

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

HOLSTED MARKETING, INC.
d/b/a Holsted Jewelry,

Case No.: 16-11683 (JLG)

Debtor.
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**DISCLOSURE STATEMENT FOR PLAN OF REORGANIZATION FOR
HOLSTED MARKETING, INC. UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated June 30, 2017

**BANKRUPTCY COURT APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT
CONSTITUTE BANKRUPTCY COURT APPROVAL, OR ITS RECOMMENDATION ON THE
MERITS, OF DEBTOR'S PLAN OF REORGANIZATION**

I. INTRODUCTION

Holsted Marketing, Inc. the above-captioned debtor and debtor-in-possession (the "**Debtor**") submits this Disclosure Statement (the "**Statement**") pursuant to section 1125 of title 11, United States Code (the "**Bankruptcy Code**"). The Statement is provided to all of the Debtor's known creditors in order to disclose the information deemed to be material, important, and necessary for the Debtor's creditors to arrive at a reasonably informed decision in exercising their right to vote on the Plan of Reorganization proposed by the Debtor (the "**Plan**").¹ A copy of the Plan is annexed hereto as **Exhibit A**. Also accompanying the Plan and Statement is a creditor's voting ballot (the "**Ballot**") for the acceptance or rejection of the Plan, together with a copy of the Order approving the Statement and Scheduling a Hearing on Confirmation of the Plan.

Definitions and Exhibits

Definitions. The definitions and designations of terms and names in the Plan apply to the Statement and you should refer to the Plan for such definitions and designations.

Exhibits. All Exhibits to the Statement are incorporated as if fully set forth and are a part of the Statement.

Notice to Creditors

The Debtor believes that confirmation and implementation of the Plan is in the best interest of the Debtor's estate, its creditors and Interest holders. Based on the liquidation analysis annexed hereto as **Exhibit B** (the "**Liquidation Analysis**"), the Debtor believe that the distributions provided for in this Plan exceed the distributions that unsecured creditors would receive if the Debtor's assets were liquidated. For this reason, the Debtor believes that approval of the Plan is the best opportunity for Creditors to receive payments with respect to Allowed Claims.

Pursuant to Bankruptcy Code § 1125, on _____, 2017, the Bankruptcy Court approved this Statement for submission to the holders of Claims against, or Interests in, the Debtor. On _____, 2017 at _____ a.m. (the "**Confirmation Hearing**") a hearing will be held to consider confirmation of the Plan before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, United States Bankruptcy Court, One Bowling Green, New York, New York.

The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan be served and filed on or before **4:00 p.m.** on _____, 2017. The Confirmation Hearing may be adjourned by the Bankruptcy Court without further notice except for the filing of a notice of the adjourned date on the Bankruptcy Court's docket, or the announcement of the adjourned date at the Confirmation Hearing (or at any subsequent adjourned date for the Confirmation Hearing). Creditors entitled to vote may vote on the Plan by filling out and mailing the accompanying Ballot to Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP ("**Forchelli**"), attorneys for the Debtor, The Omni, 333 Earle Ovington Boulevard, Suite 1010, Uniondale, New York 11553, Attention: Gerard Luckman, Esq., so that the Ballot is received on or before _____, 2017 at **4:00 p.m.**

¹ Capitalized terms not otherwise defined in this Statement shall have the meanings set forth in the Plan.

Under the Bankruptcy Code, acceptance of a plan by a class of claims occurs when holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that cast ballots for acceptance or rejection of the plan, vote to accept the plan. Thus, acceptance of the Plan by a particular class will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the claims in that class, that cast their Ballots, vote to accept the Plan. Under the Bankruptcy Code, acceptance of a plan by a class of Interests occurs when holders of at least two-thirds (2/3) in amount of such Interests that cast ballots for acceptance or rejection of the Plan, vote to accept the Plan. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or produced in good faith or in accordance with the provisions of the Bankruptcy Code.

The purpose of this Statement is to inform all Claim holders of the information deemed to be material, important and necessary in order to make an informed judgment about the Plan, and to vote for the acceptance or rejection of the Plan, where voting is necessary.

The approval by the Bankruptcy Court of this Statement does not constitute a recommendation by the Bankruptcy Court as to the merits of the Plan, only that the Statement contains "adequate information" from which creditors may form an opinion as to the merits of the Plan.

The financial information contained in this Statement has not been subject to a certified audit. Accordingly, the Debtor is unable to warrant or represent that the information is accurate and complete in all respects, although the Debtor has used its best efforts to set forth information and disclosures which are complete and accurate. This Statement has been prepared on the basis of assumptions which the Debtor believes to be reasonable, however, there can be no assurance that these assumptions will prove to have been accurate.

II. EXPLANATION OF CHAPTER 11

Chapter 11 is the principal reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor may reorganize or liquidate its business and assets.

Since the Petition Date, the Debtor has managed its affairs as a Debtor and Debtor in possession under Bankruptcy Code §§ 1107 and 1108.

The formulation and confirmation of a plan of reorganization or liquidation is the principal purpose of a chapter 11 case. A chapter 11 plan sets forth the means of satisfying or discharging the claims against or interests in a chapter 11 debtor. Chapter 11 does not require that each holder of a claim against a debtor vote in favor of a plan in order for the Bankruptcy Court to approve a plan. If any class of claimants is impaired by a plan, the plan must be accepted by at least one "impaired" class of claims or interests. A claim or interest is deemed impaired if the plan provides that the claimant: (i) will not be repaid in full; (ii) will have any of its legal rights altered; or (iii) has an interest that is adversely affected. The holder of an impaired claim or interest is entitled to vote to accept or reject the plan if the claim or interest is an allowed claim or interest under Bankruptcy Code § 502, or temporarily allowed for voting purposes under Bankruptcy Rule 3018.

III. THE DEBTOR PRIOR TO THE CHAPTER 11 CASE

Description of the Debtor's Business

The Debtor provides multi-channel marketing strategies for its retail clients and under its own brand, Holsted Jewelers. The Debtor's primary business is the promotion of merchandise through the utilization of mailing lists obtained from its clients as well as direct to the consumer.

The Debtor has been conducting an orderly wind-down of its direct marketing business, and has been working with the Committee regarding its wind-down plan and wind-down budget. After discussions between the parties, the Debtor believes that the Committee and the Debtor's lender, Rosenthal & Rosenthal, Inc. ("Rosenthal"), have approved the budget and are supportive of the Debtor's wind-down plan. The Debtor wishes to preserve the ability to continue in business if circumstances warrant it. The Plan provides for the potential for Additional Recoveries if the Reorganized Debtor continues its business beyond the period necessary to pay the Exit Facility and the Benson Claim.

The Debtor's Current Ownership and Structure

In 1971, Richard Holstein founded the Debtor which is incorporated in New York State. Victor Benson became the President of the Debtor in 1985, and continues in that role today. The Debtor's Board of Directors consists of Victor Benson and Susan Benson. The Debtor's shareholders are as follows:

Victor Benson: 89.29%

Roy Rathbun: 3.57%

Ashwin Shah: 7.14%

The Debtor's Previous Chapter 11 Case and Confirmed Plan

On August 28, 2012, the Debtor filed a case under chapter 11 of the Bankruptcy Code in this Court, designated Case No. 12-13672 (JMP) (the "Original Case"). The Debtor's business had sustained significant losses during the global financial recession, and the Debtor filed the Original Case with the hope of restructuring its business and proposing a plan to pay its creditors.

On July 29, 2013, the Court confirmed the Debtor's chapter 11 plan of reorganization (the "Original Plan"), and the Original Plan became effective on August 13, 2013. The Debtor made most, but not all, of the payments due under the Original Plan. The Debtor's financial condition did not allow it to make the last payments and the Debtor found itself in arrears on its post-confirmation obligations in the approximate amount of \$149,598.37, with a total remaining due under the Original Plan of \$203,099.52.

The Plan Administrator in the prior case noticed the Debtor's default under that plan and seized the \$100,000 of collateral posted by Victor Benson, the Debtor's majority shareholder.

Under the Original Plan, the Plan Administrator was entitled to a third position security interest in the Debtor's assets. This security interest is unperfected and, based on the value of the Debtor's assets, and the assets owed to senior creditors, is under secured. For those reasons, the alleged second claim of the Plan Administrator is being treated under the Plan as a general unsecured creditor in Class 3.

Since the effective date of the Original Plan, the Debtor attempted to continue its business

operations while reducing overhead expenses and transitioning to new sales methods. However, weak demand for the Debtor's products became a significant drain on the Debtor's finances.

Upon the filing of this case, the Debtor believed that, under the protection of this Court, it would be able to either restructure its business around its new business model or, if necessary, sell a portion of its business, and propose a new chapter 11 plan.

Prepetition Secured Debt

Since 2005, the Debtor financed its operations through a credit and security agreement with Rosenthal. Pursuant to the Original Plan, the Debtor's original credit facility with Rosenthal was replaced with a new facility on substantially similar terms, which the Debtor continued to utilize in its operations. As of June 3, 2016, the Debtor was indebted to Rosenthal in the approximate amount of \$1,238,107.72. That debt was secured by substantially all of the Debtor's assets, including accounts receivable and inventory.

The Debtor's Liabilities and Assets

As of June 7, 2016, the Debtor, on an unaudited basis, had total assets with a book value of approximately \$2.9 million and total liabilities of approximately \$5.1 million. In 2015, the Debtor had losses of approximately \$869,000 on revenues of \$25.6 million. For the calendar year ending December 31, 2016 the Debtor incurred losses of approximately \$5.0 million as it continued to restructure its business.

The Debtor's Troubles and Current Forecast

Since confirmation of the Original Case the Debtor continued to struggle with its core business and the need to right-size the business so that it can compete in its market.

Since this chapter 11 filing, the Debtor remained cautiously optimistic about its business prospects as the Debtor has already exited a number of the markets that it found to be not profitable and a drain on financial performance. The Debtor continued with planned reductions to staff and operating expenses. During this case the Debtor vacated its office space and moved to less costly space. The Debtor also terminated its relationship with Versant Supply Chain, Inc. its former fulfillment center and entered into a new agreement with a less costly facility. Accordingly, the Debtor believes that, with the ability to restructure its debts and continue financing with Rosenthal, the Debtor will emerge from this chapter 11 case and be able to fulfill its obligations under the Plan.

IV. THE DEBTOR'S CHAPTER 11 CASE

Commencement and Conduct of the Chapter 11 Case

After the Petition Date, the Debtor, as Debtor in possession, has been authorized to manage its business and assets in the ordinary course of business without specific Bankruptcy Court authorization.

In connection with the Chapter 11 Case, the Debtor was initially provided professional services by SilvermanAcampora, as general bankruptcy counsel. The employment of SilvermanAcampora was approved by the Bankruptcy Court on January 21, 2016, effective as of the Petition Date (ECF Doc. No. 38). Gerard Luckman, the primary attorney representing the Debtor changed law firms and, by Order dated March 13, 2017, Forchelli was retained as general bankruptcy counsel effective as of February 21, 2017 (ECF Doc. No. 128).

First Day Motions

On the Petition Date, the Debtor filed the following motions seeking relief critical to avoid irreparable harm to the Debtor and their businesses (collectively, the “**First Day Motions**”). On June 13, 2016 the Bankruptcy Court conducted an emergency hearing to consider the First Day Motions designed to facilitate the Debtor’s transition into chapter 11 by approving certain regular business practices that may have not been specifically authorized under the Bankruptcy Code and/or required specific Bankruptcy Court approval.

Application to Authorize the Debtor to Obtain Post-petition Financing and to Use Cash Collateral

Through the application to obtain debtor-in-possession financing and use cash collateral, the Debtor sought to continue the use of its revolving credit facility from Rosenthal. Subject to protections provided for in the proposed order, Rosenthal had consented to such relief. The Debtor’s obtaining post-petition financing and use of cash collateral was essential to the continued operation of its business.

Prior to the filing of the Original Case, the Debtor attempted to obtain conventional financing to finance its operations, but was unsuccessful due to the nature of the Debtor’s business and the amount of customer returns that the Debtor receives. Rosenthal was the Debtor’s secured lender since 2005 and had a comfort with the Debtor’s operations and business structure that any new conventional lender would not share. Thus, the Debtor believed that any effort on its part to secure a new source of post-petition financing would be fruitless. By Order dated June 27, 2016 (ECF Doc. No. 27) the Court authorized the Debtor’s use of cash collateral and scheduled a final hearing for July 21, 2016.

Application to Pay Certain Pre-Petition Date Wages, Salaries, and Related Employee Benefits, and Directing the Bank to Honor Employee Wage and Salary Checks

The Debtor believed that the application seeking authority to pay certain pre-Petition Date wages, salaries, and related benefits was critical because the Debtor’s employees might stop working if they were not timely paid. The application sought to pay employees’ accrued and unpaid pre-Petition Date wages, salaries, and related benefits, for the period June 1, 2016 through and including the Petition Date, in amounts which did not exceed the priority limits set forth in Bankruptcy Code § 507(a)(4). In addition, the application sought entry of an order directing the Debtor’s payroll and human resources administrator, or its bank, to honor employee wage and checks, drawn on the Debtor’s payroll account.

The Debtor was concerned that any delay in paying the employees’ compensation would severely disrupt the Debtor’s relationship with its employees, and irreparably harm and/or impair their morale at a time when their dedication, confidence and cooperation was critical. The Court signed the Order approving this relief on an interim basis on June 14, 2016 (ECF Doc. No. 16)

Motion to Continue to Use Existing Cash Management System and Maintain Existing Bank Accounts and Business Forms

The motion seeking authority to continue using the Debtor’s pre-Petition Date cash management system and to maintain its existing pre-Petition Date bank accounts and business forms was critical to ensure the Debtor’s compliance with certain guidelines promulgated by the Office of the United States Trustee, without disrupting the Debtor’s business operations, and jeopardizing the Debtor’s

chance for success in this chapter 11 case. The Office of the U.S. Trustee issues guidelines for debtors in chapter 11 which, among other things, would require the Debtor to close its existing bank accounts, open new accounts and immediately obtain new checks with a "Debtor in Possession" designation on them.

At the Petition Date, the Debtor maintained five (5) bank accounts with M&T Bank. If the Debtor was required to strictly comply with those U.S. Trustee guidelines, its continued operations in chapter 11 will be negatively impacted by the disruption, confusion, and delay that would most certainly result. The Debtor believed that its transition into chapter 11 would be more orderly, and spare costs if all Bank Accounts were continued following the Petition Date with the same account numbers; provided, however, that checks issued on account of prepetition claims were not honored, absent a prior order of the Court.

In addition, to minimize expenses, the Debtor further requested that it be authorized to continue to use its correspondence and business forms including, but not limited to, purchase orders, invoices, checks, letterhead, envelopes, and other business forms, substantially in the forms existing immediately before the Petition Date, without reference to its status as debtor in possession; provided, however, that after entry of an order granting the application the Debtor shall print "Debtor in Possession" and the chapter 11 case number under which this case is being administered on any new check stock. By order date June 14, 2016 the Court granted this application (ECF Doc. No.15).

Official Committee of Unsecured Creditors

By Amended Notice entered on June 28, 2016 the Official Committee of Unsecured Creditors ("Committee") was appointed in the Debtor's chapter 11 case.

Other Key Orders Granted During the Chapter 11 Case

In addition to the First Day Orders, the Bankruptcy Court has entered the following additional orders:

1. Bar Date Order – Entered October 18, 2016, order establishing deadline and procedure for filing Proofs of Claim and approving form and manner of notice thereof.
2. Debtor's settlement with Versant Supply Chain, Inc. ("Versant") – entered April 26, 2017 authorized the Debtor to pay Versant a reduced amount and move all of its inventory to a new fulfillment center.

Potential Claims of the Debtor

Presently, the Debtor does not intend to pursue recovery of Avoidance Actions because the Debtor believes that (a) the aggregate amount of the recoverable transfers is relatively small, (b) the legal fees and costs associated with pursuing Avoidance Actions would not justify the possible benefits.

Postpetition Business Operations

Since the Petition Date, the Debtor has operated its business in accordance with the budgets established by the Debtor, and approved by the Committee and DIP Lender in connection with the DIP Financing Order. The Debtor's operations have remained challenging as the Debtor continues to manage its assets to restore profitability.

The Exit Financing

On the Effective Date of the Plan, the Debtor in Possession credit facility will be converted into a new secured loan on substantially the same terms (the “**Exit Facility**”).

Management of the Reorganized Debtor

The management of the Reorganized Debtor, their names, titles and annual compensation is as follows:

Victor Benson, CEO	\$150,000
Ashwin Shah, Senior V.P. Operations	\$190,000
Roy Rathbun, Senior V.P. Finance and IT	\$150,000

V. SUMMARY OF PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND INTERESTS

Below is a summary of the Plan. Parties in interest are urged to review the Plan in its entirety to determine how the Plan affects their rights as Creditors or Interest holders.

The Plan provides for the reorganization of the Debtor by the use of the Exit Facility, which shall provide the necessary Cash to fund the Effective Date Payment. From the Effective Date, Payment, the Debtor will pay the DIP obligations, Administrative Expenses, Priority Claims and the \$100,000 payment to the Unsecured Creditor Fund.

The Debtor projects that it will have funds that will be sufficient to make the Effective Date Payment required under the Plan. The projections annexed hereto as **Exhibit C** demonstrate that the Debtor’s business operations will support the payments required by the Plan.

The Debtor currently anticipates that the Effective Date will occur no later than ninety days after the confirmation of the Plan.

The Debtor believes that the treatment of Creditors under the Plan provides creditors with substantially greater value compared to what they would receive in liquidation under chapter 7 of the Bankruptcy Code. *See Exhibit B, Liquidation Analysis.*

Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code. They are not considered impaired, and holders of such claims do not vote on the Plan. Holders of these claims may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Bankruptcy Code. As such, the Debtor has *not* placed the following claims in any class:

Statutory Fees

Statutory fees, and any applicable interest thereon, are all fees payable pursuant to Chapter 123 of Title 28, United States Code, including, but not limited to, all fees required to be paid by 28 U.S.C. §1930(a)(6) plus any interest due and payable under 31 U.S.C. §3717 (“**U.S. Trustee Fees**”). U.S. Trustee Fees will accrue and be timely paid until the Case is closed, dismissed, or converted to another chapter under the Bankruptcy Code. Any U.S. Trustee Fees owed on or before the Effective Date of this Plan will be paid in full on the Effective Date of the Plan.

The following chart lists the Debtor's estimated U.S. Trustee Fees and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
U.S. Trustee Fees	\$0.00	Paid in full in Cash on the Effective Date of the Plan.

Administrative Expenses

Administrative Expenses are costs or expenses of administering the Debtor's Chapter 11 Case which are allowed under Bankruptcy Code § 503. Administrative Expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within twenty (20) days prior to the Petition Date. The Bankruptcy Code requires that all Administrative Expenses be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses and their proposed treatment under the Plan:

<u>Type</u>	<u>Estimated Amount Owed</u>	<u>Proposed Treatment</u>
Expenses Arising in the Ordinary Course of Business After the Petition Date	\$ Minimal	To the extent not paid in the ordinary course pursuant to the budget attached to the Cash Collateral Order, they will be paid in full on the Effective Date, in Cash, or upon such other terms as may be agreed upon by the holder of the Claim and the Debtor.
Professional Fees, as approved or to be approved by the Bankruptcy Court.	\$320,000 (estimated)	Paid in full on or prior to the Effective Date, in Cash or according to Bankruptcy Court order if such fees have not been approved by the Bankruptcy Court on the Effective Date of the Plan.
Clerk's Office Fees	\$0.00	Paid in full on the Effective Date.
Other Administrative Expenses	\$0.00	Paid in full on the Effective Date, in Cash, or upon such other terms as may be agreed upon by the holder of the Claim and the Debtor.
TOTAL	\$320,000	

Priority Tax Claims

Priority Tax Claims are not impaired. All Allowed Priority Tax Claims shall be paid on the Effective Date unless such claims are Allowed in an amount significantly greater than estimated or in

an amount that would jeopardize a recovery to unsecured creditors, then in that case Priority Tax Claims will be paid over a five (5) year period in accordance with Bankruptcy Code §1129(a), at the prime rate of interest per annum as set forth in the Wall Street Journal, or other comparable publication. Holders of Priority Tax Claims shall not be entitled to vote on the Plan.

The following chart lists the Debtor's estimated section 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated Amount Owed	Date of Assessment	<u>Treatment</u>
Tax Claims (estimated)	less than \$2000		All Allowed Priority Tax Claims shall be paid on the Effective Date unless such claims are Allowed in an amount significantly greater than estimated or in an amount that would jeopardize a recovery to unsecured creditors, then in that case Priority Tax Claims will be paid over a five (5) year period in accordance with Bankruptcy Code §1129(a), at the prime rate of interest per annum as set forth in the Wall Street Journal, or other comparable publication.

Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

Classes of Priority Unsecured Claims

Certain priority claims that are referred to in Bankruptcy Code § 507(a) are required to be placed in classes. The Bankruptcy Code requires that each holder of a priority claim receive Cash on the Effective Date of the Plan 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 pay priority unsecured claims on the Effective Date.

Class #	<u>Description</u>	<u>Impairment</u>	<u>Treatment</u>
1	Priority Non-Tax Claims \$0.00	Unimpaired	Paid in full on the Effective Date.

Classes of Secured Claims

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under Bankruptcy Code § 506. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be treated as a General Unsecured Claim.

Class #	Description	Impairment	Treatment
2	DIP Lender Secured Claim in the amount of approximately \$975,000	Unimpaired	Paid in full on the Effective Date by the Exit Facility.

Classes of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under Bankruptcy Code § 507(a).

The following chart identifies the Plan's proposed treatment of Class 4 Claims, which consist of General Unsecured Claims against the Debtor:

Class #	Description	Impairment	Treatment
3	General Unsecured Claims \$3,700,000 (approx.) combined scheduled and proof of claim amount.	Impaired	Each holder of an Allowed General Unsecured Claim shall receive a pro rata share of the Unsecured Creditor Fund.

Class 4 Interest Holders

Shares of stock held by each holder of Interests in the Debtor shall be retained by such holders. The holders of such claims shall receive no distribution under the Plan until the Debtor's obligations to creditors are satisfied as provided in the Plan.

Claims and Interests Not Impaired Under the Plan

The term "impaired" as used below shall have the same meaning as it has pursuant to Bankruptcy Code § 1124. Holders of Administrative Expenses, Priority Tax Claims, Class 1 (Non-Tax Priority Claims), Class 2 (DIP Lender Secured Claim) are not impaired and shall be paid in full, on the Effective Date.

Classes 1 and 2 are not impaired under the Plan and, therefore, holders of Claims in Classes 1 and 2 are deemed to accept the Plan.

Claims and Interests Impaired Under the Plan

Claims in Classes 3 and Interests in Class 4 are impaired under the Plan. The holders of Claims in Classes 3 and Interests in Class 4 are entitled to vote on the Plan.

VI. MEANS FOR IMPLEMENTATION OF THE PLAN

The payments under the Plan will be made from (a) The Exit Facility, and (b) the Cash derived from the Debtor's operations and/or the Reorganized Debtor's operations.

On the Confirmation Date, the Debtor will have sufficient Cash on hand or availability under the Exit Facility to pay in full the following amounts required to be paid under the Plan:

- U.S. Trustee's fees and any applicable interest;
- Except as otherwise provided in the Plan, Allowed Priority Tax Claims and Priority (Non-Tax) Claims;
- Allowed Administrative Expenses excluding the Benson Claim, but including Allowed Fee Claims (except to the extent that the holders of Administrative Expenses agree to different treatment, and except for Allowed Administrative Expenses held pursuant to Bankruptcy Code 503(b)(9) which shall be paid as soon as reasonably practicable after the Confirmation Date or upon such other terms as may be agreed to by the holder thereof and the Debtor).

On the later to occur of (a) the Effective Date, and (b) the date such Claim becomes Allowed by a Final Order of the Bankruptcy Court, or as soon thereafter is reasonably practicable, the Debtor shall use available Cash to pay, or establish appropriate reserves for Allowed Administrative Expenses, including Allowed Fee Claims, except as otherwise agreed to by the holder thereof and the Debtor. The Debtor shall pay all Priority Tax Claims, and Priority (Non-Tax) Claims, in accordance with Article III of the Plan.

The Reorganized Debtor will make payments into the Unsecured Creditor Fund from its cash flow in accordance with the Plan.

The Creditor Representative

The Creditor Representative will be selected by the Committee and shall be the party responsible for overseeing the Reorganized Debtor's implementation of the Plan, and distributions thereunder. The Reorganized Debtor shall consult with the Creditor Representative and/or the Creditor Representative's professionals regarding, among other things, the Reorganized Debtor's financial performance until the Reorganized Debtor funds the Unsecured Creditor Fund and makes Distributions to Class 3 Creditors from such fund. Thereafter, the Creditor Representative shall have no further role until he is either notified by the Reorganized Debtor of, or has reason to believe of, the existence of Additional Recoveries.

In addition, the Creditor Representative shall have the following rights, among others:

- a. In the event that the Reorganized Debtor does not honor its obligations to holders of Class 3 Claims under the Plan, the Creditor Representative shall have standing to seek appropriate relief from the Bankruptcy Court or any other court of competent jurisdiction for the benefit of holders of such Claims. Such standing shall not impair any rights of any creditor to also seek appropriate relief, in connection with such default, in the Bankruptcy Court or any other court of competent jurisdiction.
- b. After payment in full of the Exit Facility and the Benson Claim, the right to review the Reorganized Debtor's books and records, for calculation of Additional Recoveries.
- c. Right to obtain information from the Reorganized Debtor regarding balances owed for the Exit Facility, the Benson Claim and the likelihood of Additional Recoveries.
 - A. The fees and expenses of the Creditor Representative and his professionals, if any, shall be paid from the Unsecured Creditor Fund. If, however, in connection with the review of the

Reorganized Debtor's books and records as provided in section 5.13(b), an error in the calculation of Additional Recoveries is found in favor of the Creditor Representative in excess of ten (10%) per cent than the amount stated by the Reorganized Debtor, then the costs of such review not to exceed \$5,000 shall be borne by the Reorganized Debtor.

Upon final Distribution of the Unsecured Creditor Fund as provided in the Plan, the Creditor Representative shall be released and discharged from its obligations.

Quarterly Reports. Until the Chapter 11 Case is closed, the Reorganized Debtor shall file quarterly reports setting forth (a) the status of Distributions to holders of Allowed Class 3 Claims. The quarterly reports shall be filed on or before the 15th day of July, October, January and April. In addition, the Reorganized Debtor shall maintain an accurate register of the General Unsecured Claims.

Vesting of Assets. As of the Effective Date, pursuant to provisions of Bankruptcy Code §§ 1141(b) and (c), all property and assets of the Debtor shall be transferred to and shall vest in the Reorganized Debtor free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in this Plan, and the Confirmation Order.

Continuing Existence. From and after the Effective Date, the Reorganized Debtor will continue in existence and shall continue normal operations of its business as a corporation under applicable law.

Post-Consummation Implementation. Promptly after full administration of the Debtor's estate, the Debtor shall file the Closing Report in accordance with Local Bankruptcy Rule 3022-1, within the deadlines set forth therein, and an application for a Final Decree.

Professionals. The Reorganized Debtor may retain and compensate professionals, including professionals who have been or are currently retained as the Debtor's professionals, without approval from the Bankruptcy Court.

Release of Avoidance Actions. On the Effective Date, the Debtor, on behalf of itself and its Estate shall release any and all Avoidance Actions and the Debtor and the Reorganized Debtor, and any of their successors and assigns and any entity acting on behalf of the Debtor or the Reorganized Debtor shall be deemed to have waived the right to pursue any and all Avoidance Actions.

VII. **EXECUTORY CONTRACTS AND LEASES**

Any executory contract or unexpired lease of the Debtor which was not assumed or rejected by Final Order of the Bankruptcy Court, or which is not the subject of a pending motion to assume or reject on the Confirmation Date, shall be deemed assumed by the Debtor on the Effective Date. Simultaneously with service of the Plan and Disclosure Statement, the Debtor shall provide a notice to all counter-parties to executory contracts proposed to be assumed, substantially in the former annexed to the Plan as **Exhibit 1**. Such counter-parties shall have until seven (7) days prior to the Confirmation Hearing to file an objection to the proposed cure amount provided in such notice. All objections to cure amounts shall be heard at the Confirmation Hearing.

Any entity with a Claim that arises from the rejection of an executory contract or unexpired lease must file its Claim within thirty (30) days after the later of the date of the order rejecting the executory contract or unexpired lease and the Confirmation Date, and shall have the same rights as a Class 3 Claimant to the extent such Claim becomes an Allowed General Unsecured Claim. **Any Claims arising from the rejection of an executory contract or unexpired lease not filed with the Bankruptcy Court within such time will be automatically treated as a Disallowed Claim,**

forever barred from assertion, and shall not be enforceable against, as applicable, the Debtor, the Reorganized Debtor, the Estate, or property of the foregoing parties, without the need for any objections by the Debtor or the Reorganized Debtor, as applicable, or further notice to, or action, order, or approval of the Bankruptcy Court or any other entity, and any Claim arising out of the rejection of the executory contract or unexpired lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Schedules or any proof of Claim to the contrary.

VIII. PROCEDURE FOR RESOLVING DISPUTED CLAIMS

Article VII of the Plan sets forth the procedures for resolving Disputed Claims under the Plan, including the establishment of Disputed Claims Reserves for certain Disputed Claims.

IX. RETENTION OF JURISDICTION

The Bankruptcy Court shall retain jurisdiction over the Debtor, the Reorganized Debtor, and the Chapter 11 Case pursuant to chapter 11 of the Bankruptcy Code and for the purposes set forth in Bankruptcy Code §1127(b), including, without limitation, with respect to the following matters:

- a. to hear and determine any claim or cause of action belonging to the Estate, and any disputes concerning the classification, allowance, or estimation of any Claim;
- b. to resolve any disputes concerning any funds held in the Disputed Claims Reserve;
- c. to hear and determine all disputed issues relating to a security or ownership interest in any property of the Estate, or in any proceeds thereof;
- d. to hear and determine all Claims arising out of any agreement entered into by the Debtor after the Petition Date but prior to the entry of the Confirmation Order;
- e. to recover all assets and property of the Debtor wherever located;
- f. to alter, modify and amend the Plan pursuant to Bankruptcy Code §1127 or to remedy any defect, cure any omissions, or reconcile any inconsistency in the Plan or Confirmation Order as may be necessary to carry out the purpose and intent of the Plan, and to extent authorized by the Bankruptcy Code or Bankruptcy Rules;
- g. to hear and determine such other matters as may be provided for in the Confirmation Order and for the purposes set forth in Bankruptcy Code §§1127(b) and 1142, or in Bankruptcy Rules 1019 and 3020(d);
- h. to hear and determine all applications for compensation of professionals for services rendered and expenses incurred through the Confirmation Date, and thereafter to hear and determine any objections to compensation of professionals;
- i. to hear and determine any and all pending applications, adversary proceedings, contested matters and litigated matters;
- j. to hear and determine any disputed issues with respect to the payments to be made under the Plan;
- k. to enter orders that are necessary or appropriate to carry out the provisions of the Plan, including orders interpreting the provisions of the Plan;
- l. to enter a Final Order or decree concluding the Debtor's Chapter 11 Case; and
- m. to determine such other matters as may be provided for in the Confirmation Order, or as may be authorized under the provisions of the Bankruptcy Code.

X. CONFIRMATION AND EFFECTIVE DATE

9.01 Conditions Precedent to Confirmation. The following are the conditions precedent to the Confirmation of the Plan

- (a) The Debtor shall have entered into the Exit Facility, conditioned on the entry of the Confirmation Order, which along with Debtor's available Cash shall provide Cash sufficient to pay the obligations under the DIP Facility;
- (b) All terms, conditions and provisions of the Plan are approved in the proposed Confirmation Order;
- (c) The proposed Confirmation Order shall be in form and substance acceptable to counsel to the Debtor, counsel to the Committee, counsel to DIP Lender and the Exit Facility lender, and the U.S. Trustee; and
- (d) Unless such holder agrees to a different treatment, the Debtor shall have sufficient Cash to pay in full all Allowed Administrative Expenses other than the Benson Claim, but including Fee Claims.

The conditions precedent set forth in subparagraphs (a), (b), (c) and (d) above, may be waived by the Debtor, only upon reasonable notice to counsel to DIP Lender and the Exit Facility Lender, counsel to the Committee, and the U.S. Trustee.

9.02 Conditions Precedent to the Effective Date. The following are the conditions precedent to the Effective Date of the Plan:

- (a) The Bankruptcy Court shall have entered the Confirmation Order, and the Confirmation Order shall have become a Final Order; and
- (b) The Debtor shall have contributed \$100,000 to the Unsecured Creditor Fund and made the Effective Date Payment.

XI. DISCHARGE OF CLAIMS, RELEASES AND EXCULPATION

Interest Holders of the Debtor. UPON THE EFFECTIVE DATE, NOTWITHSTANDING BANKRUPTCY CODE §1141(d)(1), INTERESTS IN THE DEBTOR SHALL REMAIN, AND SUCH HOLDER SHALL MAINTAIN ALL RIGHTS UNDER BANKRUPTCY LAW AND NON-BANKRUPTCY LAW WITH RESPECT TO THOSE INTERESTS, SUBJECT TO THE DILUTION OF SUCH INTERESTS AS SET FORTH IN THE PLAN.

Injunction. EXCEPT AS OTHERWISE PROVIDED IN THE PLAN OR THE CONFIRMATION ORDER, FROM AND AFTER THE CONFIRMATION DATE, ALL PERSONS ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR PROCEEDING (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTOR, THE REORGANIZED DEBTOR, THE DEBTOR'S PROPERTY, OR THE ESTATE BASED ON ANY ACT, OMISSION, TRANSACTION, OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED ON OR BEFORE THE CONFIRMATION DATE, INCLUDING ANY CLAIMS THAT ARE PROPERTY OF THE DEBTOR'S BANKRUPTCY ESTATE (COLLECTIVELY, THE "RELEASED CLAIMS"); PROVIDED THAT NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL ENJOIN THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE OR LOCAL AUTHORITY, FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTOR, OR ANY OF THE DEBTOR'S OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS,

AGENTS, REPRESENTATIVES AND ASSIGNS, OR THE DEBTOR'S PROPERTY, FOR ANY LIABILITY, INCLUDING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES, OR ANY STATE OR LOCAL AUTHORITY. IN ADDITION, THE INJUNCTION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

B. Release by the Debtor. PURSUANT TO BANKRUPTCY CODE §1123(b), AND EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THE PLAN, UPON THE EFFECTIVE DATE, THE DEBTOR AND REORGANIZED DEBTOR SHALL RELEASE UNCONDITIONALLY, AND HEREBY ARE DEEMED TO FOREVER RELEASE UNCONDITIONALLY THE FOLLOWING PERSONS (COLLECTIVELY, THE "RELEASED PARTIES"): (A) THE DIP LENDER AND PREPETITION LENDER AND ITS DIRECTORS, OFFICERS, ADVISORS, ACCOUNTANTS, CONSULTANTS, AND ATTORNEYS, (B) THE MEMBERS OF THE COMMITTEE IN SUCH CAPACITY AS COMMITTEE MEMBERS, AND (C) THE DEBTOR'S AND THE COMMITTEE'S ADVISORS, INCLUDING ATTORNEYS AND ACCOUNTANTS, (EXCEPT FOR THE RIGHT TO ENFORCE THE PERFORMANCE OF THEIR RESPECTIVE OBLIGATIONS, IF ANY, UNDER THE PLAN AND THE RIGHT TO FILE AN OBJECTION WITH THE BANKRUPTCY COURT WITH RESPECT TO ANY FEE CLAIMS), FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, RIGHTS, CAUSES OF ACTION AND LIABILITIES WHATSOEVER, INCLUDING THE RELEASED CLAIMS WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, THEN EXISTING OR THEREAFTER ARISING, IN LAW, OR OTHER OCCURRENCE TAKING PLACE ON OR PRIOR TO THE EFFECTIVE DATE, EXCEPT FOR THOSE CLAIMS OR LIABILITIES ARISING OUT OF OR RELATING TO ANY ACT OR OMISSION THAT CONSTITUTES GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES. IN ADDITION, THE RELEASE PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

C. Exculpation. TO THE EXTENT PERMISSIBLE UNDER BANKRUPTCY CODE §1125(e), NEITHER THE RELEASED PARTIES NOR THEIR ADVISORS, ACCOUNTANTS, AND ATTORNEYS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY HOLDER OF A CLAIM OR INTEREST FOR ANY ACT OR OMISSION DURING THE PENDENCY OF THE CHAPTER 11 CASE IN CONNECTION WITH, OR ARISING OUT OF, THE CHAPTER 11 CASE, THE PURSUIT OF CONFIRMATION OF THE PLAN, THE CONSUMMATION OF THE PLAN, OR THE PROPERTY OR CASH TO BE DISTRIBUTED UNDER THE PLAN; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION SHALL HAVE NO EFFECT ON THE LIABILITY OF AN ENTITY WHICH RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, *ULTRA VIRES* ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE RELEASED PARTIES SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN. IN ADDITION, THE EXCULPATION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

EXCEPT FOR THE RELEASED CLAIMS, NOTHING CONTAINED HEREIN SHALL CONSTITUTE A RELEASE OF AN INDEPENDENT CLAIM HELD BY A CREDITOR OR

INTEREST HOLDER AGAINST A NON-DEBTOR ENTITY OR PERSON BASED ON ACTS OR OMISSIONS UNRELATED TO THE DEBTOR OR THE CHAPTER 11 CASE. IN ADDITION, NOTHING CONTAINED HEREIN OR IN THE PLAN SHALL RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT FOR MALPRACTICE LIABILITY.

ENTRY OF THE CONFIRMATION ORDER SHALL CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL, PURSUANT TO BANKRUPTCY RULE 9019, OF THE RELEASES AND SETTLEMENTS CONTAINED IN THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL EFFECT A RELEASE OF ANY CLAIM BY THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, INCLUDING, WITHOUT LIMITATION, ANY CLAIM ARISING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS OR ANY CRIMINAL LAWS OF THE UNITED STATES OR ANY STATE AND LOCAL AUTHORITY AGAINST: (I) THE DEBTOR; (II) ANY OF THE DEBTOR'S SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS; AND (III) THE RELEASED PARTIES. IN ADDITION, SUBJECT TO BANKRUPTCY CODE §§ 524 AND 1141, THE RELEASES DESCRIBED HEREIN SHALL NOT PRECLUDE POLICE, FEDERAL TAX, OR REGULATORY AGENCIES FROM FULFILLING THEIR STATUTORY DUTIES.

THE RELEASES DESCRIBED IN THIS SECTION ARE IN ADDITION TO, AND NOT IN LIEU OF, ANY OTHER RELEASE SEPARATELY GIVEN, CONDITIONALLY OR UNCONDITIONALLY, BY THE DEBTOR TO ANY OTHER PERSON. ANY RELEASE GIVEN BY THE DEBTOR OR A PERSON WHICH IS PART OF OR SUBJECT TO A FINAL ORDER OF THE BANKRUPTCY COURT REMAINS IN FULL FORCE AND EFFECT AND ARE RATIFIED BY THE PLAN.

Persons or Entities Not Released by the Debtor. Except for the releases contained in the Plan, the Confirmation Order and the DIP Financing Order, the Debtor and the Estate are not releasing any claims or actions against any Person, or their respective affiliates, assigns, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing.

Good Faith. The entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Released Parties have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code, pursuant to, among others, Bankruptcy Code §§1125(e) and 1129(a)(3), with respect to the foregoing.

XII. MISCELLANEOUS PROVISIONS

Headings. The headings used in the Plan are inserted for convenience or reference only and are not part of the Plan.

Notices. Notices shall be deemed given when received. All notices, requests or demands described in or required to be made in accordance with the Plan shall be in writing and shall be delivered by overnight mail and email transmission as follows:

If to the Debtor or Reorganized Debtor:

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Boulevard - Suite 1010
Uniondale, NY 11553
Attn: Gerard R. Luckman

(516) 248-1700
gluckman@forchellilaw.com

If to the DIP Lender and Prepetition Lender:
Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP
475 Park Avenue South, 18th Floor
New York, NY 10016
Attn: Henry Swergold
(212) 593-3000
hsvergold@platzerlaw.com

If to the Committee:
Troutman Sanders LLP
875 Third Avenue
New York, NY 10022
Attn: Hugh McDonald
(212) 704-6000
hugh.mcdonald@troutmansanders.com

If to the U.S. Trustee:
Office of the U.S. Trustee
201 Varick Street, Suite 1006
New York, New York 10014
Attn: Serene Nakano
(212) 510-0500
Serene.Nakano@USDOJ.gov

If to a holder of a Claim or Interest, at the address set forth in its proof of Claim or proof of Interest filed with and allowed by the Court, or, if none, at its address set forth in the Schedules prepared and filed by the Debtor with the Bankruptcy Court pursuant to Bankruptcy Rule 1007(b).

Change of Address. Any of the parties identified in section 11.02 of the Plan may change the address at which it is to receive notices under the Plan by sending written notice pursuant to the provisions of this Article to counsel to the Debtor or the Reorganized Debtor.

Modification of the Plan. The Debtor reserves the right, in accordance with the Bankruptcy Code, upon reasonable notice to and written consent of counsel to DIP Lender to amend or modify the Plan prior to the Confirmation Date or as soon as practicable thereafter. After the Confirmation Date, the Debtor or the Reorganized Debtor may, upon appropriate motion, notice, and order of the Court, remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

Reservation of Rights. Other than the release of the Avoidance Actions, nothing contained herein shall prohibit the Debtor or the Reorganized Debtor from prosecuting or defending any of the rights of the Debtor's Estate.

Severability. Should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of the Plan.

Successors and Assigns. The rights and obligations of any entity named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such entity.

Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

Section and Article References. Unless otherwise specified, all references in the Plan to Sections and Articles are to Sections and Articles of the Plan.

XIII. ALTERNATIVES TO THE PLAN

Liquidation Analysis and Valuation

The Debtor and its professionals have carefully considered alternatives to the Plan. The alternatives considered were the sale of the Debtor's assets as a "going concern" and the liquidation of the Debtor's assets. After considering these alternatives, including the Liquidation Analysis, the Debtor determined that the Plan provides creditors and Interest Holders with greater recoveries than they would receive in the event of a sale of the Debtor's business or assets, or a liquidation of the Debtor's assets.

The Debtor believes that the total consideration offered to Creditors under the Plan is more than Creditors would receive in liquidation under chapter 7 of the Bankruptcy Code.

Liquidation Under Chapter 7 of the Bankruptcy Code

If the Plan is not confirmed under Bankruptcy Code § 1129(a), the Debtor may convert the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, in which case, a trustee would be appointed to liquidate any remaining assets of the Debtor for distribution to Creditors pursuant to chapter 7 of the Bankruptcy Code. If a trustee is appointed, the Debtor believes that all Creditors holding Allowed General Unsecured Claims will receive less than they would under the Plan. In the event of liquidation under chapter 7 of the Bankruptcy Code, the Debtor believes that all of the Cash proceeds of such liquidation primarily would be paid to the DIP Lender, and only certain of the Administrative Expense Claims that were subject of a carve-out of the DIP Lender's liens.

The Debtor encourages all creditors to carefully review the Liquidation Analysis annexed hereto as Exhibit B to fully understand how General Unsecured Creditors will be treated if the Debtor's assets were liquidated.

Certain Risk Factors

Under the Plan, Class 3 Creditors will be paid a pro rata share of the Unsecured Creditor Fund which is to be \$100,000 plus Additional Recoveries, if any.

In the event that the Plan is not confirmed or the Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code, the Debtor believes that such action or inaction, as the case may be, will cause General Unsecured Creditors to receive less than they would ultimately receive under the Plan. The Debtor believes that conversion of the case to chapter 7 will cause the Debtor's Estate to incur substantial expenses which will negatively affect potential recoveries for General Unsecured Creditors.

XIV. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE DEBTOR AND ITS PROFESSIONALS ARE NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN, WITH RESPECT TO THE DEBTOR, HOLDERS OF CLAIMS, OR HOLDERS OF INTERESTS, NOR ARE THEY RENDERING ANY FORM OF LEGAL OPINION

OR TAX ADVICE ON SUCH TAX CONSEQUENCES. THE TAX LAWS APPLICABLE TO CORPORATIONS OR LIMITED LIABILITY COMPANIES IN BANKRUPTCY ARE EXTREMELY COMPLEX, AND HOLDERS OF CLAIMS AND HOLDERS OF INTERESTS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING TAX CONSEQUENCES OF THE PLAN, INCLUDING FEDERAL, FOREIGN, STATE AND LOCAL TAX CONSEQUENCES.

XV. VOTING PROCEDURES AND REQUIREMENTS

Ballots and Voting Deadline

IT IS IMPORTANT THAT THE HOLDERS OF CLAIMS AND INTERESTS IN CLASSES 3 AND 4 TIMELY EXERCISE THEIR RIGHT TO VOTE TO ACCEPT OR REJECT THE PLAN. Holders of Claims and Interests in Classes 3 and 4 have been sent a Ballot together with this Statement. Such holders should read the Ballot carefully and follow the instructions contained therein. Please use only the Ballot that accompanies this Statement.

Forchelli shall serve as voting agent (the “**Voting Agent**”) to assist in the transmission of voting materials and in the tabulation of votes with respect to the Plan. FOR YOUR VOTE TO BE COUNTED, YOUR VOTE MUST BE RECEIVED BY THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW BEFORE THE VOTING DEADLINE OF **4:00 P.M.** ON _____, **2017**.

IF A BALLOT IS DAMAGED OR LOST, YOU MAY CONTACT THE VOTING AGENT AT THE ADDRESS SET FORTH BELOW. ANY BALLOT THAT IS EXECUTED AND RETURNED BUT WHICH DOES NOT INDICATE AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.

IF YOU HAVE ANY QUESTIONS CONCERNING VOTING PROCEDURES, YOU MAY CONTACT THE VOTING AGENT AT:

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Boulevard - Suite 1010
Uniondale, NY 11553
Attn: Gerard R. Luckman
(516) 248-1700
gluckman@forchellilaw.com

Additional copies of this Statement are available upon request made to the Voting Agent.

Holders of Claims Entitled to Vote

Classes 3 and 4 are the only classes of Claims and Interests under the Plan that are impaired and entitled to vote to accept or reject the Plan. All holders of Classes 3 Claims and Class 4 Interests should complete the enclosed Ballot and return it to the Voting Agent so that it is received by the Voting Agent before the Voting Deadline.

Withdrawal of Ballots

Any voter that has delivered a valid Ballot may withdraw its vote by delivering a written notice of withdrawal to the Voting Agent before the Voting Deadline. To be valid, the notice of withdrawal must (i) be signed by the party who signed the Ballot to be revoked, and (ii) be received by the Voting Agent before the Voting Deadline. The Debtor may contest the validity of any withdrawals.

Any holder that has delivered a valid Ballot may change its vote by delivering to the Voting Agent a properly completed subsequent Ballot so as to be received before the Voting Deadline. In the case where more than one timely, properly completed Ballot is received, only the Ballot that bears the latest date will be counted.

XVI. CONFIRMATION OF THE PLAN

The Bankruptcy Court will confirm the Plan only if all of the requirements of Bankruptcy Code § 1129 are met.

Acceptance of the Plan

Under the Bankruptcy Code, acceptance of a plan by a class of claims occurs when holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the allowed claims of that class that cast ballots for acceptance or rejection of the plan vote to accept the plan. Thus, acceptance of the Plan by a particular class will occur only if at least two-thirds in dollar amount and a majority in number of the holders of the claims in that class cast their Ballots in favor of acceptance. A vote may be disregarded if the Court determines, after notice and a hearing, that such acceptance or rejection was not solicited or produced in good faith or in accordance with the provisions of the Bankruptcy Code.

Best Interests Test and Liquidation Analysis

The Bankruptcy Code provides that the Plan will not be confirmed, regardless of whether or not anyone objects to confirmation, unless the Bankruptcy Court finds that the Plan is in the “best interests” of all Classes of Claims which are impaired. The “best interests” test will be satisfied by a finding of the Bankruptcy Court that either (i) all holders of impaired Claims have accepted the Plan, or (ii) the Plan will provide such a holder that has not accepted the Plan with a recovery at least equal in value to the recovery such holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

The starting point in determining whether the Plan meets the “best interests” test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtor’s assets in the context of a chapter 7 liquidation. Such value must then be reduced by the costs of such liquidation, including costs incurred during the Chapter 11 Cases and allowed under chapter 7 of the Bankruptcy Code (such as professionals’ fees and expenses), a trustee’s fees, and the fees and expenses of professionals retained by a trustee. The potential chapter 7 liquidation distribution in respect of each Class must be further reduced by costs imposed by the delay caused by conversion to chapter 7.

The attached Liquidation Analysis demonstrates that General Unsecured Creditors would receive less in a chapter 7 liquidation compared to the Distributions contemplated by the Plan.

For the reasons set forth above, the Debtor urges all Creditors to vote in favor of the Plan because each impaired Class will receive under the Plan a recovery at least equal in value to the recovery such Class would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code.

Feasibility of the Plan

Bankruptcy Code § 1129(a)(11) provides that a chapter 11 plan may be confirmed only if the Bankruptcy Court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the Debtor. The Debtor anticipates that it will have

sufficient Cash on hand on the Effective Date, through the Exit Facility, to fund the Effective Date Payment and make all payments required to be made on the Effective Date under the Plan.

In addition, the Plan requires the Debtor to make certain payments to Class 3 creditors by funding the Unsecured Creditor Fund following the Effective Date. The projections attached hereto as **Exhibit C** indicate that the Debtor can successfully make the payments required under the Plan.

For these reasons, the Debtor believes that the Bankruptcy Court will find that the Plan is feasible. In addition, the Debtor will have sufficient funds to meet all post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Case. The Debtor believes that the Plan satisfies the financial feasibility requirement imposed by the Bankruptcy Code because the Debtor will have the Cash necessary to make all the payments required under the Plan.

Classification of Claims Under the Plan

The Debtor believes that the Plan meets the classification requirements of the Bankruptcy Code which requires that a plan of reorganization place each claim into a class with other claims that are "substantially similar." The Plan establishes classes of Claims as required by the Bankruptcy Code and summarized above. Administrative Expense Claims and Priority Tax Claims are not classified.

Confirmation Hearing

Bankruptcy Code § 1128 requires the Bankruptcy Court, after notice, to hold the Confirmation Hearing to consider confirmation of the Plan. Bankruptcy Code § 1128(b) provides that any party in interest may object to confirmation of a plan.

By order of the Bankruptcy Court dated _____, 2017, the Confirmation Hearing has been scheduled for _____, 2017 at ____:00 .m. before the Honorable James L. Garrity, Jr., United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Alexander Hamilton U.S. Custom House, Courtroom 601, One Bowling Green, New York, New York. The Confirmation Hearing may be adjourned by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing, or any adjourned hearing. Any objection to confirmation of the Plan must (a) be in writing, (b) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (c) state with particularity the basis and nature of any objection or proposed modification, and (d) be filed with the Clerk of the Bankruptcy Court, with a copy delivered to Chambers, and served so that they are received on or before _____, 2017 at 4:00 p.m., upon (i) Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, 333 Earle Ovington Boulevard - Suite 1010, Uniondale, NY 11553 Attn: Gerard R. Luckman (attorneys for the Debtor); (ii) the Office of the United States Trustee, U.S. Federal Office Building, 201 Varick Street, New York, New York 10014, Attn: Serene Nakano; (iii) Troutman Sanders LLP, 875 Third Avenue, New York, NY 10022 Attn: Hugh McDonald and (iv) Platzer, Swergold, Levine, Goldberg, Katz & Jaslow, LLP, 475 Park Avenue South, 18th Floor, New York, NY 10016 Attn: Henry Swergold. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014. Unless an objection to confirmation is timely served and filed, it will not be considered by the Bankruptcy Court.

At the Confirmation Hearing, the Bankruptcy Court must determine whether the requirements of Bankruptcy Code § 1129 have been satisfied and, upon demonstration of such compliance, the Bankruptcy Court will enter the Confirmation Order.

XVII.
CONCLUSION

This Statement was approved by the Bankruptcy Court pursuant to Bankruptcy Code § 1125. The Bankruptcy Court has determined that the Statement contains "adequate information" as that term is defined in Bankruptcy Code § 1125(a).

The Debtor believes that confirmation of the Plan is preferable to the alternatives described above because it provides the best opportunity for Distributions to General Unsecured Creditors.

Dated: New York, New York
June 30, 2017

HOLSTED MARKETING, INC.

By: /s/ Roy Rathbun
Name: Roy Rathbun
Title: Senior V.P. of Finance and IT

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Boulevard - Suite 1010
Uniondale, NY 11553
Attn: Gerard R. Luckman
(516) 248-1700