

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

IN RE: : Chapter 11  
B & B Fitness and Barbell, Inc.,  
Debtor-in-Possession : Case No. 16-bk-02387-JJT  
:

**DEBTOR'S DISCLOSURE STATEMENT, DATED APRIL 26, 2017**

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**EXHIBITS**

- Exhibit A** - Chapter 11 Plan of Reorganization (Plan)
- Exhibit B** - Most Recently Filed Monthly Operating Report
- Exhibit C** - Liquidation Analysis

## I. INTRODUCTION

This is the Disclosure Statement (Disclosure Statement) in connection with the Chapter 11 case of B & B Fitness and Barbell, Inc. (Debtor). This Disclosure Statement contains information about the Debtor and describes the Debtor's Chapter 11 Plan of Reorganization (Plan) filed by the Debtor on April 26, 2017. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. **Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult with one.**

The proposed distributions under the Plan are discussed at pages 7 through 17 of this Disclosure Statement.

### A. **Purpose of this Document**

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case;
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the Plan is confirmed);
- Who can vote on or object to the Plan;
- What factors the Bankruptcy Court (Court) will consider when deciding whether to confirm the Plan;
- Why the Proponent (i.e., the individual or entity that is proposing a Plan - in this case, the Debtor) believes that the Plan is feasible and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation; and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

### B. **Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing**

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. Time and Place of the Hearing to Confirm the Plan

The hearing at which the Court will determine whether to confirm the Plan will take place on \_\_\_\_\_, 2017, at \_\_\_\_\_ AM, United States Bankruptcy Court, Courtroom No. 2, at the Max Rosenn U.S. Courthouse, 197 S. Main Street, Wilkes-Barre, PA 18701.

2. Deadline for Voting to Accept or Reject the Plan

If you are entitled to vote to accept or reject the Plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Philip W. Stock, Esquire, 706 Monroe Street, Stroudsburg, PA 18360. See Section IV. A. below for a discussion of voting eligibility requirements.

Your ballot must be received by the \_\_\_\_\_ day of \_\_\_\_\_, 2017 or it will not be counted.

3. Deadline for Objecting to the adequacy of the Disclosure Statement and the Confirmation of the Plan

Objections to the Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon Philip W. Stock, Attorney for Debtor, as well as the Office of the United States Trustee, 228 Walnut Street, Suite 1190, Harrisburg, PA 17101, by the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact Philip W. Stock, Attorney for Debtor, 706 Monroe Street, Stroudsburg, PA 18360. (570) 420-0500.

C. Disclaimer

**The Court has (conditionally) approved the Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court or a recommendation that it be accepted. The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to this Disclosure Statement may be filed until the \_\_\_\_\_ day of \_\_\_\_\_, 2017.**

## II. **BACKGROUND**

### A. **Description and History of the Debtor's Business**

The Debtor, B & B Fitness and Barbell, Inc. (Debtor), is a Pennsylvania corporation which operates a gym and fitness center known as Elevations Health Club. At the time of the filing of its Chapter 11 bankruptcy, the business was located at 117 Rose Street, Scotrun, Monroe County, Pennsylvania. The financing in connection with Debtor's business was provided by Newtek Small Business Finance, LLC (Newtek). In this regard, the related entity, B & B Real Estate General Partnership, is also a debtor with regard to this commercial loan. The majority of the funds were used to purchase the commercial property which is primarily used for the gym and fitness center. In addition, there is a smaller rental space which is, currently, leased by a daycare center.

### B. **Events Leading to Chapter 11 Filing**

Unfortunately, because of a rapidly changing economy and increased competition in the gym and fitness industry, Debtor was unable to, properly, adapt to these changing circumstances. These circumstances led to the nonpayment by Debtor of its monthly lease obligation to B & B Real Estate General Partnership. Consequently, during 2015 and early 2016, both Debtor and the related entity, B & B Real Estate General Partnership, were in default with regard to the payment of the commercial loan with Newtek. As a result, Newtek had provided, *inter alia*, a Notice of Default and Acceleration and a Notice of Attachment of Rents. Then, on May 2, 2016, Newtek filed its Complaint in Confession of Judgment against Debtor, *et. al.* The complaint was filed to Case 3209 CV 2016 in the Court of Common Pleas of Monroe County, Pennsylvania. As a result, on June 6, 2016, the Debtor filed its Petition for Relief under Chapter 11 of the Bankruptcy Code.

### C. **Significant Events During the Bankruptcy Case**

As noted above, on June 6, 2016, the Debtor filed its Petition for Relief under Chapter 11 of the Bankruptcy Code. Debtor filed its case in the Middle District of Pennsylvania.

On July 15, 2016, the Meeting of Creditors was held in the case. On August 10, 2016, Debtor filed a Motion to Fix the Claims Bar Date and on August 11, 2016, the Court issued an Order fixing the Bar Date as 60 days from the date of the Notice. Thus, the Claims Bar Date was set for October 11, 2016. The Claims Bar Date has now run and thus, this matter is now ripe to proceed with the filing of Debtor's Chapter 11 Plan and confirmation of same.

### D. **Projected Recovery of Avoidable Transfers**

The Debtor is not aware of any preferences, fraudulent conveyances or other avoidance actions that would result in a recovery to its creditors. However, it is important to note that prior to the filing of the bankruptcy, it appears that the manner in which Debtor's business was

managed exacerbated the financial problems. Consequently, significant steps were taken to resolve these problems. Therefore, Debtor does not intend to pursue any preference, fraudulent conveyance or other avoidance actions.

#### **E. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in the Plan.

Fourteen proofs of claims were filed in this case. Claim No. 14, Gilbert Wortsman, was filed after the Claims Bar Date. However, Debtor has explicitly waived the deadline with regard to the Claims Bar Date in connection with Gilbert Wortsman's claim because Debtor had failed to list this creditor in its case and thus, this creditor had not received notice of the bankruptcy. In addition, Gilbert Wortsman was not aware of the Claims Bar Date or the need to file a proof of claim.

### **III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

THE FOLLOWING IS ONLY A SUMMARY OF THE DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION AND SHOULD NOT IN AND OF ITSELF BE RELIED UPON WHEN CONSIDERING VOTING IN FAVOR OF OR AGAINST THE PLAN. THE CHAPTER 11 PLAN OF REORGANIZATION SHOULD BE READ IN FULL.

#### **A. What is the Purpose of the Plan of Reorganization?**

The purpose of the Chapter 11 bankruptcy is to enable the Debtor to reorganize its financial affairs in order to permit it to properly manage its gym and fitness center. This will enable Debtor to pay its monthly obligations.

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment that each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

#### **B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired and holders of such claims do not vote on the Plan. They may,

however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

1. Administrative Expenses

Administrative expenses are costs or expenses of administering the Debtor's Chapter 11 case which are allowed under §507(a)(2) of the Code. Administrative expenses include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The 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:

Type	Estimated Amount Owed	Proposed Treatment
Expenses arising in the ordinary course of business after the Petition date	0.00	Paid in full on the effective date of the Plan or according to terms of obligation, if later
The value of goods received in the ordinary course of business within 20 days before the Petition date	0.00	Paid in full on the effective date of the Plan or according to terms of obligation, if later.
Professional Fees, as approved by the Court, to Philip W. Stock	To be determined	Fees to be paid in full from cash flow after the fees are approved by the Court. One fee application already approved by the Court by Order dated 01/13/17.
Clerk's Office Fees	0.00	Paid in full on the effective date of the Plan.
Other administrative expenses: None	0.00	Paid in full on the effective date of the Plan.
Office of the U.S. Trustee expenses	0.00	Fees are current. Future fees paid when they become due.
<b>TOTAL</b>		

## 2. Priority Tax Claims

Priority tax claims are unsecured income, employment and other taxes described by §507(a)(8) of the Code. Unless the holder of such a §507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The Debtor has two priority claims:

### a. Priority Tax Claim of Internal Revenue Service (IRS)

The IRS filed a proof of claim (Claim No. 4) which sets forth a priority tax claim of \$99,201.63. Also, the IRS has included an unsecured, nonpriority, claim of \$36,090.97 in its proof of claim. The Debtor proposes to pay the IRS's priority tax claim of \$99,219.63, in full, by making equal monthly payments of \$2,013.44, to the IRS, with the first payment due to the IRS within 30 days of the effective date of the confirmed Plan. (The unsecured, nonpriority, claim of \$36,090.97 shall also be paid, in full, in accordance with the proposed treatment set forth in Section C. 3. Class of General Unsecured Claims);

### b. Priority Tax Claim of Pennsylvania Department of Revenue

The Pennsylvania Department of Revenue filed a proof of claim (Claim No. 3) which sets forth a priority tax claim of \$28,917.45. Also, the Pennsylvania Department of Revenue has included an unsecured, nonpriority, claim of \$7,902.20 in its proof of claim. The Debtor proposes to pay the Pennsylvania Department of Revenue priority tax claim of \$28,917.45, in full, by making equal monthly payments of \$586.56, to the Pennsylvania Department of Revenue, with the first payment due to the Pennsylvania Department of Revenue within 30 days of the effective date of the confirmed Plan. (The unsecured, nonpriority, claim of \$7,902.20 shall also be paid, in full, in accordance with the proposed treatment set forth in Section C. 3. Class of General Unsecured Claims);

Furthermore, if any additional, allowed, priority claims are discovered, Debtor proposes to pay them, in full, in regular installments over 5 years from the date of the order of relief. Finally, if the above referenced claims are not paid, in full, within 5 years from the order of relief, the case shall convert to Chapter 7 of the Bankruptcy Code.

## C. 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:

### 1. 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 §506 of the Code. 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 classified as a general unsecured claim.

Class #	Description	Insider?	Impaired?	Treatment
1	<p>Newtek Small Business Finance, LLC (Newtek) (Claim No. 8)</p> <p><u>Collateral:</u> Receivables, all cash collateral, all equipment and fixtures, not subject to lien by a particular lender or lessor of the equipment. All tangible and intangible property of Debtor.</p> <p><u>Claim Amount:</u> 1,619,126.12</p> <p><u>Allowed Secured Claim:</u> 1,619,126.12</p> <p><u>Arrearage:</u> 110,864.49</p> <p><u>Priority of Lien:</u> 1<sup>st</sup> priority - UCC-1</p>	No	Yes	<p>Debtor shall pay the loan arrearage within 60 months of the effective date of the Plan. The first payment to Newtek shall be paid immediately after payment of the priority tax claims set forth in Section B. 2. The payment to Newtek, of \$2,600.00 per month, shall begin approx. 50 months after the effective date of the Plan. *The vast amount of Newtek's arrearage shall be paid by B &amp; B Real Estate, in its Plan (\$98,883.49), prior to payments under this Plan. The balance of the arrearage (\$11,981.00) shall be paid in this Plan. Debtor shall continue to pay its regular monthly loan payments to Newtek and in accordance with the loan documents executed by Debtor and Newtek. Nothing in in this Plan is an attempt to amend or alter the terms of the loan documents. Newtek shall retain its lien against all of Debtor's property until Newtek's loan is paid, in full. If the loan arrearage is not paid within 60 months of the effective date of the Plan then, the case shall convert to Chapter 7 of the Bankruptcy Code. Nothing in this Plan is meant to or shall be interpreted as altering any contract, agreement or personal guarantee of any other party with Newtek.</p>

2	<p>Susquehanna (fhb/Summit Vendor Finance) (Claim No. 2)</p> <p><u>Collateral:</u> Gym equipment - 22 Pro Spinners 9-7070.</p> <p><u>Claim Amount:</u> 400.00</p> <p><u>Allowed Secured Claim:</u> 400.00</p> <p><u>Arrearage:</u> 0.00</p> <p><u>Priority of Lien:</u> 1<sup>st</sup> priority - UCC-1</p>	No	No	<p>No arrearage set forth in Proof of Claim. Debtor is proposing to continue to pay its regular monthly payments to Susquehanna on a regular basis outside the Plan. Also, nothing in Debtor's proposed Plan is meant to or should be construed as an attempt to amend or alter the terms of the loan documents. Furthermore, Susquehanna shall retain its lien against all of its collateral until its loan is paid, in full.</p>
3	<p>Lease Corp. of America (LCA) (Claim No. 11)</p> <p><u>Collateral:</u> Specific gym equipment.</p> <p><u>Claim Amount:</u> 30,010.93</p> <p><u>Allowed Secured Claim:</u> 30,010.93</p> <p><u>Arrearage:</u> 0.00</p> <p><u>Priority of Lien:</u> 1<sup>st</sup> priority - UCC-1</p>	No	No	<p>No arrearage set forth in Proof of Claim. Debtor is proposing to continue to pay its regular monthly payments to LCA on a regular basis outside the Plan. Also, nothing in Debtor's proposed Plan is meant to or should be construed as an attempt to amend or alter the terms of the loan documents. Furthermore, LCA shall retain its lien against all of its collateral until its loan is paid, in full.</p>

4	<p>On Deck Capital, Inc. (On Deck) (Claim No. 12)</p> <p><u>Collateral:</u> All tangible and intangible property of Debtor.</p> <p><u>Claim Amount:</u> 33,441.04</p> <p><u>Allowed Secured Claim:</u> 0.00</p> <p><u>Arrearage:</u> 33,441.04</p> <p><u>Priority of Lien:</u> 2<sup>nd</sup> priority - UCC-1</p>	No	Yes	<p>On Deck holds a properly filed UCC-1 against all tangible and intangible property of Debtor. However, its claim is second in priority to the claim of Newtek. Newtek's claim far exceeds the value of Debtor's property. Thus, the claim of On Deck is unsecured. As a result, Debtor is proposing to pay 100% of On Deck's claim (\$33,441.04) along with all of the other General Unsecured Claims. Please see Section C. 3. Class of General Unsecured Claims.</p> <p>Debtor shall object to the proof of claim of On Deck, if necessary, in order to establish the unsecured status of the claim. Nothing in Debtor's proposed Plan is meant to or should be construed as an attempt to amend or alter the terms of the loan documents. Furthermore, On Deck shall retain its security interest against any possible collateral until its loan is paid, in full.</p>
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5	<p>Financial Pacific Leasing (No claim filed)</p> <p><u>Collateral</u>: Specific gym equipment.</p> <p><u>Claim Amount</u>: 59,832.40</p> <p><u>Allowed Secured Claim</u>: 59,832.40</p> <p><u>Arrearage</u>: 0.00</p> <p><u>Priority of Lien</u>: 1<sup>st</sup> priority - UCC-1</p>	No	No	<p>No claim for an arrearage was filed. Debtor is proposing to continue to pay its regular monthly payments to Financial Pacific Leasing on a regular basis outside the Plan. Also, nothing in Debtor's proposed Plan is meant to or should be construed as an attempt to amend or alter the terms of the loan documents. Furthermore, Financial Pacific Leasing shall retain its lien against all of its collateral until its loan/lease is paid, in full.</p>
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## 2. Class(es) of Priority Unsecured Claims

Certain priority claims that are referred to in §§507(a)(1), (4), (5), (6) and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a 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 does not have any priority unsecured claims of this nature. If any priority unsecured claims are discovered, said claimants shall receive cash on the effective date of the Plan equal to the allowed amount of such claim.

## 3. Class of General Unsecured Claims

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

The following chart identifies the Plan's proposed treatment of Class 6, which contains the general unsecured claims of the Debtor:

**Class # 6 - General Unsecured Creditors**

<b>Creditor</b>	<b>Insider?</b>	<b>Impaired?</b>
Internal Revenue Service Claim No. 4 (unsecured portion) Claim Amount: 36,090.97 Allowed Amount: 36,090.97	No	Yes
Pennsylvania Department of Revenue Claim No. 3 (unsecured portion) Claim Amount: 7,902.20 Allowed Amount: 7,902.20	No	Yes
On Deck Capital, Inc. Claim No. 12 Claim Amount: 33,441.04 (secured - objection)* Allowed Amount: 33,441.04 (unsecured)	No	Yes
Broadcast Music, Inc. Claim No. 1 Claim Amount: 344.92 Allowed Amount: 344.92	No	Yes
209 Commercial Condo, LLP Claim No. 5 Claim Amount: 87,845.69 Allowed Amount: 87,845.69	No	Yes
CIT Communications Finance Corporation Claim No. 6 Claim Amount: 5,063.18 Allowed Amount: 5,063.18	No	Yes
Linda McLinden Claim No. 7 Claim Amount: 200.00 Allowed Amount: 0.00 (Objection)***	N/A	N/A
RV Now, LLC Claim No. 9 Claim Amount: 94,153.19 Allowed Amount: 94,153.19	No	Yes

Dempsey Uniform Claim No. 10 Claim Amount: 477.55 Allowed Amount: 477.55	No	Yes
F/J Hess and Sons Claim No. 13 Claim Amount: 7,379.60 Allowed Amount: 7,379.60	No	Yes
Gilbert Wortsmann Claim No. 14 Claim Amount: 12,750.00 Allowed Amount: 12,750.00	No	Yes
Adams Advertising No claim filed Claim Amount: 7,727.00 Allowed Amount: 7,727.00	No	Yes
Direct Energy No claim filed Claim Amount: 9,374.00 Allowed Amount: 9,374.00	No	Yes
Holly R. Corcoran, CPA No claim filed Claim Amount: Waived Allowed Amount: 0.00	No	Yes
Home Depot No claim filed Claim Amount: 6,100.00 Allowed Amount: 6,100.00	No	Yes
L.T. Verrastro, Inc. No claim filed Claim Amount: 1,297.00 Allowed Amount: 1,297.00	No	Yes
Les Mills United States No claim filed Claim Amount: 5,000.00 Allowed Amount: 5,000.00	No	Yes

Scent Air No claim filed Claim Amount: 313.00 Allowed Amount: 313.00	No	Yes
SPS No claim filed Claim Amount: 320.00 Allowed Amount: 320.00	No	Yes
Staples No claim filed Claim Amount: 6,234.00 Allowed Amount: 6,234.00	No	Yes

- \* On Deck Capital, Inc. - On Deck holds a properly filed UCC-1 against all tangible and intangible property of Debtor. However, its claim is second in priority to the claim of Newtek. Newtek's claim far exceeds the value of Debtor's property. Thus, the claim of On Deck is unsecured. As a result, Debtor is proposing to pay 100% of On Deck's claim (\$33,441.04) as unsecured, along with all of the other General Unsecured Claims. Please see Section C. 1. Classes of Secured Claims. Debtor shall object to Claim No. 12, if necessary.
- \*\* Robert C. Bishop, the President of Debtor and 50% shareholder, paid from his personal funds, multiple membership and training refunds which arose from the closing of the Marshalls Creek facility. These were, mostly, nominal amounts which resolved multiple potential claims.
- \*\*\* Linda McLinden - Debtor intends to object to the claim of Linda McLinden. Debtor believes that the Court will determine that Claimant is not entitled to any funds. Notice of this objection shall be provided to the Office of the U.S. Trustee, Department of Justice.
- \*\*\*\* B & B Real Estate General Partnership has an unsecured claim against Debtor for unpaid rent (\$115,000.00 approx.). However, B & B Real Estate is an insider and is not entitled to vote nor, is it entitled to a distribution in this Plan.

**Treatment of Class # 6 - General Unsecured Creditors**

The general unsecured creditors shall be paid 100% of their allowed claim amounts immediately after the payment of all previous class of claims. Debtor shall begin making payments to the general unsecured creditors, approximately, 61 months after the effective date of the Plan. Payments shall be made, pro rata, to each general unsecured creditor. Distributions to the general unsecured creditors shall be made on a quarterly basis (four times per year).

However, Debtor shall accumulate the funds for distribution to the general unsecured creditors on a monthly basis. Payments shall be made to the general unsecured creditors until their claims are paid in full (100% Plan). During the first year of payments to the general unsecured creditors (Year 6 of the Plan), Debtor shall pay \$2,600.00 per month in connection with the payments to the general unsecured creditors. During the second year of payments to the general unsecured creditors (Year 7 of the Plan), Debtor shall pay \$3,500.00 per month in connection with the payments to the general unsecured creditors. During the third year of payments to the general unsecured creditors (Year 8 of the Plan), Debtor shall pay \$4,500.00 per month in connection with the payments to the general unsecured creditors. During the fourth year of payments to the general unsecured creditors (Year 9 of the Plan), Debtor shall pay \$5,000.00 per month in connection with the payments to the general unsecured creditors. Thereafter, Debtor shall continue to pay \$5,000.00 per month in connection with the payments to the general unsecured creditors until all allowed claims of general unsecured creditors are paid in full (100% Plan).

#### 4. Class of Equity Interest Holders

Equity interest holders are parties who hold an ownership interest (i.e. equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (LLC), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

#### Class # 7 - Equity Interest Holders

The Debtor has two equity interest holders in Class # 7. The equity interest holders are Robert C. Bishop and Barry Klein. They each own Fifty (50%) Percent of the stock in Debtor. Also, both of them are insiders. It is proposed that Robert C. Bishop and Barry Klein each retain their interest in their stock of Debtor and no payments shall be made to them with regard to their interests until all allowed claims are paid, in full. Consequently, this class is not impaired and they would not be permitted to vote, anyway, because they are insiders.

#### D. Means of Implementing the Plan

Since the filing of this Chapter 11 case, the Debtor has made all post-petition payments to its creditors. Debtor has also been able to pay all of its other monthly obligations, including its Quarterly Fee to the Office of the U.S. Trustee. The Debtor's most recently filed Monthly Operating Report is set forth as Exhibit B. As can be seen by a review of the Monthly Operating Report, Debtor has been able to substantially increase its monthly gross revenue. This increase in revenue has been possible because of multiple positive steps that Debtor has taken in its reorganization process. Furthermore, Debtor has been able to make regular lease payments to its related entity, B & B Real Estate, which has enabled both Debtor and B & B Real Estate to make its regular monthly payments to their principal lender, Newtek. It should be noted that just several years ago, Debtor's monthly gross revenue was twice its current level. Debtor has taken multiple steps to address the changing market and the deficiencies in its own business with promising results.



**Summary of Plan Payments\***

<b>Type or Class of Creditor</b>	<b>Creditor or Description of Creditor</b>	<b>Months as of Effective Date</b>	<b>Monthly Payment Amount</b>
Priority Tax	IRS PA Dept. of Revenue	1 - 54	2,600.00
Class # 1	Newtek	55 - 60	2,600.00
Class # 6	General Unsecured Creditors	61 - 72	2,600.00
Class # 6	General Unsecured Creditors	73 - 84	3,500.00
Class # 6	General Unsecured Creditors	85 - 96	4,500.00
Class # 6	General Unsecured Creditors	97 - 156	5,000.00
<b>Total Amount of Plan Payments</b>			<b>583,200.00</b>

\*Approximate

**Debtor agrees that if the proposed payments referred to above are not made in accordance with the time frames set forth above then, the case shall convert to Chapter 7 of the Bankruptcy Code.**

**E. Risk Factors**

The principal risk regarding the proposed Plan is that Debtor is unable to generate enough gross revenue from the operation of its gym and fitness center, on a consistent basis, to pay its regular monthly payments, its lease payments to B & B Real Estate General Partnership and its Chapter 11 Plan payments. In this regard, Debtor must be able to generate enough gross revenue to consistently make these payments.

**F. Executory Contracts and Unexpired Leases**

Executory contracts are agreements whereby the parties to the agreement have not completed their obligations, thereunder. The prime example of an executory contract is a business lease on real property. Currently, the Debtor has four executory contracts. The executory contracts are with B & B Real Estate General Partnership, Susquehanna, Lease Corp. of America and Financial Pacific Leasing. It is Debtor's intention to assume these executory contracts.

## **G. Tax Consequences of Plan**

**Creditors and Equity Interest Holders concerned with how the Plan may affect their Tax Liability should consult with their own Accountants, Attorneys and/or Advisors.**

## **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the Plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a Chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in §1129 and they are not the only requirements of confirmation.

### **A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan, if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

#### **1. What is an Allowed Claim or an Allowed Equity Interest?**

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

#### **2. What is an Impaired Claim or Impaired Equity Interest?**

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is impaired under the Plan. As provided in §1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable or contractual rights of the members of that class.

### 3. Who is **Not** Entitled to Vote?

The holders of the following types of claims and equity interests are not entitled to vote:

- Holders of claims and equity interests that have been disallowed by an order of the Court;
- Holders of claims or equity interests in unimpaired classes;
- Holders of claims entitled to priority pursuant to §§507(a)(2), (a)(3) and (a)(8) of the Code;
- Administrative expenses; and
- Holders of claims by insiders.

**Even if you are not entitled to vote on the Plan, you have a right to object to the confirmation of the Plan and to the adequacy of the Disclosure Statement.**

### 4. Who can Vote in more than one Class?

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity and should cast one ballot for each claim.

#### **B. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan, without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cramdown” on non-accepting classes, as discussed later in Section B.2.

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

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

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

## 2. Treatment of Non-accepting Classes

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by §1129(b) of the Code. A Plan that binds non-accepting classes is commonly referred to as a “cramdown” Plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of §1129(a)(8) of the Code, does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the Plan.

**You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.**

### C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a Chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit C.

### D. Feasibility

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

#### 1. Ability to Initially Fund Plan

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. The most recently filed Monthly Operating Report is attached as Exhibit B.

#### 2. Ability to make Future Plan Payments and Operate without Further Reorganization

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments. In this regard, the success of this Plan is dependent upon Debtor increasing its monthly gross revenue. As noted above, just several years ago, Debtor’s monthly gross revenue was twice its current level. Consequently, Debtor has taken multiple steps to address the changing market and the deficiencies in its own business with promising results.

**You should consult with your Accountant or other Financial Advisor if you have any questions pertaining to these projections.**

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. Discharge of Debtor**

Discharge. On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in Section 1141(d)(1)(A) of the Code, that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in Section 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in Section 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

**B. Vesting of Property**

Pursuant to Section 1141(b) of the Code, the confirmation of the Plan shall vest all property of the estate in Debtor as of the effective date of the Plan.

**C. Modification of Plan**

The Debtor may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new Disclosure Statement and/or revoting on the Plan.

The Debtor may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

**D. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Debtor, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a Final Decree to close the case. Alternatively, the Court may enter such a Final Decree on its own motion.

VI. **OTHER PLAN PROVISIONS**

This Disclosure Statement and Plan are meant to address the legal issues, financial issues and arrearages of Debtor, only. The confirmation of Debtor's Plan in no way shall affect the legal or financial obligations of any other party, including B & B Real Estate General Partnership or any of the other co-debtors or co-guarantors of any creditors in this case.

Date: 04/26/17

/s/Robert C. Bishop  
Robert C. Bishop, President  
B & B Fitness and Barbell, Inc.,  
Debtor-in-Possession

Date: 04/26/17

/s/Philip W. Stock  
Philip W. Stock, Attorney for  
B & B Fitness and Barbell, Inc.,  
Debtor-in-Possession