**UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF COLORADO**

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|---|---|
| IN RE:<br>EQUITY HOLDINGS GROUP, INC.<br>Debtor. | Case No. 16-20096 TBM<br>Chapter 11 |

**DISCLOSURE STATEMENT IN SUPPORT OF**
**PLAN OF REORGANIZATION DATED JUNE 22, 20171**

EQUITY HOLDINGS GROUP, INC., Debtor-in-Possession herein ("Debtor"), through undersigned counsel, respectfully proposes this Disclosure Statement in Support of its Plan of Reorganization Dated June 22, 2017 ("Disclosure Statement") to the United States Bankruptcy Court for the District of Colorado ("Bankruptcy Court"), pursuant to 11 U.S.C. § 1125(b), and in support thereof, states as follows:

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[1] Please be advised that the Disclosure Statement provided herein consists of solely a portion of the actual Disclosure Statement proposed by the Debtor. After a lengthy period of preparing this Disclosure Statement, a day plagued by a series of unfortunate events culminated with an unknown and unexpected computer issue causing a loss of material information previously drafted. Undersigned shall file a Corrected Disclosure Statement when locating the sizable amount of vanished information through various auto-saved and temporary files and folders.

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## I. INTRODUCTION

The Debtor provides this Disclosure Statement to all known creditors and parties-in-interest in the above-captioned Chapter 11 bankruptcy case, which contains information about the Debtor and describes the Plan of Reorganization Dated June 22, 2017 ("Plan") filed with the Bankruptcy Court contemporaneous to this Disclosure Statement. A full copy Plan is also attached hereto as **EXHIBIT A** and incorporated by reference herein.

**As a creditor*, your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss your rights with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distribution under the Plan are discussed at pages __ through __ of this Disclosure Statement. General unsecured creditors are classified in Class __, and will receive a distribution of __% of their allowed claims in annual installments over a period of five (5) years after the Effective Date of the Plan ("Effective Date"), if the Plan is approved by consent. Otherwise, if the Plan is approved pursuant to the provisions of 11 U.S.C. §1129(b), the Debtor projects that general unsecured creditors will receive a distribution of __% on their Allowed Claims.

### A. Purpose of this Disclosure Statement.

This Disclosure Statement provides information that the Debtor deems material, important and necessary for each creditor to arrive at a reasonable, informed decision in exercising the right to vote for acceptance or rejection of the Plan filed in accordance with Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code"). Pursuant to 11 U.S.C. § 1125, the Disclosure Statement is subject to final approval by the Bankruptcy Court as containing adequate information to enable creditors and interest holders to determine whether to accept the Plan. Hereinafter, the Disclosure Statement describes, as follows:

- The Debtor and significant events during the above-captioned Chapter 11 bankruptcy case;
- How the Plan proposes to treat claims and/or equity interest of the type each creditor and/or interested party holds (*i.e.* what each creditor and interest holder shall receive on their claim or equity interest if the Plan is confirmed);
- Who can vote on or object to the Plan;
- What factors the Bankruptcy Court may consider when deciding whether to confirm the Plan;

- Why the Debtor believes the Plan is feasible, and how the treatment of each claim held by creditors and/or equity interest holders under the Plan compares to each would receive if the Debtor was subjected to liquidation; AND
- The effect of Plan confirmation.

**Please be sure to read both the Plan and the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan, if confirmed, that each establishes your rights.**

**B. Voting on the Plan.**

This Disclosure Statement provides each creditor with a ballot, identical to the ballot presented with the Plan, to use for voting purposes. As a creditor, voting on the Plan is important. The Bankruptcy Court has not yet confirmed the Plan more fully described herein and attached hereto.

Under certain circumstances, the Bankruptcy Court may confirm the Plan despite one or more impaired Classes rejecting the Plan, pursuant to 11 U.S.C. § 1129(b). This Disclosure Statement explains the "cramdown" provisions in greater detail within Section ___.

The remainder of this section describes the procedures pursuant to which the Bankruptcy Court will or will not confirm the Plan, as follows:

1. *Voting Requirements*:

Only those Classes of Claims deemed "impaired" under the Plan are entitled to vote to accept or reject the Plan, pursuant to 11 U.S.C. § 1126(a).

2. *Time and Place of Hearing to Confirm Plan*:

This Disclosure Statement is subject to final approval by the Bankruptcy Court, as containing adequate information to enable creditors and interest holders to determine whether to accept the Plan, pursuant to 11 U.S.C. § 1125. The Bankruptcy Court's approval of this Disclosure Statement does not constitute a decision on the merits of the Plan. Issues related to the merits of the Plan and its confirmation are subject to a confirmation hearing.

The Bankruptcy Court shall determine whether to confirm the Plan at a confirmation hearing scheduled for **___[MM]___ _[DD]__, 2017 at ___:___ __.m in Courtroom E of the United States Bankruptcy Court for the District of Colorado, U.S. Custom House, 721 19th Street, Denver, Colorado 80202.**

3. *Deadline for Voting to Accept or Reject the Plan*:

Each creditor entitled to vote to accept or reject the Plan, pursuant to voting eligibility requirements more fully discussed in Section V(A), shall vote on the enclosed ballot and return the same to counsel for the Debtor at:

**Joshua B. Sheade, Esq.**
**BERKEN CLOYES, P.C.**

**1159 Delaware Street**
**Denver, Colorado 80204**

The Debtor must receive each eligible voter's ballot on or before the deadline set by the Bankruptcy Court of **__[MM]__ _[DD]_, 2017**, or the Debtor shall not count such untimely received ballot.

4. *Deemed Acceptance or Rejection of the Plan*:

Classes of Claims deemed "not impaired" or "unimpaired" under the Plan are not entitled to vote as conclusively presumed to accept the Plan, pursuant 11 U.S.C. 1126(f). Each holder of an Allowed Claim within Class(es) ___ are unimpaired by the Plan.

Pursuant to 11 U.S.C. § 1126(c), the Debtor shall deem a Class of Claims to accept the Plan if accepted by at least two-thirds in amount and more than one-half in number of the Allowed Claims that actually votes within such Class. Each holder of an Allowed Claim within Class(es) _____ are deemed impaired, and therefore are required to vote on the Plan.

Otherwise, Class(es) of Claims that receive and retain nothing under the Plan are deemed to reject the Plan, pursuant to 11 U.S.C. § 1126(g). No Class is deemed to have rejected the Plan.

5. *One Vote Per Holder*:

If a holder of a Claim holds more than one Claim in any one Class, all Claims of such holder in such Class shall be aggregated and acknowledge as one (1) Claim for determining the number of Claims voting to accept or reject the Plan.

6. *Deadline for Objecting to Confirmation of the Plan*:

Objections to the confirmation of the Plan must be filed withe Bankruptcy Court, and served upon counsel for the Debtor, the Office of the United States Trustee and all interested parties on or before **_[MM]_ _[DD]_, 2017**.

7. *Identity of Contact Person to Return Ballot and Request Additional Information*:

Please complete the enclosed Ballot, in accordance with the instructions contained therein, and return said Ballot in the enclosed envelope to Stephen E. Berken as counsel for the Debtor. Alternatively, and/or in addition to, any creditors, equity interest holders and/or interested parties shall direct any requests for additional information about the Plan to counsel for the Debtor at such address, as follows:

**Joshua B. Sheade, Esq.**
**BERKEN CLOYES, P.C.**
**1159 Delaware Street**
**Denver, Colorado 80204**

### C. Disclaimer.

NO REPRESENTATIONS ARE AUTHORIZED OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE ACCEPTANCE, WHICH ARE OTHER THAN THOSE CONTAINED HEREIN, SHOULD NOT BE RELIED UPON IN ARRIVING AT A DECISION.

THE SECURITIES AND EXCHANGE COMMISSION HAS NEITHER APPROVED NOR DISAPPROVED THIS IS DISCLOSURE STATEMENT, NOR HAS THE COMMISSION REVIEWED THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT.

As the Debtor did not arrange for a certified audit of the information, including, but not limited to, any financial information supplied; the Debtor is not able to warrant or represent that the information contained herein is without error. In addition, much of the information presented within this Disclosure Statement is based on statements by third parties and information contained in third party documents, the accuracy of which may be subject to interpretation and/or challenge. Nonetheless, the Debtor made all diligent efforts, under reasonable circumstances, to ensure accuracy of the information disclosed.

The information contained in this Disclosure Statement is information available to the Debtor as of June 21, 2017, except as noted otherwise herein. As the Debtor acknowledges that changes may be necessary, the Debtor respectfully reserves the right to seek for the Bankruptcy Court to consider any unforeseeable material changes at the hearing on confirmation of the Plan.

**The Court has approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Bankruptcy Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the BANKRUPTCY COURT APPROVING THIS DISCLOSURE STATEMENT IS NOT a decision on the merits, an endorsement of the Plan or a recommendation that voting claimants accept the Plan**.

### D. Recommendation of the Debtor.

As more fully discussed below, in the Debtor's opinion, the Plan represents the best available option in providing the maximum value for the creditors. The Plan provides creditors with a distribution on their Claims in an amount greater than a sum received through liquidation of the Debtor's assets, minimizes administrative expenses that otherwise exists within a Chapter 7 bankruptcy case and enables the Debtor to generate ongoing revenues, a portion of which the Debtor commits to fund the Plan and pay Classes of Claims over time. **Therefore, the Debtor strongly believes that confirmation of the Plan is in the best interest of the creditors.**

However, the Debtor makes no recommendation as to acceptance of the Plan, and urges all creditors to vote on the Plan after conducting their own personal analysis. **The Debtor recommends that all creditors entitled to vote on the Plan, vote to accept the Plan.**

## II. BACKGROUND INFORMATION

The Debtor is a small business corporation within the State of Colorado, pursuant to Articles of Incorporation for a Profit Corporation ("Formation Articles") filed with the Colorado Secretary of State on March 30, 2011 at Document No. 20111188015; which discloses a principle place of business located at 1315 Monroe Street, Strasburg, Colorado 80136. The Debtor filed a voluntary petition for bankruptcy relief under Chapter 11 of Title 11 of the United States Code ("Bankruptcy Code") with the Bankruptcy Court on October 12, 2016 ("Petition Date"). *See* Dkt. No. 1.[2]

## A. General Historical Background.

Donald A. Hulse and Robert J. Cunningham formed the Debtor for purchasing, owning and maintaining a race track and events facility known by street and number as 2050 South County Road 201, Byers, Colorado 80103 ("Facility"). Although the Debtor initiated negotiations to purchase the Facility in or around mid-2011, Peoria Crossing, LLC conveyed the Facility to HW & LF Clark, LLC ("Clark LLC") – an adjacent property owner – on February 24, 2012 in consideration for the amount of $340,000.00, pursuant to a Special Warranty Deed recorded with the Arapahoe County Clerk and Recorder ("County Recorder") on February 29, 2012 at Reception No. D2022613. In accordance with a Contract to Buy and Sell Real Estate ("Purchase Contract") executed on March 24, 2012, Clark LLC conveyed a to a Warranty Deed to the Debtor on June 14, 2012 – recorded with the County Recorder on June 18, 2012 at Reception No. D2064993 – as consideration for the amount of $650,000.00 ("Purchase Price").

Pursuant to the Purchase Contract, the Debtor agreed to pay the sum of $175,000.00 of the Purchase Price by issuing 11,666.67 shares of Class A Preferred Stock. The Debtor agreed to pay the remainder of the Purchase Price in monthly installments, pursuant to two Promissory Note(s) executed in favor of Clark LLC on or about June 14, 2012, wherein the Debtor repaid the sum of $39,000.00 in monthly installments of $2,500.00 together with interest at the rate of seven and one-half percent (7.50%) commencing on July 1, 2012 ("First Note"). In addition, the Debtor agreed tender sixty (60) monthly installments of $2,500.00 together with interest at the rate of five percent (5.00%) as repayment of the principal balance of $430,000.00 ("Second Note"). Contemporaneous to executing the First Note and the Second Note, Clark LLC secured repayment under the Notes through the Debtor granting Clark LLC two Deed(s) of Trust in the Facility.

## B. Insiders of the Debtor.

Prior to the Petition Date, the Debtor issued ownership shares of stock ("Shares") to persons and entities, otherwise classified as equity interest holders, as follows:

| Certificate No. | Shares Amount | Stockholder | Issue Date |
|---|---|---|---|
| **CLASS A – PREFERRED STOCK** (1,500,000 Authorized) | | | |
| A-1 | 11,666.67 | HW & LF Clark, LLC | April 10, 2012 |
| A-2 | 3,333.33 | Jefferey Jay Bauer and Rae Lynn Bauer | April 10, 2012 |
| **Total Issued** | 15,000.00 | | |

[2] Unless otherwise stated, "Dkt. No. ___" refers to the docket in the above-captioned bankruptcy case; styled as *In re Equity Holdings Group, Inc.*, Case No. 16-20096 TBM ("Bankruptcy Case").

| **CLASS B – COMMON STOCK** (1,500,000 Authorized) | | | |
|---|---|---|---|
| B-1 | 765,000.00 | Donald A. Hulse and Carolyn J. Hulse | April 10, 2012 |
| B-2 | 21,666.67 | Robert J. Cunningham | April 10, 2012 |
| B-3 | 7,000.00 | Jesus G. Rodriguez | January 15, 2014 |
| **Total Issued** | 793,666.67 | | |

Pursuant to 11 U.S.C. §§ 101(2) and (31), statutory insiders of the Debtor include Mr. Hulse, Mr. Cunningham, Ms. Hulse, Clark LLC, Colorado Motor Sports Park, LLC ("CMSP") and Joan Marshall are statutory insiders. In addition, non-statutory insiders may include, without limitation, Jesus G. Rodriguez, Black Kettle's Tavern, LLC and Sawtooth Enterprises, LLC ("Sawtooth") as each party holds an unsecured claim, and either controls equity shares or is business owned and operated by an equity shareholder.

### C. Management of the Debtor Before and During the Bankruptcy Case.

The Formation Articles, and the Amended and Restated Articles of Incorporation filed with the Colorado Secretary of State on April 10, 2012 at Document No. 20121208781, discloses Robert J. Cunningham as the incorporator, director and managing officer. Since the Debtor executed the Purchase Agreement up to and through the Petition Date, Donald A. Hulse has operated and managed the affairs of the Debtor as the Chief Executive Officer and Chairman of the Board. In addition to Mr. Hulse, the Board of Directors includes Mr. Cunningham and Carolyn J. Hulse. At all times during the bankruptcy case, Mr. Hulse has managed the Debtor's operations and affairs.

### D. Historical Events Leading to Chapter 11 Filing.

On September 19, 2014, Beacon Sales Acquisition, Inc. ("Beacon") commenced a civil action against Sawtooth, the Debtor, Clark LLC and the Arapahoe County, Colorado ("County") Public Trustee ("Trustee") within Arapahoe County, Colorado District Court ("State Court"); styled as, *Beacon Sales Acquisition, Inc. v. Sawtooth Enterprises, LLC, et al*., Case No. 2014CV32548 ("Lien Action"). Pursuant to the *Complaint for Foreclosure of Mechanic's Lien*, Beacon purportedly sold goods and materials to Sawtooth as the general contractor constructing improvements at the Facility. Upon the parties settling all claims, the State Court dismissed the Lien Action on March 2, 2015. As Beacon named Clark LLC a defendant within civil litigation caused by an entity owned and operated by Mr. Hulse, the Lien Action triggered a long-standing feud between the Debtor and Clark LLC culminating with this bankruptcy case.

However, the Lien Action enabled Clark LLC and the Debtor to realize the need to execute and record a reformed warranty deed. Pursuant to the *Order Re: Stipulation for Entry of Order of Reformation* ("Reformation Order") entered on December 18, 2014, the State Court found that the Warranty Deed recorded on June 18, 2012 with the County Recorder "contains an inaccurate legal description of the property transferred and therefore must be reformed…The Warranty Deed recorded at Reception No. D2064993 on June 18, 2012 is hereby deemed null and void." The parties recorded the Reformation Order and the reformed Warranty Deed with the County Recorder on January 14, 2015 at Reception No(s). D5004075 and D5004076.

Albeit the Debtor received a notice of default and demand for payment under the Notes in or around November 2012, Clark LLC asserted that the Debtor held no right to cure the Second Note within a letter dated March 13, 2015 and then issued a Notice of Acceleration on January 25, 2016 ("2016 Notice"). Pursuant to the 2016 Notice, the Debtor incurred a delinquency balance in the amount of $3,327.17, which consisted of attorneys' fees and late charges – purportedly assessed but not communicated to the Debtor throughout the Lien Action – in the amount of $3,102.19. Regardless of whether the Debtor accurately owed the amount of $3,327.17 or $224.98 as delinquency less servicing and collection charges assessed, Clark LLC threatened to foreclose on the Facility if the Debtor did not execute an "Agreement to Resolve Current Default of Promissory Note and Deed of Trust" ("Cure Agreement"). As consideration for foregoing pursuing foreclosure, Clark LLC required agreeing to modify the Purchase Option and pay the amount of $61,985.83 as past attorneys' and servicing fees, further attorneys' fees and real property taxes assessed against the Facility and the Option Property since 2012. Albeit the Warranty Deed originally contained inaccurate information, the Debtor acknowledged responsibility to pay the property taxes for the Facility and reimburse Clark LLC for curing the delinquent taxes due and owing as of January 28, 2016. However, the Debtor could evade foreclosure only if also agreeing to certain terms otherwise not allowed under Colorado statute including, but not limited, distributing share dividends to Clark LLC without first paying its creditors.

In or around first quarter 2016, the Debtor made efforts to obtain a secured loan to fully and finally pay the amount owed to Clark LLC under the Second Note. However, the Debtor nearly fell victim to an alleged fraudulent scheme offering low interest loans under the business name Quaker State Commercial Finance. The Debtor avoided any further financial distress by refusing to pay a non-refundable underwriting fee in the amount of $6,000.00 prior to acquiring the loan funds. Yet, the Debtor remained without the funds to pay-off Clark LLC.

On March 7, 2017, Clark LLC filed a *Complaint for Declaratory Relief*, which sought – as amended thereafter – a declaratory judgment of turning over the Facility in lieu of a foreclosure action, to impose a constructive trust and asserted three claims for relief, as follows: (1) breach of the Second Note, Deed of Trust and Cure Agreement against the Debtor, (2) "[f]raud and [m]isrepresentation" against Mr. Hulse, and (3) breach of fiduciary duty against Mr. Hulse. *See HW & LF Clark LLC v. Equity Holdings Group, Inc., et al.*, Case No. 2016CV30561 (Arapahoe County Dist.Ct.) ("Clark Action"). On May 6, 2016, the State Court dismissed the claim for fraud as Clark LLC "allege[d] no affirmative representations by defendants of an *inability* to pay dividends on plaintiff's preferred shares due to a lack of funds, but only the fact no dividend payments were made." *See Order – Re: Defendants' Motion to Dismiss Fraud Claims* at *4, available at: https://www.jbits.courts.state.co.us/efiling/web/document/45012311/ (emphasis in original). In lieu of further pursuing declaratory relief, Clark LLC initiated a foreclosure action by submitting a "Notice of Election and Demand for Sale by Public Trustee" ("NED")[3] to the County Trustee on June 29, 2016 and filing a *Verified Motion for Order Authorizing Sale Pursuant to Rule 120, Colorado Rules of Civil Procedure* with the State Court on July 21, 2016 in Case No. 2016CV31791 ("Foreclosure Action"). The County Trustee scheduled a foreclosure of the Facility to occur on October 13, 2016.

[3] The County Trustee recorded the NED with the County Recorder on July 1, 2016 at Reception No. D6070210. Prior to initiating the Foreclosure Action, Clark LLC recorded a "Notice of Lis Pendens" – bearing the case caption for the Clark Action – with the County Recorder on March 8, 2016 at Reception No. D6023516.

In addition, Irma Lopez Hernandez and her children initiated a wrongful death action within the State Court by filing a *Complaint and Jury Demand* against the Debtor, CMSP, Sawtooth, Mr. Hulse and Jesus Rodriguez; styled as, *Hernandez, et al v. Equity Holdings Group, et al.*, Case No. 2016CV31525 ("Negligence Action"). Ms. Hernandez alleged that the Debtor, among others, caused the weather-related crash of an aerial lift that killed her husband and another independent contractor–painter. Immediately preceding the Petition Date, the Debtor was awaiting the State Court determining a pending motion to dismiss.

The Debtor initiated this bankruptcy case to prevent the loss of the Facility and the improvements completed thereon. Upon filing the voluntary petition for bankruptcy relief on the Petition Date, the State Court stayed and administratively closed both the Clark Action and Negligence Action, and the County Trustee has stayed the foreclosure auction of the Facility.

**E. Significant Events During the Bankruptcy Case.**

Upon filing a voluntary petition for bankruptcy relief under Chapter 11 of the Bankruptcy Code, the Debtor filed a *Motion to Extend the Automatic Stay* ("Stay Motion") on October 14, 2016 (Dkt. No. 23), as corrected on October 19, 2016 (Dkt. No. 28). Pursuant to the Stay Motion, the Debtor requested that the Bankruptcy Court extend the automatic stay to Mr. Hulse solely as a defendant in Clark Action. Dkt. No. 28 at pp.3-6. Within the *Response to [Stay Motion]* ("Stay Response") on December 2, 2016 (Dkt. No. 54), Clark LLC asserted, "[it] does not oppose the [Stay Motion] but does file this response to make the record clear on some matters." *Id*. at p.1. However, the Debtor failed to comprehend whether Clark LLC contested the requested relief as, *inter alia*, "there is no indication that any litigation that might be brought against [Mr. Hulse] individually would cause any greater harm or distraction." *Id*. at p.5. Although the Debtor neither requested a hearing nor filed a certificate of non-contested matter, Clark LLC discontinued prosecuting Mr. Hulse and the State Court closed the Clark Action on April 18, 2017.

Prior to the Petition Date, on April 28, 2015, the County Board of County Commissioners ("Commissioners") approved the Debtor's second amended Preliminary Development Plan ("PDP"). Thereinafter, the County Zoning Division ("Zoning") authorized CMSP to operate the Facility under Temporary Use Permit ("TUP") for motorsports events and concerts in 2015 and 2016. Pursuant to the Section 16-602(B)(2) of the County's Land Development Code, the County had the authority to issue a TUP for events arising during the 2017 season through May 16, 2017. On March 17, 2017, CMSP submitted a formal application to operate the Facility under a TUP as suggested by County Zoning within a letter to the Debtor dated March 16, 2017. However, the County Commissioners denied such application, albeit the Land Use Code authorizes conditional approval, because CMSP proposed more events than permitted and the County required the Debtor to submit and pay the filing fee for a Final Development Plan ("FDP"). Moreover, County Zoning addressed a "Cease and Desist Order" to the Debtor on April 21, 2017, which advised that holding any events at the Facility without first obtaining a TUP would cause County Zoning to commence legal proceedings and seek injunctive relief, fines and penalties.

As an effort to recommence operations and generating revenue, the Debtor decided to pay the County for the FDP instead of paying property taxes assessed by the County Treasurer's Office ("Treasurer"), as paying the County the amount of $8,000.00 was the only option in obtaining a

TUP. Shortly after the County accepted the FDP on June 7, 2017, now known as a Specific Development Plan effective April 2017, CMSP again submitted a TUP application. Currently, the TUP application remains pending as the County Zoning Administrator requested a referral response from the County Commissioners, which scheduled to hold a "brief meeting" on the matter on June 26, 2017.

The significance of the TUP application stems from CMSP paying operating revenue to the Debtor as part of monthly rents. Among other races and events scheduled to occur at the Facility, CMSP entered into a Short-Term Facility Use Agreement with Viive Events, LLC ("Viive") to host one or more events at the Facility known as the "Lights Fest." On or about June 11, 2017, CMSP confirmed with the Debtor that Viive demanded to use the Facility on June 17, 2017 regardless of whether the County Commissioners and/or County Zoning granted the TUP. On June 13, 2017, the Debtor advised Viive of this bankruptcy case and the potential ramifications, pursuant to 11 U.S.C. § 1112(b), should CMSP grant access to the Facility and the Debtor allow such event to occur in knowing violation of the County's Land Use Code. Although Viive agreed to initiate efforts to pursue relief from the County's restrictions and threats, the Debtor had no other choice than to advise CMSP and Viive to cease operations after no restraining or injunctive relief was sought within the State Court on or before June 16, 2017. As Viive took no action prior to appearing at the Facility on June 16, 2017, and the Debtor refused to grant access to any person, Viive purportedly intends to seek legal action against the Debtor. Yet, the Debtor decides that properly managing the bankruptcy estate was more important than immediately earning revenue.

In addition to seeking the TUP, the Debtor has engaged numerous lending brokers to secure post-confirmation financing as an opportunity to swiftly pay Allowed Claims and fund construction improvements on the Facility to enable operations at the Facility to include ticket sales for seating within the indoor grandstand. Therefore, the Debtor believes that completing certain and necessary improvements required by the County prior to utilizing the large-capacity grandstand shall exponentially increase revenue and establish additional feasibility for Plan payments.

### F. Projected Recovery of Avoidable Transfers.

The Debtor does not intend to pursue preference, fraudulent conveyances or other avoidance actions as the payments made to creditors during the applicable time-period were done in the ordinary course of the Debtor's financial affairs. The Debtor believes a potential claim against Clark LLC may exist for payments to an insider, pursuant to 11 U.S.C. § 547. However, after considering the additional costs and delays of litigation effecting estate administration, the Debtor does not believe the potential value of the claims justifies commencing litigation.

### G. Claims Objections.

Except to the extent the Court has already deemed a claim allowed within a final non-appealable Order, the Debtor reserves the right to object to claims. Therefore, even if a claim is allowed for voting purposes, such claimant, creditor or other interested party may remain subject to an objection by the Debtor and denied any right to a distribution by an Order of the Court. Article __ of the Plan sets forth the procedures for resolving disputed claims.

Although the Debtor expressly reserves the right to object to any and all claims, and does not waive any objection herein, the Debtor anticipates filing an objection to claims including, but not limited to, as follows:

1. Clark LLC – Claim No. 4: Clark LLC identifies to hold an unsecured claim in the amount of $255,347.55, calculated as the portion of the Purchase Price converted into Class A stock shares together with interest assessed at the statutory rate of eight percent (8.0%). Regardless of whether Clark LLC asserts a claim for fraud as an effort to remove any previously accepted risk associated with equity versus debt, the claim of fraud and misrepresentation is subject to res judicata as plead and dismissed by the State Court in the Clark Action.

### H. Current and Historical Financial Conditions.

The Debtor identifies and provides current values of the bankruptcy estate's assets within the "Schedule of Material Assets and Liquidation Analysis" attached hereto as **EXHIBIT B** and incorporated by reference herein. In addition, the most recently filed Monthly Operating Report for May 2017 enumerates values of such assets, which the Debtor attaches hereto as **EXHIBIT C** and incorporates by reference herein.

The Debtor offers Profit & Loss Statements and Balance Sheets for 2015 and 2016 as evidence of its historical financials, which are collectively attached hereto as **EXHIBIT D** and incorporated by reference herein.

## III. SUMMARY OF PLAN TREATMENT OF CLAIMS AND EQUITY INTERESTS

This Plan provides for one (1) class of secured claims; no classes of priority claims; three (3) classes of unsecured claims; and one (1) class of the holders of equity interests in the Debtor. Unsecured creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately ___ cents ($0.___) on the dollar (i.e. __%). This Plan also provides for the payment of administrative claims in full on the Effective Date of this Plan, or pursuant to a written agreement between the Debtor and the administrative claim holder, or by a further Order of the United States Bankruptcy Court for the District of Colorado ("Court").

### A. Purpose of the Plan

As required by the Bankruptcy Code, the Plan assigns all known claims and equity interests into various classes and describes the treatment received by each Class of Claims. The Plan also provides whether each Class of Claims or equity interests is impaired or unimpaired. If the Plan is confirmed, recovery by each claimant is limited to the amount provided by the Plan.

### B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. These claims are not considered impaired, and holders of such claims do not vote on the Plan. However, such creditors may object to the Plan if, in their view, they find that the Debtor fails to treat their claim under the Plan in accordance with 11 U.S.C. § 1129(a).

The following chart lists the estimated administrative expenses incurred by the Debtor, and their proposed treatment under the Plan:

| **Type** | **Amount Owed** | **Proposed Treatment** |
|---|---|---|
| Post-Petition Expenses Arising in the Ordinary Course of Business | $20,000.00 | Paid in full on the Effective Date |
| Value of Goods Received in the Ordinary Course of Business Within 20 Days Prior to the Petition Date | $0.00 | Current on the Effective Date of the Plan |
| Post-Petition Tax Liability | $___.00 (Estimated) | Paid in full on or before the Effective Date, and/or paid in full immediately upon any amount becoming due post-confirmation. |
| Bankruptcy Court Approved Professional Fees of Berken Cloyes, P.C. | $50,000.00 (Estimated) | Paid in full on or before the Effective Date |
| Bankruptcy Court Approved Professional Fees of Dennis & Company, P.C. | $10,000.00 (Estimated) | Paid in full on or before the Effective Date. |
| Bankruptcy Court Clerk's Office Fees | $0.00 | Current on the Effective Date, and paid in full immediately upon any amount becoming due post-confirmation. |
| Office of the United States Trustee's Fees | $0.00 | Current on the Effective Date, and paid in full immediately upon any amount becoming due post-confirmation. |
| Miscellaneous Administrative Expenses | $18,000.00 | Paid in full on the Effective Date of the Plan, or according to separate written agreement. |
| **TOTAL** | **$75,000.00** | |

More specifically, the Debtor – as the Plan Proponent – has *NOT* placed the following claims in any class:

1. *Administrative Expenses*:

Administrative expenses are costs or expenses incurred by the Debtor in administering the Chapter 11 bankruptcy case, which are allowed under 11 U.S.C. §§ 503 and 507(a)(2); including, but not limited to, any goods sold to the Debtor in the ordinary course of business and received within 20 days before the Petition Date and fees incurred for professional services rendered during the reorganization process. *See* 11 U.S.C. § 503(a)(4). As required under the Bankruptcy Code, the Debtor shall pay all administrative expenses on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

2. *United States Trustee's Fees*:

The Debtor is required to timely pay all fees incurred under 28 U.S.C. § 1930(a)(6), which shall continue to accrue until this Chapter 11 bankruptcy case is closed, dismissed or converted to another chapter of the Bankruptcy Code. On the Effective Date, the Debtor shall pay to the Office of the United States Trustee any fees owed on or before the Effective Date.

3. *Post-Petition Priority Tax Claims*:

Priority tax claims are unsecured claims by governmental units for income, employment and other taxes described under 11 U.S.C. § 507(a)(8). Unless a priority tax claimant agrees otherwise, the Debtor shall pay the present value of the claim in regular installments, over a period not to exceed five (5) years from the order of relief. Any penalties not related to actual pecuniary loss shall be subordinated to the general unsecured class, and shall be subject to treatment as a general unsecured claim, pursuant to 11 U.S.C. § 507(a)(8)(G).

Governmental units asserting priority tax claims against the Debtor are, as follows:

| **Claimant** | **Claim Amount** | **Allowed Amount** |
|---|---|---|
| United States Internal Revenue Service | $1,984.96 | Paid |
| Colorado Department of Revenue | $289.00 | Paid |
| Arapahoe County, Colorado Treasurer [Secured] | $16,817.26 | $16,817.26 |
| **TOTAL** | | **$16,817.26** |

Allowed Priority Claims, including the secured portion of claims entitled to priority treatment, shall be paid in full within five (5) years from the Petition Date in equal monthly installments commencing on the Effective Date of the Plan, together with interest accruing at the rate of ___ percent (__.00%) for any claim held by the IRS, six percent (6.00%) for any claim held by CDR, and ___ percent (__.00%) for the claim incurred to the Arapahoe County Treasurer.

Should the Debtor sale any assets over the life of the Plan, the purchaser of such assets shall take subject to any and all liens of the priority tax claims, and to the extent necessary, shall pay for and assume such obligations.

**C. Classes of Classified Claims and Equity Interests.**

All creditors and equity security holders should refer to Article(s) III up to and through VI of this Plan for information regarding the precise treatment of their claim. The Debtor has filed and circulated a Disclosure Statement that provides more detailed information regarding this Plan, and the rights of creditors and equity security holders, contemporaneously with this Plan.

**YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one. If you otherwise do not have an attorney, you may wish to consult one.**

The Debtor proposes to certain classes of allowed claims, as more fully set forth in the Plan, and

the proposed treatment that such classes of claimants shall receive under the Plan, as follows:

1. *Classes of Secured Claims*:

Allowed Secured Claims are claims secured by real and/or personal property of the Debtor's bankruptcy estate, or otherwise subject to setoff, to the extent allowed as secured claims under 11 U.S.C. § 506. The Debtor proposes to treat each class of claimants holding Allowed Secured Claims, pursuant to the Plan, as follows:

| **Class** | **Impairment** | **Proposed Treatment** |
|---|---|---|
| Class 2 – Secured Claim of HW & LF Clark, LLC (Proof of Claim No. 3). | Impaired | The secured claim in the amount of $475,497.94, or such other amount as the Bankruptcy Court may allow, arises from Clark, LLC conveying the Facility to the Debtor as consideration for negotiable instruments and equity shares in the collective amount of the Purchase Price. In addition to Clark LLC accepting 11,666.67 shares of Class A Preferred Stock, the Debtor executed the First Note and Second Note in favor of Clark LLC. The Debtor granted a Deed of Trust to Clark LLC, which secures payments under the Second Note against the Facility. In addition to the allowed secured claim, Clark LLC asserts an unsecured claim in the amount of $244,347.55, pursuant to Proof of Claim No. 4, which the Debtor shall treat as an Allowed Unsecured Claim under Class 5 of the Plan if Clark LLC elects to accept the Plan. In addition, the Debtor shall continue to hold the right to exercise the option to purchase a second parcel for a price of $1,000.00 per acre as set forth below.<br><br>Should Clark vote to approve the Plan, the Debtor shall tender monthly payments in the amount of $4,000.00 over one-hundred eighty (180) months with interest assessed at the contractual rate of 5.00% per annum. The Debtor shall reserve the right to pre-pay the balance due on the Claim, and the Clark LLC shall retain its security interest in the collateral until the claim is fully satisfied.<br><br>**Default**. Clark LLC may exercise any and all available legal remedies with respect to the collateral upon default of payments under the Plan, should the Debtor fail to cure such non-payment within fourteen (14) days after the Debtor receives written notice advising of the default. In addition, the Debtor, personally or through a policy held by a lessee of the collateral in operating a race track, shall maintain adequate insurance on the collateral. The failure to maintain adequate insurance shall constitute an event of default.<br><br>**Cram Down**. Alternatively, should Clark LLC reject the Plan, the Debtor shall further pursue its claim for equitable subordination of the above-described secured claim, based on the factual allegations and legal claims asserted within Adversary Proceeding No. 17-01052 TBM. Until the Bankruptcy Court determines whether Clark LLC holds an Allowed Secured Claim, the Debtor shall treat the |

| | | |
|---|---|---|
| | | entire claimed amount under Proof of Claim(s) No(s). 3 and 4 as an Allowed Subordinated Unsecured Claim, and paid in accordance with Class 6. The Debtor shall hold in a separate trust account the balance of $4,000.00 less the monthly payments tendered under Class 6, until the Bankruptcy Court determines whether to equitably subordinate the secured claim. |
| Class 3 – Secured Claim of Sunbelt Rentals, Inc. | Impaired | The secured claim in the amount of $6,330.00, or such other amount as the Bankruptcy Court may allow; arises from two (2) rental agreements executed by Sawtooth Enterprises, LLC ("Sawtooth") for construction equipment used for maintenance and improvement services rendered to the Debtor, as follows: (1) agreement dated April 21, 2015 in the amount of $4,413.18 and (2) agreement dated May 12, 2015 in the amount of $2,245.29. Sunbelt Rentals, Inc. ("Sunbelt") submitted a "Statement" to Sawtooth, dated June 1, 2015, which provides a balance in the amount of $6,332.99. The security interest arises from a Statement of Lien recorded against the real property with the Arapahoe County, Colorado Clerk and Recorder on September 16, 2015 at Reception No. D5105517. However, the Debtor schedules the indebtedness to Sunbelt as a contingent and disputed claim because Sawtooth incurred the debt and Sunbelt failed to commence a civil action within six (6) months after Sawtooth performed services and/or returned the equipment rented, pursuant to COLO.REV.STAT. § 38-22-110.<br><br>As Sawtooth incurred the debt owing, and Sunbelt failed to pursue enforcement of the secured claim amount, the Debtor shall treat Sunbelt as holding an Allowed Secured Claim in the amount of $0.00. In addition to Sunbelt receiving no payments under the Plan, the Debtor shall seek an Order of the Court to have the security interest released and removed from the public records maintained by the County Recorder. |

2. *Classes of Unsecured Priority Claims*:

Pursuant to 11 U.S.C. §§ 507(a)(1), (4), (5), (6) and (7), the Debtor shall place any holders of such claims within classes, and pay each holder of any such claims cash on the Effective Date equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment. The Debtor proposes to treat each class of claimants holding Allowed Unsecured Priority Claims as more fully described under 11 U.S.C. §§ 507(a)(1) and (4) through (7), pursuant to the Plan, as follows:

| **Class** | **Impairment** | **Proposed Treatment** |
|---|---|---|
| Class 1 – Allowed Unsecured Priority Claims. | Unimpaired | No Class 1 claims are known to exist. |

3. *Classes of Unsecured Claims*:

Allowed General Unsecured Claims are claims not secured by real and/or personal property of the Debtor's bankruptcy estate, and the Debtor is not required to treat such claims as entitled to priority under 11 U.S.C. § 507(a). The identity of the holders of the Allowed General Unsecured Claims are more fully identified in Article II of the Plan. The Debtor proposes to treat each class of claimants holding Allowed General Unsecured Claims, pursuant to the Plan, as follows:

| **Class** | **Impairment** | **Proposed Treatment** |
|---|---|---|
| Class 4 – General Unsecured Claims. | Impaired | The Debtor shall pay the Allowed General Unsecured Claims on a pro-rata basis from the remaining balance of funds generated from operations. |
| Class 5 – Subordinated Unsecured Claims | Impaired | On the Effective Date, the Subordinated Unsecured Claims shall be subordinated in payment to all other Allowed General Unsecured Claims, pursuant to 11 U.S.C. § 510(b). The Debtor shall only pay each holder of a Subordinated Unsecured Claim a pro-rata share of the funds distributable under Class 2 of the Plan if certain events occur, as follows: (1) Clark votes to reject the Plan, and (2) on or after the Effective Date, the Court enters an Order subordinating the secured claim of Clark under Proof of Claim No. 3.<br><br>Should Clark LLC vote to accept the Plan, the holders of Subordinated Unsecured Claims shall neither receive nor retain any distribution on account of its Subordinated Unsecured Claim.<br><br>Alternatively, should Clark and the Debtor require the Court to adjudicate the equitable subordination claims alleged within Adversary No. 17-1000 TBM, the Debtor shall deposit funds allocated to Class 2 of the Plan into a trust account in. Pursuant to the proposed treatment of Class 2 of the Plan, the Debtor shall distribute the allotted monthly sum of $4,000.00 to the appropriate claimant(s) – either Clark or the Subordinated Unsecured Claims on a pro rata basis – upon a full and final order entered and/or judgment rendered by the Court. |
| Class 6 – Disallowed Claims | Impaired | The Debtor shall not pay any amount or distribute any property to holders of Disallowed Claims through the Plan. |

4. *Classes of Equity Interest Holders*:

| **Class** | **Impairment** | **Proposed Treatment** |
|---|---|---|
| Class 7 – Equity Interests. | Impaired | On the Effective Date, all outstanding membership units and interests of the Debtor shall be cancelled, extinguished and discharged; and the holders thereof shall receive no distribution on account of the Equity Interests.<br><br>**Consensual Plan**. In the event that each class consensually accepts to confirm the Plan, the Debtor shall issue new Class A Membership Units ("Shares") and distribute such shares in the same percentage as existed on the Petition Date, except that Clark shall divest the Equity Interests previously held pre-petition and return such shares for the Debtor to distribute to the remaining holders of Equity Interests on a pro-rata basis.<br><br>**Cramdown Plan**. Should the Court confirm the Plan without consensual acceptance by each class, the Debtor shall offer to sell Shares to all Class 4, Class 5 and Class 7 claimants (hereinafter, collectively "Potential Shareholders"). The Debtor shall offer to sell a minimum amount of 100 Shares and a maximum offered amount of 1,000 Shares. Prior to confirmation, the Debtor shall sell each of the Shares for a minimum price of $1,000.00. The right of Potential Shareholders is not assignable.<br><br>The Potential Shareholders who seek to purchase Shares, shall submit to counsel for the Debtor via e-mail or facsimile, a signed letter of commitment on or before July __, 2017 ("Commitment Date"). Any Potential Shareholders that fails to submit a signed commitment letter prior to the Commitment Date shall be deemed to have waived that claimant's option to purchase Shares.<br><br>Within five (5) days after the Commitment Date, the Debtor shall file with the Court and provide notice to all parties – via electronic means – who have submitted a commitment letter, a report disclosing as follows: (1) each claimant that submitted a commitment letter, (2) the number of Shares each party committed to purchase, and (3) the dollar amount of each purchase commitment. Within five (5) days of said report, each committed party shall |

| | | |
|---|---|---|
| | | hold the right to withdraw their commitment letter or shall be deemed to have waived the right to withdraw.<br><br>If the Debtor does not receive commitments for the minimum amount of Shares offered, the Debtor shall liquidate personal property until earning enough proceeds to distribute on account of the full amount of the Allowed Secured Claim under Class 2, subject to any necessary approval from the Court. |

## IV. MEANS OF PLAN IMPLEMENTATION

### A. Financial Source of Payments to All Creditors.

The Debtor shall fund the Plan using income generated from a combination of sources including, but not limited to, as follows:

1. Torque Time, LLC: Pursuant to Section II(E) above, CMSP and Torque Time, LLC ("TT") have executed the Special Use Agreement, which the parties memorialized on May 20, 2017. Should the equity venture firm funding the use of the Real Property to produce a preliminary promotional video decide to move forward with the television series, the Debtor and TT shall further negotiate a long-term lease agreement for conducting operations and financing improvements to the real property either subject to specific dates and times for scheduled races or as a full leasehold interest with conditions provided for CMSP to use the property on specific dates and times for races, concerts and other events produced by CMSP.

   Subject to further negotiations with TT, any agreement to lease the real property shall include financing improvements to the grandstand and wastewater treatment facility, which shall allow spectators to purchase tickets for seating within the grandstand. As such improvements shall allow an increase in ticket sales of 1,700 seats, with an average ticket price in the minimum amount of $25.00, races conducted at the real property shall entitle the race operator to earn additional revenue in the approximate maximum amount of $42,500.00. Therefore, access to additional ticket sales for the grandstand shall allow the Debtor to earn enough through monthly lease payments to fund the monthly amount tendered to Clark on account of the Allowed Secured Claim.

2. Colorado Motor Sports Park, LLC: Upon the Effective Date, the Debtor shall require CMSP to memorialize the currently existing month-to-month holdover tenancy. Subject to further negotiations by and between the Debtor and TT, the Debtor shall grant CMSP a leasehold interest as a month-to-month tenant under a certain and specific lease agreement attached hereto as **EXHIBIT 1** and incorporated by reference herein. Pursuant to such lease agreement, to commence as of the Effective Date, shall entitle CMSP to operate events in exchange for

paying monthly rental installments in the amount of $2,500.00 together with fifty percent (50%) of monthly net revenue earned. Should TT prefer to commit to leasing the entire real property, any lease shall entitle CMSP to lease the race track from the Debtor for the specific race dates and times contracted through and produced by CMSP with third-party race promoters.

3. Post-Confirmation Secured Loan: For further information on the efforts of the Debtor and the potential loan funded to the Debtor upon acquiring a TUP from the County, please see Section II(E) *infra*.

4. Class 7 Purchase of Shares, Pursuant to Cramdown Plan Confirmation: Should the Debtor need to offer to sell Shares to Potential Shareholders, the Debtor shall utilize the amounts received from said committed parties to fund payments to Clark under Class 2 of the Plan, if any amount is deemed by the Court as an Allowed Secured Claim, shall deposit thirty percent (30.00%) of the remaining balance to into a "Net Available Cash Fund" for distribution to Allowed General Unsecured Claims, and shall deposit the remaining amount [i.e. seventy percent (70.00%) of the remaining balance] into a "Working Capital Account" to fund operations and ordinary expenses throughout the life of the Plan.

5. Liquidation of Personal Property: Should the Debtor fail to generate enough funds to finance payments at any time throughout the life of the Plan, the Debtor shall seek approval from the Court to sell any personal property that holds a resale value in the amount not less than six (6) months and to exceed one (1) year of payments owed to Clark on account of the Allowed Secured Claim under Class 2 of the Plan, if any. The Debtor shall allocate any and all funds earned for such personal property liquidated as fifty percent (50.00%) distributed to the holder of the Class 2 Allowed Secured Claim, 30% deposited into the Net Available Cash Fund for 6 months of monthly payments to holders of Allowed Unsecured Claims and twenty percent (20.00%) deposited into the Working Capital Account to fund overhead and operating expenses.

**B. Additional Source of Payments to Unsecured Creditors.**

Pursuant to the Plan, the Debtor shall recommence generating regular cash flow from operations in the ordinary course of business upon the County issuing a TUP. As the Debtor continues to engage and attract additional business opportunities with a variety of national racing associations and single-day event promoters, the Debtor anticipates new revenue to fund Plan payments, monthly unforeseen operation costs and construction improvement costs and expenses. The Debtor will deposit forty percent (40%) of the business operation cash flow into the Equity Holdings Net Available Cash Account ("Account"). The amounts deposited into the Account shall increase and decrease at various increments, with the Debtor expected to deposit greater amounts into the Account per month, on an annual basis, over the life of the Plan. The fluctuations in payment amounts reflect the seasonal nature of the operations at the Facility. The low pro rata distribution afforded to the Account is due to the capital-intensive nature of the motorsports racing industry. The Debtor will deposit the remaining sixty percent (60%) into a Working Capital Account, which

Debtor shall use to acquire operational needs and pay any monthly shortfall payments afforded to secured or priority creditors.

**C. Post-Confirmation Management.**

Due to the unique affairs and operations conducted at the Facility, Mr. Hulse is in the best position to continue managing post-confirmation. However, should any creditor or other interested party disapprove of Mr. Hulse further managing the entity, any such objection shall require offering the Debtor an individual holding a similar unique knowledge of managing a motorsports racing and concert facility.

**D. Membership Units.**

Should the Debtor obtain confirmation of the Plan by consensual acceptance by all Allowed Classes of Claims, all existing membership interests of the Debtor shall be cancelled on the Effective Date. The Reorganized Debtor shall issue new equity, in the form of Class A Membership Units ("Shares"). A total of 1,000 Shares – unregistered and restricted – shall be authorized, and each of the Shares shall establish one vote per unit in the Reorganized Debtor. Otherwise, should the Debtor require to obtain confirmation by "cram down," the Debtor sets forth the procedure for the purchase and sell of Shares below.

**E. Risk Factors.**

As with any plan of reorganization or other financial transaction, there are certain risk factors which must be considered. It should be noted that all risk factors cannot be anticipated, that some events will develop in ways that were not foreseen and that many or all of the assumptions that have been used in connection with this Disclosure Statement and the Plan will not be realized exactly as assumed. Under the Plan, some of the principal risks that Holders of Claims should be aware of, in the view of the Debtor, are as follows:

1. Non-Acceptance by Impaired Class;
2. Known and Unknown Claims;
3. Amount and Timing of Distributions;
4. Tax Consequences; and
5. Possible Adverse Effects from Delay

**F. Executory Contracts and Unexpired Leases.**

The Debtor shall assume under the Plan all executory contracts and unexpired leases listed within Article ___ of the Plan. Assumption means the Debtor elects to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Bankruptcy Code, if any. In addition, the Debtor shall cure and compensate to any claimants, landlords, or any other party to such contract or lease for any such default(s), pursuant to the procedure set forth in Article ___of the Plan. Upon confirmation of the Plan, the other party to such contract or lease shall accept and agree to assign assumed executory contracts and unexpired leases to the reorganized entity.

The Debtor currently leases the Facility to CMSP as a holdover tenant subject to the terms of a certain and specific "Lease" commenced on January 1, 2016. As the Debtor recognizes the prior terms of the Lease with CMSP does not entitle the Debtor to receive a percentage of monthly revenues either during the off-season or when racing prize purses equal ticket sales for such event, the Debtor shall require CMSP to execute a new lease agreement with terms more favorable to Plan payment compliance and more transparency afforded to any and all interested parties. Moreover, the Debtor finds that an alternative third-party lessee may afford the Debtor to procure a higher monthly rental amount. Prior to, or contemporaneous with confirmation of the Plan, the Debtor shall require CMSP to execute a new lease agreement, subject to notice to creditors and approval by the Bankruptcy Court. Any new agreement the Debtor requires CMSP to execute shall include, among other terms and provisions, an increased monthly rental payment amount and terms allowing the Debtor to enter into short-term lease agreements with third parties. Although the investigation by the Debtor remains ongoing, should CMSP remain delinquent under the current Lease for past monthly gross revenue earned, the Debtor shall require an immediate cure of such arrearage and such lump sum payment shall inure directly to the benefit of the Allowed General Unsecured Class.

In addition, to the extent enforceable under the Bankruptcy Code, any provision of the United States Code or the Colorado Revised Statutes, the Debtor shall assume the Option to Purchase executed by and between the Debtor and Clark LLC. Pursuant to the Purchase Contract, and reiterated within the Cure Agreement, Clark LLC granted the Debtor an "Exclusive Option to Buy Real Property" ("Option Contract"). The Option Contract enables the Debtor to purchase an additional 163.69 acres of vacant property known by street and number as 2280 South County Road 201, Byers, Colorado 80103 ("Option Property"). Upon fully and finally completing payments to Clark LLC as the holder of any Allowed Secured Claim, Allowed Unsecured Claim and/or Allowed Subordinated Claim, the Debtor shall pay a one-time lump sum payment in the amount of $164,000.00 ("Option Price") as consideration for Clark LLC conveying the Option Property to the reorganized entity. Should the Debtor fail to complete all payments under the Plan or lack the funds to pay the Option Price contemporaneous with the Bankruptcy Court issuing a final decree, the Debtor shall hold no further right to purchase the Option Property.

Otherwise, the Debtor hereby rejects all executory contracts and unexpired leases not listed in Article __ of the Plan. ***Under the terms of the Plan, the Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract is no later than thirty (30) days after the date of the order confirming this Plan***. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

Should any party to such leases or executory contracts object to the Debtor assuming or rejecting such, the proposed cure of any defaults, or the adequacy of assurance of performance, such objecting party must file and serve an objection to the Plan within the deadline for objecting to confirmation of the Plan, unless the Bankruptcy Court sets a different time and date.

Each party subject to any unexpired lease and/or executory contract entered with the Debtor should consult their adviser or attorney for more specific information about particular leases or contracts.

**G. Tax Consequences of the Plan.**

THIS DISCLOSURE STATEMENT DOES NOT ADDRESS THE PARTICULAR FEDERAL INCOME TAX CONSEQUENCES THAT MAY BE RELEVANT TO TAXPAYERS UNDER THE FEDERAL INCOME TAX LAWS, NOR DOES IT DISCUSS ANY ASPECT OF FEDERAL, STATE, LOCAL OR FOREIGN TAX LAWS THAT MAY BE APPLICABLE TO PARTICULAR TAXPAYERS. THE TAX CONSEQUENCES TO HOLDERS OF CLAIMS AND INTERESTS, INCLUDING THE AVAILABILITY OF DEDUCTIONS FOR WORTHLESS DEBT OR WORTHLESS EQUITY, IF ANY, MAY VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. EACH CREDITOR AND EQUITY HOLDER TREATED BY THE PLAN IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL OR FOREIGN TAX CONSEQUENCES OF THE PLAN.

Creditors are encouraged to seek their own tax counsel, however, it is anticipated that distributions from the Estate to holders of allowed claims will have not have any tax impact on creditors since creditors will merely be re-paid debt that is owed to them

The summary description of certain income tax consequences of the Plan is provided below does not purport to address all of the federal income tax consequences that may be applicable to the Debtor or to any particular Holder in light of such Holder's own individual circumstances. This summary does not address the federal income tax consequences of the Plan to Holders of Claims or Interests that may be subject to special rules, such as foreign persons, S corporations, insurance companies, financial institutions, regulated investment companies, broker-dealers and tax-exempt organizations. This summary does not discuss foreign, state, local, estate or gift tax consequences of the Plan, nor does it discuss federal income tax consequences to a Holder of Claims or Interests being satisfied in full or otherwise Unimpaired under the Plan or not receiving any recovery under the Plan. No opinion of counsel or rulings or determinations of the IRS or any other tax authorities have been sought or obtained with respect to any tax consequences of the Plan. The discussion below is not binding upon the IRS or such other authorities. The Debtor is not making any representations regarding the particular tax consequences of the confirmation and consummation of the Plan as to the Holder of any Claim or Interests, and is not rendering any form of legal opinion as to such tax consequences.

The discussion of federal income tax consequences below is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), the Treasury Regulations promulgated thereunder, judicial decisions, and published positions of the IRS and other applicable authorities, all as in effect on the date hereof and all of which is subject to change, e.g., legislative, judicial or administrative changes - possibly with retroactive effect.

1. *Consequences to Holders of Certain Allowed Claims*

**Distribution in Discharge of Accrued Unpaid Interest:** Except as otherwise provided in the Plan, a distribution received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest. However, there is no assurance that the IRS would respect such allocation for federal income tax purposes. In general,

to the extent that an amount received by a holder of debt is received in satisfaction of interest that accrued during its holding period, such amount will be taxable to the holder as interest income if not previously included in the holder's gross income. Conversely, a holder generally recognizes a deductible loss to the extent that it does not receive payment of interest that has previously been included in its income. Holders of Claims are urged to consult with their tax advisors regarding the allocation of consideration and deductibility of unpaid interest.

**Information Reporting and Withholding:** All distributions to Holders of Allowed Claims under the Plan are subject to any applicable withholding tax requirements. Under federal income tax law, interest, dividends, and other reportable payments, may, under certain circumstances, be subject to "backup withholding," at a rate provided by the Internal Revenue Code. Backup withholding generally applies if the Holder (a) fails to furnish its social security number or other taxpayer identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report interest or dividends, or (d) under certain circumstances, fails to provide a certified statement, signed under penalty of perjury, that the TIN provided is its correct number and that it is not subject to backup withholding. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax. Certain persons may be exempt from backup withholding, including, and in certain circumstances, corporations and financial institutions.

**IRS Circular 230 Disclaimer: The discussion of tax consequences in this communication is not intended or written to be used, and it cannot be used by the recipient or any other taxpayer (i) for the purpose of avoiding tax penalties that may be imposed on the recipient or any other taxpayer, or (ii) in promoting, marketing or recommending to another party any transaction addressed herein.**

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN TAX CONSEQUENCES OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. HOLDERS OF CLAIMS OR INTERESTS ARE STRONGLY ENCOURAGED TO CONSULT THEIR TAX ADVISORS ABOUT THE UNITED STATES FEDERAL, STATE AND LOCAL, AND ANY APPLICABLE FOREIGN, INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN

## V. CONFIRMATION REQUIREMENTS AND PROCEDURES

The Debtor must procure confirmation of the Plan by meeting the requirements set forth under 11 U.S.C. §§ 1129(a) or (b), which requires that the Plan Proponent propose the Plan in good faith. In addition, at least one impaired Class of Claims must accept the Plan, notwithstanding the Class consisting of insiders. Unless a creditor or equity interest holder votes to approve the Plan, such Plan must distribute to each creditor and equity interest holder at least the amount guaranteed under Chapter 7 liquidation. The Plan must be feasible. These requirements set forth are not an exhaustive list, and creditors and interested parties may find the remaining requirements within 11 U.S.C. § 1129.

**A. Parties Permitted to Vote or Object.**

Any party in interest may object to Plan confirmation in such party believes that the Plan does not satisfy the requirements set forth in 11 U.S.C. §§ 1129(a) or (b). However, a party in interest is entitled to vote to accept or reject the Plan if such claimant holds a claim that is (1) allowed or allowed for purposes of voting and (2) is impaired.

Herein, the Debtor believes that classes _____ are impaired, and each holder of a Claim within these classes are entitled to vote to accept or reject the Plan. The Debtor believes classes _____ are unimpaired claimants and do not possess the right to vote to accept or reject the Plan. In addition, the Debtor recognizes classes ____ as holders of priority tax claims, which the Bankruptcy Code treats as non-voting creditors only permitted to object to the Plan.

1. *Allowed Claim or Allowed Equity Interest*

Only those creditors or equity interest holders with an allowed claim or allowed equity interest holds a right to vote on the Plan. A claim or equity interest holder, generally, is allowed if either (1) the Debtor has scheduled the claim within the Debtor's schedules, as amended by the Debtor within this bankruptcy case, notwithstanding those scheduled as disputed, contingent, or unliquidated; or (2) the creditor filed a proof of claim or equity interest, unless the Debtor files an objection to such proof of claim or equity interest. If and when the Bankruptcy Court deems a claim or equity interest not allowed, such creditor or equity interest holder is not entitled to vote, unless the Court, after notice and hearing, either overrules the objection or grants the power to vote on the Plan, pursuant to FED.R.BANKR.P. 3018(a).

Pursuant to the *Order Granting Debtor's Application to Set Bar Date* entered on December 8, 2016 (Dkt. No. 56), the Court established **December 15, 2016 as the deadline for a creditor or other interested party to file a proof of claim**.

2. *Impaired Claim or Impaired Equity Interest*

The holder of an allowed claim or equity interest possesses the right to vote only if such class is *impaired* under the Plan. Pursuant to 11 U.S.C. § 1124, a class is deemed impaired if the Plan alters the legal, equitable, or contractual rights of members of such class.

3. *Parties **Not** Entitled to Vote*

The holder of certain and specific claims and/or equity interests are not entitled to vote, as follows:

a. Holders of a claim or equity interest the Bankruptcy Court orders disallowed;

b. Holders a claim or equity interest that are deemed not "allowed claims" or "allowed equity interests," as either (1) the Debtor scheduled such as disputed, contingent, or unliquidated and no proof of claim was filed in response, or (2) the Debtor objected to a filed proof of claim; unless the Bankruptcy Court otherwise deems such claim or equity interest as allowed for voting purposes;

c. Holders of a claim or equity interest classified under the Plan as unimpaired;

d. Holders of a claim entitled to priority status pursuant to 11 U.S.C.§§ 507(a)(2), (3), or (8);

e. Holders of a claim or equity interest that did not receive or retain *any* value under the Plan; AND

f. Administrative expenses, pursuant to 11 U.S.C. § 503.

***Even those parties not entitled to vote on the Plan retain the right to object to Plan confirmation.***

4. *Parties Entitled to Vote in More Than One Class*

A creditor whose claim is bifurcated between an Allowed Secured Class and subject to participation within the Allowed General Unsecured Class holds claims in multiple classes and is entitled to accept or reject the Plan amongst each capacity. A creditor who holds a claim in multiple classes is entitled to cast a ballot for each claim, within each of the multiple classes.

## B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Bankruptcy Court cannot confirm the Plan unless (1) at least one impaired class accepts the Plan, notwithstanding counting the votes of insiders within such class; and (2) all impaired classes vote to approve the Plan. *See* 11 U.S.C. §§ 1129(a)(8) and (10). Otherwise, if applicable subject to eligibility, the Bankruptcy Court can confirm the Plan by "cram down" on non-accepting classes, pursuant to the Plan demonstrating fairness and equity as required under 11 U.S.C. § 1129(b)(2). *See* Section VI *supra*.

1. *Votes Necessary for a Class to Accept the Plan*.

A class of claims accepts the Plan if both occur, as follows: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, elect to approve the Plan; and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims, who vote, vote to accept the Plan.

A class of equity interest holders accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Non-Accepting Classes*.

The Bankruptcy Court can elect to confirm the Plan upon one or more impaired classes votes to reject the Plan, if the Debtor treats the nonaccepting classes of allowed claims in a fair and equitable manner, pursuant to 11 U.S.C. § 1129(b). A "cram down" Plan binds non-accepting classes of claims or equity interest holders if the Debtor meets all requirements other than the consensual voting requirements under 11 U.S.C. § 1129(a)(8), does not "discriminate unfairly" and is "fair and equitable" towards each impaired non-accepting class.

***Each claimant and equity interest holder should consult an attorney to determine whether a "cram down" confirmation will affect such claim or equity interest due to the numerous and complex variations to this general rule.***

### C. Liquidation Analysis Under Chapter 7

The principle alternative to the Debtor reorganizing under Chapter 11 is a conversion of this bankruptcy case to a liquidation under Chapter 7, which requires a Chapter 7 Trustee – duly appointed by the Office for the United States Trustee – to acquire control and liquidate the Debtor's assets. Upon liquidation of the bankruptcy estate, the Trustee distributes the proceeds to the creditors in the order of their priorities.

To confirm the Plan, the Bankruptcy Court must find that all creditors who do not accept the Plan will receive at least as much under the Plan as such claim would receive in a Chapter 7 liquidation. A copy of the Debtor's Liquidation Analysis is attached hereto as **EXHIBIT __** and incorporated by reference herein.

Based upon the Debtor's Assets and Liabilities as of the Petition Date, the Debtor does not believe that the Debtor possesses enough funds or assets subject to liquidation to pay unsecured creditors in a Chapter 7 liquidation. In such event, Clark LLC as the sole secured creditor will likely assert a claim for default interest, costs and fees. In a liquidation, the Debtor does not believe that a Chapter 7 Trustee can sale the assets for more than the amount of the unpaid pre-petition property taxes assessed by the County Treasurer and the secured claim of Clark LLC. Therefore, so long as Clark LLC continues to hold an Allowed Secured Claim, unsecured creditors would likely not receive a distribution in a Chapter 7 liquidation

Given the alternative under a Chapter 7 liquidation scenario, the Debtor believes the Plan provides a substantially better alternative for unsecured creditors, as offering to distribute funds over the projected five years following the Effective Date. Therefore, the Debtor urges all creditors to vote in favor of the Plan.

### D. Feasibility

The Bankruptcy Court must find that the confirmation of the Plan is not likely to be followed by Liquidation, or the need for further financial reorganization of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed within the Plan.

Herein, the Debtor finds the Plan is feasible based upon the future prospects of the Facility, subject to Arapahoe County approving the applicable permitting, use applications and final development plan. Alternatively, the Plan provides for multiple mechanisms for funding the Plan including, but not limited to, as follows: (1) post-confirmation financing to fund payments to holders of allowed claims and complete improvements to the Facility to increase ticket sales, (2) entering into a new lease agreement with an alternative third-party operator of the Facility, (3) infusion of new equity by a class of shareholders acquiring ownership in the post-confirmation entity, and/or (4) selling or otherwise liquidating assets of the bankruptcy estate in order to comply with monthly payment requirements upon Plan confirmation.

As the Debtor owns a Facility subject to seasonal operations, and the bankruptcy case commenced during such off-season period, the Debtor is unable to demonstrate continued operational income and expenses will enable complying with payments under the Plan. In addition, the post-confirmation financing is contingent on the Debtor obtaining a Temporary Use Permit from the County and recommencing operations at the Facility. Although contingencies exist for certain avenues of financing the Plan, the Debtor ascertains that the payment amounts proposed under the Plan are feasible throughout the entirety of the five-year payment period the Debtor shall use any and all proposed options including sale of assets on a piecemeal approach to ensure compliance with the Plan during the race season and the off-season.

## VI. EFFECT OF PLAN REJECTION

The Bankruptcy Court is permitted to confirm the Plan without all impaired classes of claims voting to accept the Plan, pursuant to 11 U.S.C. § 1129(b).

### A. General Effects of Cram Down.

The "cram down" provision allows the Bankruptcy Court to confirm a Plan if finding that the Plan Proponent proposes to not unfairly discriminate and treat a non-accepting class in a fair and equitable manner. The "absolute priority rule" requires that a non-accepting class receive full compensation of the allowed claim before any junior class receives a distribution under the Plan. When the holder of a non-accepting claim or equity interest receives less than full payment, all junior classes receive no distribution under the Plan. Therefore, § 1129(b) requires the Plan to unfairly discriminate, offer fair and equitable treatment, and distribute capital to each claim or equity interest holder in the priority afforded under the Bankruptcy Code.

### B. Effects on Secured Claims.

The Plan, if confirmed in accordance with the "cram down" provision, permits each holder of an Allowed Secured Claim to preserve their lien to the extent of the allowed amount of such claim. Each holder of an Allowed Secured Claim will receive, on account of such claim, deferred cash payments amounting to the value of the claimant's interest in the secured collateral as of the Effective Date. The value of the collateral equals the allowed amount of the claim, pursuant to 11 U.S.C. §§ 1111 and 1129(b)(1)(A)(ii).

### C. Effects on Unsecured Claims and Equity Interest Holders.

In the event of a "cram down", the Debtor provides holders of Allowed General Unsecured Claims and equity interests the opportunity to purchase ownership interest in the reorganized corporation. As explained in detail within the Plan, classes ____ are afforded the option to cash bid on stock shares of the reorganized debtor at an auction conducted by BERKEN CLOYES, P.C. as counsel for the Debtor. The Debtor will commit such revenue generated from the auction towards paying any Allowed Secured Claim, Allowed General Unsecured Claim, and funding operating expenses of the reorganized debtor. In the event that the Debtor receives no interest to purchase by parties within either Class _____, the Debtor will commence sale and/or liquidation, and distribute all proceeds in accordance with the "absolute priority rule," notwithstanding the Bankruptcy Court granting all secured creditors and tax lien holders to foreclose upon their security interests upon granting relief from the automatic stay.

## VII. EFFECT OF PLAN CONFIRMATION

Upon an Order of the Bankruptcy Court confirming the Plan, the provisions of a confirmed plan bind the Debtor and any creditor or equity interest holder, pursuant to 11 U.S.C. § 1141(a). The Plan as confirmed establishes the rights and obligations of each party, whether or not the Plan impairs such any claim or interest and/or any such creditor, claimant or equity interest holder accepts the Plan.

### A. Discharge of Debtor.

Pursuant to 11 U.S.C. § 1141(d)(1), and subject to § 1141(d)(3) should the Debtor initiate a liquidation of all assets post-confirmation, an Order of the Court approving the Debtor's final financial report and payment to creditors shall discharge the Debtor from any debt that arose before the date of confirmation and vests all property of the bankruptcy estate in the reorganized entity, free and clear of all claims, or as otherwise specified by a preceding Bankruptcy Court Order.

### B. Plan Modification.

The Plan Proponent may modify the Plan at any time prior to confirmation of the Plan, subject to the Bankruptcy Court requiring a new Disclosure Statement or Vote on the Plan.

The Debtor, the Office for the United States Trustee, or a holder of an Allowed Unsecured Claim may request modifying the Plan at any time between confirmation and the Debtor completing Plan payments to (1) increase or decrease the amount of payments under the Plan on claims of a particular Class; (2) extend or reduce the time period for such payments; or (3) alter the amount of distribution to a creditor whose claim is provided for and disclosed within the Plan, to the extent necessary, to take account of any payment of the claim made other than under the Plan.

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**C. Final Decree.**

Once the Debtor completes all payments provided by the Plan, and fully and finally administers the bankruptcy estate, the Debtor, or such other party as the Bankruptcy Court shall designate within the Plan Confirmation Order, shall file a final financial report and appropriate motion(s) to obtain a final decree pursuant to FED.R.BANKR.P. 3022 and L.B.R. 3022-1.2. The party filing such documents and motion(s) with the Bankruptcy Court shall also serve such information on the Office for the United States Trustee and all parties requesting such notice. If no objections are filed, and the Court approves the Debtor's final financial report, the Debtor shall seek for the Bankruptcy Court to issue a final decree to close the case. Alternatively, the Court may *sua sponte* enter such a final decree.

DATED this 22nd day of June, 2017.

Respectfully submitted,

EQUITY HOLDINGS GROUP, INC.

By: Donald A. Hulse, Chief Executive Officer

BERKEN CLOYES, P.C.

*/s/ Joshua B. Sheade*

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*Attorneys for the Debtor*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 10th of January, 2017, I served by the CM/ECF system, pre-paid first class mail and/or other acceptable means (i.e. via hand delivery or electronic means), a copy of the foregoing **NOTICE OF AMENDED SCHEDULE OF DEBTS AND ADDITION OF CREDITORS**, a copy of **Amended Schedule E/F, Notice of Meeting of Creditors, Notice of Order Establishing Procedures and Bar Date for Filing Proofs of Claim Pursuant to FED.R.BANKR.P. 3003(c)(3)** and a **Proof of Claim form** on all parties against whom relief is sought and those otherwise entitled to service, pursuant to the FED.R.BANKR.P. and these L.B.R., at the following addresses:

PATRIOT CONCRETE PUMPING, LLC
9782 Titan Park Circle
Littleton, Colorado 80125

EQUITY HOLDINGS GROUP
1315 Monroe Street
Strasburg, Colorado 80136

NEAL R. VETA & ASSOCIATES, P.C.
5200 DTC Parkway, Suite 330
Greenwood Village, Colorado 80111

By: */s/ Joshua B. Sheade*
For BERKEN CLOYES, P.C.