor is encircled by the Live! Market Buffet, a 400 seat market-style buffet and food court, the Maker's Mark® themed fine dining restaurant, a coffee bar, and the Angels Rock Bar themed bar. Additionally, a 4,500 square foot center bar is located on the gaming floor, and the upper level of the Casino contains two private dining and bar areas, as well as the new banquet facility. The Casino was awarded top honors in seven categories in 2010 in Southern Gaming & Destination Magazine's "Best of 2010" Readers' Choice Awards, including "Best Overall Casino."

Since the Petition Date, the Debtors consolidated some aspects of the Casino and Track, as prior to the bankruptcy each had operated as a discrete business, with separate management teams, separate advertising, separate food and beverage contracts and other duplicative services and departments. In addition, the Debtors significantly revamped the marketing strategies, incentives and promotions utilized by the Casino. Recently, the Debtors have undertaken a rebranding process, whereby the Casino will be rebranded as the Indiana Grand. This rebranding should revitalize the Casino's marketing efforts, as well as facilitate resolution of the litigation with the Cordish Entities, described in more detail in Section V.E.3 herein. The Debtors have

also used the bankruptcy process to revamp the entertainment experiences available at the Casino in order to maximize the Casino's financial performance.

The Debtors' total revenue for calendar year 2010 after one full year of operations at the permanent facility was approximately $270 million, representing an 8.7% increase in revenue from 2009. During the twelve-month period ending in December 2011, the Casino captured 52% of the Indianapolis market share.

B. The Debtors' Management Structure

Since the Petition Date, the Debtors have supplemented (and in some cases upgraded) various key management positions. It is anticipated that the managers, limited and general partners, and officers of each of the Debtors who are serving as of the Confirmation Date will continue to serve in such capacities until the Effective Date. Entry of the Confirmation Order shall ratify and approve all actions taken by the managers, limited and general partners, and officers of the Debtors from the Petition Date through and until Effective Date. Below is a list of the officers of the Debtors:

Ross J. Mangano. Mr. Mangano currently serves as the Chief Executive Officer and the Chairman of the board of managers (the "**Board of Managers**") of Indianapolis Downs. Mr. Mangano has served in this and other positions with the Debtors since their inception.

Robert T. Dingman. Mr. Dingman currently serves as the General Manager of the Casino. Mr. Dingman has served in this capacity with the Casino since January 2012.

Michael N. Regan. Mr. Regan currently serves as the Chief Financial Officer of the Debtors. Mr. Regan has served in this capacity with the Debtors since January 2012.

Gregory F. Rayburn. Mr. Rayburn currently serves as the Chief Restructuring Officer of the Debtors. Mr. Rayburn has served in this capacity with the Debtors since February 2011.

Jonathan B. Schuster. Mr. Schuster currently serves as the General Manager of the Track. Mr. Schuster has served in this capacity with the Track since February 2003.

Scott M. Dillon. Mr. Dillon currently serves as General Counsel of the Debtors. Mr. Dillon has served in this position since March 2008.

C. The Debtors' Corporate Structure

Indianapolis Downs is a limited liability company formed under the laws of the State of Indiana. It was founded in 1999 primarily by Oliver Racing LLC to finance the Track and the OTB Facilities. Oliver Racing LLC is a limited liability company whose membership is comprised of several trusts, with Ross Mangano as its managing member. Indianapolis Downs is 95.39% owned by Oliver Racing LLC,[3] 3.07% owned by John S. Warriner and 1.54% owned by Ross Mangano, who also serves as the Chairman of the Board of Managers. There are also $38,705,000 of non-voting, convertible preferred membership interests outstanding. The

[3] Oliver Racing LLC has a preferential undistributed return of capital of $39,800,000.

preferred membership interests are convertible to common interests at any time after the Prepetition Second Priority Notes (defined below) and the Prepetition Third Priority Notes (defined below) are paid in full. As of the Petition Date, there was approximately $14,613,000 of accrued interest relating to the outstanding preferred membership interests.

IDCC is a Delaware corporation formed solely to serve as co-issuer and guarantor of the Prepetition Second Priority Notes and Prepetition Third Priority Notes. It has no assets or liabilities other than with respect to the Notes (defined below). Ross Mangano is the sole director of IDCC.

D. Indiana Gaming Oversight

Indiana Gaming Commission

Both the Indiana Gaming Commission (the "**Gaming Commission**") and the Indiana Racing Commission (the "**HR Commission**" and together with the Gaming Commission, the "**Commissions**") are vested with oversight of the Indiana Gambling Games at Racetracks Act (the "**Act**") including what positions and occupations related to gambling games at racetracks are to be licensed. The Act and the rules of the Commissions (the "**Commissions Rules**") set forth specific considerations which the Gaming Commission is to consider in determining which positions are to be licensed as well as what is required to obtain a license.

The Act allows the Gaming Commission to issue an occupational license to an individual who has submitted an application for a license, paid the applicable fees and is found to be eligible for such license. The Gaming Commission is statutorily prohibited from issuing a license to any individual that is: (i) less than eighteen (18) years of age (which age restriction has been elevated to twenty-one (21) years of age by rule); (ii) has been convicted of a felony that is not waived after following designated procedures; (iii) fails to demonstrate an appropriate level of skill for the position applied for; and (iv) fails to meet other "standards adopted by the [Gaming C]ommission for the holding of an occupational license." Those standards, and the procedures for determining the suitability of an applicant for an occupational license, are set forth in the Commissions Rules.

The Commissions Rules require that members of the Board of Managers apply for an "Occupational License, Level 1." All applicants are required to file a "Personal Disclosure Form 1" (PD 1), which is an extensive verified questionnaire requiring the submission of exhibits, including tax returns, schedules of assets and other financial information. In sum, the application requires disclosure of (i) personal information such as a current name, addresses, telephone numbers and social security number; (ii) educational history dating back to secondary school (iii) residences for the past fifteen (15) years; (iv) work history for the past twenty (20) years; (v) businesses owned or involved with; (vi) military history; (vii) gaming history; (viii) family history and information; (ix) litigation which the applicant has been a party; (x) criminal history; (xi) financial information; (xiii) assets and liabilities; (xiii) taxes and various financial schedules; and (xiv) a net worth calculation. The application also requires the submission of a photograph of the applicant taken within three months of the application, a birth certificate and fingerprints either taken by an interviewing investigator or by another third party designated by the Gaming

Commission. Failure to provide complete disclosure of all information required by the application is reason to find an applicant unsuitable.

Upon completion of the background investigation, a final report is prepared for review by the Executive Director of the Gaming Commission and other members of the executive staff. The Executive Director of the Gaming Commission has the authority to grant the license if the background investigation does not produce any disqualifying or questionable information. However, the Executive Director of the Gaming Commission may defer the determination of suitability and licensing to the full Gaming Commission in instances where the Executive Director of the Gaming Commission has recused himself or herself, or the applicant's background causes concerns. Regardless of how the decision is reached, the license will be issued only if the investigative factors establish that granting a license to the individual is in the best interest of the public, the gaming industry or the integrity of gaming. Once licensed, the individual has a continuing duty to advise the Gaming Commission of any changes in the application that may reflect on the licensee's suitability (e.g., arrest, bankruptcy, etc.), as well as personal information such as name change due to marriage or divorce change of address and other identifying information.

It normally takes at least six (6) months from the receipt of a completed application for the license to be issued.

Indiana Horse Racing Commission

The HR Commission reviews the suitability of individual members of a board as part of the overall consideration of an application for a Permit to Conduct Reorganized Meeting ("**Meeting Permit**"). The integrity of the of the applicant, its owners, officers, directors, policy makers and other designated individuals is an articulated consideration in determining the suitability of the Meeting Permit applicant. Factors set forth as part of the integrity consideration include (i) the applicant's criminal record; (ii) whether the applicant has been a party to litigation with respect to its business practices; (iii) whether disciplinary actions have been taken over an applicant's license or permit; and (v) whether an applicant has been a participant in bankruptcy proceedings or a proceeding in which unfair labor practices, discrimination or government regulation or pari-mutuel wagering was an issue. As part of the decision-making process, the HR Commission will consider, (i) the failure to satisfy judgments, orders or decrees; (ii) delinquency in filing of tax reports or remitting taxes; and (iii) any other indices related to the integrity of the applicant which the HR Commission considers important or relevant.

In addition to considering the personal aspects of each member of the board, HR Commission also considers the management ability of the applicant. Management ability includes, but is not limited to, the qualifications to develop, own or operate a pari-mutuel facility, along with specific considerations such as a security plan, human and animal safety, marketing promotion and advertising and any other indices related to management ability which the HR Commission deems relevant to its consideration.

The HR Commission is required to approve all aspects of any ownership transfers. The timing of the approval will be similar to the timing of the Gaming Commission.

E. Debtors' Prepetition Capital Structure

(i) Prepetition First Lien Debt and DIP Credit Agreement

On or about October 30, 2007, Indianapolis Downs entered into a Credit Agreement (the "**Original Credit Agreement**") with Jefferies Finance LLC,[4] and the lenders from time to time party thereto (collectively, the "**First Lien Lenders**"), which provided for a $75,000,000 term loan (the "**Term Loan**") to fund the second installment of a gaming license payment due by November 2008. The Original Credit Agreement was amended on November 25, 2008 and subsequently amended and restated as of January 15, 2009 (the "**Amended Credit Agreement**") to provide for a revolving loan commitment of $25,000,000 (the "**Revolving Loan**" and, together with the Term Loan, the "**First Lien Debt**"). The First Lien Debt was collateralized by substantially all of the Assets. IDCC guaranteed the First Lien Debt.

The Amended Credit Agreement was subsequently amended on October 9, 2009 (and thereafter on December 1, 2009, April 13, 2010, August 9, 2010, and March 4, 2011, respectively) to extend the maturity date of each of the Term Loan and the Revolving Loan until April 30, 2012 and to lower the interest rate on the First Lien Debt. Following these amendments, interest on the Term Loan was payable at an optional interest rate equal to the base rate (defined as the higher of the prime rate, federal funds rate plus 0.5% or LIBOR plus 1%, or 3.5%) plus 7.25%, or LIBOR (minimum 2.5%) plus 8.25%. Interest on the Revolving Loan was payable monthly at an optional interest rate equal to the base rate (defined as the higher of the prime rate, federal funds rate plus 0.5% or LIBOR plus 1%, or 3.5%) plus 4.25%, or LIBOR (minimum 2.5%) plus 5.25%. As a result of the defaults under the First Lien Debt, effective December 2, 2010, the First Lien Debt began accruing interest at the default rate, which is 2% in excess of the interest rate previously applicable thereon. On the Petition Date, the outstanding balance on the First Lien Debt was approximately $98,125,000.

Following the Petition Date, the Debtors entered into an agreement with the agent for the First Lien Debt to obtain postpetition financing, pursuant to which the Debtors refinanced the First Lien Debt under a senior secured priming and superpriority debtor-in-possession credit agreement (the "**DIP Credit Agreement**") by and among Indianapolis Downs as borrower, IDCC as guarantor, and Wells Fargo as administrative agent and collateral agent for certain financial institutions that were from time to time party to the DIP Credit Agreement. The DIP Credit Agreement provided for $103,250,000 in postpetition financing, which sum represents the aggregate principal amount due and owing on the First Lien Debt, plus $5,000,000. The DIP Credit Agreement was approved by the Bankruptcy Court by the interim and final *Order (I) Authorizing Post-Petition Secured Financing Pursuant to Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 503(b) of the Bankruptcy Code; (II) Authorizing the Debtors to Use Cash Collateral Pursuant to Section 363 of the Bankruptcy Code; (III) Providing Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362, and 363 of the Bankruptcy Code; (IV) Modifying the Automatic Stay Pursuant to Section 362(d) of the Bankruptcy Code; and (V) Providing Related Relief [Docket Nos. 60 and 139]*. On March 23, 2012, the DIP Credit Agreement was amended by the *Order Approving (I) First Amendment to*

[4] Since that time, Wells Fargo Bank N.A. ("**Wells Fargo**") has succeeded to the rights of Jefferies Finance LLC as First Lien Lender.

Senior Secured Priming and Superpriority Debtor-In-Possession Credit Agreement and (II) Modification to Final DIP Order [Docket No. 893], which, among other things, extended the maturity date of the DIP Credit Agreement and provided for the payment of an extension fee.

(ii) Prepetition Second Priority Notes and Prepetition Third Priority Notes

On October 30, 2007, pursuant to an Indenture (the "**Prepetition Second Priority Indenture**") by and among Indianapolis Downs and IDCC, as co-issuers, and The Bank of New York Trust Company, N.A. as trustee and collateral agent (in these capacities, the "**Prepetition Second Priority Agent**"), the Debtors issued senior secured notes in an aggregate principal amount of $375,000,000 (the "**Prepetition Second Priority Notes**"). The Prepetition Second Priority Notes mature on November 1, 2012, and bear interest at an annual rate of 11%, payable in cash. As of the Petition Date, the outstanding balance on the Prepetition Second Priority Notes was approximately $375,000,000 plus accrued and unpaid interest.

Additionally, on October 30, 2007, pursuant to an Indenture (the "**Prepetition Third Priority Indenture**") by and among Indianapolis Downs and IDCC, as co-issuers, and The Bank of New York Trust Company, N.A. as trustee and collateral agent (in these capacities, the "**Prepetition Third Priority Agent**")[5], the Debtors originally issued senior subordinated secured pay-in-kind notes in an aggregate principal amount of $50,000,000 (the "**Initial Prepetition Third Priority Notes**"). Additional notes were issued following the date of the Initial Prepetition Third Priority Notes through June 2010 in an amount of $22,649,048 (together with the Initial Subordinated Notes, the "**Prepetition Third Priority Notes**"). The Prepetition Third Priority Notes mature on November 1, 2012 and bear interest at an annual rate of 15.5%, payable in cash or through the issuance of additional subordinated notes, provided that the Debtors' consolidated fixed charge coverage ratio is greater than or equal to 1.25. As of the Petition Date, the outstanding balance on the Prepetition Third Priority Notes was approximately $72,649,048.

The Prepetition Second Priority Notes and the Prepetition Third Priority Notes (collectively, the "**Notes**") are guaranteed by the Debtors and are collateralized by essentially all of the Assets. The Notes and related guarantees are subordinated to the First Lien Debt and such other indebtedness to the extent of the value of such Assets. However, certain collateral in a construction account was pledged to the Prepetition Second Priority Notes and/or the Prepetition Third Priority Notes as security. In addition, pursuant to a related Intercreditor Agreement (described below), the liens securing the Prepetition Third Priority Notes are contractually subordinated to the liens securing the Prepetition Second Priority Notes.

(iii) Related Party Debt

In addition, on October 20, 2009, Indianapolis Downs issued $2,600,000 in short-term unsecured debt, bearing interest at a rate of 3.0% and due on demand to John Warriner and Susan McClean (the "**Related Party Debt**"). These funds were to be used for working capital needs of the horse racing operations. As of September 30, 2010, $1,736,000 remained outstanding.

[5] Pursuant to an Agreement of Resignation, Appointment and Acceptance, dated as of March 14, 2011 by and among Indianapolis Downs, The Bank of New York Mellon Trust Company N.A., and Wilmington Trust Company, The Bank of New York Trust Company, N.A. resigned from its position as indenture trustee and collateral agent under the Prepetition Third Priority Indenture and Wilmington Trust Company succeeded to the position.

(iv) Demand Promissory Notes

From April through June 2009, Indianapolis Downs entered into certain unsecured demand promissory notes in the aggregate amount of $25,250,000, bearing interest at a rate of 8.0%, with Troon & Co. ("**Troon**"), a partnership of the trusts that comprise Oliver Racing, LLC. Indianapolis Downs issued these notes to Troon in exchange for Troon's funding of a trust collateral account pursuant to a separate agreement with the Prepetition Second Priority Agent.

Subsequently, on June 29, 2009, Indianapolis Downs entered into a demand promissory note with Troon in an amount of $3,100,000, bearing interest at a rate of 8.0%, to fund working capital needs at the Track. In May and June 2010, Indianapolis Downs entered into demand promissory notes with Troon in an additional aggregate amount of $9,025,000, bearing interest at a rate of 3.0%, for additional working capital needs at the Track. The principal and interest on these notes are not permitted to be paid pursuant to the terms and conditions of the Notes and the First Lien Debt.

As of September 30, 2010, $37,575,000 in principal plus $3,599,000 in accrued interest remained outstanding on such demand promissory notes (such notes, together with Related Party Debt, the "**Permitted Indebtedness**").

(v) The Intercreditor Agreement

On October 30, 2007, Indianapolis Downs, Troon, the First Lien Lenders, the Prepetition Second Priority Agent and the Prepetition Third Priority Agent entered into that certain Intercreditor Agreement (the "**Intercreditor Agreement**"). The Intercreditor Agreement governs the rights and relative priorities of the First Lien Debt, the Prepetition Second Priority Notes, the Prepetition Third Priority Notes and the Permitted Indebtedness.

F. Events Leading to the Filing of the Chapter 11 Cases

On December 9, 2010, as a result of the Debtors' failure to pay interest due on November 1, 2010 as required pursuant to the terms and conditions of the Prepetition Second Priority Indenture, certain holders and beneficial holders of the Prepetition Second Priority Notes delivered an acceleration notice to Indianapolis Downs and the Prepetition Second Priority Agent. Consequently, on December 9, 2010, the Prepetition Second Priority Agent delivered an acceleration notice to Wells Fargo, as administrative agent and collateral agent for the First Lien Debt, triggering a ninety-day standstill period established pursuant to the Intercreditor Agreement. Additional defaults under the First Lien Debt and the Prepetition Third Priority Notes were triggered as a result of the acceleration of the Prepetition Second Priority Notes. On March 7, 2011, two days before the standstill period was to expire, Indianapolis Downs entered into separate forbearance agreements with the First Lien Lenders and the DIP Agent, which extended the standstill period through April 7, 2011.

Prior to, and following the delivery of, the notice of acceleration, Indianapolis Downs engaged in discussions with the First Lien Lenders and certain holders of the Prepetition Second Priority Notes and Prepetition Third Priority Notes with respect to these defaults. However, no agreement was reached prior to the end of the extended standstill period and the Holders of

Prepetition Second Priority Notes refused a further extension thereof. Thus, the Debtors determined that their constituents would be best served if they were able to take advantage of the protections of the Bankruptcy Code to afford the Debtors an opportunity to restructure their institutional debt and significantly improve enterprise value. Prior to the Petition Date, the Debtors spent significant time, money and effort to overcome certain burdensome state licensure and statutory tax rate requirements. The Debtors also developed a plan to complete their restructuring which consisted of a combination of: (a) additional planned operational improvements, increased market growth and market share, new marketing consultants, new machines on the gaming floor, and a new customer service program; (b) legislative relief; and (c) the infusion of capital at favorable rates to relieve the debt stress on their balance sheet.

V. THE CHAPTER 11 CASES

A. Commencement of the Chapter 11 Cases

On April 7, 2011, the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court. Since the Petition Date, the Debtors have continued to operate as debtors in possession subject to the supervision of the Bankruptcy Court, and in accordance with the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties in the ordinary course, with transactions outside of the ordinary course of business requiring Bankruptcy Court approval.

An immediate effect of commencement of the Chapter 11 Cases was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts by Creditors, the enforcement of liens against property of the Debtors, and the continuation of litigation against the Debtors during the pendency of the Chapter 11 Cases. The relief provided the Debtors with the "breathing room" necessary to assess and reorganize their business and prevent Creditors from obtaining an unfair recovery advantage while the Chapter 11 Cases are continuing. The automatic stay will remain in effect, unless modified by the Bankruptcy Court, until the entry of a final decree closing the Chapter 11 Cases.

B. First Day Orders

The first day hearing (the "**First Day Hearing**") was held in the Chapter 11 Cases before the Bankruptcy Court on April 8, 2011. At the First Day Hearing, the Bankruptcy Court heard certain requests for immediate relief Filed by the Debtors to facilitate the transition between the Debtors' prepetition and postpetition business operations, and objections thereto, and entered the following orders:

- Order Directing Joint Administration of Chapter 11 Cases [Docket No. 52];
- Order Authorizing the Retention and Appointment of Epiq Bankruptcy Solutions, LLC as Claims and Noticing Agent for the Clerk of the United States Bankruptcy Court *Nunc Pro Tunc* as of the Petition Date [Docket No. 54];

- Order (A) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (B) Authorizing the Continued Use of Existing Cash Management System, and (C) Waiving Certain Investment and Deposit Guidelines on an Interim Basis [Docket No. 55];

- Order Authorizing the Debtors to Perform and Honor Certain Customer Programs in the Ordinary Course of Business [Docket No. 56];

- Order (A) Authorizing But Not Directing the Debtors to Pay (I) Certain Prepetition Employee Obligations, and (II) Prepetition Withholding Obligations, and (B) Directing Banks to Honor Related Prepetition Transfers [Docket No. 59];

- Interim Order (A) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, (B) Deeming Utilities Adequately Assured of Future Performance, and (C) Establishing Procedures for Determining Adequate Assurance of Payment [Docket No. 53] (the Final Order was entered on September 26, 2011 Docket No. 133];

- Order (A) Authorizing the Debtors to Pay Prepetition Property, Sales, Gaming, and Similar Taxes and Regulatory Fees in the Ordinary Course of Business, and (B) Authorizing Banks and Financial Institutions to Honor and to Process Checks and Transfers Related Thereto [Docket No. 57];

- Order (A) Allowing Administrative Expense Status for Goods Received within the Twenty-Day Period Before the Petition Date, and (B) Authorizing, But Not Directing, the Debtors to Pay Such Obligations [Docket No. 58]; and

- Interim Order (I) Authorizing Post-Petition Secured Financing Pursuant to Sections 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 503(b) of the Bankruptcy Code; (II) Authorizing the Debtors to Use Cash Collateral Pursuant to Section 363 of the Bankruptcy Code; (III) Providing Adequate Protection to the Prepetition Secured Parties Pursuant to Sections 361, 362 and 363 of the Bankruptcy Code; (IV) Modifying the Automatic Stay Pursuant to Section 362(D) of the Bankruptcy Code; (V) Providing Related Relief and (VI) Scheduling A Final Hearing [Docket No. 60] (the Final Order was entered on April 26, 2011) [Docket No. 139]

C. Retention of Professionals

During the Chapter 11 Cases, the Bankruptcy Court has authorized the retention of various professionals by the Debtors, including:

- Greenberg Traurig, LLP, as bankruptcy counsel [Docket No. 140];

- Robert E. Neiman, P.C., as special counsel [Docket No. 134];

- Lazard Frères & Co. LLC, as investment bankers [Docket No. 137];
- Epiq Bankruptcy Solutions, LLC, as claims and noticing agent [Docket No. 54];
- Polsinelli Shughart PC, as special counsel [Docket No. 138];
- FD U.S. Communications, Inc., as corporate communications consultant [Docket No. 143]; and
- Ordinary Course Professionals [Docket No. 135].

The fees and expenses of the professionals retained by the Debtors are entitled to be paid by the Debtors subject to approval by the Bankruptcy Court and in accordance with the *Administrative Order Establishing Procedures for Final, Interim and Monthly Compensation and Reimbursement of Expenses of Professionals Retained in These Chapter 11 Cases and Reimbursement of Expenses of Committee Members Appointed in These Chapter 11 Cases* [Docket No. 141].

In addition, by order dated April 26, 2011, the Bankruptcy Court approved the retention of Kobi Partners, LLC to provide a Chief Restructuring Officer to the Debtors, and the appointment of Gregory F. Rayburn to that position [Docket No. 142]. On May 11, 2011, Warren H. Smith & Associates, P.C. was appointed as a fee auditor and to act as special consultant to the Bankruptcy Court for professional fee and expense review [Docket No. 169].

D. No Official Committees

On April 18, 2011, the U.S. Trustee, held a formation meeting to appoint an Official Committee of Unsecured Creditors. Due to insufficient response from creditors expressing an interest in sitting on the official committee, the U.S. Trustee declined to form a an official committee [Docket No. 107].

E. Other Matters Addressed During the Chapter 11 Cases

In addition to the first day relief sought in the Chapter 11 Cases, the Debtors have sought authority with respect to matters designed to assist in the administration of the Chapter 11 Cases, maximize the value of the Debtors' Estates, and provide the foundation for the Debtors' emergence from Chapter 11. Set forth below is a brief summary of certain of the principal motions the Debtors have Filed during the pendency of the Chapter 11 Cases.

1. *Motions to Extend Exclusivity Periods*

On July 29, 2011, the Debtors Filed the *Motion of Debtors for an Order Extending Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Reorganization* [Docket No. 315]. Objections were received from the Ad Hoc Second Lien Committee and Fortress [Dockets No. 371 and 354, respectively]. The Debtors submitted a response to these objections on August 23, 2011 [Docket No. 393]. Following a hearing held on August 26, 2011, the Bankruptcy Court entered an order extending the Debtors' exclusive period

to file a plan of reorganization through November 7, 2011 and the period within which only the Debtors may solicit acceptances of such plan through January 6, 2012 [Docket No. 406].

On November 3, 2011, the Debtors Filed the *Debtors' Second Motion for an Order Extending the Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Reorganization* [Docket No. 544]. The Ad Hoc Second Lien Committee Filed an objection [Docket No. 577]. Following a hearing held on November 18, 2011, the Bankruptcy Court entered an order extending the Debtors' exclusive period to file a plan of reorganization through January 31, 2012 and the period within which only the Debtors may solicit acceptances of such plan through March 30, 2012.

On January 27, 2012, the Debtors Filed the *Debtors' Third Motion for an Order Extending the Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Reorganization* [Docket No. 763] with the support of all of their major Creditor constituents. The Bankruptcy Court scheduled a hearing on this motion for February 27, 2012, and on February 22, 2012, the Debtors filed the *Debtors' Amended Third Motion for an Order Extending the Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Reorganization* [Docket No. 810] with the support of all of their major Creditor constituents. This amended motion resulted in an extension of the Debtors' exclusive period to file a plan of reorganization through March 19, 2012 and the period within which only the Debtors may solicit acceptances of such plan through May 7, 2012.

On March 13, 2012, the Debtors Filed the *Stipulation of the Parties Regarding Extension of the Debtors' Exclusive Periods* [Docket No. 865] with the support of all of their major Creditor constituents, which resulted in the extension of the Debtors' exclusive period to file a plan of reorganization through March 28, 2012 and the period within which only the Debtors may solicit acceptances of such plan through May 16, 2012.

On March 28, 2012, the Debtors filed the *Debtors' Fourth Motion for an Order Extending the Exclusive Periods During Which Debtors May File and Solicit Acceptances of a Plan of Reorganization and Outline of Sale Process* [Docket No. 899] with the support of all of their major Creditor constituents, which resulted in an extension of the Debtors' exclusive period to file a plan of reorganization through April 18, 2012 and the period within which only the Debtors may solicit acceptances of such plan through July 5, 2012.

On April 17, 2012, the Debtors filed the *Stipulation of the Parties Regarding Extension of the Debtors' Exclusive Periods* [Docket No. 943] with the support of all of their major Creditor constituents, which resulted in an extension of the Debtors' exclusive period to file a plan of reorganization through April 20, 2012 and the period within which only the Debtors may solicit acceptances of such plan through July 9, 2012.

On April 19, 2012, the Debtors filed the *Stipulation of the Parties Regarding Extension of the Debtors' Exclusive Periods* [Docket No. 959] with the support of all of their major Creditor constituents, which resulted in an extension of the Debtors' exclusive period to file a plan of reorganization through April 24, 2012 and the period within which only the Debtors may solicit acceptances of such plan through July 13, 2912.

On April 24, 2012 the Debtors filed the *Stipulation of the Parties Regarding Extension of the Debtors' Exclusive Periods* [Docket No. 968] with the support of all of their major Creditor constituents, which resulted in an extension of the Debtors' exclusive period to file a plan of reorganization through April 25, 2012 and the period within which only the Debtors may solicit acceptances of such plan through July 16, 2912.

2. ***Claims Process***

a. **Schedules and Statements of Financial Affairs**

The Debtors Filed their Schedules and Statement of Financial Affairs on June 8, 2011 [Docket Nos. 213 - 216] that, among other things, set forth the Claims of known Creditors against the Debtors as of the Petition Date, based upon the Debtors' books and records.

b. **Bar Date**

On October 14, 2011, the Bankruptcy Court entered an order (the "**Bar Date Order**"), in accordance with rule 3003(c) of the Bankruptcy Rules, fixing November 16, 2011, at 5:00 p.m. (prevailing Eastern time) (the "**Bar Date**") as the last day for filing Proofs of Claim in these Chapter 11 Cases for all Claims or Interests in the Debtors arising prior to the Petition Date, including those of governmental units, as defined in section 101(27) of the Bankruptcy Code, and Holders of Claims under section 503(b)(9) of the Bankruptcy Code.

On January 23, 2012, the Bankruptcy Court entered an order (the "**Administrative Claims Bar Date Order**"), in accordance with sections 105(a), 502(b)(9), 503(b) and 507(a)(2) of the Bankruptcy Code, rules 2002(a)(7), 3002(a) and 3003(c) of the Bankruptcy Rules and rule 2002-1(e) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, fixing (i) March 13, 2012, at 5:00 p.m. (prevailing Eastern time) as the last day for filing proofs of any Administrative Claims that may have arisen, accrued or otherwise become due and payable prior to January 1, 2012, and (ii) thirty (30) days after notice of the occurrence of the Effective Date having been entered on the docket as the last day for filing proofs of any Administrative Claims that may have arisen, accrued or otherwise become due and payable on or after January 1, 2012.

3. ***Litigation Regarding Agreements With Power Plant Entertainment Casino Resorts Indiana, LLC and LiveHoldings!, LLC***

a. **Motions to Accept the Trademark Agreement and to Reject the Management Agreements**

Prior to the Petition Date, Indianapolis Downs was party to a Development, Financing & Management Agreement (the "**Management Agreement**") with Power Plant Entertainment Casino Resorts Indiana, LLC ("**PPE**") and a Trademark License Agreement (the "**Trademark Agreement**") with LiveHoldings!, LLC ("**LiveHoldings**"), together with PPE, the "**Cordish Entities**"). On or about July 29, 2010, Indianapolis Downs sent a letter to PPE terminating the Management Agreement. On August 12, 2010, PPE formally demanded arbitration to resolve the disputes concerning the termination by Indianapolis Downs of the Management Agreement (the "**Arbitration**"). PPE claimed, *inter alia*, damages of in excess of

$10 million for fees allegedly owing to PPE by Indianapolis Downs under the terms of the Management Agreement. On September 7, 2010, Indianapolis Downs filed in the Arbitration an Answering Statement and Counterclaim Request, seeking, *inter alia*, damages of at least $410 million from PPE as a result of certain acts and omissions by PPE as manager of the Casino. The Arbitration was automatically stayed on the Petition Date.

On the Petition Date, the Debtors Filed the *Motion of the Debtors for Entry of an Order Authorizing the Debtors to Reject the Development, Financing & Management Agreement Between Power Plant Entertainment Casino Resorts Indiana, LLC and Indianapolis Downs, LLC Nunc Pro Tunc as of the Petition Date* (the "**PPE Rejection Motion**") [Docket No. 25] and the *Motion of the Debtors Pursuant to Bankruptcy Code Section 365(a) and Bankruptcy Rule 6006 for an Order Authorizing the Debtors to Assume the Trademark License Agreement* (the "**PPE Assumption Motion**" and, together with the PPE Rejection Motion, the "**PPE Motions**") [Docket No. 26].

On May 2, 2011, the Cordish Entities Filed a Proof of Claim (the "**PPE Proof of Claim**") asserting a General Unsecured Claim, as of the Petition Date, in the amount of $17,039,027.47 plus additional unliquidated amounts. The PPE Proof of Claim seeks payment for: (i) management fees through July 31, 2010; (ii) wrongful termination damages for the period commencing August 1, 2010 through March 31, 2011; (iii) fees on non-gaming revenues; (iv) fees on gaming revenues for the period commencing April 1, 2011 through April 6, 2011; and (v) default interest for years 2009 and 2010, and the period from January 2011 through April 2011. Additionally, the PPE Proof of Claim seeks unspecified and unliquidated damages for: (a) alleged harm to the Cordish Entities' reputation and goodwill resulting from the Debtors' termination of the Management Agreement; (b) alleged statements made by the Debtors regarding the Cordish Entities' capabilities; and (c) liability for the diminution in value of the trademarks (the "**Trademarks**").

On May 4, 2011, PPE filed the *Omnibus Opposition of Power Plant Entertainment Casino Resorts Indiana LLC and Live Holdings!, LLC to (i) Motion of Debtors to Assume the Trademark License Agreement [D.I. 26], and (ii) Motion of the Debtors to Reject the Management Contract [D.I. 25]* [Docket No. 158], which opposed the relief requested by the Debtors in the PPE Rejection Motion and the PPE Assumption Motion.

Thereafter, beginning in June 2011, the Debtors and the Cordish Entities engaged in settlement negotiations to resolve all disputes between them, including disputes arising out of the Management Agreement and Trademark Agreement (the "**Proposed Settlement**"). The principal terms of the Proposed Settlement were embodied in a settlement agreement (the "**PPE Settlement Agreement**")[6] that provided the following: (i) the PPE Proof of Claim would be deemed allowed in the reduced amount of $12 million, inclusive of interest; (ii) the Trademark Agreement would be modified to permit the Debtors to use the Trademarks for a period of twelve months commencing on the Petition Date, with automatic month-to-month renewals thereafter, and (iii) the Debtors would pay for the use of the Trademarks for a period of at least

[6] The Settlement Agreement was filed with the Bankruptcy Court on August 23, 2011 pursuant to the *Motion of Debtors for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a), 363, and 365, Fed. R. Bankr. P. 9019 Approving the Settlement Agreement with the Cordish Entities* (the "**PPE Settlement Motion**") [Docket No. 394].

twelve months at a rate of 1.75% of the Debtors' gross gaming revenues. On August 29, 2011 Fortress initiated discovery regarding the PPE Settlement Motion [Docket Nos. 408-409]. Subsequently, by letter to the Debtors dated September 9, 2011(the "**Fortress Letter**"), Fortress expressed its opposition to the terms of the Settlement Agreement and reserved its right to object to the Settlement Agreement on the grounds set forth therein. Also on September 9, 2011, the Ad Hoc Second Lien Committee sent a letter to the Debtors in which it joined the Fortress Letter and objected to the terms of the Settlement Agreement on the same grounds identified in the Fortress Letter. On November 3, 2011, the Debtors withdrew the Settlement Motion and Filed a *Notice of Withdrawal* [Docket No. 539]. On November 11, 2011, the Debtors also Filed their *Notices of Withdrawal* of the PPE Motions [Docket Nos. 560 and 561.]

On December 3, 2011, the Debtors Filed the *Motion of Debtors for an Order Under Bankruptcy Rule 2004 Directing Power Plant Entertainment Casino Resorts, Indiana LLC and Certain of Its Affiliates to Produce Documents and Appear for Oral Examination* (the "**2004 Motion**") [Docket No. 684]. Pursuant to the 2004 Motion, the Debtors sought to obtain documents and other materials relating to PPE's conduct in connection with the Management Agreement. On January 17, 2012, the Cordish Entities filed their opposition to the 2004 Motion [Docket No. 730]. At a hearing conducted on January 23, 2012, the Bankruptcy Court heard arguments on the 2004 Motion and denied the 2004 Motion without prejudice to the Debtors' right to attempt to seek, through discovery in a contested matter or adversary proceeding, the information sought in the 2004 Motion. The order denying the 2004 Motion was entered on January 24, 2012 [Docket No. 757].

On February 13, 2012, the Cordish Entities Filed their *Motion of Power Plant Entertainment Casino Resorts Indiana, LLC and LiveHoldings!, LLC for Allowance and Payment of Administrative Expenses* [Docket No. 795] (the "**PPE Administrative Expense Motion**")[7] for the Debtors' continued postpetition use of the Trademarks and for alleged postpetition damage to the Trademarks. Pursuant to the PPE Administrative Expense Motion, the Cordish Entities claim that they are entitled to an allowed administrative expense claim in the amount of (i) $5,090,383 for the Debtors' use of the Trademarks from the Petition Date through January 31, 2012, and (ii) 2.7% of casino, food, beverage and retail revenues for February 2012 and all subsequent months that the Debtors continue to use the Trademarks. Additionally, the Cordish Entities alleged that they were entitled to an administrative expense claim for postpetition damages relating to the diminution in value of the Trademarks in an amount not less than $28.4 million.

Also on February 13, 2012, the Cordish Entities Filed their *Motion to Compel Assumption or Rejection of the Trademark License Agreement and Management Contract and to Deem Trademark License Agreement and Management Contract Rejected* (the "**Motion to Compel**") [Docket No. 796]. On March 9, 2012, the Bankruptcy Court entered a *Scheduling Order* (the "**Scheduling Order**") which, among other things, set a trial on the PPE Administrative Expense Claim Motion and the Motion to Compel for May 30, 2012 [Docket No. 848].

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[7] The Cordish Entities have also filed a *Request for Payment of Administrative Expense Claim* [Docket No. 850] in compliance with the Administrative Claims Bar Date Order, which request restates the alleged claims of the Cordish Entities in the PPE Administrative Expense Claim Motion.

On March 9, 2012, Indianapolis Downs commenced an adversary proceeding against the Cordish Entities entitled *Indianapolis Downs, LLC v. Power Plant Entertainment Resorts Indiana, LLC, et al.*, Adv. Proc. No. 12-50413 (BLS) (the "**PPE Adversary**"). Pursuant to the complaint Filed in the PPE Adversary [Adv. Proc. Docket No. 1], Indianapolis Downs objected (the "**PPE Claim Objection**") to the PPE Proof of Claim and asserted certain counterclaims (the "**Counterclaims**") to the PPE Administrative Claim Motion, raising similar claims to those raised by Indianapolis Downs in the Arbitration. On March 19, 2012, the Cordish Entities Filed a *Motion to Dismiss* (the "**Motion to Dismiss**") [Docket No. 11] the PPE Adversary on the grounds that the PPE Adversary could not be heard in the Bankruptcy Court because of the mandatory arbitration clause in the Management Agreement [Adv. Proc. Docket No. 11]. On April 2, 2012, Indianapolis Downs Filed a reply in opposition to the Motion to Dismiss [Adv. Proc. Docket No. 16]. The Debtors also Filed a *Motion to Approve Entry of an Order (I) Requiring that the Defendants Answer or Otherwise Respond to the Complaint on an Expedited Basis and (II) Authorizing Expedited Discovery* (the "**Motion to Expedite**") [Adv. Proc. Docket No. 2] seeking to expedite briefing and discovery in the PPE Adversary to coincide with the schedule set forth in the Scheduling Order. The Cordish Entities objected to the Motion to Expedite [Adv. Proc. Docket No. 10]. On April 11, 2012, the Bankruptcy Court conducted a hearing on the Motion to Dismiss and the Motion to Expedite, at which time it granted the Motion to Dismiss and dismissed the PPE Adversary, holding that Third Circuit law required that matters relating to the parties' prepetition dispute be resolved by the arbitrator in accordance with the arbitration clause in the Management Agreement. As a result of the Bankruptcy Court's ruling, the relief requested in the Motion to Expedite was mooted.

The parties are proceeding with discovery in connection with the PPE Administrative Expense Claim Motion and Motion to Compel. The Debtors intend to vigorously contest the allegations and claims made by the Cordish Entities in the PPE Administrative Expense Claim Motion and the Motion to Compel. Trial is expected to commence on May 30, 2012. The Debtors' opposition to the PPE Administrative Expense Claim Motion and Motion to Compel is supported by the Restructuring Support Parties.

b. <u>Adversary Proceeding</u>

On May 10, 2011, the Debtors commenced an adversary proceeding in the Bankruptcy Court by Filing a *Verified Complaint for Declaratory and Injunctive Relief* against PPE and various of its affiliates, seeking to suspend the litigation commenced prepetition by PPE and its affiliates in Maryland against Ross J. Mangano and the Trusts (as defined below) (the "**Maryland Litigation**") [Docket No. 165; Adv. Proc. 11-51996 Docket No. 1]. The Debtors also Filed a *Motion for Temporary Restraining Order and Preliminary Injunctive Relief* (the "**TRO Motion**") and a related memorandum of law on May 10, 2011 [Adv. Proc. Docket Nos. 4-5]. PPE submitted an opposition to the TRO Motion on May 16, 2011 [Adv. Proc. Docket No. 12]. On May 26, 2011, the Bankruptcy Court entered a *Temporary Restraining Order* (the "**Temporary Restraining Order**") enjoining the Maryland Litigation until the earlier of the time of the Bankruptcy Court's ruling on the preliminary injunction or July 31, 2011.

The Ad Hoc Second Lien Committee Filed a motion to intervene in the adversary proceeding concerning the Maryland Litigation, which motion was granted over the objection of

the defendants therein by an order of the Bankruptcy Court dated June 10, 2011 [Adv. Proc. Docket No. 30]. By order dated September 13, 2011, the Ad Hoc Second Lien Committee withdrew from the proceeding.

The various defendants submitted their answers to the verified complaint. [Adv. Proc. Docket Nos. 20, 27, 45, 50]. On July 29, 2011, the Bankruptcy Court entered an agreed order extending the Temporary Restraining Order through the earlier of the time of the Bankruptcy Court's ruling on the preliminary injunction or August 31, 2011. Following an evidentiary hearing held on August 26, 2011, the Bankruptcy Court entered an *Order Denying Debtors' Motion for Preliminary Injunction*, which provided that the Temporary Restraining Order would expire on September 26, 2011 [Adv. Proc. Docket. No. 84].

4. *Litigation Regarding Payment of Management Fee*

On July 22, 2011, Fortress and the Ad Hoc Second Lien Committee (collectively, the "**Plaintiffs**") commenced an adversary proceeding against Indianapolis Downs, Troon and Ross J. Mangano, as trustee of the Jane C. Warriner Trust dated February 26, 1071, the J. Oliver Cunningham Trust dated February 26, 1971, the Anne C. McClure Trust dated February 26, 1971 (collectively, the "**Trusts**", and together with Troon, the "**Troon Defendants**") by filing a *Complaint For Declaratory Judgment and Injunctive Relief* [Adv. Proc. No. 11-52758, Docket No. 1]. In the adversary complaint, the Plaintiffs request that the Bankruptcy Court (i) issue a declaratory judgment that Indianapolis Downs' payment of certain management fees to Troon and the Trusts in exchange for management services performed would violate section 363(b)(1) of the Bankruptcy Code; and (ii) enjoin Indianapolis Downs from making payment of these fees as otherwise provided in certain agreements providing for payment of such management fees.

Indianapolis Downs submitted its answer on August 5, 2011 [Adv. Proc. Docket No. 9] and, on August 10, 2011, Filed a *Motion to Judgment on Pleadings Filed by Indianapolis Downs, LLC* and memorandum of law in support of the motion [Adv. Proc. Docket Nos. 22-23]. The Troon Defendants Filed a *Motion to Dismiss Adversary Proceeding* and a related memorandum of law [Adv. Proc. Docket Nos. 18-19] on August 5, 2011. On August 26, 2011, the Plaintiffs Filed their *Memorandum of Law in Opposition to (I) Troon Defendants Motion to Dismiss and (II) Defendant Indianapolis Downs, LLCs Motion for Judgment on the Pleadings* [Adv. Proc. Docket No. 28]. Thereafter, each of Indianapolis Downs and the Troon Defendants Filed reply memorandums in support of their respective motions for judgment on the pleadings and motions to dismiss [Adv. Proc. Docket Nos. 37 and 36].

On September 19, 2011, prior to the commencement of the trial scheduled for later that day, Indianapolis Downs Filed its *Supplemental Statement Regarding Mootness of Complaint for Declaratory Judgment and Injunctive Relief by FCOF II UBX Securities LLC, FCOF UB Securities LLC, and the Ad Hoc Second Lien Committee Against Indianapolis Downs, LLC, Ross J. Mangano, as Trustee of the Jane C. Warriner Trust dated February 26, 1971, the J. Oliver Cunningham Trust dated February 26, 1971, and the Anne C. McClure Trust dated February 26, 1971, Respectively and Troon and Co., an Indiana Partnership, [Adv. Proc. No. 11-52758, Docket No. 1, Filed July 22, 2011* [Adv. Proc. Docket No. 51], which advised (i) that that the management fees at issue would not be paid during the pendency of the Chapter 11 Cases and (ii) that the Debtors would establish a special committee of their Board of Managers to

investigate insider transactions, including the management fees at issue. On October 28, 2011, the parties submitted a *Certification of Counsel Regarding Stipulation and Order Staying Adversary Proceeding No. 11-52748* [Adv. Proc. Docket No. 58], which the parties stipulated that: (i) Indianapolis Downs may not pay, and the Troon Defendants shall not receive, any management fees until the earlier of twenty (20) days following: (a) confirmation of a plan of reorganization in the bankruptcy case of Indianapolis Downs (the "**Indianapolis Downs Case**"), (b) the conversion of the Indianapolis Downs Case to one under chapter 7 of the Bankruptcy Code, (c) the dismissal of the Indianapolis Downs Case, or (d) the date of the appointment of a chapter 11 trustee in the Indianapolis Downs Case (the "**Agreed Date**"); (ii) the Troon Defendants would continue to perform all of their obligations to the Debtors pursuant to the terms of the agreements at issue in this adversary proceeding; (iii) this adversary proceeding would be stayed, but may be reinstated by the Bankruptcy Court; (iv) the Troon Defendants reserve the right to file an Administrative Claim with respect to fees as of the Agreed Date without prejudice to the right of any party in interest to object to such Claim. The Bankruptcy Court granted this stipulation on October 31, 2011 [Adv. Proc. Docket No. 59].

5. *Tax Litigation*

On June 29, 2011, Indianapolis Downs Filed the *Motion of Debtor Indianapolis Downs, LLC to Determine the Legality of Certain Taxes* and a memorandum of law in support of the relief requested therein (the "**Tax Litigation**") [Docket Nos. 313-314]. In the Tax Litigation, Indianapolis Downs requested, pursuant to sections 105 and 505 of the Bankruptcy Code, that the Bankruptcy Court declare that under Indiana's racino statute, it is not required to pay to the Indiana Department of Revenue (the "**Department**") a graduated wagering tax on those funds required by Indiana law to be set aside by Indianapolis Downs for various third-party entities in the horse racing industry.

Hoosier Park, L.P. ("**Hoosier Park**"), the only other racino in the state of Indiana, sought to intervene in the Tax Litigation to ensure that it would receive the benefit of a determination on the legality of the taxes that were the subject of the Tax Litigation. On August 15, 2011, Hoosier Park Filed *Hoosier Park, L.P.'s (I) Joinder in and (II) Emergency Motion to Intervene With Respect to, the Motion of Debtor Indianapolis Downs, LLC for a Determination of the Legality of Certain Taxes* [Docket No. 353]. The Bankruptcy Court permitted Hoosier Park to intervene by order dated August 26, 2011 [Docket No. 405].

On September 6, 2011, the Department Filed its *Objection and Memorandum in Support Filed by Indiana Department of Revenue* [Docket No. 428], which was amended on September 7, 2011 by the *Amended Objection and Memorandum in Support Filed by Indiana Department of Revenue* [Docket No. 433]. On September 13, 2011, Indianapolis Downs submitted a reply brief in further support of the Tax Litigation [Docket No. 452], and on September 14, 2011, Hoosier Park Filed a joinder in Indianapolis Downs' reply [Docket No. 455].

Following a hearing held on September 19, 2011, the Bankruptcy Court entered its opinion [Docket No. 526] (the "**Tax Opinion**") and order [Docket No. 527] (the "**Tax Order**") on October 26, 2011, which resolved the Tax Litigation in favor of Indianapolis Downs. The Court concluded as a matter of law "that the Set-Aside Funds need not be included in

Indianapolis Downs' calculation and payment of the Graduated Tax." (Tax Opinion at 14; *see also id.* at 27.) The Bankruptcy Court's Tax Opinion and Tax Order held that Indianapolis Downs is not required, going forward, to pay the graduated wagering tax as applied to the funds set aside for third parties in the horse racing industry.

The Department filed a timely notice of appeal on November 30, 2011 from the decision in the Tax Opinion and Tax Order. Although an appeal from a Bankruptcy Court's final order in a proceeding would ordinarily be heard in the first instance by the United States District Court for the District of Delaware ("**District Court**"), 28 U.S.C. § 158(d)(2) provides that in certain circumstances an appeal from a bankruptcy court order may be heard directly in the United States Court of Appeals. On December 22, 2012, Indianapolis Downs timely Filed *Debtor-Appellee's Request for Certification of Direct Appeal to the United States Court of Appeals for the Third Circuit* [Docket No. 680] ("**Certification Request**") requesting that the Bankruptcy Court certify that circumstances exist that warrant the Department's appeal in the Tax Litigation to be heard directly by the United States Court of Appeals for the Third Circuit ("**Third Circuit**"). On December 28, 2011, the Department Filed an *Objection to Debtor-Appellee's Request for Certification of Direct Appeal to the United States Court of Appeals for the Third Circuit* [Docket. No. 686] ("**Certification Objection**"). At a hearing conducted on January 5, 2012, the Bankruptcy Court announced its decision to grant the Certification Request. On January 10, 2012, the Bankruptcy Court issued an order certifying the Department's appeal to be heard directly by the Third Circuit [Docket No. 720] (the "**Certification Order**"). On January 30, 2012, Indianapolis Downs timely filed a petition in the Third Circuit, pursuant to Federal Rule of Appellate Procedure 5, requesting that the Third Circuit exercise its discretion to hear the Department's appeal, which the Bankruptcy Court had certified pursuant to 28 U.S.C. § 158(d)(2). On February 22, 2012, the Third Circuit granted Indianapolis Downs' petition. The Department's appeal is currently pending in the Third Circuit as appeal number 12-1582.

On November 22, 2011, Indianapolis Downs Filed the *Motion of Debtor Indianapolis Downs, LLC for a Determination of the Estate's Right to a Refund of Certain Taxes* [Docket No. 607] ("**Refund Motion**"), which, for the reasons set forth in the Tax Litigation and the Bankruptcy Court's Tax Opinion and Tax Order, requested entry of an order determining that its bankruptcy estate is entitled to a refund of certain graduated wagering taxes paid to the Department prior to Indianapolis Downs' Petition Date. The Department objected to the Refund Motion [Docket No. 628] and also Filed an *Emergency Motion for Stay Pending Appeal* [Docket No. No. 623] ("**Motion to Stay**"). At a hearing conducted before the Bankruptcy Court on January 5, 2012, the Bankruptcy Court announced its decision to hold the Refund Motion in abeyance during the pendency of the Department's appeal in the Tax Litigation.

6. *Other Motions*

a. Motion to Reject Employment Agreement

On June 9, 2011, the Debtors Filed the *Motion For Entry of an Order Authorizing the Debtors to Reject the Executive Employment Contract Nunc Pro Tunc as of the Petition Date* (the "**Kline Rejection Motion**") [Docket No. 221] pursuant to which the Debtors sought to reject an employment agreement with Mr. Richard Kline, the former general manager of the Casino.

Mr. Kline Filed an objection to the Kline Rejection Motion, together with a supporting declaration [Docket Nos. 257-258]. Mr. Kline thereafter Filed a *Counter Motion of Richard Kline For Priority Payment Under Section 503(b)(1)(A)* (the "**Kline Counter Motion**") [Docket No. 277], requesting that the Bankruptcy Court afford administrative expense priority to certain severance payments allegedly earned postpetition in an amount of not less than $46,000, and up to $300,000. On August 19, 2011, the Debtors' Filed a response to Mr. Kline's objection to the Kline Rejection Motion and to the Kline Counter Motion [Docket No. 385].

Thereafter, the parties engaged in settlement negotiations and agreed to resolve the matters raised in the Kline Rejection Motion and the Kline Counter Motion by entering into a settlement agreement that would grant Mr. Kline a $40,000 allowed administrative expense claim under section 503(b)(1)(A) of the Bankruptcy Code. On August 30, 2011, the Debtors Filed the *Motion for Entry of an Order, Pursuant to 11 U.S.C. §§ 105(a), 363 and 365, Fed. R. Bankr. P. 9019 Approving the Settlement Agreement With Richard Kline* (the "**Kline Settlement Motion**") [Docket No. 412]. By order dated September 20, 2011, the Bankruptcy Court approved the Kline Settlement Motion [Docket No. 468].

b. Motion to Extend Time to Assume or Reject Leases

On July 13, 2011, the Debtors Filed the *Motion of the Debtors Pursuant to Section 365(d)(4) of the Bankruptcy Code for an Order Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 285]. On July 27, 2011, the Bankruptcy Court entered an Order extending the time to reject unexpired leases of nonresidential real property through and including November 3, 2011, without prejudice to the right to seek further extensions [Docket No. 305]. On November 3, 2011, the Debtors Filed the *Motion Pursuant to Section 365(d)(4) of the Bankruptcy Code for Entry of a Final and Bridge Order Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property* [Docket No. 541]. On November 15, 2011, the Bankruptcy Court entered an Order extending the time to assume or reject unexpired leases of nonresidential real property through and including December 31, 2011. On December 9, 2011, the Debtors' Filed the *Debtors' Motion Pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006 for an Order Authorizing the Assumption of Unexpired Leases* (the "**Motion to Assume Unexpired Leases**") [Docket No. 636]. On December 15, 2011, the Bankruptcy Court entered an Order approving the Motion to Assume Unexpired Leases.

c. Motions for Relief From Stay

On July 1, 2011, Delores Sheeler Filed a motion requesting relief from the automatic stay to enable her to pursue a state court tort litigation claim [Docket No. 268]. The Debtors engaged in negotiations with counsel to Ms. Sheeler and entered into a stipulation pursuant to which the automatic stay would be modified to allow Ms. Sheeler to pursue her state law tort claim in another forum, provided that Ms. Sheeler agreed to limit her recovery to available insurance proceeds under the applicable policy. The Bankruptcy Court entered an Order approving the stipulation on August 4, 2011 [Docket No. 326].

On October 4, 2011, Dawn Leonhardt Filed a motion requesting relief from the automatic stay to enable her to pursue a state court tort litigation claim. [Docket No. 491]. The

Debtors engaged in negotiations with counsel to Ms. Leonhardt and modified the automatic stay to allow Ms. Leonhardt to pursue her state law tort claim in another forum, provided that Ms. Leonhardt agreed to limit her recovery to available insurance proceeds under the applicable policy. The Bankruptcy Court approved the stipulation on November 14, 2011 [Docket No. 565].

On December 15, 2011, Erik Nelson Arroyo Filed a motion requesting relief from the automatic stay to enable him to pursue a state court tort litigation claim. [Docket No. 657]. The Debtors engaged in negotiations with counsel to Mr. Nelson Arroyo and modified the automatic stay to allow Mr. Nelson Arroyo to pursue his state law tort claim in another forum, provided that Mr. Nelson Arroyo agreed to limit his recovery to available insurance proceeds under the applicable policy. The Bankruptcy Court approved the stipulation on February 27, 2012 [Docket No. 825].

VI. OVERVIEW OF THE PLAN INCLUDING THE SALE PROCESS

THIS SECTION AND SECTION VII PROVIDE A SUMMARY OF THE STRUCTURE AND IMPLEMENTATION OF THE PLAN (INCLUDING THE SALE TRANSACTION) AND THE CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN (WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT), THE EXHIBITS ATTACHED TO THE PLAN, THE RESTRUCTURING SUPPORT AGREEMENT AND THE RESTRUCTURING TERM SHEET.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS, THE REORGANIZED DEBTORS, AND OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN OR ANY OTHER OPERATIVE DOCUMENT (INCLUDING, BUT NOT LIMITED TO, THE RESTRUCTURING SUPPORT AGREEMENT AND THE RESTRUCTURING TERM SHEET) THE TERMS OF THE PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.

A. Restructuring Support Agreement and Restructuring Term Sheet

The Debtors and the Restructuring Support Parties engaged in extensive good faith, arm's length negotiations regarding a potential restructuring of the Debtors. Those negotiations have led to an agreement regarding the material terms and conditions of the restructuring which are embodied in the Restructuring Support Agreement and the Restructuring Term Sheet, and which the Debtors have determined are in the best interest of their Estates. The Debtors and the Restructuring Support Parties are each parties to the Restructuring Term Sheet, the Restructuring Support Parties are parties to the Restructuring Support Agreement and upon the entry of the Disclosure Statement Order, the Debtors will also become a party to the Restructuring Support Agreement.

The restructuring will be implemented through either (a) the Sale Transaction, which will involve the marketing and sale of the Assets and the distribution of the proceeds of such sale and the wind down of the Debtors' Estates in accordance with, and subject to the terms and conditions contained in the Plan, the Restructuring Support Agreement and the Restructuring Term Sheet, or (b) the solicitation, confirmation and consummation of the Plan which, in the alternative, provides for the reorganization of the Debtors in accordance with, and subject to the terms and conditions contained in, the Plan, the Restructuring Support Agreement and the Restructuring Term Sheet.

B. Overview of Sale Process and Sale Transaction

IN order to pursue the Sale Transaction, the Debtors, in consultation with, and through, their professionals began a marketing process on March 26, 2012, which was designed to elicit the highest or otherwise best offer for the Assets. The Debtors, through their investment bankers, have contacted thirty-two (32) parties and have entered into non-disclosure agreements with twelve (12) of those interested parties. The Debtors will provide those parties that executed a non-disclosure agreement with certain confidential information to allow those potentially interested parties to properly evaluate the Assets and submit an initial indication of interest. The deadline for the submission of initial indications of interest was April 23, 2012.

Upon receipt of the initial indications of interest, the Debtors, in consultation with their advisors and the advisors to the Restructuring Support Parties, will evaluate the initial indications of interest and will determine the best path forward. The Debtors may select a stalking horse bidder or if the Debtors believe there is sufficient interest to proceed to an Auction without a stalking horse bidder, the Debtors anticipate filing the Sales Procedures Motion, which shall contain the Bid Procedures and which shall include negotiated bid protections, and proceed with an Auction. If a stalking horse bidder is not selected or if the Debtors fail to receive sufficient interest or insufficient offers for the Assets, the Debtors will instead forgo an Auction and anticipate moving forward with the Recapitalization as described in more detail in the Plan.

However, if the Debtors fail to receive sufficient indications of interest, or insufficient offers on the terms and conditions set forth in the Plan, the Restructuring Support Agreement and the Restructuring Term Sheet, for the Assets, the Debtors anticipate moving forward with the Recapitalization on the terms and conditions set forth in the Plan, the Restructuring Support Agreement and the Restructuring Term Sheet, as described in more detail herein.

C. Proposed Timeline of Events Related to the Plan and Sale Transaction

The following is the anticipated schedule for the Plan and Sale Transaction.[8]

Event	Anticipated Date
Debtors began the marketing process	***March 26, 2012***
Debtors Filed draft Plan and Disclosure Statement	***April 25, 2012***

[8] The dates contained in this section are anticipated dates and are subject to the Court's schedule and availability.

Event	Anticipated Date
Debtors, in consultation with their advisors and the Restructuring Support Parties to select a stalking horse bidder (if any)	***May 18, 2012***
Debtors to file the Asset Purchase Agreement, revised Plan, revised Disclosure Statement and Bid Procedures (if stalking horse bidder is selected) If a stalking horse is not selected, the Debtors will File an updated Plan and Disclosure Statement removing the Sale Transaction or describing the proposed private Sale Transaction	***June 12, 2012***
Disclosure Statement hearing and approval of Bid Procedures (if any)	***June 28, 2012 (subject to the Court's availability)***
Begin solicitation process with respect to the Plan	***July 5, 2012***
Debtors to File the Plan Supplement	***July 30, 2012***
Auction, if any and Voting Deadline and Deadline to file objections to the Plan	***August 3, 2012***
Deadline to respond to objections to the Plan	***August 7, 2012***
Confirmation Hearing	***August 10, 2012 (subject to the Court's availability)***

VII. DETAILED SUMMARY OF THE PLAN OF REORGANIZATION

A. Overall Structure of the Plan

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of its creditors and interest holders. Upon the filing of a petition for relief under chapter 11, section 362 of the Bankruptcy Code provides for an automatic stay of substantially all acts and proceedings against the debtor and its property, including all attempts to collect claims or enforce liens that arose prior to the commencement of a chapter 11 case.

The consummation of a plan of reorganization is the principal objective of a chapter 11 case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by the Bankruptcy Court makes the plan binding upon the debtor, any issuer of securities under the plan, any person acquiring property under the plan, and any creditor of, or equity security holder in, the debtor, whether or not such creditor or equity security holder (i) is impaired under or has accepted the plan or (ii) receives or retains any property under the plan. Subject to certain limited exceptions, and other

than as provided in the plan itself or the confirmation order, the confirmation order discharges the debtor from any debt that arose prior to the date of confirmation of the plan and substitutes for such debt the obligations specified under the confirmed plan, and terminates all rights and interests of equity security holders.

The terms of the Plan are based upon, among other things, the Debtors' assessment of its ability to achieve the goals of its business plan, make the Distributions contemplated under the Plan, pay its continuing obligations in the ordinary course of its business and negotiations with the Restructuring Support Parties. Under the Plan, Claims against and Interests in the Debtors are divided into Classes according to their relative seniority and other criteria.

If the Plan is confirmed by the Bankruptcy Court and consummated, the Reorganized Debtors will distribute Cash, Interests and other property in respect of certain Classes of Claims and Interests as provided in the Plan. The Classes of Claims against and Interests in the Debtors created under the Plan, the treatment of those Classes under the Plan, and the other property to be distributed under the Plan, are described below.

B. Classification and Treatment of Claims and Interests

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

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

The amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed amount of such Claim and, accordingly, the total Claims ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained in the Plan with respect to the aggregate Claims in any Impaired Class. Thus, the value of the property that ultimately will be received by

a particular Holder of an Allowed Claim under the Plan may be adversely (or favorably) affected by the aggregate amount of Claims ultimately Allowed in the applicable Class.

The classification of Claims and Interests and the nature of Distributions to members of each Class are summarized below. The Debtors believe that the consideration, if any, provided under the Plan to Holders of Claims and Interests reflects an appropriate resolution of their Claims and Interests, taking into account the differing nature and priority (including applicable contractual and statutory subordination) of such Claims and Interests and the fair value of the Assets. The Debtors may seek Confirmation of the Plan pursuant to the "cramdown" provisions of the Bankruptcy Code, if necessary. Specifically, section 1129(b) of the Bankruptcy Code permits Confirmation of a chapter 11 plan in certain circumstances even if the plan has not been accepted by all Impaired classes of Claims and interests. See Section X.G below. Although the Debtors believe that the Plan can be confirmed under section 1129(b), there can be no assurance that the Bankruptcy Court will find that the requirements to do so have been satisfied.

1. *Treatment of Unclassified Claims under the Plan*

a. Administrative Claims

Except to the extent that an Allowed Administrative Claim has been paid prior to the Effective Date, or is otherwise provided for herein or in the Plan, and unless otherwise agreed to by the Debtors (with the consent of the Restructuring Support Parties) and the Holder of an Allowed Administrative Claim, all Holders of an Allowed Administrative Claim shall receive, in full and complete settlement, release and discharge of such Claim, payment in full in Cash on or as soon as is reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court and (iii) the date such Allowed Administrative Claim becomes due and payable; provided, however, that in the event a Sale Transaction is not consummated, the Debtors shall pay Allowed Administrative Claims that are ordinary course trade payables in the ordinary course of business. In the event a Sale Transaction is consummated, Allowed Administrative Claims shall not include any Claims assumed under the Asset Purchase Agreement.

b. Priority Tax Claims

Except to the extent that an Allowed Priority Tax Claim has been paid prior to the Effective Date or unless otherwise agreed to by the Debtors (with the consent of the Restructuring Support Parties) and the Holder of an Allowed Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall, at the sole option of the Debtors or the Debtor Representative (with the consent of the Restructuring Support Parties if the payment is other than as set forth in clause (i) below), as applicable, receive on account of such Allowed Priority Tax Claim and in full and complete settlement, release, and discharge of such Claim: (i) Cash in the amount equal to such Allowed Priority Tax Claim on or as soon as is reasonably practicable after the later of (a) the Effective Date and (b) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court; or (ii) Cash equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code (or such lesser rate as is agreed to by the Holder of such Allowed Priority Tax Claim), payable over

a period ending no later than five (5) years from the Petition Date pursuant to section 1129(a)(9)(C) of the Bankruptcy Code; provided, however, that the Debtor Representative reserves the right to prepay such amounts at any time under the latter option.

c. DIP Claims

On the Effective Date, each Holder of an Allowed DIP Claim in full and complete settlement, release, and discharge of such Claim, shall be paid in full in Cash all outstanding principal and accrued but unpaid interest, costs, fees and expenses owing as of the Effective Date, or any other amounts due and owing under the DIP Credit Documents. The DIP Claims shall be Allowed in the amount set forth in the Plan Supplement.

d. Professional Fee Claims

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 the Debtor Representative and the Restructuring Support Parties, their counsel and other necessary parties-in-interest **no later than sixty (60) days after notice of the Effective Date having been entered on the docket**, unless otherwise ordered by the Bankruptcy Court. Objections to such applications must be Filed and served on the Debtor Representative and the Restructuring Support Parties, their counsel and the requesting Professional or other Entity on or before the date that is thirty (30) days (or such longer period as may be allowed by order of the Bankruptcy Court) after the date on which the applicable application was served. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the Allowed amounts of such Professional Fee Claims shall be determined by the Bankruptcy Court.

The Debtor Representative may, without application to or approval by the Bankruptcy Court, retain professionals and pay reasonable professional fees and expenses in connection with services rendered to it after the Effective Date.

2. *Treatment of Classified Claims and Interests under the Plan*

a. Classes 1A and 1B: Other Priority Claims - Indianapolis Downs and Other Priority Claims - IDCC (Claims in Classes 1A and 1B shall be collectively referred to below as "**Class 1 Claims**").

Classification: Class 1 Claims consist of Other Priority Claims against the Debtors.

Treatment: The legal, equitable and contractual rights of the Holders of Allowed Class 1 Claims will be unaltered by the Plan. Unless otherwise agreed to by the Holder of an Allowed Class 1 Claim and the Debtors (with the consent of the Restructuring Support Parties), each Holder of an Allowed Class 1 Claim shall receive in full, final and complete satisfaction, settlement, release and discharge of such Allowed Class 1 Claim, payment of the Allowed Class 1 Claim in full in Cash on, or as soon as is reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court.

Voting: Classes 1A and 1B are Unimpaired, and the Holders of Allowed Class 1 Claims will be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Allowed Class 1 Claims shall not be entitled to vote to accept or reject the Plan.

b. **Classes 2A and 2B**: Other Secured Claims - Indianapolis Downs and Other Secured Claims - IDCC (Claims in Classes 2A and 2B shall be collectively referred to below as "**Class 2 Claims**").

Classification: Class 2 Claims consist of all Other Secured Claims against the Debtors.

Treatment: On, or as soon as is reasonably practicable after the later of (i) the Effective Date and (ii) the date on which such Claim is Allowed by the Final Order of the Bankruptcy Court, each Holder of an Allowed Class 2 Claim shall receive, in full and complete settlement, release and discharge of such Claim, in the sole discretion of the Debtors or the Debtor Representative (with the consent of the Restructuring Support Parties), as applicable: (i) reinstatement and unimpairment of its Allowed Class 2 Claim in accordance with section 1124(2) of the Bankruptcy Code (notwithstanding any contractual provision or applicable non-bankruptcy law that entitles the Holder of an Allowed Class 2 Claim to demand or receive payment of such Allowed Class 2 Claim prior to the stated maturity of such Allowed Class 2 Claim from and after the occurrence of a default), or (ii) in exchange for such Other Secured Claim, either (a) Cash in the full amount of such Allowed Class 2 Claim, including any postpetition interest accrued pursuant to section 506(b) of the Bankruptcy Code, (b) the proceeds of the sale or disposition of the collateral securing such Allowed Class 2 Claim to the extent of the value of the Holder's secured interest in such collateral, (c) the collateral securing such Allowed Class 2 Claim and any interest on such Allowed Class 2 Claim required to be paid pursuant to section 506(b) of the Bankruptcy Code or (d) such other Distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code.

Voting: Classes 2A and 2B are Unimpaired, and the Holders of Allowed Class 2 Claims shall be conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Allowed Class 2 Claims shall not be entitled to vote to accept or reject the Plan.

c. **Classes 3A and 3B**: Prepetition Second Priority Note Claims - Indianapolis Downs and Prepetition Second Priority Guarantee Claims - IDCC (Claims in Classes 3A and 3B shall be collectively referred to below as "**Class 3 Claims**").

Classification: Class 3 Claims consist of Prepetition Second Priority Note Claims against Indianapolis Downs and Prepetition Second Priority Guarantee Claims against IDCC.

Treatment: Except to the extent that a Holder of an Allowed Class 3 Claim agrees to a less favorable treatment, each Holder of an Allowed Class 3 Claim shall receive, in full and final satisfaction, settlement, release and compromise of such Claim:

(i) If a Sale Transaction occurs: its Pro Rata Share of the Net Sales Proceeds, less the Required Third Lien Recovery Payment; provided, that a Holder of Class 3 Claims shall not recover more than its Allowed Class 3 Claim; or

(ii) If a Sale Transaction does not occur: its Pro Rata Share of (a) all of the New Second Lien Term Loan, or in the alternative, all of the proceeds from the Alternative Second Lien Financing; (b) the percentage of the New Unsecured PIK Term Loan as set forth in the Restructuring Term Sheet; and (c) the percentage of the New Series A Warrants as set forth in the Restructuring Term Sheet.

Voting: Classes 3A and 3B are Impaired and the Holders of Allowed Class 3 Claims shall be entitled to vote to accept or reject the Plan.

Allowance: Class 3 Claims shall be Allowed under the Plan in the amount set forth in the Plan Supplement.

d. **Classes 4A and 4B**: Prepetition Third Priority Note Claims - Indianapolis Downs and Prepetition Third Priority Guarantee Claims - IDCC (Claims in Classes 4A and 4B shall be collectively referred to below as "**Class 4 Claims**").

Classification: Class 4 Claims consist of Prepetition Third Priority Note Claims against Indianapolis Downs and Prepetition Third Priority Guarantee Claims against IDCC.

Treatment: Except to the extent that a Holder of an Allowed Class 4 Claim agrees to a less favorable treatment, each Holder of an Allowed Class 4 Claim shall receive, in exchange for full and final satisfaction, settlement, release and compromise of such Claim:

(i) If a Sale Transaction occurs: (x) its Pro Rata Share of the Required Third Lien Recovery Payment; and (y) its Pro Rata Share of any Net Sales Proceeds exceeding the Second Lien Full Payment Amount plus the Required Third Lien Recovery Payment; provided, that a Holder of Class 4 Claims shall not recover more than its Allowed Class 4 Claim; or,

(ii) If a Sale Transaction does not occur: its Pro Rata Share of (a) the percentage of the New Unsecured PIK Term Loan as set forth in the Restructuring Term Sheet; (b) the percentge of the New Series A Warrants as set forth in the Restructuring Term Sheet; and (c) the percentage of the New Series B Warrants as set forth in the Restructuring Term Sheet.

Voting: Classes 4A and 4B are Impaired and the Holders of Class 4 Claims shall be entitled to vote to accept or reject the Plan.

Allowance: Class 4 Claims shall be Allowed under the Plan in the amount set forth in the Plan Supplement.

e. **Classes 5A and 5B**: General Unsecured Claims- Indianapolis Downs and General Unsecured Claims - IDCC (Claims in Classes 5A and 5B shall be collectively referred to below as "**Class 5 Claims"**).

Classification: Class 5 Claims consist of General Unsecured Claims against the Debtors.

Treatment: Holders of Class 5 Claims shall not be entitled to receive or retain any Distributions or other property on account of such Claims under the Plan. Pursuant to the Plan, all Allowed General Unsecured Claims against the Debtors shall be deemed settled, cancelled, extinguished and discharged on the Effective Date.

Voting: Classes 5A and 5B are Impaired, and the Holders of Allowed Class 5 Claims shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Allowed Class 5 Claims shall not be entitled to vote to accept or reject the Plan.

f. **Class 6A**: Interests in Indianapolis Downs.

Classification: Class 6A consists of Interests in Indianapolis Downs.

Treatment: On the Effective Date, each Holder of an Allowed Interest in Indianapolis Downs shall not receive or retain any Distribution or other property on account of such Interests under the Plan. All Interests in Indianapolis Downs and all stock certificates, instruments, and other documents evidencing such Interests in Indianapolis Downs shall be cancelled as of the Effective Date.

Voting: Class 6A is Impaired, and the Holders of Allowed Class 6A Interests shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Therefore, the Holders of Allowed Class 6A Interests shall not be entitled to vote to accept or reject the Plan.

g. **Class 6B**: Interests in IDCC.

Classification: Class 6B consists of the Interests in IDCC.

Treatment: As of the Effective Date, each Holder of an Allowed IDCC Interest shall not be entitled to receive or retain any Distribution or other property on account of such Interests under the Plan; provided that as a matter of convenience the Reorganized Debtors may elect to leave the Interests of IDCC in place on or after the Effective Date so long as such Interests consist only of common stock and are owned (legally and beneficially) solely by Reorganized Indianapolis Downs.

Voting: Class 6B is Impaired, and the Holders of Allowed Class 6B Interests shall be conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy

Code. Therefore, the Holders of Allowed Class 6B Interests shall not be entitled to vote to accept or reject the Plan.

3. *Special Provisions Regarding Insured Claims*

Under the Plan, an Insured Claim is any Allowed Claim or portion of an Allowed Claim that is insured under the Debtors' insurance policies, but only to the extent of such coverage. Distributions under the Plan to each Holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for General Unsecured Claims; provided, however, that the maximum amount of any Distribution under the Plan on account of an Allowed Insured Claim shall be limited to an amount equal to the applicable self-insured retention under the relevant insurance policy; provided further, however, that, to the extent a Holder has an Allowed Insured Claim, the amount of which exceeds the total coverage available from the relevant insurance policies of the Debtors, such Holder shall have an Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the coverage available from the Debtors' insurance policies. Nothing in this section shall constitute a waiver of any Litigation Rights the Debtors may hold against any Person, including the Debtors' insurance carriers; and nothing in this section is intended to, shall, or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining a Distribution or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under the Plan; provided, however, that the Debtors do not waive, and expressly reserves their rights to assert that any insurance coverage is property of the Estate to which it is entitled.

The Plan does not expand the scope of, or alter in any other way, the rights and obligations of the Debtors' insurers under their policies, and the Debtors' insurers will retain any and all defenses to coverage that such insurers may have, including the right to contest and/or litigate with any party, including the Debtors, the existence, primacy and/or scope of available coverage under any alleged applicable policy. The Plan shall not operate as a waiver of any other Claims the Debtors' insurers have asserted or may assert in any Proof of Claim or the Debtors' rights and defenses to such Proofs of Claim.

4. *Reservation of Rights Regarding Claims*

Except as otherwise explicitly provided in the Plan, nothing herein or in the Plan shall affect the Debtors' or the Debtor Representative's rights and defenses, both legal and equitable, with respect to any Claims or Interests, including, but not limited to, all rights with respect to legal and equitable defenses to alleged rights of setoff or recoupment.

The Plan is being proposed as a joint plan of reorganization of the Debtors for administrative purposes only. The Plan is not premised upon the substantive consolidation of the Debtors with respect to the Classes of Claims or Interests set forth in the Plan.

C. Debtor Representative's Obligations Under the Plan

From and after the Effective Date, the Debtor Representative shall exercise its reasonable discretion and business judgment to perform its obligations under the Plan. The Plan

will be administered and actions will be taken in the name of the Debtors and the Debtor Representative. From and after the Effective Date, the Debtor Representative shall conduct, among other things, the following tasks:

- Administer the Plan and take all steps and execute all instruments and documents necessary to effectuate the terms of the Plan;
- Pursue (including, as it determines through the exercise of its business judgment, prosecuting, enforcing, objecting to, litigating, reconciling, settling, abandoning, or resolving) all of the rights, Claims, Causes of Action, defenses, and counterclaims retained by the Debtors or the Reorganized Debtors;
- Reconcile Claims and resolve Disputed Claims, and administer the Claims' allowance and disallowance processes as set forth in the Plan, including objecting to, prosecuting, litigating, reconciling, settling, and resolving Claims and Disputed Claims in accordance with the Plan;
- Make decisions regarding the retention, engagement, payment, and replacement of professionals, employees and consultants;
- Administer the Distributions under the Plan, including (i) making Distributions in accordance with the terms of the Plan and (ii) Filing with the Bankruptcy Court on each three (3) month anniversary of the Effective Date reports regarding the Distributions made and to be made to the Holders of Allowed Claims as required by the U.S. Trustee;
- Exercise such other powers as necessary or prudent to carry out the provisions of the Plan;
- File appropriate tax returns;
- File a motion requesting the Bankruptcy Court enter a final decree closing the Chapter 11 Cases; and
- Take such other action as may be necessary or appropriate to effectuate the Plan.

D. Description of New Securities under the Plan

The terms of the New First Lien Term Loan, the New Second Lien Term Loan, the New Unsecured PIK Term Loan, the Alternative Second Lien Financing, the New Series A Warrants, the New Series B Warrants and the New Class A Units as set forth in the Restructuring Term Sheet and as will be more fully described in the Plan Supplement Documents.

E. Claims, Distribution Rights and Objections

1. *Distributions for Allowed Claims*

Except as otherwise provided in the Plan or as ordered by the Bankruptcy Court, all Distributions to Holders of Allowed Claims as of the Effective Date shall be made on or as soon as practicable after the Effective Date. Distributions on account of Claims that first become Allowed Claims after the Effective Date shall be made pursuant to Section 7.03 of the Plan and on such day as selected by the Reorganized Debtors, in their sole discretion.

2. *Interest on Claims*

Unless otherwise specifically provided for in the Plan or the Confirmation Order, postpetition interest shall not accrue or be paid on Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Unless otherwise specifically provided for in the Plan or the Confirmation Order, interest shall not accrue or be paid upon any Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if and after such Claim becomes an Allowed Claim.

3. *Designation; Distributions by Disbursing Agent*

The Debtor Representative or any Disbursing Agent on its behalf shall make all Distributions required to be made under the Plan.

If a Disbursing Agent is an independent third party designated to serve in such capacity, such Disbursing Agent shall receive, without further approval from the Bankruptcy Court, reasonable compensation for distribution services rendered pursuant to the Plan and reimbursement of reasonable out of pocket expenses incurred in connection with such services from the Debtor Representative, including the reasonable fees, costs and expenses of counsel, which shall be paid from the Wind Down Fund, provided however, that the terms and conditions of the Disbursing Agent's engagement shall be in form and substance acceptable to the Restructuring Support Parties. No Disbursing Agent shall be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court, in which case all costs and expenses of procuring any such bond or surety shall be borne by the Debtor Representative unless otherwise agreed.

The DIP Agent shall be the Disbursing Agent for the DIP Claims. Distributions under the Plan to Holders of such DIP Claims shall be made by the Debtor Representative to the DIP Agent, which in turn, shall make distributions to the Holders of such Allowed Claims. The DIP Agent shall not be required to give any bond, surety or other security for the performance of its duties with respect to its administration of distributions. Upon delivery by the Debtor Representative of the Distributions in conformity with Section 3.01(c) of the Plan to the DIP Agent, the Debtor Representative shall be released of all liability with respect to the delivery of such Distributions.

The Prepetition Second Priority Trustee shall be the Disbursing Agent for the Allowed Prepetition Second Priority Note Claims and the Allowed Prepetition Second Priority Guarantee Claims. Distributions under the Plan to Holders of such Allowed Prepetition Second

Priority Note Claims and the Allowed Prepetition Second Priority Guarantee Claims shall be made by the Debtor Representative to the Prepetition Second Priority Trustee, which in turn, shall make distributions to the Holders of such Allowed Claims. The Prepetition Second Priority Trustee shall not be required to give any bond, surety or other security for the performance of its duties with respect to its administration of distributions. Upon delivery by the Debtor Representative of the Distributions in conformity with Section 3.03 of the Plan to the Prepetition Second Priority Trustee, the Debtor Representative shall be released of all liability with respect to the delivery of such Distributions.

The Prepetition Third Priority Trustee shall be the Disbursing Agent for the Holders of Allowed Prepetition Third Priority Note Claims and the Allowed Prepetition Third Priority Guarantee Claims. Distributions under the Plan to such Holders of Allowed Prepetition Third Priority Note Claims and the Allowed Prepetition Third Priority Guarantee Claims shall be made by the Debtor Representative to the Prepetition Third Priority Trustee, which in turn, shall make distributions to the Holders of such Allowed Claims. The Prepetition Third Priority Trustee shall not be required to give any bond, surety or other security for the performance of its duties with respect to its administration of distributions. Upon delivery of the Distributions in conformity with Section 3.03 of the Plan; the Debtor Representative and the Prepetition Third Priority Trustee shall be released of all liability with respect to the delivery of such Distributions.

4. ***Means of Cash Payment***

Cash payments under this Plan shall be in U.S. funds, and shall be made, at the option, and in the sole discretion, of the Debtor Representative, by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Debtor Representative. Cash payments to foreign Creditors may be made, at the option, and in the sole discretion, of the Debtor Representative, in such funds and by such means as are necessary or customary in a particular foreign jurisdiction. Cash payments made pursuant to this Plan in the form of checks issued by the Debtor Representative shall be null and void if not cashed within 120 days of the date of the issuance thereof. Requests for reissuance of any check shall be made directly to the Debtor Representative.

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 or, if such Claim is to be paid in the ordinary course, then pursuant to the applicable published exchange rate in effect on the date of such payment.

5. ***Fractional Distributions***

Notwithstanding any other provision of the Plan to the contrary, no fractional units of shares will be issued or distributed and no cash payments of fractions of cents will be made. When any distribution pursuant to the Plan would otherwise result in the issuance of a number of shares that is not a whole number, the actual distribution of shares shall be rounded to the nearest whole number and fractions of one-half (1/2) or less shall be rounded to the next lower whole number. The total number of authorized shares to be distributed pursuant to the Plan shall be adjusted as necessary to account for the foregoing rounding.

6. *De Minimis Distributions*

Notwithstanding anything to the contrary contained in the Plan, the Disbursing Agent 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 $50. Any Holder of an Allowed Claim on account of which the amount of Cash or other property to be distributed is less than such amount shall have such Claim discharged and shall be forever barred from asserting such Claim against the Debtors, the Debtor Representative or their respective property. Any Cash or other property not distributed pursuant to this provision shall be the property of the Debtor Representative, free of any restrictions thereon unless a Sale Transaction is consummated, in which case any Cash or other property shall be sold or otherwise liquidated by the Liquidator and the proceeds distributed in accordance with the Plan.

7. *Delivery of Distributions*

Distributions to Holders of Allowed Claims shall be made by the applicable Disbursing Agent (a) at the addresses reflected in the Schedules, (b) at the addresses set forth on the Proofs of Claim Filed by such Holders, (c) at the addresses set forth in any written notices of address changes delivered to the Debtors, the Debtor Representative or the Disbursing Agent after the date of the Schedules if no Proof of Claim was Filed or after the date of any related Proof of Claim Filed, (d) with respect to the Holders of DIP Claims, to, or at the direction of the DIP Agent, (e) with respect to the Holders of Allowed Second Priority Note Claims, to, or at the direction of the Second Priority Indenture Trustee, or (f) with respect to the Holders of Allowed Third Priority Note Claims to, or at the direction of the Third Priority Indenture Trustee. Unless otherwise agreed between the Debtor Representative and the Disbursing Agent, amounts in respect of undeliverable Distributions made by the Disbursing Agent shall be returned to the Debtor Representative, on the first (1^{st}) anniversary of the Effective Date. Any amount returned to the Debtor Representative prior to such anniversary shall be held in trust by the Debtor Representative, until the earlier of (a) the first anniversary of the Effective Date or (b) such Distributions are claimed, at which time the applicable amounts shall be returned to the Disbursing Agent for Distribution pursuant to the Plan. All claims for undeliverable Distributions must be made on or before the first (1^{st}) anniversary of the Effective Date, after which date all unclaimed property shall revert to the Debtor Representative free of any restrictions thereon and the claims of any Holder or successor to such Holder with respect to such property shall be discharged and forever barred, notwithstanding any federal or state escheat laws to the contrary. Distributions to the Holders of Allowed DIP Claims shall be deemed made when delivered to the DIP Agent. Distributions to the Holders of Allowed Second Priority Note Claims shall be deemed made when delivered to the Second Priority Indenture Trustee. Distributions to the Holders of Allowed Third Priority Note Claims shall be deemed made when delivered to the Third Priority Indenture Trustee. Nothing contained in the Plan shall require the Debtors, the Debtor Representative, or any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

8. *Application of Distribution Record Date*

At the close of business on the Distribution Record Date, the claims registers for all Claims shall be closed, and there shall be no further changes in the record Holders of such Claims. Except as provided the Plan, the Debtor Representative, the Disbursing Agent and each of their respective agents, successors, and assigns shall have no obligation to recognize any transfer of Claims occurring after the Distribution Record Date and shall be entitled instead to recognize and deal for all purposes hereunder with only those record Holders stated on the claims registers as of the close of business on the Distribution Record Date irrespective of the number of Distributions to be made under the Plan to such Persons or the date of such Distributions.

9. *Withholding, Payment and Reporting Requirements*

In connection with the Plan and all Distributions under the Plan, the Debtor Representative and the Disbursing Agent 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 under the Plan shall be subject to any such withholding, payment, and reporting requirements. The Debtor Representative and the Disbursing Agent shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding, payment, and reporting requirements. Notwithstanding any other provision of the Plan, and except as provided in the DIP Credit Agreement, the Prepetition Second Priority Indenture or the Prepetition Third Priority Indenture, (a) each Holder of an Allowed Claim that is to receive a Distribution of Cash 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 cases of any Holder of a Disputed General Unsecured Claim that has become an Allowed General Unsecured Claim, any tax obligation that would be imposed upon the Debtor Representative in connection with such Distribution, and (b) no Distribution of Cash shall be made to or on behalf of such Holder pursuant to the Plan unless and until such Holder has made arrangements satisfactory to the applicable Reorganized Debtor for the payment and satisfaction of such withholding Tax obligations or such tax obligation that would be imposed upon the Debtor Representative in connection with such Distribution. Any property to be distributed pursuant to the Plan shall, pending the implementation of such arrangements, be treated as an undeliverable Distribution pursuant to Section 7.07 of the Plan.

10. *Setoffs*

The Debtor Representative may, but shall not be required to, set off against any Claim or any Allowed Claim, and the payments or other Distributions to be made pursuant to the Plan in respect of such Claim, Claims of any nature whatsoever that the Debtors or the Debtor Representative 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 Representative of any such Claim that the Debtors or the Debtor Representative may have against such Holder.

11. ***Pre-Payment***

Except as otherwise provided in the Plan, any ancillary documents entered into in connection herewith, or the Confirmation Order, the Debtor Representative shall have the right to pre-pay, without penalty, all or any portion of an Allowed Claim entitled to payment in Cash at any time.

12. ***No Distribution in Excess of Allowed Amounts***

Notwithstanding anything to the contrary 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 (excluding payments on account of interest due and payable from and after the Petition Date pursuant to the Plan, if any).

13. ***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.

14. ***Prosecution of Objections to Claims***

a. **Objections to Claims; Estimation Proceedings**

Except as set forth in the Plan or any applicable Bankruptcy Court order, all objections to Claims must be Filed and served on the Holders of such Claims by the Claims Objection Bar Date, as the same may be extended by the Bankruptcy Court upon motion by the Debtors, the Debtor Representative or any other party-in-interest. If a timely objection has not been Filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtors but (ii) was not Scheduled as contingent, unliquidated, and/or disputed, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if such Claim has not been Allowed earlier. No payments or Distributions shall be made on account of a Claim until such Claim becomes an Allowed Claim. Notice of any motion for an order extending any Claims Objection Bar Date shall be required to be given only to those Persons or Entities that have requested notice in these Chapter 11 Cases, or to such Persons as the Bankruptcy Court shall order.

The Debtors (prior to the Effective Date) or the Debtor Representative, with the consent of the Restructuring Support Parties, may at any time request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether the Debtors, the Debtor Representative or any other Party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time, including during litigation concerning any objection to any Claim (and 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 either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court, as applicable. If the estimated amount constitutes a maximum limitation on such Claim,

the Debtor Representative may elect to pursue any supplemental proceedings to object to any ultimate payments and Distributions on such Claim. All of the aforementioned Claims objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanisms.

The Debtor Representative will have no obligation to review and/or respond to any Claim that is not Filed by the applicable Bar Date and all such Claims shall be conclusively deemed to receive no Distribution under the Plan unless: (i) the filer has obtained an order from the Bankruptcy Court authorizing it to File such Claim; or (ii) the Debtor Representative has consented to the Filing of such Claim in writing.

b. Authority to Prosecute Objections

After the Effective Date, only the Debtor Representative shall have the authority to File objections to Claims and to settle, compromise, withdraw, or litigate to judgment objections to Claims, including, without limitation, Claims for reclamation under section 546(c) of the Bankruptcy Code. The Debtor Representative may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

15. *Treatment of Disputed Claims*

a. No Distribution Pending Allowance

Notwithstanding any other provisions of the Plan, no payments or Distributions will be made on account of a Disputed Claim or, if less than the entire Claim is a Disputed Claim, the portion of a Claim that is Disputed, unless and until such Disputed Claim becomes an Allowed Claim.

b. Distributions on Accounts of Disputed Claims Once They are Allowed

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, Distributions, if any, shall be made by the Disbursing Agent on the applicable Distribution Dates to the Holder of such Allowed Claim. Such Distributions shall be made pursuant to the provisions of the Plan governing the applicable Class. Such Distributions shall be based upon the Distributions that would have been made to the Holder of such Claim under the Plan if the Disputed Claim had been an Allowed Claim on the Effective Date in the amount ultimately Allowed.

16. *Accounts; Escrows; Reserves*

The Debtors, and the Debtor Representative shall, subject to and in accordance with the provisions of this Plan: (a) establish one or more general accounts into which shall be deposited all funds not required to be deposited into any other account, reserve or escrow, (b) create, fund, replenish and withdraw funds from, as appropriate, the Administrative Claims Reserve, the Professional Fee Reserve, the Disputed Claims Reserve and any Wind Down Fund, and (c) if practicable, invest any Cash that is withheld as the applicable claims reserve in an appropriate manner to ensure the safety of the investment, provided, however, that the

Restructuring Support Parties shall retain their Liens on any such funds described in clause (a) and (b) above and any funds remaining after making the payments described in Section 8.03 of the Plan shall be treated as Retained Collateral Proceeds and distributed in accordance with the Plan. Nothing in this Plan or the Disclosure Statement, however, shall be deemed to entitle the Holder of a Disputed Claim to postpetition interest on such Claim.

a. Administrative Claims Reserve

On the Effective Date (or as soon thereafter as is practicable), the Debtors or the Debtor Representative, as applicable, shall create and fund the Administrative Claims Reserve in an amount sufficient to pay all estimated Administrative Claims including Disputed Claims (but excluding Professional Fee Claims), which amount shall be agreed upon by the Debtors and the Restructuring Support Parties. The Administrative Claims Reserve shall be used by the Debtor Representative to pay Distributions on account of Allowed Administrative Claims, other than Professional Fee Claims, including Claims under section 503(b)(9) of the Bankruptcy Code and lease payments under section 365(d)(5) of the Bankruptcy Code. In the event that any Cash remains in the Administrative Claims Reserve after payment of all Allowed Administrative Claims such Cash shall constitute Retained Collateral Proceeds and be distributed in accordance with the Plan.

b. Professional Fee Reserve

The Debtors or the Debtor Representative shall create and fund the Professional Fee Reserve on the Effective Date (or as soon thereafter as is practicable) in the amount of the unpaid Professional fees projected through the Effective Date, which amount shall be sufficient to pay all estimated Allowed Professional Fee Claims held by any Professional and shall be agreed upon by the Debtors and the Restructuring Support Parties. In the event that any Cash remains in the Professional Fee Reserve after payment of all Allowed Professional Fee Claims, such Cash shall constitute Retained Collateral Proceeds and be distributed in accordance with the Plan.

c. Disputed Claims Reserve

On the Effective Date and on each subsequent Distribution Date, the Debtors or the Debtor Representative shall withhold on a pro rata basis from property that would otherwise be distributed to Classes of Claims entitled to Distributions under the Plan on such date, in a separate Disputed Claims Reserve, such amounts or property as may be necessary to equal one hundred percent (100%) of Distributions to which Holders of such Disputed Claims would be entitled under this Plan if such Disputed Claims were allowed in their Disputed Claim Amount. The Debtors or the Debtor Representative may request, if necessary, estimation from the Bankruptcy Court for any Disputed Claim that is contingent or unliquidated, or for which the Debtors or the Debtor Representative determine to reserve less than the face amount. The Debtors or the Debtor Representative shall withhold the applicable portion of the Disputed Claims Reserve with respect to such Claims based upon the estimated amount of each such Claim as estimated by the Bankruptcy Court. If the Debtors or the Debtor Representative elect not to request such an estimation from the Bankruptcy Court with respect to a Disputed Claim that is contingent or unliquidated, the Debtors or the Debtor Representative shall withhold the

applicable Disputed Claims Amount based upon the good faith estimate of the amount of such Claim by the Debtors or the Debtor Representative after the Effective Date, which amount shall be agreed upon by the Debtors or the Debtor Representative and the Restructuring Support Parties. If practicable, the Debtors or the Debtor Representative will invest any Cash that is withheld as the applicable Disputed Claims Reserve in an appropriate manner to ensure the safety of the investment. Nothing in this Plan or the Disclosure Statement shall be deemed to entitle the Holder of a Disputed Claim to postpetition interest on such Claim, however, except as otherwise provided in the Plan.

d. Wind Down Fund

On the Effective Date, the Wind Down Fund shall be funded, if the Sale Transaction is consummated.

17. *DIP Agent and Indenture Trustee Fees and Expenses*

If the Debtor Representative disputes any portion of fees and expenses asserted under Section 3.01(d) of the Plan, the Debtor Representative shall pay the undisputed portion of such fees and expenses as set forth in the Plan, and shall notify the party whose fees and/or expenses it disputes within ten (10) days after the presentation of such invoices to the Debtor Representative. The party whose fees are in dispute may at any time submit such dispute for resolution to the Bankruptcy Court, provided that, in the case of the DIP Agent, the Prepetition Second Priority Trustee and Prepetition Third Priority Trustee, the Bankruptcy Court review shall be limited to a determination under the reasonable standards in accordance with the DIP Credit Agreement, the Prepetition Second Priority Indenture and the Prepetition Second Priority Indenture. In addition, the DIP Agent, Prepetition Second Priority Trustee and Prepetition Third Priority Trustee may assert their rights under the DIP Credit Agreement, Second Priority Indenture and Third Priority Indenture to Liens upon or other priority in payment with respect to the Distributions to Holders of the DIP Claims, Prepetition Second Priority Notes and the Prepetition Third Priority Notes to pay the disputed portion of the DIP Agent's, Prepetition Second Priority Trustee's and Prepetition Third Priority Trustee's fees and expenses. Nothing in the Plan shall waive, discharge or negatively affect any lien for any fees costs and expenses not paid by the Debtor Representative and otherwise claimed by the DIP Agent, Prepetition Second Priority Trustee and Prepetition Third Priority Trustee under the Plan.

18. *Payment of Statutory Fees*

All fees payable on or before the Effective Date pursuant to section 1930 of title 28 of the United States Code shall be paid by the Debtors on or before the Effective Date and all such fees payable after the Effective Date shall be paid by the applicable Reorganized Debtor or from the Wind Down Fund. The obligation of each of the Reorganized Debtors or the Liquidator to pay quarterly fees to the Office of the United States Trustee pursuant to section 1930 of title 28 of the United States Code shall continue until such time as the Chapter 11 Cases are closed.

F. Disposition of Executory Contracts and Unexpired Leases

1. *Executory Contracts and Unexpired Leases Deemed Assumed*

Except as otherwise specifically provided in the Plan, including in Sections 6.01(c) and 6.09 of the Plan, or in any contract, instrument, release, indenture or other agreement or document entered into in connection with the Plan, as of the Effective Date, all Executory Contracts and Unexpired Leases are assumed except for an Executory Contract or Unexpired Lease that: (i) is listed, either specifically or by category, on the schedule of rejected Executory Contracts and Unexpired Leases in the Plan Supplement which schedule shall be acceptable in all material respects to the Restructuring Support Parties; (ii) was previously assumed or rejected (in either case, with the approval of the Restructuring Support Parties) by the Debtors pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date; (iii) previously expired or was terminated pursuant to its own terms; or (iv) is the subject of a motion to assume, assume and assign, or reject filed by the Debtors on or before the Confirmation Date (in any such case, with the approval of the Restructuring Support Parties); provided, however, that all Related Party Executory Contracts and Unexpired Leases shall be deemed rejected unless expressly assumed by being listed, on the schedule of assumed Related Party Executory Contracts or Unexpired Leases in the Plan Supplement, which schedule, if any, shall be acceptable in all material respects to the Restructuring Support Parties. The Confirmation Order shall constitute an order of the Bankruptcy Court under section 365 of the Bankruptcy Code approving the Executory Contract and Unexpired Lease assumptions, assignments or rejections described above, as of the Effective Date. Each party to an Executory Contract or Unexpired Lease that does not file and serve upon counsel to the Debtors and the Restructuring Support Parties by the deadline set for objections to Confirmation an objection to the Debtors' assumption and/or assignment of such Executory Contract or Unexpired Lease, will be deemed to consent to the assumption and/or assignment of such Executory Contract or Unexpired Lease.

Notwithstanding anything to the contrary in the Plan, the Debtors and the Reorganized Debtors reserve the right to assert that any license, franchise and partially performed contract is a property right and not an Executory Contract.

Notwithstanding anything to the contrary in the Plan, if a Sale Transaction is consummated, all Executory Contracts and/or Unexpired Leases shall be deemed rejected as of the Effective Date except (a) those specifically assumed in connection with the Asset Purchase Agreement, (b) as listed on the schedule of assumed contracts in the Plan Supplement, and (c) agreements described in Section 6.04 of the Plan. The Asset Purchase Agreement shall contain an exhibit which lists the Executory Contracts and/or Unexpired Leases being assumed thereunder. If a Sale Transaction is consummated, contracts or leases entered into after the Petition Date will be performed by the Reorganized Debtors in the ordinary course of business.

2. *Assignment of Executory Contracts and Unexpired Leases*

To the extent provided under the Bankruptcy Code or other applicable law, any Executory Contract or Unexpired Lease transferred and assigned pursuant to this Plan or the Asset Purchase Agreement shall remain in full force and effect for the benefit of the transferee or assignee in accordance with its terms, notwithstanding any provision in such Executory Contract

or Unexpired Lease (including those of the type described in section 365(b)(2) of the Bankruptcy Code) that prohibits, restricts or conditions such transfer or assignment. To the extent provided under the Bankruptcy Code or other applicable law, any provision that prohibits, restricts or conditions the assignment or transfer of any such Executory Contract or Unexpired Lease or that terminates or modifies such Executory Contract or Unexpired Lease or allows the counterparty to such Executory Contract or Unexpired Lease to terminate, modify, recapture, declare a default, accelerate or increase obligations, impose any penalty, condition renewal or extension, or modify any term or condition upon any such transfer and assignment constitutes an unenforceable provision and is void and of no force or effect.

3. *Cure Rights for Executory Contracts and Unexpired Leases Assumed Under the Plan*

Any monetary amounts by which each Executory Contract and Unexpired Lease to be assumed or assumed and assigned pursuant to the Plan is in default shall be satisfied, under section 365(b)(1) of the Bankruptcy Code, solely by Cure. If there is a dispute regarding (a) the nature or amount of any Cure, (b) the ability of any Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed or assumed and assigned or (c) any other matter pertaining to assumption and/or assignment, Cure shall occur following the entry of a Final Order by the Bankruptcy Court resolving the dispute and approving the assumption or assumption and assignment, as the case may be; provided, however, that the Debtors or Reorganized Debtors, as applicable, shall be authorized to reject any Executory Contract or Unexpired Lease to the extent that the Debtors or Reorganized Debtors, in the exercise of their sound business judgment and with the approval of the Restructuring Support Parties, conclude that the amount of the Cure obligation as determined by such Final Order, renders assumption of such Executory Contract or Unexpired Lease unfavorable to the Debtors or Reorganized Debtors. Cure amounts for an assumed Executory Contract or Unexpired Lease are listed on a schedule of Cure amounts in the Plan Supplement. If no Cure amount for an assumed Executory Contract or Unexpired Lease is listed on such schedule, the Cure amount shall be deemed to be $0.

4. *Continuing Obligations Owed to Debtors*

Except as otherwise provided in the Plan, any confidentiality agreement entered into between the Debtors and any other Person requiring the parties to maintain the confidentiality of each other's proprietary information shall be deemed to be, and shall be treated as though it is, an Executory Contract that is assumed and assigned to the Debtor Representative pursuant to section 365 of the Bankruptcy Code and Section 6.01 of the Plan, except as otherwise provided in the Plan.

Any indemnity agreement entered into between the Debtors and any other Person requiring that Person to provide insurance in favor of the Debtors, to warrant or guarantee such Person's goods or services, or to indemnify the Debtors for claims arising from such goods or services shall be deemed to be, and shall be treated as though it is, an Executory Contract that is assumed and assigned pursuant to section 365 of the Bankruptcy Code and Section 6.01 of the Plan (but subject to Section 5.06 of the Plan); provided, however, that if any party thereto asserts

any Cure, at the election of the Debtors (with the approval of the Restructuring Support Parties) such agreement shall not be deemed assumed, and shall instead be rejected pursuant to section 365 of the Bankruptcy Code under the Plan.

Continuing obligations of third parties to the Debtors under insurance policies, contracts, or leases that have otherwise ceased to be executory or have otherwise expired on or prior to the Effective Date, including, without limitation, continuing obligations to pay Insured Claims, to defend against and process claims, to refund premiums or overpayments, to provide indemnification, contribution or reimbursement, to grant rights of first refusal, to maintain confidentiality, or to honor releases, shall continue and shall be binding on such third parties unless otherwise specifically terminated by the Debtors, under the Plan or otherwise by order of Bankruptcy Court.

All of the Debtors' insurance policies and any agreements, documents or instruments relating thereto shall be treated as Executory Contracts of the Debtors under the Plan and the Bankruptcy Code and shall be assumed by the Debtors pursuant to section 365 of the Bankruptcy Code and Section 6.01 of the Plan, unless such insurance policies (and any agreements, documents or instruments relating thereto) are listed on the schedule of rejected Executory Contracts and Unexpired Leases in the Plan Supplement. Any and all Claims (including payments for Cure) arising under or related to any insurance policies or related insurance agreements that are assumed by the Debtors prior to or as of the Effective Date (i) shall not be discharged, (ii) shall be Allowed Administrative Claims and (iii) shall be paid in full in the ordinary course of business of the Reorganized Debtors as set forth in Section 3.01(a) of the Plan or the Wind Down Fund.

5. *Limited Extension of Time to Assume or Reject*

In the event of a dispute as to whether a contract or lease between the Debtors and a Person that is not an Insider is executory or unexpired, the right of the Debtors or the Debtor Representative to move to assume or reject such contract or lease shall be extended until the date that is thirty (30) days, or as otherwise provided in section 365(d) of the Bankruptcy Code, after entry of a Final Order by the Bankruptcy Court determining that the contract or lease is executory or unexpired, provided such dispute is pending as of the Confirmation Date.

6. *Claims Based on Rejection of Executory Contracts or Unexpired Leases; Rejection Damages Bar Date*

Unless otherwise provided by a Bankruptcy Court order, if the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan results in a Claim, then such Claim shall be forever barred and shall not be enforceable against the Debtors, their Estates, the Debtor Representative or any of their properties unless a Proof of Claim is Filed with the claims agent and served upon counsel to the Debtor Representative within thirty (30) days after the later of the date of (a) entry of the Confirmation Order and (b) entry of the order rejecting the applicable Executory Contract or Unexpired Lease. The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease; any other Claims held by a party to a rejected contract or lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable.

7. *Postpetition Contracts and Leases*

The Debtors shall not be required to assume or reject any contract or lease entered into by the Debtors after the Petition Date. Any such contract or lease shall continue in effect in accordance with its terms after the Effective Date as set forth in the Plan, unless the Debtor Representative have obtained a Final Order of the Bankruptcy Court approving termination of such contract or lease. Unless a Sale Transaction is consummated, contracts or leases entered into after the Petition Date will be performed by the Debtor Representative in the ordinary course of their businesses.

8. *Treatment of Claims Arising From Assumption or Rejection*

All Allowed Claims for Cure arising from the assumption of any Executory Contract or Unexpired Lease shall be treated as Administrative Claims pursuant to Section 3.01(a) of the Plan. All Allowed Claims arising from the rejection of an Executory Contract or Unexpired Lease shall be treated, to the extent applicable, as General Unsecured Claims, unless otherwise ordered by Final Order of the Bankruptcy Court. All other Allowed Claims relating to an Executory Contract or Unexpired Lease shall have such status as they may be entitled to under the Bankruptcy Code as determined by Final Order of the Bankruptcy Court.

9. *Employee Benefit Programs*

All employment and severance policies, and all compensation and benefit plans, policies and programs of the Debtors applicable to their respective employees, retirees and directors, including, without limitation, all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life, accidental death and dismemberment insurance plans shall be treated as Executory Contracts under the Plan and, except and to the extent (i) previously assumed by an order of the Bankruptcy Court on or before the Confirmation Date, (ii) otherwise specifically provided in the Plan, or (iii) set forth in the Asset Purchase Agreement in connection with a Sale Transaction, will be listed on the schedule of rejected Executory Contracts and Unexpired Leases in the Plan Supplement and will be rejected on the Effective Date [(to the extent such rejection does not violate sections 1114 and 1129(a)(13) of the Bankruptcy Code); provided, however, that the Debtors' obligations, if any, to pay all "retiree benefits" as defined in section 1114(a) of the Bankruptcy Code shall continue; provided further, however, that nothing herein or in the Plan, shall extend or otherwise modify the duration of such period or prohibit the Debtors' ability or the Reorganized Debtors' ability to modify the terms and conditions of the retiree benefits as otherwise permitted by such plans and applicable nonbankruptcy law.

10. *Indemnification Obligations*

If a Sale Transaction is not consummated, upon the Effective Date, the Indemnification Obligations shall not be discharged or impaired by Confirmation of the Plan, shall survive Confirmation of the Plan and shall remain unaffected thereby after the Effective Date; provided, however, that, notwithstanding the foregoing, the right of an Indemnified Person to receive any indemnities, reimbursements, advancements, payments or other amounts arising out of, relating to or in connection with the Indemnification Obligations shall be limited to, and

an Indemnified Person's sole and exclusive remedy to receive any of the foregoing shall be exclusively from, the director and officer insurance policies of the Debtors in effect on the Effective Date, and no Indemnified Person shall seek, or be entitled to receive, any of the foregoing from (directly or indirectly) the Reorganized Debtors.

If a Sale Transaction is consummated, for three (3) years thereafter, the Debtors or the Debtor Representative, as the case may be, shall obtain reasonably sufficient tail coverage under a director and officer liability insurance policy to cover Persons who are covered by the Debtors' officers' and directors' liability insurance policies as of immediately prior to the Effective Date with respect to actions and omissions occurring prior to the Effective Date. As of the Effective Date in the event a Sale Transaction is not consummated, the Reorganized Debtors shall assume, under section 365(a) of the Bankruptcy Code, all of the director and officer insurance policies of the Debtors in effect on the Effective Date.

Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Debtors' foregoing assumption of each of the director and officer liability insurance policies.

G. Revesting of Assets; Preservation of Causes of Action, Litigation Rights and Avoidance Actions; Release of Liens; Resulting Claim Treatment

Except as otherwise provided herein, the Plan, or in the Confirmation Order, and pursuant to section 1123(b)(3) and sections 1141(b) and (c) of the Bankruptcy Code, on the Effective Date, all of the property and assets of the Debtors and all Causes of Action and Litigation Rights, including the Avoidance Actions, except to the extent transferred pursuant to the Asset Purchase Agreement, shall automatically vest or revest in the Debtor Representative, free and clear of all Claims, Liens, Interests, charges or other encumbrances. On and after the Effective Date, the Debtor Representative may operate the Debtors' businesses (as applicable) and conduct their affairs and use, acquire or dispose of property and assets and settle or compromise any Claims, Interests or Causes of Action without the supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, subject to the terms of this Plan and the Plan Supplement, and all documents and exhibits thereto implementing the provisions of the Plan. The Debtor Representative (directly or through the Disbursing Agent) shall make all Distributions under the Plan. As of the Effective Date, all such property of the Debtor Representative shall be free and clear of all Claims, Liens, Interests, charges and other encumbrances, except as specifically provided in the Plan or the Confirmation Order and the Debtor Representative shall receive the benefit of any and all discharges under the Plan.

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, to the fullest extent possible under applicable law and except to the extent transferred pursuant to the Asset Purchase Agreement, on the Effective Date, the Debtor Representative shall retain and may enforce, and shall have the sole right to enforce or prosecute, any claims, demands, rights, and Causes of Action and Litigation Rights that the Debtors may hold against any Entity, including, without limitation, all Avoidance Actions. The Debtor Representative or its successor may pursue such retained Claims, demands, rights or

Causes of Action or Litigation Rights, including, without limitation, Avoidance Actions, as appropriate, in accordance with the best interests of the Debtor Representative or its successor holding such Claims, demands, rights, Causes of Action or Litigation Rights.

H. Restructuring Transactions

On, and after the Effective Date, the Reorganized Debtors may enter into such transactions, execute and deliver such agreements, instruments and other documents, and may take such actions as may be necessary or appropriate, in accordance with any applicable law, and with the consent of the Restructuring Support Parties to effect a company/corporate or operational restructuring of the Debtors' businesses, to otherwise simplify the overall company/corporate or operational structure of the Reorganized Debtors, to achieve company/corporate or operational efficiencies, or to otherwise improve financial results; provided that such transactions or actions are not otherwise inconsistent with the Plan or Distributions to be made under the Plan.

1. *Restructuring Implementation Steps and Transactions*

(a) If a Sale Transaction is not consummated, the transactions contemplated by the Plan will require the following:

(i) Execution and Delivery of the New First Lien Term Loan Agreement and Funding Thereunder. On the Effective Date, the Reorganized Debtors shall be authorized, without further act or action under applicable law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, to enter into the New First Lien Term Loan Agreement. The Reorganized Debtors are hereby authorized to enter into such agreements, collateral documents and other documents, and issue such instruments, including, without limitation, promissory notes, as may be necessary to effectuate their entry into the New First Lien Term Loan Agreement and to consummate the transactions contemplated thereby (including by granting security interests in and Liens on their respective assets and properties to secure the obligations under the New First Lien Term Loan Agreement and such other agreements, documents and instruments), in each case, in form and substance acceptable to the Restructuring Support Parties.

(ii) Execution and Delivery of the New Second Lien Term Loan Agreement or Execution and Delivery of the Alternative Second Lien Financing and Funding Thereunder. On the Effective Date, the Reorganized Debtors shall be authorized, without further act or action under applicable law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, to enter into the New Second Lien Term Loan Agreement. The Reorganized Debtors are hereby authorized to enter into such agreements, collateral documents and other documents, and issue such instruments, including, without limitation, promissory notes, as may be necessary to effectuate their entry into the New Second Lien Term Loan Agreement and to consummate the transactions contemplated thereby (including by granting security interests in and Liens on their respective assets and properties to secure the obligations under the New Second Lien Term Loan Agreement and such other agreements, documents and instruments), in each case, in the form and substance acceptable to the Restructuring Support Parties. In the event the Debtors elect to obtain Alternative Second

Lien Financing rather than the New Second Lien Term Loan (with the consent of the Restructuring Support Parties), the Reorganized Debtors, on the Effective Date, shall be authorized without further act or action under applicable law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, to enter into the Alternative Second Lien Documents. The Reorganized Debtors are hereby authorized to enter into such agreements, collateral documents and other documents, and issue such instruments, including, without limitation, promissory notes, as may be necessary to effectuate their entry into the Alternative Second Lien Financing and to consummate the transactions contemplated thereby (including by granting security interests in and Liens on their respective assets and properties to secure the obligations under such agreements, documents and other instruments evidencing the Alternative Second Lien Financing and such other agreements, documents and instruments), in each case, in form and substance acceptable to the Restructuring Support Parties.

(iii) Execution and Delivery of the New Unsecured PIK Term Loan Agreement. On the Effective Date, the Reorganized Debtors shall be authorized, without further act or action under applicable law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, to enter into the New Unsecured PIK Term Loan Agreement. The Reorganized Debtors are hereby authorized to enter into such agreements, collateral documents and other documents, and issue such instruments, including, without limitation, promissory notes, as may be necessary to effectuate their entry into the New Unsecured PIK Term Loan Agreement and to consummate the transactions contemplated thereby, in each case, in form and substance acceptable to the Restructuring Support Parties.

(iv) Issuance of the New Series A Warrants. On the Effective Date, the Reorganized Debtors shall be authorized, without further act or action under applicable law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, to issue the New Series A Warrants to the recipients of the New Unsecured PIK Term Loan. All documentation with respect to the New Series A Warrants, including, without limitation, the forms of warrant and the warrant agreement shall be in form and substance acceptable to the Restructuring Support Parties.

(v) Issuance of the New Series B Warrants. On the Effective Date, the Reorganized Debtors shall be authorized, without further act or action under applicable law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, to issue a percentage of the New Series B Warrants set forth in the Restructuring Term Sheet to holders of Prepetition Third Priority Notes. All documentation with respect to the New Series B Warrants, including, without limitation, the forms of warrant and warrant agreement shall be in form and substance acceptable to the Restructuring Support Parties.

(vi) Authorization and Issuance of New Class A Units. On the Effective Date, the Reorganized Debtors shall be authorized to issue, execute and deliver the New Class A Units.

(b) If a Sale Transaction is consummated, the transactions contemplated by the Plan and the Asset Purchase Agreement will require the following:

(i) Wind Down and Dissolution of the Debtors. On and after the Effective Date, the Liquidator will implement the Wind Down pursuant to the Liquidator Agreement, any other provision of the Plan and any applicable orders of the Bankruptcy Court, and the Liquidator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors and to realize on any Assets retained by the Debtors. After the Effective Date, the Debtors shall not engage in any business activities or take any actions, except those necessary to effectuate the Plan, the Wind Down and comply with its obligations under the Asset Purchase Agreement. As soon as practicable after the Effective Date, the Liquidator shall: (a) change the business and company/corporate names of each of the Debtors to new names bearing no resemblance to any of the present names of such Debtor; (b) cause the Debtors to comply with, and abide by, the terms of the Asset Purchase Agreement; (c) file for each of the Debtors, a certificate of dissolution, together with all other necessary corporate and company documents, to effect the dissolution and/or a certificate of cancellation of the Debtors under the applicable laws of their state of incorporation or formation (as applicable); (d) complete and file all final or otherwise required federal, state and local tax returns for each of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws; and (e) take such other actions as the Liquidator may determine to be necessary or desirable to carry out the purposes of this Plan and to realize on any Assets retained by the Debtors. The filing by the Liquidator of each Debtor's certificate of dissolution and/or certificate of cancellation shall be authorized and approved in all respects without further action under applicable law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, including, without limitation, any action by the stockholders, members, the board of directors or board of managers of each such Debtor.

(ii) Liquidator. The Confirmation Order shall approve the Liquidator Agreement substantially in the form Filed in the Plan Supplement and shall empower and authorize the Liquidator to take or cause to be taken all actions pursuant to the provisions of the Liquidator Agreement as may be necessary to administer and liquidate the Debtors' remaining assets, pursue Causes of Action not transferred under the Asset Purchase Agreement, provide for a document and record retention program, if necessary, in such a manner as approved by order of the Bankruptcy Court, to secure and facilitate the effective implementation of the Plan and the closing of the Chapter 11 Cases, and to otherwise conduct and effectuate the Wind Down. The Liquidator is authorized to execute such documents and take such other actions as may be necessary to effectuate the transactions provided for in the Plan to the extent applicable.

(iii) Appointment of the Liquidator. Prior to or on the Effective Date, the Liquidator will be appointed pursuant to the terms of the Liquidator Agreement for purposes of conducting the Wind Down and shall succeed to such powers as would have been applicable to the Debtors' officers, directors, managers, members and shareholders, and the Debtors shall be authorized to be (and, upon the conclusion of the Wind Down, shall be) dissolved by the Liquidator. All property of the Debtors' Estates not distributed to the holders of Allowed Claims on the Effective Date, or transferred pursuant to the Asset Purchase Agreement, shall be transferred to the Liquidator and managed by the Liquidator pursuant to the terms of the Liquidator Agreement and shall be held in the name of the Debtors free and clear of all Claims against the Debtors and Interests in the Debtors except for rights to such Distributions provided

to Holders of Allowed Claims as provided in the Plan. As provided in the Liquidator Agreement, the Entity chosen to be the Liquidator shall have such qualifications and experience to enable the Liquidator to perform its obligations under this Plan and under the Liquidator Agreement. The Liquidator shall be compensated and reimbursed for reasonable costs and expenses as set forth in, and in accordance with, the Liquidator Agreement.

(iv) Wind Down Fund. On the Effective Date, the Wind Down Fund will be funded from the Consideration. All costs and expenses of the Liquidator will be paid solely from the Wind Down Fund.

2. ***Use of Proceeds from New First Lien Term Loan, the New Second Lien Term Loan, the Alternative Lien Financing and the New Unsecured PIK Term Loan***

Unless otherwise provided in the Plan, the Debtors and Reorganized Debtors, as applicable, shall use the proceeds received from the New First Lien Term Loan, the New Second Lien Term Loan, the Alternative Second Lien Financing (if applicable) and the New Unsecured PIK Term Loan, together with any other funds held by the Debtors on the Effective Date, (i) to make Distributions or fund reserves required by the Plan, (ii) to pay other expenses of the Chapter 11 Cases, to the extent so ordered by the Bankruptcy Court, and (iii) for general corporate purposes.

Notwithstanding the foregoing, subject to the terms of the New First Lien Term Loan Agreement, excess proceeds from the New First Lien Term Loan shall be retained by Reorganized Indianapolis Downs and may be used to partially pay down the New Second Lien Term Loan beginning twenty (20) days after the end of the first full fiscal quarter following the Effective Date

3. ***Exemption Under Section 1145 of the Bankruptcy Code***

The offering, issuance and Distribution of any securities pursuant to the Plan and any and all settlement agreements incorporated therein are exempt from applicable federal and state securities laws (including blue sky laws), registration and other requirements, including but not limited to, the registration and prospectus delivery requirements of Section 5 of the Securities Act, pursuant to section 1145 of the Bankruptcy Code or, if section 1145 of the Bankruptcy Code is not available, pursuant to Section 4(2) of the Securities Act or another available exemption from registration under the Securities Act, as applicable.

4. ***Effectuating Documents; Further Transactions***

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the board of managers or the board of directors thereof, are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Sale Transaction or the Plan (and the securities issued pursuant to the Plan) in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorization, or consents except for those

expressly required pursuant to the Plan. In addition, and without limitation of the foregoing, the Secretary or Assistant Secretary of the Debtor Representative shall be authorized to certify or attest to any of the foregoing actions.

5. *Exemption from Certain Transfer Taxes*

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. Such exemption specifically applies, without limitation, to: (1) the creation of any mortgage, deed of trust, Lien or other security interest; (2) the making or assignment of any lease or sublease; (3) the issuance and/or Distribution pursuant to the Plan of the New First Lien Term Loan, the New Second Lien Term Loan, the Alternative Second Lien Financing (if applicable), the New Unsecured PIK Term Loan, the New Series A Warrants, the New Series B Warrants, the New Class A Units and any other securities of the Debtors or the Reorganized Debtors; or (4) the making or delivery of any deed, bill of sale, assignment and assumption agreement or other instrument of transfer under, in furtherance of or in connection with the Plan, including: (a) any merger agreements, equity purchase agreements or asset purchase agreements; (b) agreements of consolidation, restructuring, disposition, liquidation, or dissolution; (c) deeds; (d) bills of sale; or (e) assignments executed in connection with any transaction occurring pursuant to the Plan.

I. Post-Confirmation Corporate Structure, Management and Operation

1. *Continued Corporate Existence*

If a Sale Transaction is not consummated, on and after the Effective Date, each of the Reorganized Debtors shall continue to exist after the Effective Date with all powers of a corporation or a limited liability company under the laws of the respective states governing their formation or incorporation and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law, except as such rights may be limited, modified and conditioned by the Plan, the Plan Supplement Documents and any other documents and instruments executed in connection therewith.

2. *General Corporate Actions*

The entry of the Confirmation Order shall constitute authorization for the Debtors and Debtor Representative to take or cause to be taken all corporate and limited liability company (as applicable) actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on, and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further

action by the partners, members, stockholders, directors or managers of the Debtors or the Reorganized Debtors. Such actions may include (1) the adoption and filing of the Restated Charter Documents, (2) the appointment of the New Indy Board and the New IDCC Board, (3) the adoption and implementation of the Management Incentive Plan and (4) the authorization, issuance and Distribution pursuant to the Plan of the New First Lien Term Loan, the New Second Lien Term Loan, the Alternative Second Lien Financing (if applicable), the New Unsecured PIK Term Loan, the New Series A Warrants, the New Series B Warrants and the New Class A Units. On the Effective Date, the appropriate officers, partners, members, directors and managers of the Debtors and the Debtor Representative are authorized and directed to execute and deliver the agreements, documents, and instruments contemplated by the Plan or the Plan Supplement Documents, in the name and on behalf of the Debtors or the Debtor Representative.

3. *Management Incentive Plan*

If a Sale Transaction is not consummated, the New Indy Board shall adopt and approve the new Management Incentive Plan on the Effective Date or as soon as is reasonably practicable thereafter. The Management Incentive Plan shall be acceptable in all material respects to the Debtors and the Restructuring Support Parties.

4. *Post Effective Date Boards*

If a Sale Transaction is not consummated, on the Effective Date, the term of the current directors and/or managers of the boards of directors and/or boards of managers of the Debtors shall expire and such directors and managers shall be deemed removed from such boards (without the need for any further action on the part of, or notice to, any Person), and the operations of the Reorganized Debtors shall become the responsibility of the New Indy Board or the New IDCC Board as applicable, subject to and in accordance with the New Governance Documents of each Reorganized Debtor, which shall provide that the Reorganized Debtors shall continue to operate under the laws of their respective jurisdictions of incorporation or formation. The New Indy Board and the New IDCC Board shall consist of five (5) members to be selected as set forth in the New Governance Documents. To the extent known, the identity of the initial members of the New Indy Board and the New IDCC Board shall be set forth in the Plan Supplement.

5. *Officers of Reorganized Debtors*

If a Sale Transaction is not consummated, the initial officers of the Reorganized Debtors shall be selected as set forth in the Plan Supplement. After the Effective Date, the Reorganized Debtors may remove or appoint officers in accordance with applicable non-bankruptcy law. If a Sale Transaction is consummated, the Liquidator will act as the responsible officer of the Debtors.

6. *Cancellation of Existing Notes, Securities and Agreements*

Except for purposes of evidencing a right to Distribution under the Plan or otherwise as provided hereunder, on the Effective Date, the Prepetition Second Priority Notes and the Prepetition Third Priority Notes, the Prepetition Second Priority Notes documents and

the Prepetition Third Priority Notes documents, and all agreements relating thereto, shall be deemed automatically cancelled, terminated and of no further force or effect, without further act or action under any applicable agreement, law, regulation, order, or rule and the obligations of the parties, as applicable, under the agreements and indentures governing such Claims shall be discharged; provided, however, that the Prepetition Second Priority Notes documents and the Prepetition Third Priority Notes documents shall continue in effect solely for the limited purpose of (i) allowing the Prepetition Second Priority Trustee and the Prepetition Third Priority Trustee and the Disbursing Agent, respectively, to make any Distributions on account of the DIP Obligations, the Prepetition Second Priority Notes and the Prepetition Third Priority Notes pursuant to this Plan, to perform such other necessary administrative or other functions with respect thereto and with respect to other obligations set forth under the Plan and the Confirmation Order, and for the Prepetition Second Priority Notes Trustee and the Prepetition Third Priority Notes Trustee to have the benefit of all the rights and protections and other provisions of the Prepetition Second Priority Notes documents and the Prepetition Third Priority Notes documents, and all other related agreements respectively, including to seek compensation and reimbursement of reasonable fees and expenses after the Effective Date, and (ii) permitting the Prepetition Second Priority Trustee and the Prepetition Third Priority Trustee, respectively, to maintain and assert any right to indemnification, contribution or other Claim it may have against the noteholders under the Prepetition Second Priority Notes documents and the Prepetition Third Priority Notes documents, subject to any and all defenses any party may have under the Plan or applicable law to any such asserted rights or Claims.

Except as provided for in Section 3.04(c) of the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to Article III of the Plan, the existing equity Interests, and any other promissory notes, share certificates, whether for preferred or common stock (including treasury stock), unit or limited liability company interest certificates, other instruments evidencing any Claims or Interests in the Debtors, other than a Claim that is being Reinstated and rendered Unimpaired, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Interests in the Debtors shall be deemed canceled and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and without further corporate or limited liability company (as applicable) proceedings or action, and the obligations of the Debtors under the notes, share certificates, unit or limited liability company interest certificates and other agreements and instruments governing such Claims and Interests in the Debtors shall be discharged subject to the provisions of the Plan. The Holders of or parties to such canceled notes, shares, share certificates, unit or limited liability company interest certificates and other agreements and instruments shall have no rights arising from or relating to such notes, shares, share certificates, unit or limited liability company interest certificates and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

J. Compromise and Settlement Under the Plan

NOTWITHSTANDING ANYTHING CONTAINED IN THE PLAN TO THE CONTRARY, THE ALLOWANCE, CLASSIFICATION, AND TREATMENT OF ALL ALLOWED CLAIMS AND ALLOWED INTERESTS AND THEIR RESPECTIVE DISTRIBUTIONS AND TREATMENTS HEREUNDER TAKE INTO ACCOUNT AND

CONFORM TO THE RELATIVE PRIORITY AND RIGHTS OF THE CLAIMS AND INTERESTS IN EACH CLASS IN CONNECTION WITH ANY CONTRACTUAL, LEGAL AND EQUITABLE SUBORDINATION RIGHTS RELATING THERETO. AS OF THE EFFECTIVE DATE, ANY AND ALL SUCH RIGHTS DESCRIBED IN THE PRECEDING SENTENCE ARE SETTLED, COMPROMISED AND RELEASED PURSUANT TO THE PLAN. THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S FINDING AND DETERMINATION THAT THE SETTLEMENTS REFLECTED IN THE PLAN, ARE (1) IN THE BEST INTERESTS OF THE DEBTORS AND THEIR ESTATES, (2) FAIR, EQUITABLE AND REASONABLE, (3) MADE IN GOOD FAITH, AND (4) APPROVED BY THE BANKRUPTCY COURT PURSUANT TO SECTIONS 363 AND 1123 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019. IN ADDITION, THE ALLOWANCE, CLASSIFICATION AND TREATMENT OF ALLOWED CLAIMS TAKES INTO ACCOUNT ANY CAUSES OF ACTION, CLAIMS, OR COUNTERCLAIMS, WHETHER UNDER THE BANKRUPTCY CODE OR OTHERWISE UNDER APPLICABLE LAW, THAT MAY EXIST BETWEEN THE DEBTORS AND THE RELEASING PARTIES; AND AS BETWEEN THE RELEASING PARTIES AND THE RELEASED PARTIES. AS OF THE EFFECTIVE DATE, ANY AND ALL SUCH CAUSES OF ACTION, CLAIMS AND COUNTERCLAIMS ARE SETTLED, COMPROMISED AND RELEASED PURSUANT TO THE PLAN AND THE CONFIRMATION ORDER.

K. Releases and Related Matters

1. *Released Parties*

For purposes of the Plan, "Released Parties" means (i) each Debtor and its Affiliates, and each Reorganized Debtor and its Affiliates, (ii) each direct or indirect equity holder of the Debtors, (iii) the DIP Agent and Lenders, (iv) the Prepetition Second Priority Trustee and Holders of Prepetition Second Priority Notes, (v) the Prepetition Third Priority Trustee and Holders of Prepetition Third Priority Notes, (vi) the Ad Hoc Second Lien Committee and Fortress, (viii) the New Second Lien Term Loan Agent and the lenders under the New Second Lien Term Loan, (ix) any Alternative Second Lien Lenders and any agent for the Alternative Second Lien Financing, (x) the New Unsecured PIK Term Loan Agent and the lenders under the New Unsecured PIK Term Loan, (xi) the Liquidator, and (xii) with respect to the foregoing, each of their respective direct or indirect subsidiaries, current and former officers and directors, managers, members, employees, agents, representatives, financial advisors, professionals, accountants, attorneys, and each of their predecessors, successors and assigns.

2. *RELEASES BY DEBTORS*

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE PLAN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, INCLUDING: (1) THE SETTLEMENT, RELEASE AND COMPROMISE OF DEBT AND ALL OTHER GOOD AND VALUABLE CONSIDERATION PAID PURSUANT HERETO; AND (2) THE SERVICES OF THE DEBTORS' PRESENT AND FORMER

OFFICERS, DIRECTORS, MANAGERS AND ADVISORS IN FACILITATING THE EXPEDIENT IMPLEMENTATION OF THE RESTRUCTURING TRANSACTIONS CONTEMPLATED HEREBY, EACH OF THE DEBTORS, THE REORGANIZED DEBTORS, AND ANY PERSON OR ENTITY SEEKING TO EXERCISE THE RIGHTS OF THE DEBTORS' ESTATES (INCLUDING THE LIQUIDATOR), INCLUDING, WITHOUT LIMITATION, ANY SUCCESSOR TO THE DEBTORS OR ANY ESTATE REPRESENTATIVE APPOINTED OR SELECTED PURSUANT TO SECTION 1123(B)(3) OF THE BANKRUPTCY CODE, SHALL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, RIGHTS, CAUSES OF ACTION (INCLUDING AVOIDANCE ACTIONS), RIGHTS OF SETOFF AND LIABILITIES WHATSOEVER (INCLUDING ANY DERIVATIVE CLAIMS ASSERTED ON BEHALF OF THE DEBTORS) IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTORS, THE CONDUCT OF THE DEBTORS' BUSINESSES, THE CHAPTER 11 CASES, THE DISCLOSURE STATEMENT OR THE PLAN (OTHER THAN THE RIGHTS OF THE DEBTORS, THE REORGANIZED DEBTORS, THE LIQUIDATOR OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER) WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE; PROVIDED, HOWEVER, THAT NOTHING IN SECTION 11.01(B) OF THE PLAN:

(i) **SHALL BE DEEMED TO PROHIBIT THE REORGANIZED DEBTORS FROM ASSERTING AND ENFORCING ANY CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION OR LIABILITIES THEY MAY HAVE AGAINST ANY EMPLOYEE (INCLUDING DIRECTORS AND OFFICERS) FOR ALLEGED BREACH OF CONFIDENTIALITY, OR ANY OTHER CONTRACTUAL OBLIGATIONS OWED TO THE DEBTORS OR THE REORGANIZED DEBTORS, INCLUDING NON-COMPETE AND RELATED AGREEMENTS OR OBLIGATIONS AND THE RESTRUCTURING SUPPORT AGREEMENT;**

(ii) **CONSTITUTES A WAIVER OF ANY RIGHT OF THE REORGANIZED DEBTORS TO: (X) ENFORCE ALL RIGHTS AND CLAIMS CONCERNING ANY AND ALL INTELLECTUAL PROPERTY (INCLUDING, WITHOUT LIMITATION, TRADEMARKS, COPYRIGHTS, PATENTS, CUSTOMER LISTS, TRADE SECRETS AND CONFIDENTIAL OR PROPRIETARY BUSINESS INFORMATION), ALL OF WHICH RIGHTS ARE EXPRESSLY RESERVED AND NOT RELEASED AND (Y) ASSERT ANY DEFENSE BASED ON WHETHER OR NOT APPLICABLE STANDARDS HAVE BEEN MET; OR**

(iii) **SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO THE DEBTORS AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY AS DETERMINED BY A FINAL ORDER.**

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

3. *RELEASES BY HOLDERS OF CLAIMS AND INTERESTS*

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE PLAN TO THE CONTRARY, ON THE EFFECTIVE DATE AND AS OF THE EFFECTIVE DATE, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS AND THE REORGANIZED DEBTORS: (1) WHO EITHER VOTE TO ACCEPT THE PLAN OR ARE PRESUMED TO HAVE VOTED FOR THE PLAN UNDER SECTION 1126(F) OF THE BANKRUPTCY CODE, OR (2) ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN AND WHO REJECT THE PLAN OR ABSTAIN FROM VOTING AND DO NOT RETURN THEIR BALLOT TO INDICATE THEIR REFUSAL TO GRANT THE RELEASES PROVIDED IN THIS SUB-PARAGRAPH, SHALL BE DEEMED TO FOREVER RELEASE, WAIVE, AND DISCHARGE EACH OF THE RELEASED PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, RIGHTS, CAUSES OF ACTION (INCLUDING AVOIDANCE ACTIONS), AND LIABILITIES WHATSOEVER IN CONNECTION WITH OR IN ANY WAY RELATING TO THE DEBTORS, THE CONDUCT OF THE DEBTORS' BUSINESSES, THE CHAPTER 11 CASES, THE DISCLOSURE STATEMENT OR THE PLAN (OTHER THAN THE RIGHTS OF THE DEBTORS, THE REORGANIZED DEBTORS, OR A CREDITOR HOLDING AN ALLOWED CLAIM TO ENFORCE THE OBLIGATIONS UNDER THE CONFIRMATION ORDER AND THE PLAN AND THE CONTRACTS, INSTRUMENTS, RELEASES, AND OTHER AGREEMENTS OR DOCUMENTS DELIVERED THEREUNDER), WHETHER LIQUIDATED OR

UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, WHETHER FOR TORT, CONTRACT, VIOLATION OF FEDERAL OR STATE SECURITIES LAW OR OTHERWISE, THAT ARE BASED IN WHOLE OR PART ON ANY ACT, OMISSION, TRANSACTION, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE; PROVIDED, HOWEVER, THAT NOTHING IN SECTION 11.01(C) OF THE PLAN SHALL OPERATE AS A RELEASE, WAIVER OR DISCHARGE OF ANY CAUSES OF ACTION OR LIABILITIES UNKNOWN TO SUCH PERSON AS OF THE PETITION DATE ARISING OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD OR CRIMINAL ACTS OF ANY SUCH RELEASED PARTY AS DETERMINED BY A FINAL ORDER.

4. ***Discharge of the Debtors***

(i) **Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise provided herein, the Plan or in the Confirmation Order, all consideration distributed under the Plan shall be in exchange for, and in complete satisfaction, settlement, discharge, and release, effective as of the Effective Date, of all Claims, Interests and Causes of Action of any nature whatsoever, including any interest accrued on such Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of its assets or properties and, regardless of whether any property shall have been abandoned by order of the Bankruptcy Court, retained, or distributed pursuant to the Plan on account of such Claims and Interests, including demands, liabilities and Causes of Action that arose before the Effective Date, and all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (i) a Proof of Claim based upon such debt is Filed or deemed Filed under section 501 of the Bankruptcy Code, (ii) a Claim based upon such debt is Allowed under section 502 of the Bankruptcy Code, (iii) a Claim based upon such debt is or has been Disallowed by order of the Bankruptcy Court, or (iv) the Holder of a Claim based upon such debt accepted the Plan. The Plan shall bind all Holders of Claims and Interests, notwithstanding whether any such Holders failed to vote to accept or reject the Plan or voted to reject the Plan.**

(ii) **As of the Effective Date, except as provided in the Plan or the Confirmation Order, all Persons shall be precluded from asserting against the Debtors or the Reorganized Debtors or any of their assets or properties, any other or further Claims, Interests, debts, rights, Causes of Action, claims for relief, liabilities, or equity interests relating to the Debtors based upon any act, omission, transaction, occurrence, or other activity of any nature that occurred prior to the Effective Date. In accordance with the foregoing, except as provided in the Plan or the Confirmation Order, the Confirmation Order shall be a judicial determination, as of the Effective Date, of discharge of all such Claims and other debts and liabilities against the Debtors and termination of all Interests, pursuant to sections 524 and 1141 of the Bankruptcy Code, and such discharge shall void any judgment obtained against the Debtors at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest.**

5. *Injunctions*

(a) **Except as provided in the Plan or the Confirmation Order, as of the Effective Date, all Persons that have held, currently hold, may hold, or allege that they hold, a Claim, Interest, or other debt or liability that is discharged pursuant to Section 11.02 of the Plan, released pursuant to Section 11.01 of the Plan, or is subject to exculpation pursuant to Section 11.04 of the Plan are permanently enjoined from taking any of the following actions against the Debtors, the Reorganized Debtors, and their respective affiliates or their property on account of any such discharged Claims, debts, or liabilities or terminated Interests or rights: (i) commencing or continuing, in any manner or in any place, any action or other proceeding of any kind; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors, the Reorganized Debtors or its property; (iii) creating, perfecting, or enforcing any Lien or encumbrance; (iv) asserting a right of setoff, recoupment or subrogation of any kind against any debt, liability, or obligation due to the Debtors or the Reorganized Debtors; or (v) commencing or continuing any action, in each such Cases in any manner, in any place, or against any Person that does not comply with or is inconsistent with the provisions of the Plan.**

(b) **Without limiting the effect of the foregoing provisions of Section 11.03 of the Plan upon any Person, by accepting Distributions pursuant to the Plan, each Holder of an Allowed Claim or Interest receiving a Distribution pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in Section 11.03 of the Plan.**

(c) **Nothing in Section 11.03 of the Plan shall impair (i) the rights of any Holder of a Disputed Claim to establish its Claim in response to an objection Filed by the Debtors or the Debtor Representative, (ii) the rights of any defendant in an Avoidance Action Filed by the Debtors to assert defenses in such action, or (iii) the rights of any party to an Executory Contract or Unexpired Lease that has been assumed by the Debtors pursuant to an order of the Bankruptcy Court or the provisions of the Plan to enforce such assumed contract or lease.**

6. *Exculpation and Limitations of Liability*

For purposes of the Plan, "Exculpated Parties" means (i) each Debtor and its Affiliates, and each Reorganized Debtor and its Affiliates, (ii) each direct or indirect shareholder of the Debtors, (iii) the DIP Agent and Lenders, (iv) the Prepetition Second Priority Trustee and Holders of the Prepetition Second Priority Notes, (v) the Prepetition Third Priority Trustee and Holders of the Prepetition Third Priority Notes, (vi) Fortress, (vii) the New Second Lien Term Loan Agent and the lenders under the New Second Lien Term Loan, (viii) any Alternative Second Lien Lenders and any agent for the Alternative Second Lien Financing, (ix) the New Unsecured PIK Term Loan Agent and the lenders under the New Unsecured PIK Term Loan, (x) the Liquidator and (xi) with respect to the foregoing, each of their respective direct or indirect subsidiaries, current and former officers and directors, managers, members, employees, agents, representatives, financial

advisors, professionals, accountants, attorneys, and each of their predecessors, successors and assigns.

The Plan contains standard exculpation provisions applicable to the key parties in interest with respect to their conduct in the Chapter 11 Cases. On the effective date, the Exculpated Parties shall neither have nor incur any liability to any Holder of a Claim or an Interest, the Debtors, the Reorganized Debtors, or any other Party-In-Interest, or any of their respective Agents, Employees, Representatives, Advisors, Attorneys, or Affiliates, or any of their successors or assigns, for any prepetition or postpetition act or omission in connection with, relating to, or arising out of the Chapter 11 Cases, the formulation, negotiation, or implementation of this Disclosure Statement or the Plan, the Solicitation of Acceptances of the Plan, the pursuit of confirmation of the Plan, the Confirmation of the Plan, the Consummation of the Plan or the administration of the Plan or the Property to be distributed under the Plan, except for acts or omissions that are the result of willful misconduct, gross negligence, fraud or criminal acts as determined by a Final Order; provided, however, that (i) the foregoing is not intended to limit or otherwise impact any defense of qualified immunity that may be available under applicable law; (ii) each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, the Plan; and (iii) the foregoing Exculpation shall not be deemed to, release, affect, or limit, any of the rights and obligations of the Exculpated Parties from, or Exculpate the Exculpated Parties with respect to any of the Exculpated Parties' obligations or covenants arising pursuant to the Plan or the Confirmation Order.

The Debtors submit that the exculpations contained in the Plan are appropriate and are standard in a chapter 11 case. The exculpations are appropriately limited in scope, apply only to acts and omissions occurring after the Petition Date and in connection with the Chapter 11 Cases or the Plan and confer only a qualified immunity by excluding acts or omissions which are the result of fraud, gross negligence or willful misconduct. The beneficiaries of the exculpations have made significant contributions to the Debtors' reorganization, which contributions have allowed for the formulation of the Plan which resolves many complicated issues between the Debtors and other interested parties, in the opinion of the Debtors, provides for the best possible recoveries for Claims against the Debtors. In the Debtors' view, the beneficiaries of the exculpations would not have contributed as they did without the prospect of the limited immunity reflected in the exculpations. The Debtors are also unaware of any valid Causes of Action against any of the beneficiaries of the exculpations. In view of the foregoing, the exculpations are appropriate and in the best interests of the Debtors' Estates.

7. *Term 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 existing on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date.

8. *Rights of the Restructuring Support Parties*

Under the Restructuring Support Agreement, the Restructuring Support Parties retain the right to file an objection to the releases and/or exculpation provided under the Plan in favor of (i) Ross J. Mangano, (ii) the Jane C. Warriner Trust dated February 26, 1971, (iii) the J. Oliver Cunningham Trust dated February 26, 1971, (iv) the Annie C. McClure Trust dated February 26, 1971 and (v) Troon & Co (the persons and trusts referred to in clauses (i) – (v), collectively, the "Oliver Parties"). The Debtors agree to modify the Plan as necessary if the Bankruptcy Court determines that the releases and/or exculpation provided in favor of any of the Oliver Parties under the Plan should be deleted or altered, or otherwise renders the Plan unconfirmable.

L. Retention of 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 exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law (provided, however, that notwithstanding the foregoing, with respect to all civil proceedings arising in or related to the Chapter 11 Cases and the Plan, the Bankruptcy Court shall have original but not exclusive jurisdiction, in accordance with section 1334(b) of title 28 of the United States Code), including, among other things, jurisdiction to:

- allow, disallow, determine, liquidate, classify, estimate, or establish the priority secured or unsecured status or amount of any Claim or Interest not otherwise Allowed under the Plan (other than personal injury or wrongful death Claims, unless agreed by the Holder), including the resolution of any request for payment of any Administrative Claim and the resolution of any objections to the secured or unsecured status, priority, amount or allowance of Claims or Interests in the Debtors;

- hear and determine all matters related to the granting and denying, in whole or in part, of any applications for compensation and reimbursement of expenses of Professionals authorized under the Plan or under sections 327, 328, 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code; provided, however, that from and after the Effective Date, the payment of the fees and expenses of the Professionals of the Debtor Representative shall be made in the ordinary course of business and shall not be subject to the review or approval of the Bankruptcy Court;

- hear and determine any matters related to Executory Contracts or Unexpired Leases, including: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable, and to hear, determine, and, if necessary, liquidate, any Cure or Claims arising therefrom, including pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory

Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors' amendment, modification, or supplement, after the Effective Date of the list of Executory Contracts and Unexpired Leases to be rejected; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

- ensure that Distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to Distributions under the Plan;

- adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

- adjudicate, decide, or resolve any and all matters related to Causes of Action of the Debtors or brought by or against the Reorganized Debtors;

- adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

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

- enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

- grant any consensual request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code;

- hear and determine any cases, controversies, suits, disputes or Causes of Action 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;

- 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;

- issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity with the implementation, consummation or enforcement of the Plan or the Confirmation Order;

- 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;

- hear and determine any matters arising in connection with or relating to the Plan, the Plan Supplement, the schedules to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan, the Plan Supplement, the schedules to the Plan, the Disclosure Statement or the Confirmation Order;

- enforce, interpret and determine any cases, controversies, suits, disputes or Causes of Action arising in connection with any stipulations, orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Cases (whether or not the Chapter 11 Cases has been closed);

- enter and implement such orders as may be necessary or appropriate to execute, implement or consummate the provisions of all contracts, instruments, releases, indentures and other agreements or documents approved by Final Order in the Chapter 11 Cases;

- resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the holder of a Claim for amounts not timely repaid pursuant to the Plan;

- determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

- hear and determine cases, controversies, suits, disputes or Causes of Action arising in connection with the interpretation, implementation or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

- except as otherwise limited in the Plan, recover all assets of the Debtors and property of the Estates, wherever located;

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

- hear and determine all disputes involving the existence, nature or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment, regardless of whether such termination occurred prior to or after the Effective Date;

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

- enter a final decree closing the Chapter 11 Cases;

- enforce all orders previously entered by the Bankruptcy Court; and

- hear any other matter not inconsistent with the Bankruptcy Code.

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 Cases, including the matters set forth in Section 10.01 of the Plan, the provisions of Article X of the Plan will have no effect upon and will not control, prohibit, or limit the exercise of jurisdiction by any other court having jurisdiction with respect to such matter.

M. Modifications and Amendments

The Debtors may, subject to the terms of the Restructuring Support Agreement, alter, amend, or modify the Plan or any exhibits thereto under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. The Debtors 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 or Interest 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 or Interest of such Holder.

After the Confirmation Date and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtors or Reorganized Debtors, as applicable, may, under section 1127(b) of the Bankruptcy Code and with the consent of the Restructuring Support Parties, 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 so long as such proceedings do not adversely affect the treatment of Holders of Claims or Interests in the Debtors under the Plan; provided, however, that, 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 or Interest 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 or Interest of such Holder. In the event of any dispute as to whether such proposed alteration, amendment, modification, or clarification materially and adversely changes the treatment of the Claim or Interest of any such Holder, the Debtors or Reorganized Debtors, as the Cases may be, shall bear the burden of demonstrating that such proposed alteration, amendment, modification, or clarification does not materially adversely change the treatment of the Claim or Interest of such Holder.

N. Continuing Exclusivity and Solicitation Period

Subject to further order of the Bankruptcy Court, until the Effective Date, the Debtors shall, pursuant to section 1121 of the Bankruptcy Code, retain the exclusive right to amend the Plan and to solicit acceptances thereof, and any modifications or amendments thereto, subject to the terms of the Restructuring Support Agreement.

O. 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 Debtors, 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, interpretation or severance, 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, interpretation or severance. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms

P. Successors and Assigns and Binding Effect

The rights, benefits, and obligations of any Person or 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 Person or Entity, including, but not limited to, the Debtor Representative and all other parties-in-interest in the Chapter 11 Cases.

Q. Compromises and Settlements

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to the Plan or any Distribution to be made on account of an Allowed Claim, the provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, Litigation Rights, Avoidance Actions and controversies relating to the contractual, legal and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, Litigation Rights, Avoidance Actions and controversies, as well as a finding by the Bankruptcy Court that any such compromise or settlement is in the best interests of the Debtors, their Estates, and holders of Claims and Interests and is fair, equitable, and reasonable.

Until the Effective Date and subject to the terms of the Restructuring Support Agreement, the Debtors or the Debtor Representative may, with the consent of the Restructuring Support Parties with respect to any proposed settlement by the Debtors of any claim, litigation, dispute, controversy, cause of action, proceeding, appeal, determination, investigation, matter or otherwise that will require the payment of any amount in excess of $500,000 (whether such payments are made individually or in the aggregate), compromise and settle various Claims against or Interests in the Debtors, Litigation Rights, Avoidance Actions and controversies relating to the contractual, legal, and subordination rights that they may have against other Persons or Entities without any further approval by the Bankruptcy Court; provided, however, that to the extent any such Claims, Litigation Rights, Avoidance Actions or controversies are pending before the Bankruptcy Court pursuant to Filings made during the pendency of the Chapter 11 Cases, the Debtors shall be required to obtain an appropriate order of the Bankruptcy

Court concluding any such Filings (which order shall be in form and substance reasonably acceptable to the Debtors and the Restructuring Support Parties).

R. Revocation, Withdrawal, or Non-Consummation

The Debtors reserve the right, subject to the terms of the Restructuring Support Agreement, to revoke or withdraw the Plan at any time prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw 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), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, 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 Debtors, or any Avoidance Actions, Litigation Rights or other claims by or against the Debtors or any Person or Entity, (ii) prejudice in any manner the rights of the Debtors or any Person or Entity in any further proceedings involving the Debtors or (iii) constitute an admission of any sort by the Debtors or any other Person or Entity.

S. Plan Supplement

The Plan Supplement shall be Filed with the Bankruptcy Court prior to the Confirmation Hearing or by such later date as may be established by order of the Bankruptcy Court. Upon such Filing, all documents set forth in the Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court during normal business hours. Holders of Claims or Interests may obtain a copy of any document set forth in the Plan Supplement upon written request to the Debtors in accordance with Section 12.11 of the Plan.

T. Confirmation and/or Consummation

Described below are certain important considerations under the Bankruptcy Code in connection with Confirmation of the Plan.

1. *Conditions Precedent to Confirmation of the Plan*

Before the Plan can be confirmed, the Bankruptcy Court must determine at the Confirmation Hearing that, among others, the following requirements for Confirmation, set forth in section 1129 of the Bankruptcy Code, have been satisfied:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors have 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 by the Debtors or by a Person issuing securities or acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been disclosed to the Bankruptcy Court, and any such payment made before Confirmation of the Plan is reasonable, or if such payment is to be fixed after Confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable.

- The Debtors have disclosed or will disclose in the Plan Supplement (a) the identity and affiliations of (i) any individual proposed to serve, after Confirmation of the Plan, as a manager, officer, or voting trustee of the Reorganized Debtors, (ii) any affiliate of the Debtors participating in a joint plan with the Debtors, or (iii) any successor to the Debtors under the Plan (and the appointment to, or continuance in, such office of such individual(s) is consistent with the interests of Claim and Interest Holders and with public policy), and (b) the identity of any insider that will be employed or retained by the Debtors and the nature of any compensation for such insider.

- With respect to each Class of Claims or Interests in the Debtor, each Impaired Claim and Impaired Interest Holder either has accepted the Plan or will receive or retain under the Plan, on account of the Claims or Interests held by such Holder, 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 Debtors were liquidated on such date under chapter 7 of the Bankruptcy Code.

- The Plan provides that Administrative Claims and Priority Claims other than Priority Tax Claims will be paid in full on the Effective Date, except to the extent that the Holder of any such Claim has agreed to another less favorable treatment.

- If a Class of Claims is Impaired under the Plan, at least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by insiders holding Claims in such Class.

- Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors under the Plan, unless such liquidation or reorganization is proposed in the Plan.

- The Plan provides for the continuation after the Effective Date of all retiree benefits, if any, at the level established pursuant to sections 1114(e)(1)(B) or 1114(g) of the Bankruptcy Code at any time prior to Confirmation of the Plan, for the duration of the period the Debtors has obligated themselves to provide such benefits.

The Debtors believe that, upon receipt of the votes required to confirm the Plan, the Plan will satisfy the statutory requirements of chapter 11 of the Bankruptcy Code, that the Debtors have complied or will have complied with all of the requirements of chapter 11, and that the Plan has been proposed and submitted to the Bankruptcy Court in good faith.

2. *Conditions to Confirmation and Effective Date*

The Plan specifies conditions precedent to the Confirmation and the Effective Date.

The following conditions precedent to the occurrence of the Confirmation must be satisfied unless any such condition shall have been waived by the Debtors, with the consent of the Restructuring Support Parties:

(a) The Confirmation Order shall have been entered by the Bankruptcy Court;

(b) The Bankruptcy Court shall have found that adequate information and sufficient notice of the Disclosure Statement, the Plan and the Confirmation Hearing, along with all deadlines for voting on or objecting to the Plan have been given to all relevant parties in accordance with the solicitation procedures governing such service and in substantial compliance with Bankruptcy Rules 2002(b), 3017, 9019 and 3020(b);

(c) The Plan, the Plan Supplement and the Plan Supplement Documents, including any exhibits, schedules, amendments, modifications or supplements thereto, shall have been Filed;

(d) In the event of a Sale Transaction, the Bankruptcy Court shall have (i) approved all documents related to the Sale Transaction, in form and substance acceptable to the Debtors and the Restructuring Support Parties (except if the Plan provides that a Sale Transaction document shall be reasonably acceptable to the Restructuring Support Parties, then such document shall be reasonably acceptable) provided, that the Restructuring Support Parties shall not have to approve the identity of the prevailing bidder, but reserve the right to object to such prevailing bidder as set forth in the Restructuring Support Agreement provided that the denial of any such objection will not be deemed to cause a failure of this condition; and (ii) entered an order, in form and substance reasonably acceptable to the Restructuring Support Parties, approving the sale of the Debtors' assets, which documents and order shall be in full force and effect and there shall not be a stay or injunction with respect thereto;

(e) The estimated Allowed Administrative Claims, such estimates to be made in the reasonable discretion of the Debtors and Restructuring Support Parties, excluding Allowed Administrative Claims (i) to be paid from the Professional Fee Escrow Account, (ii) related to any exit financing fees and expenses incurred by the Debtors or (iii)(A) in a Sale Transaction, that are trade payables incurred by the Debtors in the ordinary course of business and which are not otherwise assumed by the purchaser, and (B) if a Sale Transaction is not consummated, that are trade payables incurred by the Debtors in the ordinary course of business, shall not exceed the Administrative Claims Cap;

(f) The estimated Allowed Priority Tax Claims, such estimates to be made in the reasonable discretion of the Debtors and Restructuring Support Parties, shall not exceed the Priority Tax Claim Cap; and

(g) The amount of the Wind Down Budget shall have been agreed to by the Debtors and the Restructuring Support Parties.

The following conditions precedent to the occurrence of the Effective Date must be satisfied or waived by the Debtors (with the consent of the Restructuring Support Parties) on or prior to the Effective Date in accordance with Section 9.04 of the Plan:

(a) The Confirmation Order shall have become a Final Order;

(b) After the Confirmation Date but prior to the Effective Date, the Debtors shall not have made any amendment, modification, supplement or other change to the Plan, the Plan Supplement or any Plan Supplement Document, including any exhibits, schedules, amendments, modifications or supplements thereto, without the consent of the Restructuring Support Parties;

(c) The estimated Allowed Administrative Claims, such estimates to be made in the reasonable discretion of the Debtors and Restructuring Support Parties, excluding Allowed Administrative Claims (i) to be paid from the Professional Fee Escrow Account, (ii) related to any exit financing fees and expenses incurred by the Debtors or (iii)(A) in a Sale Transaction, that are trade payables incurred by the Debtors in the ordinary course of business and which are not otherwise assumed by the purchaser, and (B) if a Sale Transaction is not consummated, that are trade payables incurred by the Debtors in the ordinary course of business, shall not exceed the Administrative Claims Cap;

(d) The estimated Allowed Priority Tax Claims, such estimates to be made in the reasonable discretion of the Debtors and Restructuring Support Parties, shall not exceed the Priority Tax Claim Cap;

(e) No force majeure event (which shall include, amongst other things, a significant disruption to the financial markets) shall have occurred;

(f) The Debtors shall have received all necessary authorizations, consents and approvals required by (i) any Governmental Authority, including, but not limited to, the Indiana Gaming Commission and the Indiana Racing Commission, and (ii) as otherwise required pursuant to the Restructuring Support Agreement;

(g) No materially adverse change or modification by a Governmental Authority shall have occurred;

(h) All reserves shall be established in accordance with the Plan in amounts sufficient in the reasonable judgment of the Debtors to make all Distributions required under the Plan;

(i) The Restructuring Support Agreement shall be in full force and effect;

(j) If a Sale Transaction is not consummated:

(1) After the Confirmation Date but prior to the Effective Date, the Debtors shall not have undertaken, proposed to undertake or failed to undertake any action that would likely have a materially adverse economic or regulatory impact on the Debtors' businesses, properties or results of operations without the consent of the Restructuring Support Parties;

(2) All conditions precedent to the issuance of the New Class A Units, New First Lien Term Loan, New Second Lien Term Loan or Alternative Second Lien Financing, New Series A Warrants and the New Series B Warrants, other than those related to the occurrence of the Effective Date, shall have been satisfied;

(3) The Debtors shall have at least $13.8 million of unrestricted working capital available; or

(k) If a Sale Transaction is consummated:

(1) Such Sale Transaction shall have closed and distributions shall have been made in accordance with the provisions contained in the Asset Purchase Agreement and the Restructuring Support Agreement; and

(2) The Wind Down Fund shall have been funded;

(l) With respect to all actions, documents, certificates, and agreements necessary to implement the Plan (a) all conditions precedent to such documents and agreements shall have been satisfied or waived by the Debtors (with the consent of the Restructuring Support Parties) pursuant to the terms of such documents or agreements, (b) such documents, certificates and agreements shall have been tendered for delivery, (c) to the extent required, such documents, certificates and agreements shall have been filed with and approved by any applicable Governmental Authorities in accordance with applicable laws, and (d) such actions, documents, certificates and agreements shall have been effected or executed; and

(m) All Restructuring Support Advisors have been fully paid under the DIP Order, including the adequate protection obligations in paragraph 19 of the DIP Order, or pursuant to section 1129(a)(4) of the Bankruptcy Code.

3. *Anticipated Effective Date and Notice Thereof*

The Debtors or Debtor Representative shall File a notice of the occurrence of the Effective Date within five (5) business days after the Effective Date. Failure to File such notice shall not prevent the effectiveness of the Plan, Plan Supplement or any related documents.

VIII. CERTAIN RISK FACTORS TO BE CONSIDERED

THE IMPLEMENTATION OF THE PLAN, THE RESTRUCTURING SUPPORT AGREEMENT AND THE RESTRUCTURING TERM SHEET IS SUBJECT TO A NUMBER OF MATERIAL RISKS, INCLUDING, AMONG OTHERS, THOSE ENUMERATED BELOW. IN EVALUATING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS AGAINST AND/OR INTERESTS IN THE DEBTORS SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED BY REFERENCE HEREIN), BEFORE DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS ASSOCIATED WITH THE PLAN AND ITS IMPLEMENTATION, OR ALTERNATIVES TO THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY OR IN THE RESTRUCTURING SUPPORT AGREEMENT AND THE RESTRUCTURING TERM SHEET.

A. Certain Business Considerations

1. *Continuing Global Economic Crisis Could Adversely Affect the Debtors' Business*

As noted above, the Debtors' primary assets are the Casino and the Track. Like other states, Indiana's economy has been adversely affected by the economic crisis. The current economic crisis and turbulent financial markets and the continuation thereof could adversely affect the Reorganized Debtors' businesses, results of operations, and financial condition. In addition, lower consumer spending could lead to a decline in gaming or the other products and services offered by the Debtors. If the credit markets do not improve, the Reorganized Debtors may experience difficulty refinancing debt and/or raising capital for future operations.

2. *The Reorganized Debtors will be Exposed to Changing Regulations*

The Debtors' businesses and operations are subject to regulations, which have historically been subject to constant change, and which could continue to be subject to such changes in the future. There can be no assurance that future regulatory changes will not have a material adverse effect on the Reorganized Debtors, or that regulators or third parties will not raise material issues with regard to the Reorganized Debtors' compliance or noncompliance with applicable regulations, any of which could have a material adverse effect upon the Reorganized Debtors. Enforcement and interpretation of these laws and regulations can be unpredictable, and are often subject to the informal views of government officials. Future regulatory, judicial, legislative, and governmental policy changes in the jurisdictions where the Debtors operate could have a materially adverse effect on the Reorganized Debtors. Any adverse developments implicating the foregoing could cause a material adverse effect on the Reorganized Debtors' businesses, financial condition, result of operations and prospects.

3. *Projected Financial Information*

The Projections annexed as Exhibit B to this Disclosure Statement are dependent upon the successful implementation of the business plan and the validity of the other assumptions contained therein. These Projections prepared by the Debtors' management reflect numerous assumptions (many of which will be beyond the control of the Reorganized Debtors) including: (i) the Confirmation and consummation of the Plan in accordance with the terms of the Plan, the Restructuring Support Agreement and the Restructuring Term Sheet; (ii) the anticipated future performance of the Casino and the Track; (iii) industry performance, results of cost savings programs; (iv) technical process improvements; (v) certain assumptions with respect to competitors of the Debtors; (vi) general business and economic conditions; and (vii) other matters,. In addition, unanticipated events and circumstances that occur subsequent to the preparation of the Projections may affect the actual financial results of the Reorganized Debtors. Although the Debtors believe that the Projections are reasonably attainable, variations between the actual financial results and those projected may occur and may have a material effect on the Reorganized Debtors.

Finally, the Projections were not prepared with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information. Rather, the Projections were developed in connection with the planning, negotiation and development of the Plan. Neither the Debtors nor the Reorganized Debtors undertake any obligation to update or otherwise revise the Projections to reflect events or circumstances existing or arising after the date of this Disclosure Statement or to reflect the occurrence of unanticipated events. In management's view, however, the Projections were prepared on a reasonable basis and represent a reasonable view of the expected future financial performance of the Reorganized Debtors after the Effective Date. Nevertheless, the Projections should not be regarded as a representation, guaranty or other assurance by the Debtors, the Reorganized Debtors, or any other person, that the Projections will be achieved, and Holders are therefore cautioned not to place undue reliance on the projected financial information contained in this Disclosure Statement.

4. *Historical Financial Information May Not Be Comparable*

The financial condition and results of operations of the Reorganized Debtors from and after the Effective Date may not be comparable to the financial condition or results of operations reflected in the Debtors' historical financial statements.

5. *Competition*

The businesses owned by the Debtors currently face competition in the market. If existing competitors expand their market share or enter into new markets, competition will intensify. Such increased competition may result in a loss of market share and could have a material adverse effect on the Reorganized Debtors' businesses, results of operations, and financial condition.

6. *Litigation*

The Reorganized Debtors may be subject to various Claims and legal actions arising in the ordinary course of their businesses. The Debtors are not able to predict the nature and extent of any such Claims or legal actions, and cannot guarantee that the ultimate resolution of such Claims or legal actions will not have a material adverse effect on the Reorganized Debtors.

B. Certain Bankruptcy Considerations

The Reorganized Debtors' future results are dependent upon the successful Confirmation and implementation of the Plan. Failure to obtain Confirmation in a timely manner could adversely affect the Debtors' operating results, as the Debtors' ability to obtain financing to fund their operations may be harmed by protracted bankruptcy proceedings.

1. *Non-Confirmation or Delay of Confirmation of the Plan*

The Bankruptcy Court, which sits as a court of equity, may exercise substantial discretion when deciding whether to confirm the Plan. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan of reorganization and requires, among other things, that the confirmation of a plan of reorganization not be followed by a need for further financial reorganization and that the value of Distributions to dissenting creditors and interest holders not be less than the value of Distributions such creditors and interest holders would otherwise receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

Although the Debtors believe that the Plan will satisfy all of the requirements for Confirmation under section 1129 of the Bankruptcy Code, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for Confirmation or that such modifications would not be sufficiently material as to require the resolicitation of votes on the Plan.

In the event that any Class of Claims entitled to vote fails to accept the Plan in accordance with section 1126(c) and 1129(a)(8) of the Bankruptcy Code, the Debtors reserve the right (with the consent of the Restructuring Support Parties) to: (a) request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code; and/or (b) modify the Plan in accordance with Section 12.04 thereof. The Debtors believe that the Plan satisfies the requirements for non-consensual Confirmation set forth in section 1129(b) of the Bankruptcy Code because it does not "discriminate unfairly" and is "fair and equitable" with respect to the Classes that reject or are deemed to reject the Plan, however, there can be no assurance that the Bankruptcy Court will reach the same conclusion, or that any other party in interest in the Chapter 11 Cases will not challenge Confirmation on such grounds.

If the Plan is not confirmed, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to a chapter 7 liquidation case or that any alternative plan of reorganization would be on terms as favorable to the Holders of Claims against and Interests in the Debtors as the terms of the Plan. If a liquidation or protracted reorganization of the

Debtors' Estates were to occur, there is a substantial risk that the Debtors' going concern value would be substantially eroded to the detriment of all stakeholders.

Moreover, there can be no assurance with respect to timing of the Effective Date, or as to whether the Effective Date will, in fact, occur. The occurrence of the Effective Date is subject to certain conditions precedent as described in Section 9.02 of the Plan, and consummation of the Plan may not occur if any of these conditions are not met. In the event that the Effective Date does not occur, there can be no assurance that the Chapter 11 Cases will continue rather than be converted to a chapter 7 liquidation case or that any alternative plan of reorganization would be on terms as favorable to the Holders of Claims against the Debtors as the terms of the Plan. If a liquidation or protracted reorganization of the Debtors' Estates were to occur, there is a substantial risk that the Debtors' going concern value would be eroded to the detriment of all stakeholders.

If the Confirmation Order is vacated (a) the Plan shall be null and void in all respects; (b) any settlement of Claims or Interests provided for in the Plan shall be null and void without further order of the Bankruptcy Court; and (c) the time within which the Debtors may assume and assign or reject all Executory Contracts and Unexpired Leases shall be extended for a period of one hundred twenty (120) days after the date the Confirmation Order is vacated.

2. *Classification and Treatment of Claims and Equity Interests*

Section 1122 of the Bankruptcy Code requires that a plan of reorganization classify claims against, and interests in, a debtor. The Bankruptcy Code also provides that a plan of reorganization may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtors believe that all Claims and Interests in the Debtors have been appropriately classified in the Plan.

To the extent that the Bankruptcy Court finds that a different classification is required for the Plan to be confirmed, the Debtors presently anticipate that they would seek (i) to modify the Plan to provide for any reclassification that may be required for Confirmation and (ii) to use the acceptances received from any Creditor pursuant to this solicitation for the purpose of obtaining the approval of the Class or Classes of which such Creditor ultimately is deemed to be a member. Any such reclassification of creditors, although subject to the notice and hearing requirements of the Bankruptcy Code, could adversely affect the Class in which such creditor was initially a member, or any other Class under the Plan, by changing the composition of such Class and, as a result, the votes required for approval of the Plan. There can be no assurance that the Bankruptcy Court, after finding that a classification was inappropriate and requiring a reclassification, would approve the Plan after such reclassification. Except to the extent that a modification of classification in the Plan requires resolicitation, the Debtors will, in accordance with the Bankruptcy Code and the Bankruptcy Rules, seek a determination by the Bankruptcy Court that acceptance of the Plan by any Holder of Claims pursuant to this solicitation will constitute a consent to the Plan's treatment of such Holder regardless of the Class as to which such Holder is ultimately deemed to be a member. The Debtors believe that under the Bankruptcy Rules they would be required to resolicit votes for or against the Plan only when a modification adversely affects the treatment of the Claim of any Creditor or Interest Holder.

The Bankruptcy Code also requires that a plan of reorganization provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of its claim or interest. The Debtors believe that the Plan meets this requirement of equal treatment. To the extent that the Bankruptcy Court finds that the Plan does not satisfy such requirement, the Bankruptcy Court may deny Confirmation of the Plan.

Issues or disputes relating to classification and/or treatment may delay Confirmation and consummation of the Plan, and may increase the risk that the Plan will not be confirmed or consummated.

3. *Claims Estimation*

The Debtors reserve the right to object to the amount or classification of any Claim or Interest except any such Claim or Interest that is deemed Allowed under the Plan or except as otherwise provided in the Plan, the Restructuring Support Agreement or the Restructuring Term Sheet. There can be no assurance that any estimated Claim amounts set forth in this Disclosure Statement are correct. The actual Allowed amount of Claims will likely differ in some respect from the estimates set forth herein, or in any exhibit attached hereto, including the Plan. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should the underlying assumptions prove incorrect, the actual Allowed amount of Claims may differ in some respect from the estimates set forth herein, or in any exhibit attached hereto, including the Plan.

C. Risks to Creditors Who Will Receive Securities

The ultimate recoveries under the Plan to Holders that will receive securities will depend on the realizable value of the these securities. The securities to be issued pursuant to the Plan are subject to a number of material risks, including, but not limited to, those specified below. Prior to voting on the Plan, each Holder of a Claim in Class 3 and Class 4 should carefully consider the risk factors specified or referred to below, as well as all of the information contained in the Plan.

1. *Lack of Market for Securities Issued Pursuant to the Plan*

Currently, there is no existing market for the securities to be issued pursuant to the terms of the Plan and there can be no assurance that an active trading market will develop. There can also be no assurance as to the degree of price volatility in any such particular market or as to the prices at which such securities might be traded. Accordingly, no assurance can be given that a Holder of securities issued pursuant to the terms of the Plan will be able to sell such securities in the future or the price at which any such sale may occur. If such market were to exist, the liquidity of the market for such securities and the prices at which such securities will trade will depend upon many factors, including, but not limited to, the number of Holders, investor expectations for the Reorganized Debtors, and other factors beyond the Reorganized Debtors' control.

D. Certain Tax Considerations

There are a number of income tax considerations, risks, and uncertainties associated with consummation of the Plan. Interested parties should read carefully the discussions set forth in Section X of this Disclosure Statement regarding certain U.S. federal income tax consequences of the transactions proposed by the Plan to the Debtors and the Reorganized Debtors and to certain Holders of Claims and Interests in the Debtors who are entitled to vote to accept or reject the Plan.

IX. APPLICABILITY OF FEDERAL AND OTHER SECURITIES LAWS

Except as noted above, the Debtors believe that, subject to certain exceptions described below, various provisions of the Securities Act, the Bankruptcy Code and state securities laws exempt from federal and state securities registration requirements (a) the offer and the sale of such securities pursuant to the Plan and (b) subsequent transfers of such securities.

A. Offer and Sale of New Securities; Bankruptcy Code Exemption

Holders of Allowed Claims may receive securities pursuant to the Plan. Section 1145(a)(1) of the Bankruptcy Code exempts the offer or sale of securities under a plan of reorganization from registration under Section 5 of the Securities Act and state laws if the following principal requirements are satisfied: (1) the securities must be issued "under a plan" of reorganization by the debtor or its successor under a plan or by an affiliate participating in a joint plan of reorganization with the debtor; (2) the recipients of the securities must hold a prepetition or administrative expense claim against the debtor or an interest in the debtor; and (3) the securities must be issued entirely in exchange for the recipient's claim against or interest in the debtor, or "principally" in such exchange and "partly" for cash or property. In reliance upon this exemption, the Debtors believe that the exchange of the [securities] under the Plan will be exempt from registration under the Securities Act and state securities laws.

In addition, the Debtors will seek to obtain, as part of the Confirmation Order, a provision confirming such exemption. Thus, under this exemption,, such securities may be resold without registration under the Securities Act or other federal securities laws pursuant to an exemption provided by Section 4(1) of the Securities Act, unless the Holder is an "underwriter" (see discussion below) with respect to such securities, as that term is defined under the Bankruptcy Code. In addition, such securities generally may be resold without registration under state securities or "blue sky" laws pursuant to various exemptions provided by the respective laws of the several states. Recipients of securities issued under the Plan, however, are advised to consult with their own legal advisors as to the availability of any such exemption from registration under state laws in any given instance and as to any applicable requirement or conditions to such availability.

B. Subsequent Transfers of New Securities

Section 1145(b) of the Bankruptcy Code defines the term "underwriter" for purposes of the Securities Act as one who, except with respect to "ordinary trading transactions"

of an entity that is not an "issuer," (1) purchases a claim against, interest in, or claim for an administrative expense in the case concerning the debtor, if such purchase is with a view toward distributing any security received in exchange for such a claim or interest; (2) offers to sell securities offered or sold under a plan of reorganization for the holders of such securities; (3) offers to buy securities offered or sold under a plan of reorganization from the holders of such securities, if the offer to buy is: (a) with a view toward distribution of such securities and (b) under an agreement made in connection with such plan, with the consummation of such plan, or with the offer or sale of securities under such plan; or (4) is an "issuer" with respect to the securities, as the term "issuer" is defined in Section 2(11) of the Securities Act.

The term "issuer" is defined in Section 2(4) of the Securities Act; however, the reference contained in section 1145(b)(1)(D) of the Bankruptcy Code to Section 2(11) of the Securities Act purports to include as statutory underwriters all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. "Control" (as such term is defined in Rule 405 of Regulation C under the Securities Act) means the possession, direct or indirect, of the power to direct or cause the direction of the policies of a person, whether through the ownership of voting securities, by contract or otherwise. Accordingly, an officer or director of a reorganized debtor (or its successor) under a plan of reorganization may be deemed to be a "control person," particularly if such management position is coupled with the ownership of a significant percentage of the debtor's (or successor's) voting securities. Mere ownership of securities of a reorganized debtor could result in a person being considered to be a "control person."

To the extent that persons deemed to be "underwriters" receive securities pursuant to the Plan, resales by such persons would not be exempted by section 1145 of the Bankruptcy Code from registration under the Securities Act or other applicable law. Such persons would not be permitted to resell such securities unless such securities were registered under the Securities Act or other exemptions from such registration requirements were available. Entities deemed to be statutory underwriters for purposes of section 1145 of the Bankruptcy Code may, however, be able, at a future time and under certain conditions, to sell securities without registration pursuant to the resale provisions of Rule 144 under the Securities Act.

Pursuant to the Plan, certificates evidencing the securities will bear a legend substantially in the form below:

THE SECURITIES EVIDENCED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION AND MAY NOT BE SOLD, OFFERED FOR SALE, OR OTHERWISE TRANSFERRED UNLESS REGISTERED OR QUALIFIED UNDER SAID ACT AND APPLICABLE STATE SECURITIES LAWS OR UNLESS THE REORGANIZED DEBTORS RECEIVE AN OPINION OF COUNSEL, REASONABLY SATISFACTORY TO IT, THAT SUCH REGISTRATION OR QUALIFICATION IS NOT REQUIRED.

Whether or not any particular person would be deemed to be an "underwriter" with respect to the securities to be issued pursuant to the Plan, or an "affiliate" of the Reorganized Debtors, would depend upon various facts and circumstances applicable to that

person. Accordingly, the Debtors express no view as to whether any such person would be such an "underwriter" or "affiliate." PERSONS WHO RECEIVE SECURITIES UNDER THE PLAN ARE URGED TO CONSULT THEIR OWN LEGAL ADVISOR WITH RESPECT TO THE RESTRICTIONS APPLICABLE UNDER RULE 144 AND THE CIRCUMSTANCES UNDER WHICH SHARES MAY BE SOLD IN RELIANCE UPON SUCH RULE.

THE FOREGOING SUMMARY DISCUSSION IS GENERAL IN NATURE AND HAS BEEN INCLUDED IN THIS DISCLOSURE STATEMENT SOLELY FOR INFORMATIONAL PURPOSES. THE DEBTORS MAKE NO REPRESENTATIONS CONCERNING, AND DOES NOT PROVIDE, ANY OPINIONS OR ADVICE WITH RESPECT TO THE SECURITIES OR THE BANKRUPTCY MATTERS DESCRIBED IN THIS DISCLOSURE STATEMENT. IN LIGHT OF THE UNCERTAINTY CONCERNING THE AVAILABILITY OF EXEMPTIONS FROM THE RELEVANT PROVISIONS OF FEDERAL AND STATE SECURITIES LAWS, THE DEBTORS ENCOURAGE EACH CREDITOR, INTEREST HOLDER AND PARTY-IN-INTEREST TO CONSIDER CAREFULLY AND CONSULT WITH ITS OWN LEGAL ADVISORS WITH RESPECT TO ALL SUCH MATTERS. BECAUSE OF THE COMPLEX, SUBJECTIVE NATURE OF THE QUESTION OF WHETHER A PARTICULAR HOLDER MAY BE AN UNDERWRITER, THE DEBTORS MAKE NO REPRESENTATION CONCERNING THE ABILITY OF A PERSON TO DISPOSE OF THE SECURITIES.

X. CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

[To Come]

A. U.S. Federal Income Tax Consequences to the Debtor

[To Come]

1. *Conversion of the Debtor*

[To Come]

2. *Cancellation of Indebtedness Income*

[To Come]

B. U.S. Federal Income Tax Consequences to the Holders of Claims and Interests

[To Come]

1. *Accrued but Unpaid Interest*

[To Come]

2. *Exchange*

a. Holders of Other Secured Claims (Classes 2A and 2B)

[To Come]

b. Holders of Prepetition Second Priority Claims (Classes 3A and 3B)

[To Come]

c. Holders of Prepetition Third Priority Claims (Classes 4A and 4B)

[To Come]

d. Holders of General Unsecured Claims (Classes 5A and 5B)

[To Come]

e. Interests in Indianapolis Downs (Class 6A)

[To Come]

f. Interests In IDCC (Class 6B)

[To Come]

3. ***Ordinary Income***

[To Come]

C. Information Reporting and Backup Withholding

[To Come]

D. Importance of Obtaining Your Own Professional Tax Assistance

[To Come]

XI. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS

A. Feasibility of the Plan

Section 1129(a)(11) of the Bankruptcy Code requires that a debtor demonstrate that confirmation of a plan of reorganization is not likely to be followed by liquidation or the need for further financial reorganization. For purposes of determining whether the Plan meets this requirement, the Debtors prepared the Projections that are annexed hereto as Exhibit B.

B. Acceptance of the Plan

A condition to Confirmation, the Bankruptcy Code requires that each Class of Claims or Interests that is Impaired, but still receives a Distribution under the Plan vote to accept the Plan, except under certain circumstances set forth in section 1129(b) of the Bankruptcy Code.

A class is impaired unless the plan of reorganization leaves unaltered the legal, equitable and contractual rights of the holder of such claim. Pursuant to sections 1126(c) and 1126(d) of the Bankruptcy Code, and except as otherwise provided for in section 1126(e) of the Bankruptcy Code: (i) an impaired class of claims has accepted the plan of reorganization if the holders of at least two-thirds (2/3) in dollar amount and more than half (1/2) in number of the voting allowed claims have voted to accept the plan of reorganization and (ii) an impaired class of interests has accepted the plan of reorganization if the holders of at least two-thirds (2/3) in amount of the allowed interests of such class have voted to accept the plan. Thus, Holders of Claims in Class 3 and Class 4 (which are Impaired, but receiving Distributions) will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number of the Claims actually voting in each Class cast their ballots in favor of acceptance. Holders of Claims who fail to vote are not counted as either accepting or rejecting a plan.

Holders of Claims in Class 1 and Class 2 are Unimpaired by the Plan, and such Holders are conclusively presumed to have accepted the Plan and will not be entitled to vote to accept or reject the Plan. Holders of Claims in Class 5 and Interests in Class 6A and Class 6B are Impaired by the Plan and are not receiving a Distribution, therefore such Holders are conclusively presumed to have rejected the Plan and will not be entitled to vote to accept or reject the Plan.

A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

C. Best Interests Test

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

To calculate the probable distribution to holders of each impaired class of claims and interests if a debtor were liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from the debtor's assets if its chapter 11 case was converted to a chapter 7 case under the Bankruptcy Code. This "liquidation value"

would consist primarily of the proceeds from a forced sale of the debtor's assets by a chapter 7 trustee.

The amount of liquidation value available to unsecured creditors would be reduced first, by the claims of secured creditors to the extent of the value of their collateral and, second, by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 case and the chapter 11 case. Costs of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the debtor in its chapter 11 case (such as compensation of attorneys, financial advisors, and accountants) that are allowed in the chapter 7 case, litigation costs, and claims arising from the operations of the debtor during the pendency of the chapter 11 case. The liquidation itself would trigger certain priority payments that otherwise would be due in the ordinary course of business. Those priority claims would be paid in full from the liquidation proceeds before the balance would be made available to pay general unsecured claims or to make any distribution in respect of equity security interests. The liquidation would also prompt the rejection of a large number of executory contracts and unexpired leases and thereby significantly enlarge the total pool of unsecured claims by reason of resulting rejection damages claims.

Once the bankruptcy court ascertains the recoveries in liquidation of secured creditors and priority claimants, it must determine the probable distribution to general unsecured creditors and equity security holders from the remaining available proceeds in liquidation. If such probable distribution has a value greater than the distributions to be received by such creditors and equity security holders under the plan, then the plan is not in the best interests of creditors and equity security holders.

D. Liquidation Analysis

[TBD][9]

E. Application of the "Best Interests" of Creditors Test to the Liquidation Analysis and the Valuation

[TBD]

F. Confirmation Without Acceptance of All Impaired Classes: The "Cramdown" Alternative

[TBD].

XII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtors believe that the Plan affords Holders of Claims and Interests in Class 3 and Class 4 the potential for the greatest realization on the Assets and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances are not received or the Plan is

[9] The Debtors intend to file the Liquidation Analysis prior to the hearing on the Disclosure Statement.

not confirmed and consummated, certain restructuring alternatives may exist including, but not limited to, (a) formulation of an alternative plan or plans of reorganization or (b) liquidation of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

A. Alternative Plan(s) of Reorganization

[TBD].

B. Liquidation under Chapter 7 or Chapter 11

[TBD].

XIII. THE SOLICITATION; VOTING PROCEDURES

A. Parties-in-Interest Entitled to Vote

In general, a holder of a claim against or interest in a debtor may vote to accept or to reject a plan of reorganization if (a) the claim or interest is "allowed" and (b) the claim or interest is "impaired" by such plan.

Under section 1124 of the Bankruptcy Code, a class of claims or interests is deemed to be "impaired" under a plan of reorganization unless (i) the plan leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder thereof or (ii) notwithstanding any legal right to an accelerated payment of such claim or interest, the plan cures all existing defaults (other than defaults resulting from the occurrence of events of bankruptcy) and reinstates the maturity of such claim or interest as it existed before such default.

If, however, the holder of an impaired claim or interest will not receive or retain any distribution under the plan of reorganization on account of such claim or interest, the Bankruptcy Code deems such holder to have rejected the plan and, accordingly, holders of such claims and interests are not entitled to vote on the plan of reorganization. If a claim or interest is not impaired by the plan, the Bankruptcy Code deems the holder of such claim or interest to have accepted the plan and, accordingly, holders of such claims and interests are not entitled to vote on such plan.

B. Classes Entitled to Vote to Accept or Reject the Plan

Holders of Claims in Class 3 and Class 4 are entitled to vote to accept or reject the Plan. By operation of law, each unimpaired class of claims is deemed to have accepted the Plan and, therefore, the Holders of Claims or Interests in such classes are not entitled to vote to accept or reject the Plan. Consequently, Class 1 and Class 2 are deemed to have accepted the Plan and, therefore, none of the Holders of Claims in Class 1 and Class 2 are entitled to vote to accept or reject the Plan.

C. Waivers of Defects, Irregularities, Etc.

Unless otherwise directed by the Bankruptcy Court, all questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of

Ballots will be determined by the Voting Agent and the Debtors, which determination will be final and binding. As indicated below under "Withdrawal of Ballots; Revocation," effective withdrawals of Ballots must be delivered to the Voting Agent prior to the Voting Deadline. The Debtors reserve the absolute right to contest the validity of any such withdrawal. The Debtors also reserve the right to reject any and all Ballots not in proper form, the acceptance of which would, in the opinion of the Debtors or their counsel, be unlawful. The Debtors further reserve the right to waive any defects or irregularities or conditions of delivery as to any particular Ballot. Unless otherwise directed by the Bankruptcy Court, the Debtors' interpretation (including the Ballot and the respective instructions thereto) will be final and binding on all parties. Unless waived, any defects or irregularities in connection with deliveries of Ballots must be cured within such time as the Debtors (or the Bankruptcy Court) determine. Neither the Debtors nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of Ballots nor will any of them incur any liabilities for failure to provide such notification. Unless otherwise directed by the Bankruptcy Court, delivery of such Ballots will not be deemed to have been made until such irregularities have been cured or waived. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) will be invalidated.

D. Withdrawal of Ballots; Revocation

Unless otherwise provided, 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. To be valid, a notice of withdrawal must (i) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s), (ii) be signed by the withdrawing party in the same manner as the Ballot being withdrawn, (iii) contain a certification that the withdrawing party owns the Claim(s) and possesses the right to withdraw the vote sought to be withdrawn, and (iv) be received by the Voting Agent in a timely manner at Epiq Bankruptcy Solutions, LLC, 757 Third Avenue, 3rd Floor, New York, New York 10017. The Debtors intend to consult with the Voting Agent to determine whether any withdrawals of Ballots were received and whether the requisite acceptances of the Plan have been received. As stated above, the Debtors expressly reserve the right to contest the validity of any such withdrawals of Ballots.

Unless otherwise directed by the Bankruptcy Court, a purported notice of withdrawal of Ballots which is not received in a timely manner by the Voting Agent will not be effective to withdraw a previously cast Ballot.

Unless otherwise provided, any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed Ballot may revoke such Ballot and change such vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan. In the case where more than one timely, properly completed Ballot is received, the last valid Ballot received before the Voting Deadline shall supersede and revoke any earlier received Ballot, provided that, if a Holder of Claims casts multiple Ballots dated with the same date but voted inconsistently, neither of such Ballots be counted.

E. Voting Objection Deadline

Pursuant to Bankruptcy Rule 3018(a), the deadline for the Debtors to File and serve any objections (each a "**Voting Objection**") to temporary allowance of a Claim for purposes of voting on the Plan in a different class or different amount than is set forth in the Proof of Claim timely Filed by the applicable Bar Date as set by the Bankruptcy Court, shall be [_____], 2012 at [_:__] p.m. (prevailing Eastern time) (the "**Voting Objection Deadline**"). Any party with a response to a Voting Objection may be heard at the Confirmation Hearing. Responses to any Voting Objection may be Filed with the Bankruptcy Court up to and including the date of the Confirmation Hearing. If, and to the extent that, the Debtors and such party are unable to resolve the issues raised by the Voting Objection on or prior to the Confirmation Hearing, any such Voting Objection shall be heard at the Confirmation Hearing.

Creditors seeking to have a Claim temporarily allowed for purposes of voting to accept or reject the Plan pursuant to Bankruptcy Rule 3018(a) must File a motion (the "**Claims Estimation Motion**") for such relief no later than July 20, 2012 (the "**Claims Estimation Motion Deadline**") which date is fourteen 14 days prior to the Voting Deadline. The Bankruptcy Court shall hear such Claims Estimation Motion at the Confirmation Hearing. Any such Claims Estimation Motion may be resolved by agreement between the Debtors and the movant without the requirement for further order or approval of the Bankruptcy Court.

F. Further Information; Additional Copies

If you have any questions or require further information about the voting procedures for voting your Claim or about the packet of material you received, or if you wish to obtain an additional copy of the Plan, this Disclosure Statement, or any exhibits or appendices to such documents (at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d) or the Solicitation Order), please contact the Voting Agent at:

If by first class mail:

Indianapolis Downs, LLC Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
FDR Station, PO Box 5014
New York, New York 10150-5014

If by hand delivery or overnight mail:

Indianapolis Downs, LLC Claims Processing Center
c/o Epiq Bankruptcy Solutions, LLC
757 Third Avenue, 3rd Floor
New York, New York 10017

RECOMMENDATION AND CONCLUSION

For all of the reasons set forth in this Disclosure Statement, the Debtors believe that Confirmation and consummation of the Plan are preferable to all other alternative restructuring options. Consequently, the Debtors urge all Holders of Claims in Class 3 and Class 4 to vote to ACCEPT the Plan, and to complete and return their ballots so that they will be RECEIVED on or before 5:00 p.m. Eastern Time on the Voting Deadline.

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DATED: April 25, 2012

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