

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DISTRICT**

In re:) **In Proceedings Under Chapter 11**
)
STANDFAST USA, LLC) **Case No.: 16-46691-659**
)
Debtor.) **FIRST AMENDED DISCLOSURE**
) **STATEMENT FOR DEBTOR'S FIRST**
) **AMENDED PLAN OF LIQUIDATION**
) **DATED MAY 3, 2017**
)
) **Spencer P. Desai, Esq.**
) **Carmody MacDonald P.C.**
) **120 South Central Avenue, Suite 1800**
) **St. Louis, Missouri 63105**
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**FIRST AMENDED DISCLOSURE STATEMENT FOR DEBTOR'S
FIRST AMENDED PLAN OF LIQUIDATION DATED MAY 3, 2017**

This First Amended Disclosure Statement for the Debtor's First Amended Plan of Liquidation Dated May 3, 2017 (the "Plan") has been prepared and is being distributed by Standfast USA, LLC, the Debtor in this Chapter 11 case.

**ARTICLE I
INTRODUCTION**

1.1 Purpose. The Debtor is providing this First Amended Disclosure Statement (the "Disclosure Statement") to all of Debtor's known creditors and to the members of the Debtor pursuant to the provision of §1125 of the United States Bankruptcy Code (the "Code"), in order to enable such creditors and members to make an informed judgment concerning Debtor's solicitation of acceptances of the Plan described below, prior to certain of such creditors and members exercising their rights to vote to accept or reject the Plan. A hearing to determine the adequacy of this Disclosure Statement was held on March 27, 2017 at 11:00 a.m. Central

Standard Time in the United States Bankruptcy Court for the Eastern District of Missouri, Thomas F. Eagleton United States Courthouse, 111 South 10th Street, St. Louis, Missouri 63102, 7th Floor North Courtroom. At the hearing, the Court will determine whether this Disclosure Statement contains "adequate information" (as defined in §1125 of the Code) of a kind and in sufficient detail to enable a hypothetical, reasonable investor, typical of the holders of claims against or shareholder interests in Debtor to make an informed judgment in voting to accept or reject the Plan. Approval of this Disclosure Statement by the Court, however, does not constitute a recommendation by the Court to accept or reject the Plan.

1.2 Construction. The definitions in the Plan are applicable here. Insofar as not inconsistent or in conflict with such definitions, the words herein will have the meanings ascribed thereto by the Code and the Bankruptcy Rules.

1.3 Source of Information. Except as otherwise expressly stated herein, this Disclosure Statement has been prepared by counsel for the Debtor based upon information supplied by the Debtor.

1.4 Disclaimers. THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSES OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN, AND NOTHING CONTAINED IN THIS DISCLOSURE STATEMENT SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE ADVICE ON THE LEGAL EFFECTS OF THE REORGANIZATION OF DEBTOR ON HOLDERS OF CLAIMS.

EXCEPT AS MAY BE SET FORTH IN THIS DISCLOSURE STATEMENT OR ANY OTHER DISCLOSURE STATEMENT OR OTHER DOCUMENT APPROVED FOR

DISTRIBUTION BY THE COURT, NO REPRESENTATIONS CONCERNING DEBTOR, THE CONSEQUENCES OF THIS PLAN, OR THE VALUE OF DEBTOR'S ASSETS ARE AUTHORIZED BY THE COURT. ANY REPRESENTATIONS OR INDUCEMENTS MADE TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN BY CREDITORS THAT ARE OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT OR ANY OTHER DISCLOSURE DOCUMENT APPROVED FOR DISTRIBUTION BY THE COURT SHOULD NOT BE RELIED UPON IN VOTING ON THE PLAN AND SHOULD BE REPORTED TO THE DEBTOR'S COUNSEL AND THE OFFICE OF THE UNITED STATES TRUSTEE.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN, AND NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THIS DISCLOSURE STATEMENT SHALL UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE FACTS SET FORTH HEREIN SINCE THE DATE THIS DISCLOSURE STATEMENT WAS COMPILED.

THERE HAS BEEN NO AUDIT OR REVIEW OF THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT BY OR ON BEHALF OF THE DEBTOR AND THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY. CREDITORS ARE ENCOURAGED TO REVIEW THE PLAN AND THIS DISCLOSURE STATEMENT WITH LEGAL COUNSEL.

READING THIS DISCLOSURE STATEMENT IS NOT A SUBSTITUTE FOR READING THE PLAN, WHICH WILL CONTROL THE LEGAL RELATIONSHIPS

BETWEEN THE PARTIES FOLLOWING CONFIRMATION. THE DISCLOSURE STATEMENT ATTEMPTS TO SUMMARIZE THE PLAN, AND IN THE EVENT OF ANY DISCREPANCY BETWEEN THE DISCLOSURE STATEMENT AND THE PLAN, THE PLAN WILL GOVERN.

ARTICLE II
CONFIRMATION PROCEDURES

2.1 Confirmation. The Plan cannot be consummated unless it is confirmed by the Court. Confirmation of the Plan requires that, among other things, either (i) each class of claims that is impaired by the Plan has voted to accept the Plan by the requisite majority, or (ii) the Plan is determined by the Court to be fair and equitable, as defined by the Code, with respect to all classes of claims that have rejected the Plan. The Code also requires that the confirmation of the Plan be in the "best interest" of all creditors. The Plan Proponent believes that the Plan meets the classification requirements of the Code, which requires that all claims or interest in a class be "substantially similar". Disputes regarding a proper classification of claims or interests not specifically classified in the Plan will be resolved by the Court pursuant to the procedures established by the Code, the Bankruptcy Rules, and other applicable law, and such resolution will not be a condition precedent to confirmation or consummation of the Plan.

2.2 Creditors Eligible to Vote. Only the votes of classes whose claims are impaired by the Plan will be counted in connection with the confirmation of the Plan. Generally, and subject to the specific provisions of §1124 of the Code, a class is "impaired" if the legal, equitable or contractual rights attaching to the claims or of the class are modified, other than by curing default in stated maturities. Creditors in all Classes are, for purposes of this Disclosure Statement, deemed to be impaired under the Plan and accordingly, are entitled to vote to accept

or reject the Plan. In determining acceptances of the Plan, votes will be counted only if timely submitted by a holder of an Allowed Claim.

2.3 Acceptances Necessary to Confirm the Plan. For the Plan to be accepted and, thereafter, confirmed, it must be accepted by at least one class of claims that is impaired by the Plan. Under §1126 of the Code, an impaired class is deemed to have accepted the Plan if (i) with respect to a class of claims, votes representing at least two-thirds in amount and more than one-half in number of allowed claims that have voted in that class have accepted the Plan, and (ii) with respect to a class of equity interests, votes representing at least two-thirds in amount of those interests that have voted have accepted the Plan, provided that the vote of any creditor or holder of an interest that is determined by the Court to be an entity whose acceptance or rejection was not in good faith will not be counted.

Unless an impaired class accepts the Plan unanimously, to confirm the Plan the Court must independently determine that the Plan provides to each holder of a claim or interest, as the case may be, of such class, a recovery that has a value, as of the Effective Date, at least equal to the value of the distribution which such holder would receive or retain if Debtor were instead liquidated under Chapter 7 of the Code on the Effective Date.

2.4 Manner of Voting. In voting for or against the Plan, please use only the ballots sent to you with this Disclosure Statement. If a person has an Allowed Claim in more than one class, such person may receive multiple ballots. Each person will be entitled to vote each claim that such person holds in each class.

Creditors who are entitled to vote to accept or reject the Plan may vote by completing, dating, signing and mailing, email or faxing, the accompanying ballot to counsel for the Plan Proponent in care of:

Spencer P. Desai
CARMODY MACDONALD P.C.
120 South Central Avenue, Suite 1800
St. Louis, Missouri 63105
Facsimile: (314) 854-8660
Email: spd@carmodymacdonald.com

In order for a ballot to be counted, the ballot must be received on or before 5:00 p.m., Central Standard Time, on June 12, 2017. A ballot, once submitted, cannot be withdrawn or modified except as provided under the Code.

2.5 Confirmation Without Acceptance. Section 1129(b) of the Code provides that the Plan may be confirmed by the Court despite not being accepted by every impaired class if (i) at least one impaired class has accepted the Plan, and (ii) the Court finds that the Plan does not discriminate unfairly and is fair and equitable to the rejecting classes. Among other things, such a finding would require a determination by the Court that the Plan would require that no holder of an allowed claim junior to a rejecting unsecured class receive or retain any property or payment under the Plan, unless such rejecting unsecured class is being paid an amount equal to the value of its claims as of the effective date of the Plan.

Pursuant to §1129(b) of the Code, the Debtor will request the Court to confirm the Plan if all of the applicable requirements of §1129(a) of the Code, other than §1129(a)(8) (that each impaired class under the proposed Plan has voted to accept the Plan), have been met. In addition, the Debtor reserves the right, pursuant to §1126(e) of the Code to request the Court to strike any rejection of the Plan by any holder of a claim or interest as not being in good faith.

2.6 Hearing on Confirmation of Plan. A hearing has been scheduled for June 19 , 2017 at 11:00 a.m., Central Standard Time, in the United States Bankruptcy Court for the Eastern District of Missouri, Thomas F. Eagleton United States Courthouse, 111 South 10th Street, St. Louis, Missouri 63102, 7th Floor North Courtroom, to determine whether the Plan has

been accepted by the requisite number of creditors and whether the other requirements for confirmation of the Plan have been satisfied. This hearing may be adjourned from time to time without further written notice. Each creditor will receive, either with this Disclosure Statement or separately, the Court's notice of hearing on confirmation of the Plan.

2.7 Effect of Confirmation. The Confirmation Order will be a judicial determination that the holders of claims and interests, following confirmation, will be precluded from asserting against the Debtor any claim or interest based upon any pre-petition debt or obligation.

ARTICLE III **GENERAL INFORMATION**

3.1 The Debtor. The Debtor, Standfast USA has been in business since 2012. Debtor provides design, manufacturing, distribution and installation of height safety protection systems utilized in elevated work surfaces.

3.2 The Chapter 11 Case. The Debtor filed its chapter 11 case on September 16, 2016. On or about September 26, 2016, Debtor obtained secured post-petition financing through O'Brien Capital ("O'Brien") a pre-petition unsecured creditor. O'Brien is also an insider of the Debtor holding the majority equity interest of the Debtor.

3.3 Post-Petition Operations. The Debtor has streamlined operations by cutting overhead and closing a larger warehouse facility. The Debtor has shown a net profit since the filing of the case, however, this profit is overstated because of the undermarket financing terms provided in the DIP loan from O'Brien. If the DIP financing were at market terms, the Debtor would operate at a loss. A copy of the Debtor's most recent Monthly Operating reports are attached as **Exhibit 1**.

3.4 Title 28 U.S.C. §1930 Fees. All fees paid in the Case, pursuant to 28 U.S.C. §1930, as determined by the Bankruptcy Code at the hearing on confirmation of the Plan or

thereafter, will, if not previously paid in full, be paid in cash on the Effective Date. All post-confirmation reports and fees as required by law shall be filed and paid.

3.5 Post-Petition Professional Fees. Post-petition professional fees outstanding on the Effective Date consist of fees and expenses of attorneys and expenses incurred after the Petition Date. These Claims will be paid in full on the Effective Date. Professionals must file an Application for Compensation with the Bankruptcy Court pursuant to §§330 and 331 of the Bankruptcy Code.

ARTICLE IV **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

Under this Plan, claims and equity interests will be classified and paid as follows:

4.1 Administrative Claims and Expenses. As required by the Bankruptcy Code, Allowed Administrative Claims are not classified under the Plan. The holder of an Allowed Claim of the kind described in §507(a)(1) of the Bankruptcy Code, including, but not limited to, an Allowed Claim entitled to payment under §503(b), will be paid in full upon the Effective Date to the extent such Claims are Allowed Administrative Expense Claims on that date, except with respect to Claimants who elect to receive different treatment and/or Claimants whose Administrative Expense Claims were incurred by the Debtor in the ordinary course of business. The Administrative Claims outstanding on the Effective Date consist of fees and expenses of professionals for post-petition work and other administrative claims. Administrative Expense Claims that are not Allowed Administrative Expense Claims as of the Effective Date will be paid on or before thirty (30) days after they are allowed, unless deferred payment arrangements have been made or such Claim is a liability incurred in the ordinary course of business. In the event that an Administrative Expense Claim is a Disputed Claim on the Effective Date, sufficient funds shall be reserved by Debtor to pay such Administrative Expense Claim in full upon its

allowance, unless deferred payment arrangements have been made, Notwithstanding the foregoing, United States Trustee fees and Bankruptcy Court costs shall be paid fully current on or before the Effective Date.

4.2 Priority Tax Claims. As required by the Bankruptcy Code, Allowed Priority Tax Claims are not classified under the Plan. Each holder of an Allowed Claim of the kind described in §507(a)(8) of the Bankruptcy Code will receive payment in full within ten (10) days of the Effective Date unless the claim is disputed. In the event the claim is disputed, Debtor shall pay the Priority Tax Claimant within ten (10) business days from the date an Order determining the claim amount becomes final. Said payment will include interest at the lowest rate as may be applicable and allowed by law. The Allowed Priority Tax Claims consist of the following:

<u>Creditor</u>	<u>Amount</u>
Internal Revenue Service	\$182.57

4.3 Class 1 Allowed Unsecured Priority Claims: Class 1 shall consist of any unpaid Claims that are referred to in Code § 507(a), other than Claims of a kind specified in Code §§ 507(a)(2), 507(a)(3), or 507(a)(8). The Debtor is not aware of any unpaid Class 1 Claims.

Certain priority claims that are referred to in Bankruptcy Code Sections 507(a)(3), (4), (5), (6), and (7) are required to be placed in classes. The Bankruptcy Code requires that the holder of these types of claims receive cash on the Effective Date equal to the allowed amount of such claim. However, a class of unsecured priority claim holders may vote to accept deferred cash payments of a value, as of the Effective Date, equal to the allowed amount of such claims.

In the event that Priority Claims are filed and Allowed in the Case and remain unpaid on the Effective Date, such Claims will be treated as follows: Except to the extent that a holder of

an Allowed Priority Claim agrees to less favorable treatment on account of such Claim and/or to the extent that such Priority Claim has been paid in full on or before the Effective Date, the holder of such Allowed Priority Claim shall receive Cash in an amount equal to such Claim on the Effective Date.

The Allowed Unsecured Priority Claims are not Impaired, and the holders of such Claims, if any, are not entitled to vote to accept or reject the Plan on account of such Claim.

4.4 Class 2 Allowed Secured Claims: Class 2 shall consist of any unpaid Allowed Secured Claims. The Debtor is not aware of any unpaid Class 2 Claims.

Except to the extent that a holder of an Allowed Secured Claim (i) has been paid by the Debtor, in whole or in part, prior to the Effective Date, or (ii) agrees to a less favorable treatment, each holder of an Allowed Secured Claim will receive from the Liquidating Debtor, in full satisfaction of such Claim, (a) Cash in the full amount of such Allowed Claim on or as soon as reasonably practicable after the latter of (x) the Effective Date and (y) the date such Claim becomes Allowed, (b) the Collateral securing such Allowed Secured Claim, or (c) such other distribution as necessary to satisfy the requirements of section 1129 of the Bankruptcy Code.

The Class 2 Claimants are not impaired in that with respect to such claims the plan leaves unaltered the legal, equitable, and contractual rights to which such claim entitles the holder of such claim.

4.5 Class 3 Allowed Unsecured Claims. Class 3 shall consist of all Allowed Unsecured Claims held by any Unsecured Creditors against the Estate.

The non-insider Class 3 Claimants shall receive payment from the liquidation proceeds of any assets of the Debtor. If there are insufficient funds to pay the insider Class 3 Claimants in full, the insider Class Claimants shall receive pro-rata distributions after payment in full of the

Priority Tax Claims, Administrative Claims, Class 1, Class 2 and non-insider Allowed Class 3 claims, and following resolution of all claim objections; *provided, however*, that no holder of an Allowed General Unsecured Claim will receive distributions that aggregate to more than the amount of such holder's Allowed General Unsecured Claim.

Class 3 is Impaired under the Plan.

4.5 Class 4 Allowed Equity Interests. Class 4 consists of all Allowed Equity Interests in the Debtor. Class 4 claimants will not receive any distribution under the Plan. Upon entry of the Confirmation Order, the existing membership interests in the Debtor shall be cancelled. Class 4 is impaired and non-voting under the Plan.

4.6 Treatment of Disputed Claims. Notwithstanding any other provisions of the Plan, payments and distributions of cash with respect to any class of claims which are disputed, unliquidated, or contingent, will not be made until such claims are allowed. Notwithstanding any provision in the Plan to the contrary, the Claim of any transferee of a transfer that is voidable §§ 544, 547, 548 and 550 of the Bankruptcy Code will be deemed to be a Disputed Claim, and no distribution will be payable thereon, unless and until such transferee has paid the amount, or turned over any such property, for which such transferee is liable under §550 of the Bankruptcy Code.

ARTICLE V
PROVISIONS FOR THE ASSUMPTION AND
REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

5.1 Upon confirmation of the Plan, the Debtor will be deemed to have rejected all existing pre-petition executory contracts and unexpired leases that are still in existence, if any, as of the Effective Date of the Plan.

ARTICLE VI
MEANS FOR IMPLEMENTATION OF THE PLAN

6.1 Sale of Debtor's Assets. The Debtor has filed a Motion to Sell Substantially All Assets of the Debtor Pursuant to 11 U.S.C. §363(b)(1) ("Sale Motion"). As of the Petition Date, the Debtor was indebted to O'Brien Capital pursuant to the terms of a Consolidated Promissory Note in the amount of \$2,141,391.39. O'Brien also is the holder of the current Debtor in Possession secured lien in the Debtor's assets. The outstanding amount of the DIP loan as of 1/31/2017 was approximately \$188,000.00. Pursuant to the terms of the Sale Motion, O'Brien Capital will credit bid Six Hundred Thousand and 00/100 Dollars (\$600,000.00) of the outstanding DIP loan and it's unsecured claim for the assets of the Debtor including the Debtor's inventory, furniture, fixtures, equipment, accounts receivable and intangibles (domain name, telephone number, Standfast USA name). The Purchaser is satisfying its purchase price by waiver of its unsecured claim against the Debtor. Purchaser will contribute sufficient cash to satisfy all allowed non-insider unsecured claims. **The proposed sale to the Purchaser under the APA is a sale to an insider and cannot, on its face, be deemed to have been negotiated at arm's length.** The Debtor believes the offer and constitutes a good faith offer to purchase the Acquired Assets in accordance with Section 363(m) of the Code. A copy of the Sale Motion is attached as **Exhibit 2.**

6.2 Existing Equity Holders Option to Participate. Assuming no higher or better offers are obtained by the Debtor for the sale of its assets, the existing equity holders may participate in the purchase by contributing cash, pro-rata, with O'Brien's DIP loan. Any participating equity holders will be subject to the terms and conditions of the operating agreement of the new operating entity, Standfast TRAM, LLC.

6.3 Dissolution of Debtor; Termination of Interests. Upon the Effective Date: (i) the members and managers of the Debtor shall be deemed to have resigned; (ii) the Debtor shall be deemed dissolved for all purposes without the necessity for any further action to be taken by or on behalf of the Debtor other than as set forth herein; (iii) the Interests shall be deemed to be terminated and extinguished; and (iv) Debtor shall have no further duties or responsibilities in connection with implementation of the Plan other than expressly set forth herein.

ARTICLE VII **GENERAL PROVISIONS**

7.1 Retention of Jurisdiction. Until this Plan is fully implemented and this case is closed, the Bankruptcy Court will retain jurisdiction to insure that the purposes and intent of this Plan are carried out, and to hear and determine all claims against the Debtor or on behalf of the Debtor. The Court will retain jurisdiction over this Chapter 11 case for the purpose of ruling on any matter to come properly before this Court, including, but not limited to, determining any matters for which approval of the Bankruptcy Court has been provided by the Plan or any other matters pertaining to the Plan or the Confirmation Order and determining all disputes, suits or controversies arising out of the Plan and its interpretation, enforcement or consummation.

7.2 Defect or Inconsistency in Plan. After confirmation of the Plan, so long as it does not materially or adversely affect the interests of the creditors, the Bankruptcy Court upon motion of any party in interest may remedy any defect or inconsistency in the Plan as may be necessary to carry out the purposes and effects of the Plan.

7.3 Effect of Confirmation. On the Effective Date, all provisions of the Plan, and all amendments, exhibits and schedules thereto, will become binding on the Debtor, the Estate, all Creditors, and all other entities whose interests are affected in any way by the Plan. On the

Effective Date, all Property of the Estate will be vested in the Debtor, and will be free and clear of all claims and interests of Creditors and Parties in Interest, except as expressly provided in the Plan or the Confirmation Order. The automatic stay provision of §362 of the Bankruptcy Code will remain in full force and effect until the Case is closed.

7.4 Chapter 5 Causes of Action. All claims and causes of action available to the Debtor or the Estate under Chapter 5 of the Bankruptcy Code will be retained by the Debtor with the exception of actions under 11 U.S.C. 547, which shall be released by the Debtor upon entry of the Confirmation Order. The Debtor may, in its sole discretion, elect not to prosecute any such claim or cause of action.

7.5 Severability. Any clause within the Plan, enforcement of which is determined to be unconstitutional, illegal, unlawful, or otherwise improper or against public policy, will be severed and stricken from the Plan and will not invalidate or otherwise render void the remainder of the Plan unless such severance would frustrate the accomplishment of the purposes of the Plan.

7.6 Tax Consequence. The Debtor is not aware of any adverse tax consequences that will result from confirmation of the Plan.

ARTICLE VIII **CONFIRMATION STANDARDS**

The Court will confirm the Plan at the Confirmation Hearing only if all the requirements of §1129 of the Code are met. Those requirements include:

8.1 Best Interest Test. With respect to each impaired Class, each claimant or interest holder in such Class either (i) has accepted the Plan, or (ii) will receive or retain under the Plan on account of its claim or interest, property of a value, as of the Effective Date, that is at least equal to the amount which such claimant or interest holder would receive or retain if the Debtor

were liquidated under Chapter 7 of the Code. More specifically, if the Plan provides that each claimant or interest holder in a class will receive money or other consideration equal to or in excess of the probable dividend it would receive if all of the Debtor's property were immediately liquidated, then the Plan is in the "best interests" of such claimant or interest holder.

8.2 Feasibility Test. The Bankruptcy Code requires a judicial determination that Confirmation of the Plan will not likely be followed by liquidation or the need for further reorganization of the Debtor or any successor to the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. Debtor proposes liquidation in the Plan.

8.3 Acceptance. Each impaired Class must accept the Plan by the percentages described in paragraph 2.3, above, or the Court must find that the Plan complies with the "fair and equitable" test described below with respect to any such non-accepting Class.

8.4 Fair and Equitable Test. If less than all the Impaired Classes accept the Plan, the Plan may nevertheless be confirmed by the Court under §1129(b) of the Code as long as one impaired Class has affirmatively voted to accept the Plan. In order to obtain Confirmation pursuant to §1129(b) of the Code, the Plan Proponent must demonstrate to the Court that as to each non-accepting Class, the Plan "does not discriminate unfairly" and is "fair and equitable with respect to that Class." As a general rule, a Plan does not discriminate unfairly if no Class receives more from Debtor's assets than such class is entitled to receive for its claims under a Chapter 7 liquidation. The Code establishes different "fair and equitable" tests for non-accepting secured creditors, unsecured creditors and interest holders as follows:

1. Secured Creditors. A non-accepting secured creditor whose Claim is impaired, must retain the lien(s) securing its claim and receive under the Plan cash payments that have a present value at least equal to such creditor's Allowed Secured Claim, or otherwise receive the

"indubitable equivalent" of the value of the interest in the Debtor's property upon which it holds a lien.

2. Unsecured Creditors. A non-accepting unsecured creditor whose Claim is impaired must receive or retain under the Plan (a) property of a value at least equal to the amount of its Allowed Claims; or (b) the holders of Claims or Interests junior to the Claims of the non-accepting Class of Unsecured Creditors will not receive or retain any property under the Plan.

3. Interest Holders. A non-accepting interest holder must receive and retain under the Plan, property of a value equal to (a) the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of the interest; or (b) the holders of interests junior to the Class will not receive or retain any property under the Plan on account of such junior interest.

The Plan Proponent believes that the Plan does meet the "fair and equitable" test. According to the Plan, no junior class of claims and interest holders will receive any distribution until the senior classes have been paid under the Plan.

ARTICLE IX **ALTERNATIVES TO THE PLAN**

9.1 The alternatives to confirmation of the Plan consist of dismissal of the case or conversion of the case to Chapter 7 proceeding. Because the Debtor has existing post-petition secured financing, there is no equity in any of remaining assets and conversion to a Chapter 7 would result in no distribution to unsecured creditors beyond what is set out in the Debtor's Plan.

ARTICLE X
RECOMMENDATION

10.1 The Debtor believes that confirmation and implementation of this Plan is preferable to dismissal of the case or conversion of the case to Chapter 7 because it will provide the greatest recovery for unsecured creditors. The Plan Proponent urges all creditors and interest holders to accept this Plan and to evidence such acceptance by returning their ballots to the undersigned at the address below on or before 5:00 p.m., Central Daylight Time, on June 12, 2017.

Respectfully submitted,

CARMODY MACDONALD P.C.

By: /s/ Spencer P. Desai
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