

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
IGNITE RESTAURANT GROUP, INC., et al.,¹)	Case No. 17-33550
)	
Debtors.)	(Jointly Administered)
)	

**DISCLOSURE STATEMENT WITH RESPECT TO THE
JOINT CHAPTER 11 PLAN DATED AS OF SEPTEMBER 18, 2017**

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Dated September 18, 2017

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if any), are: Ignite Restaurant Group, Inc. (1359); Ignite Restaurant Group – RSC LLC (1791); Joe's Crab Shack, LLC (4189); Joe's Crab Shack – Redondo Beach, Inc. (5107); BHTT Entertainment, LLC (9818); Ignite Restaurants – New Jersey, LLC (5907); Joe's Crab Shack – Maryland, LLC (5297); Joe's Crab Shack – Anne Arundel MD, LLC (9318); Brick House Development, LLC (2944); JCS Monmouth Mall – NJ, LLC (3509); JCS Development, LLC (4235). The Debtors' service address is: 10555 Richmond Avenue, Houston, Texas 77042.

DISCLAIMER

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF SOLICITING ACCEPTANCES OF THE JOINT CHAPTER 11 PLAN DATED SEPTEMBER 18, 2017 FILED BY IGNITE RESTAURANT GROUP, INC.; IGNITE RESTAURANT GROUP – RSC LLC; JOE’S CRAB SHACK, LLC; JOE’S CRAB SHACK – REDONDO BEACH, INC.; BHTT ENTERTAINMENT, LLC; IGNITE RESTAURANTS – NEW JERSEY, LLC; JOE’S CRAB SHACK – MARYLAND, LLC; JOE’S CRAB SHACK – ANNE ARUNDEL MD, LLC; BRICK HOUSE DEVELOPMENT, LLC; JCS MONMOUTH MALL – NJ, LLC; AND JCS DEVELOPMENT LLC, DEBTORS AND DEBTORS IN POSSESSION (AS MAY BE AMENDED IN ACCORDANCE WITH THE TERMS THEREOF AND APPLICABLE LAW, THE “PLAN”). THE INFORMATION CONTAINED HEREIN MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS, OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT, REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN SHALL BE CORRECT AT ANY TIME AFTER THE DATE HEREOF.

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

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE

ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST OR EQUITY INTERESTS IN ANY OF THE DEBTORS AND DEBTORS-IN-POSSESSION IN THESE CASES.

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I. INTRODUCTION

The debtors and debtors-in-possession in the above-referenced chapter 11 cases (these “Chapter 11 Cases”) are the following related companies (collectively, the “Debtors” or the “Company”):

Ignite Restaurant Group, Inc.
Ignite Restaurant Group – RSC LLC
Joe’s Crab Shack, LLC
Joe’s Crab Shack – Redondo Beach, Inc.
BHTT Entertainment, LLC
Ignite Restaurants – New Jersey, LLC
Joe’s Crab Shack – Maryland, LLC
Joe’s Crab Shack – Anne Arundel MD, LLC
Brick House Development, LLC
JCS Monmouth Mall – NJ, LLC
JCS Development, LLC

The Debtors submit this disclosure statement (as may be amended, the “Disclosure Statement”) pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”) for use in the solicitation of votes on the Joint Chapter 11 Plan dated as of September 18, 2017 (as may be amended, the “Plan”). A copy of the Plan is attached hereto as Appendix A. Each capitalized term used in this Disclosure Statement but not otherwise defined herein has the meaning ascribed to such term in the Plan. In addition, all references in this Disclosure Statement to monetary figures refer to United States currency, unless otherwise expressly provided.

The Debtors’ have sold substantially all of their assets to Landry’s MCGA, Inc., KRG BHTT, LLC and KRG JCS, LLC, as assignees of Landry’s, Inc. (the “Purchaser”). After an auction on August 7, 2017, Landry’s, Inc. was named the prevailing bidder with a purchase price bid of \$57,000,000. A copy of the asset purchase agreement with the Purchaser (the “Asset Purchase Agreement”) was filed as Exhibit A to the *Notice of Filing of Asset Purchase Agreement* [Docket No. 561].

This Disclosure Statement sets forth certain information regarding the Debtors’ prepetition operating and financial history, their reasons for seeking protection and liquidation under Chapter 11 and significant events that have occurred during the Chapter 11 Cases. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of confirmation of the Plan, certain risk factors associated with the Plan and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that Holders of Claims entitled to vote on the Plan must follow for their votes to be counted.

By order entered on or about September 18, 2017, the Bankruptcy Court has approved this Disclosure Statement as containing “adequate information,” in accordance with section 1125 of the Bankruptcy Code, to enable a hypothetical, reasonable investor typical of Holders of Claims against the Debtors to make an informed judgment as to whether to accept or

reject the Plan, and has authorized its use in connection with the solicitation of votes with respect to the Plan. **APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.** No solicitation of votes may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Holders of Claims entitled to vote should not rely on any information relating to the Debtors and their businesses, other than that contained in this Disclosure Statement, the Plan, the Plan Supplement and all exhibits and appendices hereto and thereto.

Pursuant to the provisions of the Bankruptcy Code, only classes of Claims or Interests that are (a) "impaired" by a plan and (b) entitled to receive a distribution under such plan are entitled to vote on such plan. In the Debtors' cases, only Claims in Classes 2 and 4 are both Impaired by and entitled to receive a distribution under the Plan; accordingly, only the Holders of Claims in those Classes are entitled to vote to accept or reject the Plan. Claims in Classes 1, 3, and 5 are Unimpaired by the Plan; accordingly, the Holders thereof are conclusively presumed to have accepted the Plan. Holders of Interests in Class 6, which receive nothing under the Plan, are deemed to have rejected the Plan and the Holders of Interests in Class 6 are not entitled to vote.

FOR A DESCRIPTION OF THE PLAN AND VARIOUS RISKS AND OTHER FACTORS PERTAINING TO THE PLAN, PLEASE SEE ARTICLE VI OF THIS DISCLOSURE STATEMENT, ENTITLED "SUMMARY OF THE PLAN" AND ARTICLE VII OF THIS DISCLOSURE STATEMENT, ENTITLED "CERTAIN RISK FACTORS TO BE CONSIDERED."

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

NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTORS OR ANY OTHER PARTY OR BE DEEMED CONCLUSIVE ADVICE ON THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS OR INTERESTS. YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX ADVISOR ON ANY QUESTIONS OR

CONCERNS RESPECTING TAX, SECURITIES OR OTHER LEGAL CONSEQUENCES OF THE PLAN.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS BY ITS NATURE FORWARD LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL, FUTURE RESULTS. EXCEPT AS OTHERWISE SPECIFICALLY AND EXPRESSLY STATED HEREIN, THIS DISCLOSURE STATEMENT DOES NOT REFLECT ANY EVENTS THAT MAY OCCUR SUBSEQUENT TO THE DATE HEREOF AND THAT MAY HAVE A MATERIAL IMPACT ON THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS DO NOT ANTICIPATE THAT ANY AMENDMENTS OR SUPPLEMENTS TO THIS DISCLOSURE STATEMENT WILL BE DISTRIBUTED TO REFLECT SUCH OCCURRENCES. ACCORDINGLY, THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT UNDER ANY CIRCUMSTANCE IMPLY THAT THE INFORMATION HEREIN IS CORRECT OR COMPLETE AS OF ANY TIME SUBSEQUENT TO THE DATE HEREOF.

THE DEBTORS BELIEVE THAT THE PLAN WILL ACCOMPLISH THE OBJECTIVES OF CHAPTER 11 AND THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTORS, THEIR CREDITORS AND THEIR ESTATES. THE DEBTORS URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO ACCEPT THE PLAN.

ANSWERS TO CERTAIN QUESTIONS ABOUT THE PLAN AND DISCLOSURE STATEMENT

The information presented in the answers to the questions set forth below is qualified in its entirety by reference to the full text of this Disclosure Statement, including the Plan. All creditors entitled to vote on the Plan are encouraged to read and carefully consider this entire Disclosure Statement, including the Plan, prior to submitting a Ballot to accept or reject the Plan.

What is this document and why am I receiving it?

On June 6, 2017, each Debtor filed a voluntary petition for reorganization under chapter 11 of the Bankruptcy Code. The Debtors continue in possession of their properties and are managing their businesses as debtors-in-possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. In connection with the sale of the Debtors' assets in accordance with chapter 11, the Debtors have prepared the Plan, which sets forth in detail the proposed treatment of the Claims of the Debtors' creditors and Interests of the Debtors' equity interest holders. This Disclosure Statement describes the terms of, and certain other material information relating to, the Plan.

This Disclosure Statement is being delivered to you because you either are or may be the holder of, or have otherwise asserted, either a Claim or Claims against the Debtors. This Disclosure Statement is intended to provide you with information sufficient to make an informed decision as to whether to vote to accept or reject the Plan.

Am I eligible to vote to accept or reject the Plan?

You are entitled to vote to accept or reject the Plan only if you hold an Allowed Claim (or a Claim that has been temporarily allowed for voting purposes) in one or more of the following Classes:

- Class 2 - Secured Lender Claims
- Class 4 - General Unsecured Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not eligible to vote with respect to the Plan as a holder of such Claim. If you hold an Allowed Claim in Class 1 (Miscellaneous Secured Claims), Class 3 (Other Priority Claims), or Class 5 (Convenience Claims), your claim is Unimpaired and you are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. If you hold a Class 6 Interest, you will not receive or retain any Property under the Plan on account of such Interest and you are conclusively deemed to have rejected the Plan.

Why should I vote to accept the Plan?

Simply put, from a creditor's perspective, the Debtors believe that the Plan provides the best means for achieving the maximum distribution on account of your prepetition claim. The Plan is the product of months of difficult negotiations, and is believed to have the support of the major constituencies who have had the financial resources to investigate and pursue alternative courses for achieving a distribution on account of the prepetition claims. It is believed that a failure to achieve confirmation of the Plan will result in a piecemeal liquidation of the Assets, with little or no prospects for distributions to unsecured creditors.

How do I vote to accept or reject the Plan?

If you are entitled to vote on the Plan because you are the holder of a Claim in Class 2 or Class 4 that is Allowed or has been temporarily allowed for voting purposes, as the case may be, you must complete, sign and return your Ballot or Ballots in accordance with the ballot instructions to be provided.

What if I'm entitled to vote to accept or reject the Plan and don't?

In general, within any particular class of Claims, only those holders of Claims who actually vote to accept or to reject the Plan will affect whether the Plan is accepted by the requisite holders of Claims in such Class. The holders representing at least two-thirds in dollar amount and a majority in number of the Claims in such Class that are allowed or have been temporarily allowed for voting purposes, as the case may be, and that are held by holders of such Claims who actually vote to accept or to reject the Plan must vote to accept the Plan.

What happens if the Plan is not accepted by each Class entitled to vote on the Plan?

If the holders of each Class of Claims entitled to vote on the Plan (*i.e.*, Class 2 and Class 4) vote to reject the Plan, the Plan will not be confirmed or consummated in its present form. Conversely, as long as the requisite holders of Claims in one of the above enumerated classes vote to accept the Plan, the Debtors may seek Confirmation pursuant to the "cramdown"

provisions of the Bankruptcy Code (which will require a determination by the Bankruptcy Court that the Plan is “fair and equitable” and “does not discriminate unfairly” as to each impaired Class that does not accept the Plan or is deemed to have rejected it). The Debtors believe that the Plan satisfies the “cramdown” provisions of the Bankruptcy Code and, in any case, have reserved the right to modify the Plan to the extent that Confirmation thereunder requires modification.

What will I receive if my Claim is Disputed?

No distributions will be made on account of any Claim that is a Disputed Claim unless and until that Claim becomes an Allowed Claim in accordance with the procedures for resolving Disputed Claims set forth in the Plan.

When will the Plan be confirmed?

After the Bankruptcy Court has approved the form and adequacy of information in this Disclosure Statement, the Bankruptcy Court will schedule and conduct a hearing concerning Confirmation of the Plan. Typically, the Plan confirmation hearing is scheduled about a month after the Disclosure Statement hearing. The Plan confirmation hearing may be continued or adjourned, however, and even if it is held, there is no guaranty that the Bankruptcy Court will find that the requirements of the Bankruptcy Code with respect to Confirmation have been met. In addition, the conditions to Confirmation set forth in the Plan must be satisfied or waived in accordance with the Plan before the Plan can be confirmed. Thus, while the Debtors expect the Plan to be confirmed perhaps as early as November 29, 2017, there is no way to predict with any certainty when, if ever, Confirmation will actually occur.

When will the Plan be effective?

Even if the Plan is confirmed in November 2017, there are a number of additional conditions that must be satisfied or waived before the Plan can become effective. The Effective Date will not occur until after the Plan has been confirmed. No assurance can be given as to if or when the Effective Date will actually occur.

What happens if the Plan isn’t confirmed or doesn’t become effective?

The Debtors expect that all of the conditions to Confirmation and effectiveness of the Plan will be satisfied (or waived in accordance with the Plan). There is no guaranty, however, that the Plan will become effective. Although the Debtors intend to take all acts reasonably necessary to satisfy the conditions to the Confirmation and effectiveness of the Plan that are within the Debtors’ control, if, for any reason, the Plan is not confirmed or does not become effective, the Debtors may be forced to propose an alternative plan or plans of reorganization under Chapter 11 of the Bankruptcy Code. If no plan of reorganization or liquidation can be confirmed, the Debtors may have to convert to a liquidation case under chapter 7 of the Bankruptcy Code.

Does the Plan seek releases for any third parties?

The Plan seeks releases for certain third parties. Specifically, each Holder of a Claim or Interest, except with respect to those Holders of Claims or Interests who vote to reject the Plan or

are deemed to reject the Plan, shall be deemed to have forever waived and released (i) the Debtors, (ii) the Liquidation Trustee and the GUC Trustee, (iii) the Liquidating Trust and the GUC Trust, (iv) the Releasees, and (v) the D&O Releasees and their respective Related Persons from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of such Persons or Entities to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered under or in connection with the Plan), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, other than claims or liabilities arising out of or relating to any act or omission of any of the Persons set forth in clauses (i) through (v) of Section 10.03(b) of the Plan that is determined by a final order to have constituted gross negligence, willful misconduct, actual fraud or a criminal act by such Person; provided, however, that Section 10.03(b) of the Plan shall not release any Releasees or the D&O Releasee from any Causes of Action held by a Governmental Unit existing as of the Effective Date based on (i) any criminal laws of the United States or any domestic state, city or municipality or (ii) sections 1104-1109 and 1342(d) of ERISA; provided, however, that no Cause of Action against any insurer arising out of or relating to matters for which the Debtors would otherwise be liable or suffer an insurable loss shall be released, including without limitation, any Cause of Action against the Debtors' Directors and Officers insurance carrier(s) and only to the extent of such insurance.

A vote to accept the Plan constitutes your consent to the releases, injunctions, and exculpation provisions specified in Sections 10.01, 10.02, and 10.03 of the Plan. If you vote to reject the Plan or return your ballot but abstain from voting you may opt-out of the release, injunction and exculpation provisions provided for in the Plan by checking the "Opt Out" box on your ballot. You will also be deemed to accept the releases, injunctions, and exculpation provisions of the Plan if you vote to reject the Plan or return your ballot but abstain from voting on the Plan and do not opt out of the releases, injunctions and exculpations.

II. OVERVIEW OF THE PLAN

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

The Plan provides for the classification and treatment of Claims against and Interests in the Debtors. The Plan designates five Classes of Claims and one Class of Interests. These Classes take into account the differing nature and priority under the Bankruptcy Code of the various Claims and Interests.

A. General Structure of the Plan

The Plan is structured as a joint plan. The Debtors will pursue all reasonably available actions to maximize distributions under the Plan to Holders of Claims and Interests.

On August 11, 2017, the Debtors executed the Asset Purchase Agreement with the Purchaser for the sale (the “Sale”) of substantially all of the Debtors’ assets pursuant to the Plan. Under the Asset Purchase Agreement, the Purchaser agreed to pay the Debtors’ estates a cash purchase price of \$57,000,000 (less certain purchase price adjustments) and assume certain liabilities of the Debtors. On August 29, 2017, the Debtors closed the Sale pursuant to the Asset Purchase Agreement. The Debtors anticipate that the Asset Purchase Agreement will yield gross proceeds to the estates in the amount of over \$44,600,000 after payment of Allowed Administrative Claims (including accrued professional fees), Priority Tax Claims and Other Priority Claims.

The Debtors believe that the value they realized from the Sale constitutes fair market value for their assets and supports a confirmable Plan that will maximize value to their various creditor constituencies and bring a successful conclusion to these Chapter 11 Cases.

The Debtors have estimated the ultimate distributions that will be made in respect of Allowed Claims and Interests. As explained more fully in Section VII entitled “Certain Risk Factors to Be Considered,” because of inherent uncertainties, many of which are beyond the Debtors’ control, there can be no guaranty that actual performance will meet the Debtors’ estimates. The Debtors nonetheless believe that if the Plan is not consummated, it is likely that Holders of Claims against and Interests in the Debtors’ estates will receive less than they would if the Plan is confirmed because liquidation of the Debtors’ assets under Chapter 7 of the Bankruptcy Code will not result in a higher distribution to any Class of Claims or Interests.

As discussed further below in Section V.G, the Plan reflects the terms of a settlement reached by and between the official committee of unsecured creditors and the Secured Lenders (to which the Debtors have agreed and consented), regarding the net cash proceeds arising from or in connection with the Sale.

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

The table below summarizes the classification and treatment of the prepetition Claims against and Interests in the Debtors under the Plan. For certain Classes of Claims, estimated percentage recoveries also are set forth below. Estimated percentage recoveries have been calculated based upon a number of assumptions, including (where not Allowed by the Plan) the amount of Allowed Claims in each Class.

For certain Classes of Claims, the actual amounts of Allowed Claims could materially exceed or could be materially less than the estimated amounts shown in the table that follows. Except for Claims Allowed by the Plan, estimated Claim amounts for each Class set forth below are based upon the Debtors’ review of their books and records, and include estimates of a number of Claims that are contingent, disputed and/or unliquidated. Accordingly, for these reasons, no representation can be or is being made with respect to whether the estimated

percentage recoveries shown in the table below for Classes 2 and 4 will actually be realized by the Holders of Allowed Claims in such Classes.

Type of Claim or Interest	Description and Treatment under Plan
<p>Unclassified — Administrative Claims</p> <p>Estimated Aggregate Unpaid Allowed Amount as of the Effective Date: Approximately \$30,000²</p>	<p>An Administrative Claim is a Claim for (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of any of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code including, but not limited to (i) any actual and necessary post-Petition Date cost or expense of preserving the Debtors' respective Estates or operating the businesses of the Debtors, in each case incurred prior to the Effective Date, (ii) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code, (iii) Allowed Cure Amounts, and (iv) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546 of the Bankruptcy Code; (b) any fees or charges assessed against the Debtors' respective Estates under section 1930 of title 28 of the United States Code; and (c) any Allowed administrative claim or superpriority claim granted to, or for the benefit of, the Secured Lenders pursuant to the Cash Collateral Order.</p> <p>Under the Plan, Administrative Claims are Unimpaired. Unless otherwise provided for therein, and subject to (x) the bar date provisions set forth in Section 3.03(c) of the Plan and (y) additional requirements for Professionals and certain other entities set forth below, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and extinguishment of such Claim in accordance with Section 5.02 of the Plan: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, (iii) a date agreed to in writing by the Debtors and the Holder of such Administrative Claim, and (iv) the date on which the Administrative Claim becomes due in accordance with its terms if not Disputed; or (b) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or as</p>

² As discussed in Section VI.G, the FLSA plaintiffs have filed proofs of claim asserting administrative and priority claims for unpaid wages. The Debtors contest that any amounts are owed.

Type of Claim or Interest	Description and Treatment under Plan
	<p>the Bankruptcy Court may order; provided, however, that any Administrative Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser.</p> <p>All U.S. Trustee's Fee Claims, as determined, if necessary, by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date by the Debtors. On and after the Effective Date, the Liquidating Trust shall pay any and all such fees when due and payable and in accordance with Section 5.02 of the Plan, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the United States Trustee. Each Debtor shall remain obligated to pay quarterly fees to the Office of the United States Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.</p> <p>Administrative Claims are not classified and are treated as required by the Bankruptcy Code. The Holders of such Claims are not entitled to vote on the Plan.</p> <p>Estimated Percentage Recovery: 100%</p>
<p>Unclassified — Priority Tax Claims</p> <p>Estimated Aggregate Unpaid Allowed Amount as of the Effective Date: Approximately \$994,000</p>	<p>The Plan defines Priority Tax Claims as any and all Claims accorded priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.</p> <p>Under the Plan, Priority Tax Claims are Unimpaired. Each Holder of an Allowed Priority Tax Claim shall receive, in the sole discretion of the Debtors, in full satisfaction, settlement, release, and extinguishment of such Claim and in accordance with Section 5.02 of the Plan: (a) Cash equal to the amount of such Allowed Priority Tax Claim in Cash on or as soon as practicable after the latest of (i) the Effective Date, (ii) the date on which such Priority Tax Claim becomes Allowed and (iii) a date agreed to by the Debtors and the Holder of such Priority Tax Claim; or (b) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors; provided, however, that any Priority Tax Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary</p>

Type of Claim or Interest	Description and Treatment under Plan
	<p>course of business.</p> <p>Priority Tax Claims are not classified and are treated as required by the Bankruptcy Code. The Holders of such Claims are not entitled to vote on the Plan.</p> <p>Estimated Percentage Recovery: 100%</p>
<p>Class 1 — Miscellaneous Secured Claims</p> <p>Estimated Aggregate Allowed Amount: \$100,000</p>	<p>Class 1 consists of the Miscellaneous Secured Claims, which are any Secured Claims other than the Secured Lender Claims, including without limitation, any Secured Claim arising from a Tax.</p> <p>Under the Plan, Class 1 Miscellaneous Secured Claims are Unimpaired. The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Allowed Miscellaneous Secured Claims. In accordance with Section 5.02 of the Plan, each Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, in the sole discretion of the Debtors in full satisfaction, settlement, release, and extinguishment of such Claim: (a) Cash equal to the amount of such Allowed Miscellaneous Secured Claim solely from the Miscellaneous Secured Claim Sale Proceeds on or as soon as practicable after the latest of (i) the Effective Date, (ii) the date that such Miscellaneous Secured Claim becomes Allowed, and (iii) a date agreed to by the Debtors and the Holder of such Class 1 Miscellaneous Secured Claim; (b) the Property securing such Miscellaneous Secured Claim without representation or warranty by or recourse against the Debtors; (c) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; or (d) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors; provided, however, that any Class 1 Miscellaneous Secured Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.</p> <p>Estimated Percentage Recovery: 100%</p>
<p>Class 2 — Secured Lender Claims</p> <p>Estimated Aggregate Allowed Amount: \$46,100,000</p>	<p>Class 2 consists of Secured Lender Claims against each Debtor, which are the Claims of the Secured Lenders arising under the Prepetition Credit Documents but only to the extent that such Claims are Secured Claims. As of the Effective Date, the Secured Lender Claims shall be Allowed Claims, and shall not be subject to any avoidance,</p>

Type of Claim or Interest	Description and Treatment under Plan
	<p>reductions, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, crossclaims, defenses, disallowance, impairment, objection, or any other challenges under any applicable law or regulation by any Person or Entity to the extent provided for in the Final Cash Collateral Order and the Plan.</p> <p>Under the Plan, Class 2 Secured Lender Claims are Impaired. Subject to Section 5.02 of the Plan, each Holder of an Allowed Class 2 Secured Lender Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Claim, (i) on the Effective Date, and as a condition precedent thereto, its Pro Rata Share of the Secured Lender Fund Initial Payment Amount; and (ii) on each Distribution Date subsequent to the Effective Date, or as soon thereafter as is reasonably practicable, its Pro Rata Share of any available funds in the Secured Lender Fund until the Consummation Date.</p> <p>Estimated Percentage Recovery: 100%</p>
<p>Class 3 -- Other Priority Claims</p> <p>Estimated Aggregate Allowed Amount: Approximately \$75,000³</p>	<p>Class 3 consists of Other Priority Claims, which are any Claims against the Debtors entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or Administrative Claim.</p> <p>Under the Plan, Class 3 Other Priority Claims are Unimpaired. The Plan will not alter the legal, equitable and contractual rights of the Holders of Allowed Other Priority Claims. On, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Claim is an Allowed Class 3 Claim as of the Effective Date and (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors, but in each case with the consent of the Secured Lenders and in accordance with Section 5.02 of the Plan: (A) Cash equal to the amount of such Allowed Class 3 Claim; (B) such other less favorable treatment as to which the Debtors and the Holder of such Allowed Class 3 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to</p>

³ As discussed in Section VI.G, the FLSA plaintiffs have filed proofs of claim asserting administrative and priority claims for unpaid wages. The Debtors contest that any amounts are owed.

Type of Claim or Interest	Description and Treatment under Plan
	<p>section 1124 of the Bankruptcy Code; provided, however, that Class 3 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Code; provided further that any Class 3 Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.</p> <p>The Holders of such Other Priority Claims are Unimpaired and not entitled to vote on the Plan.</p> <p>Estimated Percentage Recovery: 100%</p>
<p>Class 4 — General Unsecured Claims</p> <p>Estimated Aggregate Allowed Amount: \$132,000,000 to \$144,500,000</p>	<p>Class 4 consists of all General Unsecured Claims (other than Convenience Claims, if any). General Unsecured Claims are any Claims against the Debtors that are not Administrative Claims, Priority Tax Claims, Professional Fee Claims, Miscellaneous Secured Claims, Other Priority Claims, or Secured Lender Claims. For the avoidance of doubt, Rejection Claims, and the Secured Lender Deficiency Claims are General Unsecured Claims. To the extent applicable, the limitations imposed by Section 502 of the Bankruptcy Code shall apply to the relevant General Unsecured Claim, including, without limitation, subsection 502(b)(6) and subsection 502(b)(7) thereof.</p> <p>Under the Plan, Class 4 General Unsecured Claims are Impaired. Subject to Section 5.02 of the Plan, on either (i) the first Distribution Date after the Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed, or (ii) the first Distribution Date after the date on which any objection to such General Unsecured Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court, each Holder of an Allowed Class 4 General Unsecured Claim (excluding the Secured Lender Deficiency Claims) shall receive, in accordance with the GUC Trust Documents, its Pro Rata Share of the General Unsecured Creditors Fund and the GUC Initial Litigation Proceeds. On each subsequent Distribution Date or as soon thereafter as is reasonably practicable, the GUC Trustee shall, until the Consummation Date, continue to distribute to (i) Holders of Allowed Class 4 General Unsecured Claims (excluding the Secured Lender</p>

Type of Claim or Interest	Description and Treatment under Plan
	<p>Deficiency Claims) of any available funds in the General Unsecured Creditors Fund and the GUC Initial Litigation Proceeds and (ii) Holders of Allowed Class 4 General Unsecured Claims (including the Secured Lender Deficiency Claims) their respective Pro Rata Shares of the GUC Aggregate Litigation Proceeds to the extent that the GUC Aggregate Litigation Proceeds exceeds \$500,000. Notwithstanding anything to the contrary herein, any Class 4 General Unsecured Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business</p> <p>Estimated Percentage Recovery: 3%⁴</p>
<p>Class 5 — Convenience Claims</p> <p>Estimated Aggregate Allowed Amount: Approximately \$150,000</p>	<p>Class 5 consists of Convenience Claims, which are Allowed General Unsecured Claims having a value less than or equal to the Convenience Class Cap, <u>provided</u> that the aggregate value of all such claims does not exceed \$150,000, and <u>provided further</u> that in the event the aggregate value of Convenience Claims exceeds \$150,000, then all such claims shall be classified as, and subject to the same Plan treatment as, General Unsecured Claims.</p> <p>Under the Plan, Class 5 Convenience Claims are Unimpaired. On either (i) the first Distribution Date after the Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed, or (ii) the first Distribution Date after the date on which any objection to such Convenience Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court, each Holder of an Allowed Class 5 Convenience Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Claim, Cash in an amount equal to 100% of such Allowed Claim in accordance with Section 5.02 of the Plan. Any Holder of an Allowed General Unsecured Claim in excess of the Convenience Class Cap may elect to reduce its Claim to the Convenience Class Cap. Notwithstanding anything to the contrary in the Plan, any Class 5 Convenience Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of</p>

⁴ Estimated Percentage Recovery is calculated based on General Unsecured Claims excluding the Secured Lender Deficiency Claim.

Type of Claim or Interest	Description and Treatment under Plan
	business Estimated Percentage Recovery: 100%
Class 6 — Interests in the Debtors	<p>Class 6 consists of Interests in the Debtors. Such Interests include, but are not limited to, any and all equity interests, ownership interests or shares in the Debtors issued by the Debtors prior to the Petition Date (including, without limitation, all capital stock, stock certificates, common stock, preferred stock, partnership interests, membership and other interests in a corporation or limited liability company, rights, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights and liquidation preferences, puts, calls or commitments of any character whatsoever relating to any such equity, ownership interests or shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock) whether or not certificated, transferable, voting or denominated “stock” or a similar security, and any Claim or Cause of Action related to or arising from any of the foregoing (including those subordinated pursuant to section 510(b) of the Bankruptcy Code).</p> <p>Under the Plan, Class 6 Interests are Impaired. Holders of Class 6 Interests in the Debtors shall not receive or retain any distribution or Property under the Plan on account of such Interests. On the Effective Date, all Interests shall be cancelled without further notice to, approval of, or action by any Entity.</p> <p>Estimated Percentage Recovery: 0%</p>

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

III. PLAN VOTING INSTRUCTIONS AND PROCEDURES

A. Notice to Holders of Claims and Interests

Approval by the Bankruptcy Court of this Disclosure Statement means that the Bankruptcy Court has found that this Disclosure Statement contains information of a kind and in

sufficient and adequate detail to enable Holders of Claims to make an informed judgment whether to accept or reject the Plan.

THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN OR THEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

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

THIS DISCLOSURE STATEMENT AND THE PLAN ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT OR REJECT THE PLAN.

No solicitation of votes may be made except after distribution of this Disclosure Statement and no person has been authorized to distribute any information concerning the Debtors other than the information contained herein. No such information will be relied upon in making a determination to vote to accept or reject the Plan.

B. Voting Rights

Pursuant to the provisions of the Bankruptcy Code, only holders of claims in classes that are (a) treated as "impaired" by the plan and (b) entitled to receive a distribution under such plan are entitled to vote on the plan. In these Chapter 11 Cases, under the Plan, only Holders of Claims in Classes 2 and 4 are entitled to vote on the Plan. Claims and Interests in other Classes are either (i) Unimpaired and their Holders are deemed to have accepted the Plan, or (ii) receiving no distributions under the Plan and their Holders are deemed to have rejected the Plan.

Only Holders of Allowed Claims in the voting Classes are entitled to vote on the Plan. A Claim that is unliquidated, contingent or disputed is not an Allowed Claim, and is thus not entitled to vote, unless and until the amount is estimated or determined, or the dispute is determined, resolved or adjudicated in the Bankruptcy Court or another court of competent jurisdiction, or pursuant to agreement with the Debtors. However, the Bankruptcy Court may deem a contingent, unliquidated or disputed Claim to be Allowed on a provisional basis, for purposes only of voting on the Plan.

Holders of Allowed Claims in the voting Classes may vote on the Plan only if they are Holders as of the Voting Record Date, which Voting Record Date is October 17, 2017.

C. Solicitation Materials

In soliciting votes for the Plan pursuant to this Disclosure Statement, the Debtors, through their voting agent Garden City Group, LLC (the “Voting Agent”), will send to Holders of Claims who are entitled to vote copies of (a) the Disclosure Statement and Plan, (b) the notice of, among other things, (i) the date, time and place of the hearing to consider confirmation of the Plan and related matters and (ii) the deadline for filing objections to confirmation of the Plan (the “Confirmation Hearing Notice”), (c) one or more ballots (and return envelopes) to be used in voting to accept or to reject the Plan and (d) other materials as authorized by the Bankruptcy Court.

If you are the Holder of a Claim that is entitled to vote, but you did not receive a ballot, or if your ballot is damaged or illegible, or if you have any questions concerning voting procedures, you may contact the following:

If by regular mail:

IGNITE RESTAURANT GROUP, INC.
C/O GCG
P.O. BOX 10448
DUBLIN, OH 43017-4048

If by overnight courier or hand delivery:

IGNITE RESTAURANT GROUP, INC.
C/O GCG
5151 BLAZER PARKWAY, SUITE A
DUBLIN, OH 43017

If by telephone:

GCG
(844) 752-2747

D. Voting Procedures, Ballots and Voting Deadline

After reviewing the Plan and this Disclosure Statement, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying ballot. You should complete and sign your original ballot (copies will not be accepted) and return it in the envelope provided.

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

IN ORDER FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE PROPERLY COMPLETED AS SET FORTH ABOVE AND IN ACCORDANCE WITH THE VOTING INSTRUCTIONS ON THE BALLOT AND RECEIVED NO LATER THAN NOVEMBER 21, 2017, AT 4:00 P.M. CENTRAL TIME (THE "VOTING DEADLINE") BY THE FOLLOWING:

If by regular mail:

IGNITE RESTAURANT GROUP, INC.
C/O GCG
P.O. BOX 10448
DUBLIN, OH 43017-4048

If by overnight courier or hand delivery:

IGNITE RESTAURANT GROUP, INC.
C/O GCG
5151 BLAZER PARKWAY, SUITE A
DUBLIN, OH 43017

UNLESS OTHERWISE PROVIDED IN THE INSTRUCTIONS ACCOMPANYING THE BALLOTS, FAXED BALLOTS WILL NOT BE ACCEPTED. BALLOTS THAT ARE RECEIVED BUT NOT SIGNED WILL NOT BE COUNTED. BALLOTS THAT ARE SIGNED BUT DO NOT SPECIFY WHETHER THE HOLDER ACCEPTS OR REJECTS THE PLAN WILL BE NULL AND VOID. DO NOT RETURN ANY STOCK CERTIFICATES, DEBT INSTRUMENTS OR OTHER EVIDENCE OF YOUR CLAIM WITH YOUR BALLOT.

Copies of this Disclosure Statement, the Plan and any appendices and exhibits to such documents are available to be downloaded free of charge on the Ignite Restaurant Group, Inc., et al. case website: www.gardencitygroup.com/cases/IRG. If you have any questions about (a) the procedure for voting your Claim, (b) the packet of materials that you have received, or (c) the amount of your Claim, or if you wish to obtain, at your own expense, unless otherwise specifically required by Bankruptcy Rule 3017(d), an additional copy of the Plan, this Disclosure Statement or any appendices or exhibits to such documents, please contact:

If by regular mail:

IGNITE RESTAURANT GROUP, INC.
C/O GCG
P.O. BOX 10448
DUBLIN, OH 43017-4048

If by overnight courier or hand delivery:

IGNITE RESTAURANT GROUP, INC.
C/O GCG

5151 BLAZER PARKWAY, SUITE A
DUBLIN, OH 43017

If by telephone:

GCG, LLC
(844) 752-2747

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

THE DEBTORS URGE ALL HOLDERS OF CLAIMS ENTITLED TO VOTE TO EXERCISE THEIR RIGHT BY VOTING IN FAVOR OF THE PLAN AND OTHERWISE COMPLETING THEIR BALLOTS AND RETURNING THEM BY THE VOTING DEADLINE.

E. Confirmation Hearing and Deadline for Objections to Confirmation

Pursuant to section 1128 of the Bankruptcy Code and Bankruptcy Rule 3017(c), the Bankruptcy Court has scheduled a Confirmation Hearing for **November 29, 2017**, at 9:00 a.m. (prevailing Central time). The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing. Objections to confirmation of the Plan or proposed modifications to the Plan, if any, must (i) be in writing, (ii) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, (iii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party, (iv) state with particularity the basis and nature of any objection to the Plan and (v) be filed electronically, together with proof of service, with the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk, Houston, Texas 77002, www.txs.uscourts.gov, and served on the parties listed in the Confirmation Hearing notice, in each case so as to be actually received on or before 4:00 p.m. (**prevailing Central time**) on **November 21, 2017**. Objections to Confirmation of the Plan are governed by Bankruptcy Rule 9014.

IV. GENERAL INFORMATION CONCERNING THE DEBTORS

A. Overview of Business Operations

Prior to the Sale, the Debtors operated two well-known restaurant brands, Joe's Crab Shack ("Joe's") and Brick House Tavern + Tap ("Brick House"), offering a variety of high-quality food and beverages in a distinctive, causal, high-energy atmosphere. Pursuant to the Sale, substantially all of the Debtors' assets have been sold to Purchaser. As of the Petition Date, the Debtors operated 137 restaurants and had three international franchise locations. The Debtors employed approximately 8,400 employees, consisting of approximately 2,400 full-time hourly employees, 5,500 part-time hourly employees and 500 full-time salaried employees. The Debtors' store base consisted of approximately 112 Joe's locations (plus three franchises) and 25

Brick House locations. The store locations are spread across 32 states, with large numbers of locations in Texas, Florida and California. The three franchises are located in Dubai, U.A.E.

B. Events Leading to Commencement of Chapter 11 Cases

The Debtors continued to experience declining financial performance and declines in comparable restaurant sales and income from operations at Joe's and Brick House. The Debtors closed underperforming restaurants and implemented cost reduction measures to help mitigate the effect of these declines and improve their financial position and liquidity. In late 2016, the Debtors engaged advisory firms Alvarez & Marsal ("A&M") and PiperJaffray & Co. ("PJC"), to assist the Debtors in evaluating various strategic alternatives available to the Debtors. The Debtors commenced a process to pursue the sale of the business after determining that a sale of the Company's assets would result in the best recovery for all of their stakeholders.

Despite their efforts to improve performance, the Debtors have been unable to comply with their obligations under their pre-petition credit agreement, and in April 2017 the Debtors defaulted on those obligations. The Debtors and the pre-petition lenders entered into a forbearance agreement on March 31, 2017, which terminated on June 6, 2017.

The Debtors originally commenced the process of evaluating financing and sale options in September 2016 with the hiring of PJC as their exclusive investment banker. Under the terms of its agreement and to assist the Debtors in determining the best strategic alternative available to them, PJC explored debt refinance, structured equity, minority capital and full sale transactions. At the Debtors' direction, PJC contacted numerous parties from September 2016 to January 2017 to determine their interest in the acquisition of, or investment in, the Debtors. Specifically, PJC contacted 83 strategic and financial potential bidders, and 105 potential lenders or providers of capital. Of these contacted parties, 37 potential bidders and 83 potential lenders or providers of capital ultimately negotiated confidentiality agreements and were provided a confidential information memorandum. Interested parties were asked to participate in an initial discussion with PJC to hear about the opportunity and ask questions about the Debtors' assets. Parties that demonstrated sufficient interest in a possible transaction were then given access to further initial due diligence information and invited to conduct calls with management. Through this process, seven potential bidders and two potential lenders or providers of capital provided verbal or written indications of interest.

However, amid continued declining same store sales trends, the degradation of restaurant-level margins, and broader concerns that surfaced in media and analysts reports regarding the casual dining and restaurant sector as a whole, these trends created an extremely challenging backdrop for investors. Certain parties who submitted proposals to invest in or acquire the Debtors withdrew these proposals. The remaining offers were not viewed as viable, or capable of being closed. Concluding that all alternatives had been exhausted, the Debtors pursued a path to secure a stalking horse bid for the sale of substantially all of their assets.

At the Debtors' direction, PJC approached interested parties to secure a stalking horse bidder for the sale of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code. While all previous indications of interest received since the Fall of 2016 were considered, PJC particularly reached out to parties who had expressed substantial interest in acquiring the Debtors

through a bankruptcy proceeding in the previously conducted marketing process, as well as additional parties with expertise in acquiring distressed assets. In total, during this phase of the sale process, PJC contacted 44 strategic and financial potential bidders to serve as a potential stalking horse bidder, of which 33 ultimately negotiated confidentiality agreements and were provided a confidential information memorandum. Six potential bidders submitted indications of interest to acquire the Debtors, and three of those potential bidders continued their diligence process and submitted markups of an asset purchase agreement to acquire the Debtors. Of these parties, KRG Acquisitions Co, LLC (the “Stalking Horse Purchaser”) emerged as the highest and best bid, based on the business judgment of the Debtors and its advisors, after considering all other options and following an extensive effort to negotiate favorable terms. Accordingly, after the robust sales process outlined above, the Debtors negotiated and executed an agreement with the Stalking Horse Purchaser, which would serve as the template for the sale of the Debtors’ assets at auction and provide a floor that any successful bidder would have to exceed in order to acquire the assets. These Chapter 11 Cases were filed to consummate that sale.

On August 7, 2017, the Debtors conducted an auction in accordance with the *Order Pursuant to Bankruptcy Code Sections 105, 363 and 365: (A) Scheduling an Auction; (B) Scheduling the Date, Time and Place for a Hearing on the Proposed Sale Motion; (C) Approving the Form and Manner of the Notice of (I) the Proposed Sale of the Debtors’ Assets, the Auction and the Sale Hearing, and (II) Proposed Assumption and Assignment of Executory Contracts and Leases; and (D) Approving (I) Bidding Procedures, and (II) Break-Up Fee* [Docket No. 314] (the “Bid Procedures Order”). At the conclusion of the Auction, the Purchaser emerged as the prevailing bidder, based on the business judgment of the Debtors and its advisors, after considering all other options. The Court approved the Sale on August 17, 2017. On August 29, 2017, the Debtors closed the Sale pursuant to the Asset Purchase Agreement.

At closing, pursuant to the Asset Purchase Agreement, certain leases and contracts were designated Assigned Contracts (as defined in the Asset Purchase Agreement). Other leases and contracts were designated Designation Rights Assets (as defined in the Asset Purchase Agreement). With respect to those assets designated Designation Rights Assets, the Purchaser can include such assets in the definition of Assigned Contracts through October 15, 2017.

C. Pre-Confirmation Capital Structure of the Debtors

1. Corporate Structure

The parent entity, Ignite Restaurant Group, Inc. (“IRG”), is a Delaware corporation that is majority owned (66.26%) by J.H. Whitney VI, L.P., an affiliate of J.H. Whitney & Co. IRG was originally incorporated in Delaware in 2002 as “Joe’s Crab Shack Delaware, Inc.” In 2009, IRG changed its name to its current name. In May 2012, IRG completed its IPO and began trading on the NASDAQ Global Select Market under the symbol “IRG”. In April 2017, the stock was delisted.

IRG owns directly or indirectly 100% of the equity interests of the following affiliate debtors: Ignite Restaurant Group – RSC LLC, a Delaware limited liability company; Joe’s Crab Shack, LLC, a Texas limited liability company; Joe’s Crab Shack – Redondo Beach,

Inc., a California corporation; BHTT Entertainment, LLC, a Texas limited liability company; Ignite Restaurants – New Jersey, LLC, a Delaware limited liability company; JCS Development, LLC, a Delaware limited liability company; and Brick House Development, LLC, a Delaware limited liability company.

The equity ownership of the remaining Debtors is as follows:⁵

(a) Joe's Crab Shack – Anne Arundel MD, LLC. Joe's Crab Shack – Redondo Beach, Inc., a wholly-owned subsidiary of IRG, owns 100% of the Class A membership units of Joe's Crab Shack – Anne Arundel MD, LLC, a Maryland limited liability company. Jonathan Tibus owns 33.4% of the Class B membership units and Brad Leist and Kimberly Castle each own 33.3% of the Class B membership units of Joe's Crab Shack – Anne Arundel MD, LLC.

(b) JCS Monmouth Mall – NJ, LLC. The outstanding equity of JCS Monmouth Mall – NJ, LLC, a Delaware limited liability company, is 99% owned by Joe's Crab Shack and 1% owned by VNO MM License LLC.

(c) Joe's Crab Shack – Maryland, LLC. Joe's Crab Shack, LLC, a wholly-owned subsidiary of IRG, owns 100% of the Class A membership units of Joe's Crab Shack – Maryland, LLC, a Maryland limited liability company. Jonathan Tibus owns 33.4% of the Class B membership units of Joe's Crab Shack – Maryland, LLC, and Brad Leist and Steven Metzger each own 33.3% of the Class B membership units of Joe's Crab Shack – Maryland, LLC.

The Debtors operate their businesses from a common headquarters in Houston, Texas.

2. *Prepetition Secured Debt*

On August 13, 2014, IRG, as borrower, certain lenders (the “Pre-Petition Lenders”), Credit Suisse AG, as administrative agent, Credit Suisse Securities (USA) LLC and KeyBank Capital Markets, Inc., as joint lead arrangers and joint book runners, and KeyBank National Association, as syndication agent entered into that certain Credit and Security Agreement, pursuant to which, the Prepetition Lenders agreed to make (a) available a \$30,000,000 revolving credit facility, and (b) a \$165,000,000 term loan (the “Pre-Petition Credit Agreement”). Both the revolving credit facility and the term loan mature on February 13, 2019. As closing, IRG repaid the balance of its previous secured credit facility using the proceeds from the term loan.

The Pre-Petition Credit Agreement is guaranteed by certain of IRG's subsidiaries and secured by substantially all present and future assets of the borrower and guarantors and liens on the capital stock or other equity interests of IRG's direct and indirect subsidiaries.

⁵ The non-voting Class B membership units and other equity interests owned by certain non-debtors are held by those individuals and entities in order to comply with regulatory requirements associated with the Debtors' liquor licenses.

D. Pre-Petition Officers, Board Members and Employees

1. *Existing Executive Officers*

The following are the current executive officers of the Debtors:

- Jonathan Tibus, Chief Executive Officer
- Brad Leist, Chief Financial Officer
- Ellen Clarry, Chief Supply Officer
- Steve Metzger, Vice President and General Counsel

2. *Existing Board Members*

The following are the current board members of Debtor Ignite Restaurant Group, Inc.:

- Paul R. Vigano (Chairman)
- Ann Iverson
- Shauna R. King
- Joseph N. Stein
- F. Philip Handy

3. *Employees/Labor Relations*

As of the Petition Date, the Debtors employed approximately 8,400 people, of which approximately 90 resided in their corporate office. Of the Debtors' 8,400 employees, approximately 500 were employed on a full-time salaried basis, approximately 2,400 were employed on a full-time hourly basis, and approximately 5,500 were employed on a part-time hourly basis.

4. *Existing Compensation and Benefits*

Retirement Plan. The Debtors maintained a retirement plan meeting the requirements of Section 401(k) of the Internal Revenue Code, under which eligible salaried employees may defer a portion of their salary on a pre-tax basis, post-tax basis, or a combination. After completing one month of employment, eligible employees 21 years of age or older could contribute up to 90% of their annual pay (up to the maximum deferral amount). Under the plan, the Debtors matched 25% of each participating employee's contributions; however, the Debtors' matching contribution was limited to 2% of the participating employee's salary.

E. Summary of Assets

On July 20, 2017, the Debtors filed schedules with the Bankruptcy Court that detail the assets owned by each of the Debtors. Such assets include real property, cash on hand, bank accounts and investments, security deposits, insurance policies, stock interests, accounts receivable, intellectual property, vehicles, office equipment, furnishings and supplies, machinery, fixtures, equipment and supplies used in business, inventory, and other items of personal property. The schedules will provide asset values on a net book basis, which are not reflective of actual values. The schedules may be reviewed on the Bankruptcy Court electronic case filing system, on the Debtors' case website at www.gardencitygroup.com/cases/IRG or during business hours in the offices of the Clerk of the Bankruptcy Court. Information regarding the Debtors' assets is also available in the Liquidation Analysis attached hereto as Appendix B.

F. Historical Financial Information

Attached as Appendix C is selected financial data for the Debtors for the annual periods ended December 31, 2015 and December 31, 2016.

G. Ignite Restaurant Group, Inc.

Ignite Restaurant Group, Inc., a Debtor and ultimate parent of the remaining Debtors, is a public company. As a result, additional information regarding the Debtors, their assets, and financial performance is available at ir.igniterestaurants.com/sec.cfm.

V. THE CHAPTER 11 CASES**A. Continuation of Business; Stay of Litigation**

As described above, on June 6, 2017, the Debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to operate as debtors in possession subject to the supervision of the Bankruptcy Court and in accordance with the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties in the ordinary course, with transactions outside of the ordinary course of business requiring Bankruptcy Court approval.

An immediate effect of the filing of the Debtors' bankruptcy petitions was the imposition of the automatic stay under the Bankruptcy Code which, with limited exceptions, enjoins the commencement or continuation of all collection efforts by creditors, the enforcement of liens against property of the Debtors and the continuation of litigation against the Debtors. The relief provides the Debtors with the "breathing room" necessary to assess their businesses and prevents creditors from obtaining an unfair recovery advantage while the Chapter 11 Cases are pending.

B. First Day Motions

On the first day of the Chapter 11 Cases, the Debtors filed several applications and motions seeking certain relief by virtue of so-called "first day orders." First day motions and orders are intended to facilitate the transition between a debtor's prepetition and postpetition

business operations by approving certain regular business practices that may not be specifically authorized under the Bankruptcy Code or as to which the Bankruptcy Code requires prior approval by the Bankruptcy Court. The first day motions filed in the Chapter 11 Cases are typical of motions filed in large chapter 11 cases across the country. Such motions sought, among other things, the following relief:

- **joint administration of the Debtors' bankruptcy cases;**
- **an order designating the cases as complex cases and establishing notice and administrative procedures;**
- **extension of the time period in which the Debtors must file schedules and statements of financial affairs;**
- **payment of employees' prepetition compensation, benefits and expense reimbursement amounts;**
- **authority to continue maintenance of certain insurance programs;**
- **maintenance of the Debtors' bank accounts and operation of their cash management systems substantially as such systems existed prior to the Petition Date, and the continuing use of business forms;**
- **payment of certain prepetition sales, use, trust fund, and other taxes and related obligations;**
- **authority to administer customer programs;**
- **interim use of cash collateral (as further discussed below) and granting of adequate protection to Secured Lenders;**
- **authority to pay certain prepetition claims arising under the Perishable Agricultural Commodities Act;**
- **authority to pay certain undisputed claims arising under section 503(b)(9) of the Bankruptcy Code and establishment of global procedures for resolving claims relating to goods received within twenty days prior to the Petition Date; and**
- **an order establishing procedures for utilities to request adequate assurance of payment and establishing procedures for resolving disputes related to adequate assurance of payment.**

On June 7, 2017, the Court entered the following orders:

- *Order Setting Bar Date* [Docket No. 65];⁶
- *Interim Order (A) Authorizing Payment of Pre-Petition Wages, Payroll Taxes, Certain Employee Benefits, and Related Expenses and (B) Directing Banks to Honor Related Pre-Petition Transfers* [Docket No. 66];
- *Order (I) Authorizing the Debtors to File a Consolidated List of Creditors and a Consolidated List of the 30 Largest Unsecured Creditors and Redact Certain Personal Identification Information for Individual Creditors, and (II) Approving the Form and Manner of Notifying Creditors of the Commencement of the Chapter 11 Cases and Other Information* [Docket No. 67];
- *Order (A) Extending Time to File Schedules and Statements of Financial Affairs and (B) Waiving the Requirements to File a List of and Provide Notices Directly to Equity Security Holders* [Docket No. 68];
- *Interim Order Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations* [Docket No. 69];
- *Interim Order Authorizing the Debtors to Continue Pre-Petition Insurance and Workers' Compensation Programs and to Pay Pre-Petition Premiums and Related Obligations* [Docket No. 70];
- *Interim Order (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service on Account of Prepetition Invoices, (B) Deeming Utilities Adequately Assured of Future Performance, (C) Establishing Procedures for Determining Adequate Assurance of Payment, and (D) Granting Related Relief* [Docket No. 71];
- *Interim Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims Arising under the Perishable Agricultural Commodities Act and (II) Granting Related Relief* [Docket No. 72];
- *Order Pursuant to Sections 105(a), 1107(a) and 1108 of the Bankruptcy Code Authorizing the Debtors to Honor Prepetition Obligations to Customers and Otherwise Continue Customer Programs in the Ordinary Course of Business* [Docket No. 73];

⁶ On September 8, 2017, the Bankruptcy Court entered an order [Docket No. 688] establishing October 16, 2017 as a supplemental bar date for individuals employed by the Debtors during the period from June 7, 2014 through the Petition Date who did not receive notice of the original bar date.

- *Order Authorizing Continued Use of Pre-Petition Bank Accounts, Cash Management System, Forms, and Books and Records* [Docket No. 74];
- *Interim Order on Debtors' Motion for (I) an Order Establishing Bar Date for Filing Requests for Payment of Administrative Expense Claims under Section 105 and 503(b)(9) of the Bankruptcy Code, Approving Form, Manner, and Sufficiency of Notice of Bar Date Pursuant to Bankruptcy Rule 9007, and Approving the Procedure for Submitting Section 503(b)(9) Claims, and (II) an Order Establishing and Implementing Exclusive and Global Procedures for Resolving Claims Relating to Goods Received within Twenty Days Prior to the Petition Date* [Docket No. 75]; and
- *Interim order Authorizing the Debtors to Use Cash Collateral and Setting Hearing* [Docket No. 76].

C. Retention of Professionals

The Debtors are represented in the Chapter 11 Cases by King & Spalding LLP (“K&S”). The Debtors obtained the financial advisory services of A&M and the investment banking services of PJC. The Debtors obtained the real estate advisory services of Hilco Real Estate (“Hilco”). The Debtors have retained Garden City Group, LLC (“GCG”) as noticing, claims and solicitation agent.

D. The Official Committee of Unsecured Creditors

On June 21, 2017, the U.S. Trustee appointed an Official Committee of Unsecured Creditors (the “Committee”) [Docket No. 183]. The Committee has retained Pachulski Stang Ziehl & Jones LLP as counsel; Cole Schotz as co-counsel; and FTI as financial advisor.

E. Authorization to Use Cash Collateral of Existing Lenders

As of the Petition Date, the Debtors held proceeds of assets on which the Secured Lenders assert first priority liens and security interests (the “Cash Collateral”). Cash collateral is defined in section 363 of the Bankruptcy Code and includes, but is not limited to, “cash, negotiable instruments, documents of title, securities, deposit accounts, . . . other cash equivalents. . . and . . . proceeds, products, offspring, rents or profits of property subject to a security interest.” 11 U.S.C. § 363(a). Under the Bankruptcy Code, the Debtors are prohibited from using, selling or leasing cash collateral unless either the appropriate creditors consent or the Bankruptcy Court, after notice and a hearing, authorizes such action.

On the Petition Date, the Debtors filed the *Debtors' Emergency Motion For Entry of an Interim and Final Order (A) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (B) Granting Adequate Protection Pursuant to Sections 361 and 363 of the Bankruptcy Code, (C) Modifying the Automatic Stay, and (D) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c)* [Docket No. 5] (the “Cash Collateral Motion”).

By the Cash Collateral Motion, the Debtors sought (i) authority on an interim basis to use cash collateral in accordance with a proposed budget; (ii) authority on an interim basis to provide adequate protection to the Secured Lenders; (iii) a final hearing on the Cash Collateral Motion; (iv) authority on a final basis to use cash collateral in accordance with a proposed budget and (v) authority on a final basis to provide adequate protection to the Secured Lenders.

On June 7, 2017, the Court entered the *Interim Order (1) Authorizing the Debtors to Use Cash Collateral, (2) Granting Adequate Protection to Lenders, (3) Modifying the Automatic Stay, and (4) Setting a Final Hearing* [Docket No. 76] (the “Interim Cash Collateral Order”). On July 24, 2017, the Court entered the *Final Order (1) Authorizing the Debtors to use Cash Collateral, (2) Granting Adequate Protection to Lenders, and (3) Modifying the Automatic Stay* [Docket No. 481] (the “Final Cash Collateral Order”). The Final Cash Collateral Order, among other things, authorized the Debtors to use cash collateral in accordance with a budget.

The Final Cash Collateral Order provides that, during the Cash Collateral Period, no costs or expenses of administrative or other charge, lien, assessment or claim incurred at any time (including, without limitation, any expenses set forth in the Approved Budget (as defined in the Final Cash Collateral Order)) by any Debtor or any other person or entity shall be imposed against any or all of the Agent, Lenders, or other Secured Parties, their respective claims, or their respective collateral under Sections 105(a) or 506(c) of the Bankruptcy Code. Pursuant to the Settlement (as defined below), the waivers under Section 506(c) of the Bankruptcy Code become effective and binding on the Effective Date. The Settlement also provides that the Secured Lenders will fund the amounts set forth in the Approved Budget, as may be amended.

F. Sale and Bid Procedures

On the Petition Date, the Debtors filed the *Emergency Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 363 and 365 (A) Authorizing and Scheduling an Auction at which Debtors will Solicit the Highest or Best Bid for the Sale of Substantially all of Debtors’ Assets, (B) Approving Bidding Procedures Related to Conduct of Auction, (C) Approving Break-Up Fee, (D) Approving the Form and Manner of Notices of (I) Proposed Sale of the Debtors’ Assets, the Auction and the Sale Hearing, and (II) Proposed Assumption and Assignment of Executory Contracts and Leases, (E) Approving the Sale of the Assets to the Party Submitting the Highest or Best Bid, and (F) Granting Related Relief* [Docket No. 19] (the “Bid Procedures & Sale Motion”). By the Bid Procedures & Sale Motion, the Debtors sought entry of an order approving, among other things, (a) the scheduling of an auction, at which the Debtors would solicit the highest or best bid for the sale of substantially all of the Debtors’ assets, (b) payment of the break-up fee in an amount equal to \$1,500,000 (the “Break-Up Fee”) payable to the Stalking Horse Bidder, and (c) establishment of the bid procedures related to the conduct of the auction, including the establishment of (i) an “Initial Overbid”, which must have substantially identical terms and conditions as the Stalking Horse Agreement, except with higher and better consideration; contain terms and conditions otherwise no less favorable to the Debtors’ estates than the terms and conditions in the Stalking Horse Agreement; provide for a cash purchase price in an amount equal to or greater than the sum of (1) \$50,000,000, (2) the Breakup Fee, and (3) \$500,000; and (ii) bidding increments of at least \$100,000.

On July 6, 2017, the Court entered the Bid Procedures Order. By the Bid Procedures Order the Court approved (a) the scheduling of an auction on August 7, 2017, at which the Debtors would solicit the highest or best bid for the sale of substantially all of the Debtors' assets, (b) payment of the Break-Up Fee payable to the Stalking Horse Bidder, Landry's, Inc. (the "Overbid Offeror") or both the Stalking Horse Bidder and the Overbid Offeror as set forth in the Bid Procedures Order but in no event would the Break-Up Fee exceed \$1,500,000; (c) establishment of bid procedures related to the conduct of the auction, including the establishment of (i) an "Initial Overbid", which must have substantially identical terms and conditions as the Stalking Horse Agreement, except with higher and better consideration; contain terms and conditions otherwise no less favorable to the Debtors' estates than the terms and conditions in the Stalking Horse Agreement; provide for a cash purchase price in an amount equal to or greater than \$55,100,000; and (ii) bidding increments of at least \$100,000.

The auction occurred on August 7, 2017. The Purchaser emerged as the prevailing bidder with a cash purchase price bid of \$57,000,000. On August 17, 2017, the Court approved the Sale and entered the *Order (A) Approving Asset Purchase Agreement and Authorizing the Sale of the Assets of the Debtors Outside the Ordinary Course of Business, (B) Authorizing the Sale of Assets Free and Clear of all Liens, Claims, Encumbrances and Interests, (C) Authorizing the Assumption and Sale and Assignment of Certain Executory Contracts and Unexpired Leases, and (D) Granting Related Relief* [Docket No. 615] (the "Sale Order"). On August 29, 2017, the Debtors closed the Sale pursuant to the Asset Purchase Agreement.

Throughout the bankruptcy cases, the Debtors have rejected certain unexpired leases. At closing, the remainder of the real property leases were designated as Designation Rights Assets. The Purchaser has through October 15, 2017 to direct the Debtors to include such assets as Assigned Contracts.

On August 17, 2017, the Court entered the *Order (I) Establishing Procedures for the Rejection of Other Executory Contracts and Other Unexpired Leases of Nonresidential Real Property and (II) Granting Related Relief* [Docket No. 616], which established certain procedures for the rejection of executory contracts and unexpired leases (the "Rejection Procedures"). Subject to the procedures set forth therein, the Rejection Procedures allow the Debtors to reject leases and contracts by filing a notice (rather than a motion).

G. The Settlement and 9019 Motion

Attached as Exhibit A to the Final Cash Collateral Order is a term sheet summarizing the terms of a settlement (the "Settlement") reached by the official committee of unsecured creditors and the Secured Lenders regarding the terms and conditions of the Final Cash Collateral Order, as well as the net cash proceeds arising from or in connection with the Sale. At the time of the entry of the Final Cash Collateral Order, the Debtors were not parties to the Settlement and had not approved or consented to the term sheet.

Pursuant to the Settlement, the Lenders and the Committee agreed to, among other things, (A) the establishment of a general unsecured creditor trust, which would receive the first \$800,000 of net sale proceeds, in the aggregate, and an upside sharing percentage, on an incremental basis, to the extent the purchase price for assets exceeds \$55,000,000; (B) the

treatment of avoidance actions and commercial tort claims; (C) the treatment of secured lender deficiency claims and (D) a maximum recovery amount for holders of allowed general unsecured claims. The Committee and the Lenders also agreed to support the Debtors' chapter 11 plan so long as the plan is consistent with the terms of the Settlement.

The Debtors subsequently approved of and consented to the Settlement, and agreed to seek to distribute the proceeds of the Sale through a plan consistent with the Settlement. Accordingly, on August 23, 2017, the Debtors filed the *Debtors' Expedited Motion for Entry of an Order Authorizing and Approving Settlement and Granting Related Relief* [Docket No. 644] (the "9019 Motion"). The Bankruptcy Court entered an order granting the 9019 Motion and approving the Settlement on September 8, 2017. A copy of the term sheet summarizing the terms of the Settlement is attached as Exhibit A to the 9019 Motion and as Exhibit A to the Plan.

Pursuant to the terms of the Settlement (and the terms of the Plan), \$900,000 of net sale proceeds will be deposited into the GUC Trust as of the Effective Date. Under the Asset Purchase Agreement, Avoidance Actions and Commercial Tort Claims (to the extent the latter are not subject to the Prepetition Liens) will be deposited into the GUC Trust, and the GUC Trust will receive the first \$500,000 of aggregate net proceeds recovered from such avoidance actions and commercial tort claims (with net proceeds over and above such \$500,000 minimum amount to be shared on a pro rata basis with the Secured Lender Deficiency Claims).

VI. SUMMARY OF THE PLAN

THIS SECTION PROVIDES A SUMMARY OF THE STRUCTURE AND IMPLEMENTATION OF THE PLAN AND THE CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN WHICH ACCOMPANIES THIS DISCLOSURE STATEMENT.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE PRECISE OR COMPLETE STATEMENTS OF ALL THE TERMS AND PROVISIONS OF THE PLAN OR DOCUMENTS REFERRED TO THEREIN, AND REFERENCE IS MADE TO THE PLAN AND TO SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS.

THE PLAN ITSELF AND THE DOCUMENTS REFERRED TO THEREIN WILL CONTROL THE TREATMENT OF CLAIMS AGAINST, AND INTERESTS IN, THE DEBTORS UNDER THE PLAN AND WILL, UPON THE EFFECTIVE DATE, BE BINDING UPON HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, THE DEBTORS AND OTHER PARTIES IN INTEREST. IN THE EVENT OF ANY CONFLICT BETWEEN THIS DISCLOSURE STATEMENT AND THE PLAN OR ANY OTHER OPERATIVE DOCUMENT, THE TERMS OF THE PLAN AND/OR SUCH OTHER OPERATIVE DOCUMENT WILL CONTROL.

A. Overall Structure of the Plan

The Plan constitutes a plan of liquidation and sets forth the means for satisfying Claims against and Interests in the Debtors. Under the Plan, Claims against and Interests in the Debtors are divided into Classes according to their relative seniority and other criteria.

If the Plan is confirmed by the Bankruptcy Court and consummated: (a) the Claims in certain Classes will be modified and receive distributions equal to the full amount of such Claims, (b) the Claims of certain other Classes will be modified and receive distributions constituting a partial recovery on such Claims and (c) the Claims and Interests in certain other Classes will receive no recovery on such Claims or Interests. On the Effective Date and at certain times thereafter, the Debtors, the Liquidation Trustee, or the GUC Trustee, as applicable, will distribute Cash and other property in respect of certain Classes of Claims as provided in the Plan. The Classes of Claims against and Interests in the Debtors created under the Plan, the treatment of those Classes under the Plan and the securities and other property to be distributed under the Plan are described below.

On the Effective Date, except as otherwise expressly provided in the Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all Property comprising the Estates of the Debtors not conveyed to the Purchaser under the Asset Purchase Agreement excluding the General Unsecured Creditors Fund, Avoidance Actions, Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender), and GUC Aggregate Litigation Proceeds, shall automatically vest in the Liquidating Trust, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished subject to the rights of Holders Allowed Claims to obtain distributions provided for in the Plan; provided that the Secured Lender Fund and the Secured Lender Collateral shall continue to be subject to the Liens of the Prepetition Agent and other Secured Lenders. In no event shall any property of any kind be returned by, or otherwise transferred from, the Liquidating Trust to any Debtor. A copy of the Liquidating Trust Agreement shall be included with the Plan Supplement to be filed on or before the fifth day prior to the Confirmation Hearing.

The GUC Trust shall be established to receive the General Unsecured Creditors Fund, Avoidance Actions, Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender), GUC Aggregate Litigation Proceeds, and any other Property allocable to the GUC Trust under the terms of the Plan and to distribute proceeds thereof in accordance with the Plan. Except as otherwise expressly provided in the Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all such Property shall automatically vest in the GUC Trust, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished subject to the rights of Holders of Allowed Claims to obtain distributions provided for in the Plan. In no event shall any property of any kind be returned by, or otherwise transferred from, the GUC Trust to any Debtor.

B. Substantive Consolidation

The Plan is premised on the substantive consolidation of all of the Debtors with respect to the treatment of all Claims and Interests. The Plan shall serve as a request by the Debtors, in lieu of a separate motion, to the Bankruptcy Court, that it grant substantive consolidation with respect to the treatment of all Claims and Interests as follows: on the Effective Date, (a) all assets and liabilities of the Debtors will be merged or treated as though they were merged; (b) all guarantees of the Debtors of the obligations of any of Debtor and any joint and several liability of any of the Debtors shall be eliminated; (c) each and every Claim of a Debtor held against another Debtor shall be deemed released, cancelled and terminated; and (d) each and every Claim and Interest against any Debtor shall be deemed Filed against the consolidated Debtors and all Claims Filed against more than one Debtor for the same liability shall be deemed one Claim against any obligation of the consolidated Debtors.

Substantive consolidation is appropriate here. Pursuant to the Settlement, the Lenders will be receiving all of the net proceeds of the sale, except for \$900,000 to be distributed to general unsecured creditors. The cost of determining the appropriate distributions and disentangling intercompany claims, absent substantive consolidation would, be prohibitive. The Debtors share common vendors and employees, and there is substantial overlap in the management of the Debtor entities.

C. Classification and Treatment of Claims and Interests

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

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

Except as to Claims specifically Allowed in the Plan, the amount of any Impaired Claim that ultimately is Allowed by the Bankruptcy Court may vary from any estimated Allowed

amount of such Claim and accordingly the total Claims ultimately Allowed by the Bankruptcy Court with respect to each Impaired Class of Claims may also vary from any estimates contained herein with respect to the aggregate Claims in any Impaired Class. Thus, the value of the property that ultimately will be received by a particular Holder of an Allowed Claim under the Plan may be adversely or favorably affected by the aggregate amount of Claims ultimately Allowed in the applicable Class.

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

1. *Treatment of Unclassified Claims under the Plan*

(a) *Administrative Claims*

An Administrative Claim is defined in the Plan as a Claim: (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of any of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code including, but not limited to (i) any actual and necessary post-Petition Date cost or expense of preserving the Debtors' respective Estates or operating the businesses of the Debtors, in each case incurred prior to the Effective Date, (ii) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code, (iii) Allowed Cure Amounts, and (iv) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546 of the Bankruptcy Code; (b) any fees or charges assessed against the Debtors' respective Estates under section 1930 of title 28 of the United States Code; and (c) any Allowed administrative claim or superpriority claim granted to, or for the benefit of, the Secured Lenders pursuant to the Cash Collateral Order.

Under the Plan, Administrative Claims are Unimpaired. Unless otherwise provided for therein, and subject to (x) the bar date provisions set forth in subsection (c) of Section 3.03 of the Plan and (y) additional requirements for Professionals and certain other entities set forth in Section 3.03 of the Plan, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and extinguishment of such Claim in accordance with Section 5.02 of the Plan: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, (iii) a date agreed to in writing by the Debtors and the Holder of such Administrative Claim, and (iv) the date on which the

Administrative Claim becomes due in accordance with its terms if not Disputed; or (b) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or as the Bankruptcy Court may order; provided, however, that any Administrative Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser.

Under the Plan, U.S. Trustee's Fee Claims, as determined, if necessary, by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date by the Debtors. On and after the Effective Date, the Liquidating Trust shall pay any and all such fees when due and payable and in accordance with Section 5.02 of the Plan, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the United States Trustee. Each Debtor shall remain obligated to pay quarterly fees to the Office of the United States Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

Under the Plan, except for Administrative Claims of Professionals for Professional Fee Claims, which are addressed in Section 3.03(c)(ii) of the Plan and summarized below, and except as otherwise provided in the Plan, requests for payment of Administrative Claims must be Filed and served on counsel for the Debtors no later than (x) the Administrative Claim Bar Date, or (y) such later date, if any, as the Bankruptcy Court shall order upon application made prior to the end of the Administrative Claim Bar Date. Holders of Administrative Claims (including, without limitation, the holders of any Claims for federal, state or local taxes) that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date shall be forever barred from asserting such Claims against any of the Debtors, the Liquidation Trustee, the GUC Trustee or any of their respective properties.

Under the Plan, applications for compensation for services rendered and reimbursement of expenses incurred by Professionals from the Petition Date through the Effective Date shall be Filed no later than forty-five (45) days after the Effective Date or such later date as the Bankruptcy Court approves. Such applications shall be served on: (a) the Debtors; (b) Sarah Robinson Borders, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, counsel to the Debtors; (c) Stephen Statham, 515 Rusk, Suite 3516, Houston, Texas 77002, counsel to the United States Trustee; (d) Keith Simon and David Hammerman, Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022, counsel for the Secured Lenders; and (e) Bradford J. Sandler, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, counsel to the Committee. Applications that are not timely Filed will not be considered by the Court. The Debtors, Liquidation Trustee, and the GUC Trustee, as the case may be, may pay any Professional fees and expenses incurred after the Effective Date without any application to the Bankruptcy Court, in each case subject to Section 5.02 of the Plan.

(b) *Priority Tax Claims*

The Plan defines Priority Tax Claims as any and all Claims accorded priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. Such Priority Tax Claims

include Claims of governmental units for taxes owed by the Debtors that are entitled to a certain priority in payment pursuant to section 507(a)(8). The taxes entitled to priority are (a) taxes on income or gross receipts that meet the requirements set forth in section 507(a)(8)(A), (b) property taxes meeting the requirements of section 507(a)(8)(B), (c) taxes that were required to be collected or withheld by the Debtors and for which the Debtors are liable in any capacity as described in section 507(a)(8)(C), (d) employment taxes on wages, salaries or commissions that are entitled to priority pursuant to section 507(a)(4), to the extent that such taxes also meet the requirements of section 507(a)(8)(D), (e) excise taxes of the kind specified in section 507(a)(8)(E), (f) customs duties arising out of the importation of merchandise that meet the requirements of section 507(a)(8)(F) and (g) prepetition penalties relating to any of the foregoing taxes to the extent such penalties are in compensation for actual pecuniary loss as provided in section 507(a)(8)(G) of the Bankruptcy Code. The Debtors have estimated that the aggregate amount of Priority Tax Claims payable under the Plan will be approximately \$994,000.

Priority Tax Claims are Unimpaired. Under the Plan, each Holder of an Allowed Priority Tax Claim shall receive, in the sole discretion of the Debtors, in full satisfaction, settlement, release, and extinguishment of such Claim and in accordance with Section 5.02 of the Plan: (a) Cash equal to the amount of such Allowed Priority Tax Claim on or as soon as practicable after the latest of (i) the Effective Date, (ii) the date that such Priority Tax Claim becomes Allowed, and (iii) a date agreed to by the Debtors and the Holder of such Priority Tax Claim; or (b) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors; provided, however, that any Priority Tax Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.

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

(a) *Class 1: Miscellaneous Secured Claims*

Class 1 Miscellaneous Secured Claims are Unimpaired under the Plan. The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Allowed Miscellaneous Secured Claims. In accordance with Section 5.02 of the Plan, each Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, in the sole discretion of the Debtors in full satisfaction, settlement, release, and extinguishment of such Claim: (a) Cash equal to the amount of such Allowed Miscellaneous Secured Claim solely from the Miscellaneous Secured Claim Sale Proceeds on or as soon as practicable after the latest of (i) the Effective Date, (ii) the date that such Miscellaneous Secured Claim becomes Allowed, and (iii) a date agreed to by the Debtors and the Holder of such Class 1 Miscellaneous Secured Claim; (b) the Property securing such Miscellaneous Secured Claim without representation or warranty by or recourse against the Debtors; (c) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; or (d) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors; provided, however, that any Class 1 Miscellaneous Secured Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.

(b) *Class 2: Secured Lender Claims*

Class 2 Secured Lender Claims are Impaired Under the Plan. Subject to Section 5.02 of the Plan, each Holder of an Allowed Class 2 Secured Lender Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Claim, (i) on the Effective Date, and as a condition precedent thereto, its Pro Rata Share of the Secured Lender Fund Initial Payment Amount; and (ii) on each Distribution Date subsequent to the Effective Date, or as soon thereafter as is reasonably practicable, its Pro Rata Share of any available funds in the Secured Lender Fund until the Consummation Date. As of the Effective Date, the Secured Lender Claims are Allowed Claims, and shall not be subject to any avoidance, reductions, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, crossclaims, defenses, disallowance, impairment, objection, or any other challenges under any applicable law or regulation by any Person or Entity to the extent provided for in the Final Cash Collateral Order and the Plan.

(c) *Class 3: Other Priority Claims*

Class 3 Other Priority Claims are Unimpaired under the Plan. The legal, equitable and contractual rights of the Holders of Allowed Class 3 Claims are unaltered by the Plan. On, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 3 Claim is an Allowed Class 3 Claim as of the Effective Date and (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors, but in each case with the consent of the Secured Lenders and in accordance with Section 5.02 of the Plan: (A) Cash equal to the amount of such Allowed Class 3 Claim; (B) such other less favorable treatment as to which the Debtors and the Holder of such Allowed Class 3 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; provided, however, that Class 3 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court; provided further that any Class 3 Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.

(d) *Class 4: General Unsecured Claims*

Class 4 General Unsecured Claims are Impaired under the Plan. Subject to Section 5.02 of the Plan, on either (i) the first Distribution Date after the Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed, or (ii) the first Distribution Date after the date on which any objection to such General Unsecured Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court, each Holder of an Allowed Class 4 General Unsecured Claim (excluding the Secured Lender Deficiency Claims) shall receive, in accordance with the GUC Trust Documents, its Pro Rata Share of the General Unsecured Creditors Fund and the GUC Initial Litigation Proceeds. On each subsequent Distribution Date or as soon thereafter as is reasonably practicable, the GUC Trustee shall, until the Consummation Date, continue to distribute to (i) Holders of Allowed Class 4 General

Unsecured Claims (excluding the Secured Lender Deficiency Claims) their respective Pro Rata Shares of any available funds in the General Unsecured Creditors Fund and the GUC Initial Litigation Proceeds and (ii) Holders of Allowed Class 4 General Unsecured Claims (including the Secured Lender Deficiency Claims) their respective Pro Rata Shares of the GUC Aggregate Litigation Proceeds to the extent that the GUC Aggregate Litigation Proceeds exceeds \$500,000. Notwithstanding anything to the contrary herein, any Class 4 General Unsecured Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.

(e) *Class 5: Convenience Claims*

Class 5 Convenience Claims are Unimpaired under the Plan. On either (i) the first Distribution Date after the Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed, or (ii) the first Distribution Date after the date on which any objection to such Convenience Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court, each Holder of an Allowed Class 5 Convenience Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Claim, Cash in an amount equal to 100% of such Allowed Claim in accordance with Section 5.02 of the Plan. Any Holder of an Allowed General Unsecured Claim in excess of the Convenience Class Cap may elect to reduce its Claim to the Convenience Class Cap. Notwithstanding anything to the contrary herein, any Class 5 Convenience Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.

(f) *Class 6: Interests in the Debtors*

Class 6 Interests in the Debtors are Impaired under the Plan. Holders of Class 6 Interests in all of the Debtors shall not receive or retain any distribution or Property under the Plan on account of such Interests. On the Effective Date, all Interests shall be cancelled without further notice to, approval of, or action by any Entity

D. Reservation of Rights Regarding Claims

Except to the extent that any Claim is Allowed during the Chapter 11 Cases or expressly by the Plan, the Asset Purchase Agreement, or the Confirmation Order, nothing, including, but not limited to, the failure of the Debtors to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Cases, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Debtors, the Liquidation Trustee or the GUC Trustee with respect to any Claim or Interest, including, but not limited to, all rights of the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, to contest or defend themselves against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

E. Allowed Claims, Distribution Rights and Objections to Claims**1. Allowance Requirement**

Only Holders of Allowed Claims are entitled to receive distributions under the Plan. An Allowed Administrative Claim is a Claim or any portion thereof that has been Allowed, or adjudicated in favor of the Holder by estimation or liquidation, by a Final Order, that was incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases and as to which there is no dispute as to the Debtors' liability, or that has become Allowed by failure to object pursuant to Section 8.04 of the Plan. An Allowed Claim is such Claim that is not a Disputed Claim or a Disallowed Claim and (a) for which a Proof of Claim has been timely Filed by the applicable Bar Date and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtors in their Schedules as liquidated in a specified amount and is not Disputed or contingent and for which no contrary Proof of Claim has been timely Filed; or (c) that is expressly Allowed pursuant to the terms of the Plan or a Final Order of the Bankruptcy Court. The term "Allowed Claim" shall not, for purposes of computing Distributions under the Plan, include interest on such Claim from and after the Petition Date, except as provided in sections 506(b) or 511 of the Bankruptcy Code or as otherwise expressly set forth in the Plan or a Final Order of the Bankruptcy Court.

2. Date of Distribution

All Distributions to Holders of Allowed Claims as of the Effective Date will be made as and when provided in the Plan.

3. Sources and Uses of Property for Plan Distributions.

- (a) Unimpaired Claims. Notwithstanding anything in the Plan to the contrary, the Debtors and Liquidation Trustee shall satisfy the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Convenience Claims solely from the Liquidating Trust Assets, and no other asset or Property of the Debtors, or their Estates and no other portion of the Sale Proceeds or Secured Lender Fund, shall be required to be used or otherwise monetized to pay or otherwise fund such Claims, whether Allowed as of the Effective Date or thereafter.
- (b) Distributions to the Prepetition Agent. In accordance with the Lien and Claim Perfection Matters, no Distribution or other payment made by a Debtor or its estate in accordance with the Plan to the Prepetition Agent shall, after receipt thereof by the Prepetition Agent, be subject to avoidance, disgorgement, recoupment, return, or other challenge.
- (c) Professional Fee Claims of the Committee. In the event and only to the extent that the allowed Professional Fee Claims of the Committee exceeds \$500,000 in the aggregate, such excess amount shall be paid by the GUC Trustee solely from the General Unsecured Creditors Fund (for the avoidance of doubt, the first

\$500,000 of allowed Professional Fee Claims of the Committee are being paid under the Final Cash Collateral Order from funds of the Debtors and their estates).

- (d) Maximum Class 4 Recovery Percentage. In accordance with the Settlement Term Sheet, the percentage recovery to Holders of Allowed Class 4 General Unsecured Claims (excluding the Secured Lender Deficiency Claims) may not exceed the percentage recovery to Holders of Allowed Class 2 Secured Lender Claims. In such event, the GUC Trustee shall provide such additional Distributions to the Prepetition Agent on behalf of Holders of Allowed Class 2 Secured Lender Claims as may be required to equalize such percentage recoveries.
- (e) Miscellaneous Secured Lender Claims. The Debtors and the Liquidation Trustee shall fund all Distributions in respect of Miscellaneous Secured Lender Claims, if any, from Miscellaneous Secured Lender Sale Proceeds.
- (f) Liquidation Trustee. The reasonable fees, costs, and expenses of the Liquidation Trustee (including any reasonable fees, costs, and expenses incurred by professionals to or advisors for the Liquidation Trustee) shall be paid solely from the Liquidation Trust Reserve and any other proceeds of the Liquidation Trust Assets.
- (g) GUC Trustee. The reasonable fees, costs, and expenses of the GUC Trustee (including any reasonable fees, costs, and expenses incurred by professionals to or advisors for the GUC Trustee) shall be paid solely from the General Unsecured Creditors Fund and the GUC Initial Litigation Proceeds.

4. *Making of Distributions*

Distributions to Holders of Allowed Claims shall be made by the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate: (a) at the last known addresses of such Holders or (b) at the addresses set forth in any written notices of address changes delivered to the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate. If any Holder's Distribution is returned as undeliverable, no further Distributions to such Holder shall be made unless and until to the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. Distributions on account of the Allowed Secured Lender Claims and Allowed Secured Lender Deficiency Claims shall be made to the Prepetition Agent, who shall act as the distribution agent with respect to such Claims in accordance with the terms and conditions of the Plan and the Prepetition Credit Documents.

All Property distributed on account of Claims must be claimed prior to the date on which the Bankruptcy Court enters the Final Decree, or, in the case of a Distribution made in the form of a check, must be negotiated and a request for reissuance be made as provided for in Section 5.08 of the Plan. All Unclaimed Property will be retained by and will vest in the Liquidating Trust or the GUC Trust, as appropriate, to be subsequently distributed in accordance with Article III and subject to Section 5.02 of the Plan. All full or partial payments made by the Debtors and received by the Holder of a Claim prior to the Effective Date will be deemed to be

payments under the Plan for purposes of satisfying the obligations of the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, pursuant to the Plan. Nothing contained in the Plan shall require the Debtors, the Liquidation Trustee or the GUC Trustee to attempt to locate any Holder of an Allowed Claim other than by reviewing the records of the Debtors and any Claims filed in the Chapter 11 Cases. All Claims in respect of Unclaimed Property shall be deemed Disallowed and the Holder of any Claim Disallowed in accordance with this Section 5.09 will be forever barred, expunged, estopped and enjoined from asserting such Claim in any manner against the Debtors or their respective assets, the Liquidation Trustee, the Liquidation Trust, the GUC Trustee or the GUC Trust notwithstanding any federal or state escheat laws to the contrary.

5. *Objection Procedures*

Unless otherwise ordered by the Court after notice and a hearing, the Debtors, the Liquidation Trustee, the GUC Trustee and other parties in interest to the extent provided by section 502(a) of the Bankruptcy Code, on and after the Effective Date, shall have the right to File objections to Claims (except those specifically Allowed by the Plan) and shall serve a copy of each such objection upon the Holder of the Claim to which the objection is made as soon as practicable, but in no event later than the applicable Claims Objection Deadline. The foregoing deadlines may be extended by order of the Court. An objection to any Claim shall be deemed properly served on the Holder thereof if the Liquidation Trustee or the GUC Trustee, as appropriate, effects service in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Federal Rule of Bankruptcy Procedure 7004; (b) by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified in the proof of claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the Holder's behalf in the Chapter 11 Cases.

After the Effective Date, the Debtors, the Liquidation Trustee, or the GUC Trustee, as appropriate, may settle or compromise any Disputed Claim without approval of the Bankruptcy Court upon written notice to the United States Trustee and the Secured Lenders; provided that (a) the Debtors, the Liquidation Trustee, or the GUC Trustee, as appropriate, shall promptly File with the Bankruptcy Court a written notice of any settlement or compromise of a Claim that results in an Allowed Claim in excess of \$500,000 and (b) the United States Trustee and the Secured Lenders shall be authorized to contest the proposed settlement or compromise (whether such settlement is above or below \$500,000) by Filing a written objection with the Bankruptcy Court and serving such objection on the Debtors, the Liquidation Trustee, or the GUC Trustee, as appropriate, within 20 days of the service of the proposed settlement notice. If no such objection is Filed, the applicable settlement or compromise shall be deemed final without further action of the Bankruptcy Court.

F. Disposition of Executory Contracts and Unexpired Leases

1. *Contracts and Leases Deemed Rejected*

The Plan provides that all executory contracts and unexpired leases of the Debtors shall be deemed rejected by the Debtors as of the Effective Date, except for any executory

contract or unexpired lease that: (a) has previously been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date or (b) is the subject of a pending motion to assume, assume and assign, or reject as of the Confirmation Date. The assumption, assumption and assignment, and rejection of executory leases and unexpired contracts under the Plan shall be governed by the terms of the Asset Purchase Agreement, the Sale Documents, the Sale and Bid Procedures, and other orders of the Bankruptcy Court.

2. *Cure with Respect to Assumed Contracts and Leases*

The cure of all defaults under executory contracts and unexpired leases to be assumed and assigned under the Asset Purchase Agreement, including the resolution of all objections to the adequacy of assurance of future performance under such contracts and leases and as to the adequacy of amounts proposed to cure defaults under such contracts and leases, shall be governed by the terms and conditions of the Sale and Bid Procedures, the Asset Purchase Agreement, the Sale Documents, any order approving the Asset Purchase Agreement or authorizing the Sale, and other orders of the Court; provided however that any amounts to be paid by the Debtors in respect of such Assumed Contracts and Leases, including without limitation Cure Amounts, shall be funded in accordance with Section 5.02 of the Plan from the Sale Proceeds.

The Debtors have rejected, or have a pending notice of rejection with respect to, approximately 60 leases. More contracts and leases may be rejected pursuant to the Rejection Procedures. At this time the Debtors do not know the impact of claims for rejection damages on the return to general unsecured creditors under the Plan.

3. *Bar Date for Rejection Damages*

Claims arising out of the rejection of any executory contract or unexpired lease pursuant to Article VI of the Plan must be filed with the Bankruptcy Court no later than the later of (a) thirty (30) days after the Effective Date, and (b) thirty (30) days after the entry of an order rejecting such executory contract or unexpired lease. Any Claim not filed within such time period shall be forever barred. The Debtors, the Liquidation Trustee, the GUC Trustee, and other parties in interest to the extent provided by section 502(a) of the Bankruptcy Code shall have the right to object to any Claim arising out of the rejection of an executory contract or unexpired lease pursuant to the terms of Section 8.04 of the Plan.

4. *Employee Benefit Programs*

(a) *Employment Agreements.*

Except and to the extent previously rejected by an order of the Bankruptcy Court on or before the Effective Date, all employment and severance agreements between the Debtors and their employees entered into before or after the Petition Date and not since terminated, shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected under Section 6.01 of the Plan, except for any such employment agreement that is specifically assumed under Section 6.01 of the Plan. Any Claim arising out of such rejection shall be treated in accordance with Section 6.04 of the Plan.

(b) *Employment Benefit Plans.*

Except and to the extent previously rejected by an order of the Bankruptcy Court on or before the Effective Date, all Employee Benefit Plans entered into before or after the Petition Date and not since terminated, shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected under Section 6.01 of the Plan. Any Claim arising out of such rejection shall be treated in accordance with Section 6.04 of the Plan.

5. *Survival of Certain Indemnification Obligations.*

Notwithstanding any other provision of the Plan, the obligations of the Debtors pursuant to their certificates or articles of incorporation, bylaws and other organizational documents to indemnify persons serving after the Petition Date as officers, directors, agents, or employees of the Debtors with respect to actions, suits and proceedings against the Debtors or such officers, directors, agents, or employees, based upon any act or omission for, on behalf of, or relating to the Debtors and occurring prior to or after the Petition Date, shall continue (and shall not be discharged or impaired by the confirmation of the Plan) solely to the extent there is available insurance that provides coverage for such obligations and shall be recoverable solely from such available insurance.

6. *Insurance Coverage.*

Nothing in the Plan shall impair in any way the right or ability of any Person or Entity to make a claim under any applicable insurance policy or against any insurer (or nominally against the Debtors or the D&O Releasees) with respect to such applicable insurance policy.

G. FLSA Claims.

The Debtors are defendants in an employee wage action in the Western District of New York, *Hart v. Crab Addison, Inc. et al.*, 13-cv-06458, where it is alleged that the defendants violated FLSA by failing to pay minimum wage. The FLSA plaintiffs have filed proofs of claim asserting administrative and priority claims for unpaid wages (the “FLSA Claims”). The Debtors do not believe that these claims are valid. Out of an abundance of caution, the Debtors intend to reserve \$140,000 to pay administrative expenses and priority claims related to this class action. To the extent that the claims are worth \$140,000 there will be adequate funds to pay such claims. If the claims are greater than that, the Debtors may not be able to confirm the Plan. Although the Debtors dispute the validity of such claims, the size of the unsecured portion of these claims is not known at this time may materially affect distribution to general unsecured creditors.

H. Post-Consummation Corporate Structure, Management and Operation

1. *Cancellation of Interests*

Except for the purpose of evidencing a right to Distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all notes, stock, agreements, instruments, certificates, and other documents evidencing any Claim against or Interest in the Debtors shall be cancelled and the obligations of the Debtors thereunder or in any way related thereto shall be fully released. Notwithstanding the foregoing, the Prepetition Credit Documents

shall continue in effect solely for the purposes of, as applicable: (a) allowing the Secured Lenders to receive Distributions under the Plan; and (b) allowing and preserving the rights of the Prepetition Agent to (i) make distributions in satisfaction of Allowed Class 2 and 4 Claims (solely to the extent the Secured Lenders hold Class 4 Claims) and (ii) appear in these Chapter 11 Cases. For the avoidance of doubt, all indemnification obligations and expense reimbursement obligations of the Debtors arising under the Prepetition Credit Documents in favor of the Secured Lenders, and each of its respective directors, officers, employees, agents, affiliates, controlling persons, and legal and financial advisors, shall survive, remain in full force and effect, and be enforceable against the Debtors, their Estates or the Liquidating Trust on and after the Effective Date.

2. *Corporate Action*

The entry of the Confirmation Order shall constitute authorization for the Debtors to take or to cause to be taken all corporate and limited liability company actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the stockholders or directors of the Debtors. On the Effective Date, the appropriate officers and managers of the Debtors are authorized and directed to execute and deliver the agreements, documents and instruments contemplated by the Plan and the Plan Supplement in the name and on behalf of the Debtors.

I. **Confirmation and/or Consummation**

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

1. *Requirements for Confirmation of the Plan*

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

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the Debtors or by a Person acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable.

- The Debtors have disclosed the identify and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the Debtors, an affiliate of the Debtors, or a successor to the Debtors under the Plan, and the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy.
- The Debtors have disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.
- Any governmental regulatory commission with jurisdiction, after confirmation of the Plan, over the rates of the Debtors has approved any rate change provided for in the Plan, or such rate change is expressly conditioned on such approval.
- With respect to each Class of Claims or Interest, such class has accepted the Plan or is not impaired.
- The Plan provides that Administrative Claims and Priority Claims other than Priority Tax Claims will be paid in full on the Effective Date and that Priority Tax Claims will receive on account of such Claims: (a) the amount of such unpaid Allowed Priority Tax Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Priority Tax Claim becomes Allowed and (iii) a date agreed to by the Debtors and the Holder of such Priority Tax Claim; or (b) such other treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Priority Tax Claim and the Debtors or as the Bankruptcy Court may order.
- With respect to each Class of Claims or Interests, each Impaired Claim and Impaired Interest Holder either has accepted the Plan or will receive or retain under the Plan, on account of the Claims or Interests held by such Holder, property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on such date under Chapter 7 of the Bankruptcy Code. See [Section X.D].
- If a Class of Claims is Impaired under the Plan, at least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by insiders holding Claims in such Class.
- Confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization.

- All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the Plan provides for the payment of all such fees on the Effective Date.
- The Plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to subsection (e)(1)(B) or (g) of Section 1114, at any time prior to confirmation of the Plan, for the duration of the period the Debtors have obligated themselves to provide such benefits.

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

Further, even if all of the foregoing are satisfied, if any Class of Claims is Impaired and votes to reject the Plan, the Debtors must satisfy the applicable “cramdown” standard with respect to that Class. Section 1129(b) of the Bankruptcy Code requires that the plan “not discriminate unfairly” and be “fair and equitable” with respect to such class. The Debtors do not anticipate that any Class of Claims will vote to reject the Plan. However, in the event any Class votes to reject the Plan, the Debtors believe they will satisfy the cramdown standards in section 1129(b) with respect to any such rejecting class.

2. *Conditions to Confirmation Date and Effective Date*

The Plan specifies conditions precedent to consummation of the Plan and the Effective Date. The conditions to consummation in Section 9.02 (other than Sections 9.02(a)-(e)) may be waived at any time by a writing signed by an authorized representative of each of the Debtors (in consultation with the Committee and the Prepetition Agent) without notice or order of the Bankruptcy Court or any further action other than proceeding to consummation of the Plan.

The conditions precedent to the occurrence of the Confirmation Date, which is the date of entry by the clerk of the Bankruptcy Court of the Confirmation Order, are that: (a) the form and substance of the Confirmation Order, as well as any amendments to the Plan, shall have been approved by the Debtors; (b) the Confirmation Order shall authorize the transactions contemplated by the Plan; and (c) the Confirmation Order shall provide that the provisions of the Confirmation Order are non-severable and mutually dependent.

The conditions that must be satisfied on or prior to the Effective Date, which is the Business Day upon which all conditions to the consummation of the Plan have been satisfied or waived, and is the date on which the Plan becomes effective, are that: (a) Bankruptcy Court shall have approved the information contained in this Disclosure Statement as adequate; (b) the Confirmation Order shall be in full force and effect, shall have become a Final Order, and shall not have been amended, modified, reversed, vacated, or stayed pending appeal; (c) the transactions contemplated in the Asset Purchase Agreement have been consummated; (d) the

Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) authorizing and directing the Debtors to take all actions necessary or appropriate to enter into, implement, and consummate the documents created, amended, supplemented, modified or adopted in connection with the Plan; (e) each of the Secured Lender Fund Initial Payment Amount, the Unimpaired Claims Amount, and the Liquidating Trust Reserve shall be in an amount acceptable to the Prepetition Agent acting at the direction of the Required Lenders (as defined in the Credit and Security Agreement); (f) all authorizations, consents and regulatory approvals required, if any, in connection with the Plan's effectiveness shall have been obtained; (g) the Debtors shall have appointed the Liquidation Trustee, and the Liquidating Trust Agreement and the other Liquidating Trust Documents shall have been executed and delivered; (h) the Committee shall have appointed the GUC Trustee, and the GUC Trust Agreement and the other GUC Trust Documents shall have been executed and delivered; and (h) no order of a court shall have been entered and shall remain in effect restraining the Debtors from consummating the Plan.

J. Releases, Injunctions, Exculpation and Indemnification

1. Releases by Debtors

The Plan provides for certain releases to be granted by the Debtors on and as of the Effective Date. Specifically, effective as of the as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, in their individual capacities and as debtors in possession, will be deemed to have forever released, and waived the Releasees and the D&O Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered under or in connection with the Plan), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, other than claims or liabilities arising out of or relating to any act or omission of a Releasee or D&O Releasee that is determined by a Final Order to have constituted gross negligence, willful misconduct, actual fraud or a criminal act; provided, however, that (a) no Releasee or D&O Releasee shall be released from any Claims, obligations, suits, judgments, debts or Causes of Action arising out of or in connection with indebtedness for money borrowed by any such person from any of the Debtors and (b) no Cause of Action against any insurer arising out of or relating to matters for which the Debtors would otherwise be liable or suffer an insurable loss shall be released, including without limitation, any Cause of Action against the Debtors' Directors and Officers insurance carrier(s).

2. *Releases by Holders of Claims and Interests*

Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, to the fullest extent permitted under applicable law, in consideration for the obligations of the Persons set forth below under the Plan and, if applicable, the Cash, securities, contracts, releases and other agreements or documents to be delivered in connection with the Plan, each Holder of a Claim or Interest, except with respect to those Holders of Claims or Interests who vote to reject the Plan or are deemed to reject the Plan, shall be deemed to have forever waived and released (i) the Debtors, (ii) the Liquidation Trustee and the GUC Trustee, (iii) the Liquidating Trust and the GUC Trust, (iv) the Releasees, and (v) the D&O Releasees and their respective Related Persons from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of such Persons or Entities to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered under or in connection with the Plan), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, other than claims or liabilities arising out of or relating to any act or omission of any of the Persons set forth in clauses (i) through (v) of this Section 10.03(b) that is determined by a final order to have constituted gross negligence, willful misconduct, actual fraud or a criminal act by such Person; provided, however, that this Section 10.03(b) shall not release any Releasees or the D&O Releasee from any Causes of Action held by a Governmental Unit existing as of the Effective Date based on (i) any criminal laws of the United States or any domestic state, city or municipality or (ii) sections 1104-1109 and 1342(d) of ERISA; provided, however, that no Cause of Action against any insurer arising out of or relating to matters for which the Debtors would otherwise be liable or suffer an insurable loss shall be released, including without limitation, any Cause of Action against the Debtors' Directors and Officers insurance carrier(s) and only to the extent of such insurance.

3. *Injunction*

(a) Claims and Interests. The Plan provides that, except as otherwise expressly provided for in the Plan or the Confirmation Order and to the fullest extent authorized or provided by the Bankruptcy Code, including section 1141 thereof, the entry of the Confirmation Order shall, provided that the Effective Date occurs, permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability or an Interest or other right of an equity security holder that is Impaired or terminated pursuant to the terms of the Plan from taking any of the following actions against the Debtors, the Liquidating Trust, the Liquidation Trustee, the GUC Trust, the GUC Trustee, the Purchaser, or the Property of any of the foregoing on account of any such Claims, debts or liabilities or such terminated Interests or rights: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise

recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any Lien or encumbrance of any kind; (d) asserting any setoff, offset, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors; and (e) proceeding in any manner in any place whatsoever, including employing any process, that does not conform to or comply with or is inconsistent with the provisions of the Plan; provided that the foregoing shall not limit the ability of any Person or Entity to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered under or in connection with the Plan.

(b) Released Claims. The Plan provides that, as of the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, Cause of Action or liability that is released pursuant to Section 10.03 of the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, Cause of Action or liability against (i) any Debtor, (ii) the Liquidating Trust or the GUC Trust, (iii) any Releasee, (iv) any D&O Releasee, or (v) any Exculpated Person, or any of their respective Property, based on, arising from or relating to, in whole or in part, any act, omission, or other occurrence taking place on or prior to the Effective Date with respect to or in any way relating to the Chapter 11 Cases, all of which claims, demands, debts, rights, Causes of Action or liabilities shall be deemed released on and as of the Effective Date; provided, however, that with respect to the directors, officers and employees of the Debtors that ceased serving in such capacities before the Petition Date, this injunction shall apply only to the enforcement of Claims, demands, debts, rights, Causes of Action or liabilities with respect to which such former directors, officers and employees would be entitled to indemnification from the Debtors under contract or law; and, provided further, however, that this injunction shall not apply to (a) any claims Creditors may assert under the Plan to enforce their rights thereunder to the extent permitted by the Bankruptcy Code or (b) any claims Creditors or other third parties may have against each other, which claims are not related to the Debtors, it being understood, however, that any defenses, offsets or counterclaims of any kind or nature whatsoever which the Debtors may have or assert in respect of any of the claims of the type described in (a) or (b) of this proviso are fully preserved.

4. *Exculpation Relating to Chapter 11 Cases*

The Plan contains standard exculpation provisions applicable to the key parties in interest with respect to their conduct in the Chapter 11 Cases. Specifically, the Plan provides that, none of the Debtors, the Committee, the Liquidation Trustee, the GUC Trustee, J.H. Whitney VI, LP and Whitney Strategic Partners VI, LP, or any Exculpated Person shall have or incur any liability to any Person, including, without limitation, any Holder of a Claim or Interest or any other party in interest, or any of their respective Related Persons, for any act taken or omission made in connection with, relating to, or arising out of, the Chapter 11 Cases, filing, negotiating, prosecuting, administering, formulating, implementing, confirming or consummating the Plan, or the Property to be distributed under the Plan, including all activities leading to the promulgation and confirmation of the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtors or these Chapter 11 Cases, provided,

however, that the foregoing exculpation shall not apply to any act of gross negligence or willful misconduct.

K. Preservation of Rights of Action

Except as otherwise provided in the Plan, the Asset Purchase Agreement or the Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, the Liquidation Trustee (as a representative of the Debtors' Estates) will retain and may exclusively enforce any Retained Actions other than Avoidance Actions and Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender), subject only to any express waiver or release thereof in the Plan or in any other contract, instrument, release, indenture or other agreement entered into in connection with the Plan, and the Confirmation Order's approval of the Plan shall be deemed a res judicata determination of such rights to retain and exclusively enforce such Retained Actions other than Avoidance Actions and Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender) which shall be retained and exclusively enforced by the GUC Trustee, and none of such Retained Actions is deemed waived, released or determined by virtue of the entry of the Confirmation Order or the occurrence of the Effective Date, notwithstanding that the specific Retained Actions are not identified or described. Absent such express waiver or release by the Debtors, the Liquidation Trustee may pursue Retained Actions, as appropriate, in accordance with the best interests of the Liquidating Trust.

In accordance with section 1123(b)(3) of the Bankruptcy Code, the GUC Trustee will retain and may exclusively enforce any Retained Actions (to the extent such Retained Actions constitute GUC Trust Assets) subject only to any express waiver or release thereof in the Plan or in any other contract, instrument, release, indenture or other agreement entered into in connection with the Plan, and the Confirmation Order's approval of the Plan shall be deemed a res judicata determination of such rights to retain and exclusively enforce such Retained Actions, and none of such Retained Actions is deemed waived, released or determined by virtue of the entry of the Confirmation Order or the occurrence of the Effective Date, notwithstanding that the specific Retained Actions are not identified or described. Absent such express waiver or release by the Debtors, the GUC Trustee may pursue such Retained Actions, as appropriate, in accordance with the best interests of the GUC Trust.

Absent an express waiver or release as referenced above, nothing in the Plan shall (or is intended to) prevent, estop or be deemed to preclude the Liquidation Trustee or the GUC Trustee, as appropriate, from utilizing, pursuing, prosecuting or otherwise acting upon all or any of its respective Retained Actions and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Retained Actions upon or after Confirmation, the Effective Date or the consummation of the Plan. By example only, and without limiting the foregoing, the utilization or assertion of a Retained Action, or the initiation of any proceeding with respect thereto against a Person, by the Liquidation Trustee or the GUC Trustee, as appropriate, shall not be barred (whether by estoppel, collateral estoppel, res judicata or otherwise) as a result of (a) the solicitation of a vote on the Plan from such Person or such Person's predecessor in interest; (b) the Claim, Interest or Administrative Claim of such Person or such Person's predecessor in interest having been listed in a Debtor's Schedules, list of

Holders of Interests, or in the Plan, Disclosure Statement or any exhibit thereto; (c) prior objection to or allowance of a Claim or Interest of the Person or such Person's predecessor in interest; or (d) Confirmation of the Plan. **No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as an indication that the Debtors, Liquidation Trustee or GUC Trustee will not pursue any and all available Causes of Action against them. The Debtors, Liquidation Trustee and GUC Trustee expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein.**

Notwithstanding any allowance of a Claim, but subject to and without limiting, altering or impairing the Lien and Claim Perfection Matters with respect to Allowed Class 2 Claims, the Debtors, the Liquidation Trustee and the GUC Trustee, as appropriate, reserve the right to seek, among other things, to have such Claim Disallowed if the Debtor, the Liquidation Trustee or the GUC Trustee, as the case may be, at the appropriate time, determines that it has a defense under section 502(d) of the Bankruptcy Code, e.g., the GUC Trustee holds an Avoidance Action against the Holder of such Claim and such Holder after demand refuses to pay the amount due in respect thereto.

L. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to the Chapter 11 Cases to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(a) classify or establish the priority or secured or unsecured status of any Claim (whether Filed before or after the Effective Date and whether or not contingent, Disputed or unliquidated) or resolve any dispute as to the treatment of any Claim pursuant to the Plan;

(b) grant or deny any applications for allowance of compensation or reimbursement of expenses pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code or otherwise provided for in the Plan, for periods ending on or before the Effective Date;

(c) determine and resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

(d) ensure that all payments due under the Plan and performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to distributions to Holders of Allowed Claims pursuant to the provisions of the Plan;

(e) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of the Plan

and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement and the Confirmation Order, for the maintenance of the integrity of the Plan and protection of the Liquidation Trustee and the GUC Trustee in accordance with sections 524 and 1141 of the Bankruptcy Code following consummation;

(f) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan (and all Exhibits to the Plan and the Plan Supplement) or the Confirmation Order, including the indemnification and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any Entity's rights arising under or obligations incurred in connection therewith;

(g) hear any application of the Debtors or the Liquidation Trustee or the GUC Trustee to modify the Plan after the Effective Date pursuant to section 1127 of the Bankruptcy Code and Section 12.04 hereof or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;

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

(i) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(j) determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, the Asset Purchase Agreement, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement, the Asset Purchase Agreement or the Confirmation Order, except as otherwise provided in the Plan;

(k) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(l) hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;

(m) hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Asset Purchase Agreement;

- (n) enter one or more Final Decrees closing each of the Chapter 11 Cases;
- (o) determine and resolve any and all controversies relating to the rights and obligations of the Liquidation Trustee or GUC Trustee in connection with the Chapter 11 Cases;
- (p) allow, disallow, determine, liquidate or estimate any Claim, including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance of Claims and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim (to the extent permitted under applicable law);
- (q) permit the Debtors (and the Liquidation Trustee or the Purchaser, to the extent provided for in the Plan, the Asset Purchase Agreement or the Liquidating Trust Agreement) to recover all assets of the Debtors and Property of their respective Estates, wherever located, and permit the GUC Trustee to recover all GUC Trust Assets, wherever located;
- (r) hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes and tax benefits and similar or related matters with respect to the Debtors or the Debtors' respective Estates arising prior to the Effective Date or relating to the period of administration of the Chapter 11 Cases, including, without limitation, matters concerning federal, state and local taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (s) hear and determine any motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed or commenced after the Effective Date that may be commenced by the Liquidation Trustee or GUC Trustee thereafter, including their respective Retained Actions, proceedings with respect to the rights of the Liquidation Trustee or GUC Trustee, as appropriate, to recover Property under sections 542, 543 or 553 of the Bankruptcy Code, or proceedings to otherwise collect to recover on account of any claim or Cause of Action that the Debtors may have had; and
- (t) hear any other matter not inconsistent with the Bankruptcy Code.

If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtors, including with respect to the matters set forth above, nothing in the Plan shall prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

M. Amendment, Alteration and Revocation of Plan

The Debtors may alter, amend or modify the Plan in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy

Rules, the Debtors may, so long as the treatment of Holders of Claims or Interests under the Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with Bankruptcy Rules 2002 and 9014. In accordance with, and to the extent provided by, section 1127 of the Bankruptcy Code, a Holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

The Debtors reserve the right, at any time prior to Confirmation of the Plan, to withdraw the Plan. If the Plan is withdrawn, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Person (or Liens securing any Claims) or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

N. Plan Implementation Documents

The documents necessary to implement the Plan include the following:

- Liquidating Trust Agreement
- GUC Trust Agreement

Such documents are either enclosed herewith or will be submitted in substantially the form to be implemented on the Effective Date as part of the Plan Supplement. All documents in the Plan Supplement shall be in form, scope, and substance satisfactory to the Debtors. Upon such filing, all documents included in the Plan Supplement may be viewed and downloaded free of charge from the Debtors' case website at www.gardencitygroup.com/cases/IRG, viewed and downloaded from the Bankruptcy Court electronic case filing system or inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims or Interests may obtain a copy of any document included in the Plan Supplement upon written request to the Debtors' Voting Agent at the address set forth in Section III.C or to the Debtors' counsel, King & Spalding LLP, 1180 Peachtree Street, Atlanta, Georgia 30309 (Attn: Sarah R. Borders).

VII. CERTAIN RISK FACTORS TO BE CONSIDERED

The Holders of Claims in Classes 2 and 4 should read and carefully consider the following factors, as well as the other information set forth in this Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference herein), before deciding whether to vote to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks associated with the Plan and its implementation.

A. General Considerations

The Plan sets forth the means for satisfying the Claims against each of the Debtors. See Section VI.C of this Disclosure Statement entitled “Classification and Treatment of Claims and Interests” for a description of the treatments of each class of Claims and Interests. Certain Claims and Interests receive no distributions pursuant to the Plan.

B. Certain Bankruptcy Considerations

Even if all voting Impaired Classes vote in favor of the Plan, and if with respect to any Impaired Class deemed to have rejected the Plan the requirements for “cramdown” are met, the Bankruptcy Court may choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that confirmation of the Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, (see Section X.A), and that the value of distributions to dissenting Holders of Claims and Interests will not be less than the value such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. See Section X.D. Although the Debtors believe that the Plan will meet such tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. See Appendix B for a liquidation analysis of the Debtors.

C. Claims Estimations

There can be no assurance that any estimated Claim amounts set forth in this Disclosure Statement are correct. The actual Allowed amount of Claims likely will differ in some respect from the estimates. The estimated amounts are subject to certain risks, uncertainties, and assumptions. Should one or more of these risks or uncertainties materialize, or should any underlying assumptions prove incorrect, the actual Allowed amount of Claims may vary from those estimated herein.

In particular, although the Debtors dispute the validity of the FLSA Claims, the amounts provided for herein are only estimates and the ultimate amounts of such Claims are unknown.

D. Conditions Precedent to Consummation

The Plan provides for certain conditions that must be satisfied (or waived) prior to confirmation of the Plan and for certain other conditions that must be satisfied (or waived) prior to the Effective Date. As of the date of this Disclosure Statement, there can be no assurance that any or all of the conditions in the Plan will be satisfied (or waived). Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated and the restructuring completed.

E. Certain Tax Considerations

There are a number of income tax considerations, risks and uncertainties associated with consummation of the Plan. Interested parties should read carefully the Section IX regarding U.S. federal income tax consequences.

VIII. APPLICABILITY OF FEDERAL AND OTHER SECURITIES LAWS

It is not currently expected that any registration statement will be filed under the Securities Act or any state securities laws with respect to any transfer under the Plan.

IX. UNITED STATES FEDERAL INCOME TAX CONSEQUENCES

THE DEBTORS HAVE NOT SOUGHT OR OBTAINED ANY RULING FROM THE INTERNAL REVENUE SERVICE OR FROM ANY OTHER TAXING AUTHORITY WITH RESPECT TO ANY OF THE TAX CONSEQUENCES OF THE PLAN, NOR HAVE THE DEBTORS SOUGHT OR OBTAINED AN OPINION OF COUNSEL WITH RESPECT TO ANY SUCH TAX CONSEQUENCES. NO REPRESENTATIONS OR ASSURANCES ARE MADE WITH RESPECT TO THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN. BECAUSE THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX AND MAY VARY BASED ON INDIVIDUAL CIRCUMSTANCES, EACH CREDITOR AND EQUITY INTEREST HOLDER SHOULD CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES OF ANY ASPECT OF THE PLAN WITH RESPECT TO SUCH CREDITOR OR EQUITY INTEREST HOLDER.

X. FEASIBILITY OF THE PLAN AND BEST INTERESTS OF CREDITORS

A. Feasibility of the Plan

In connection with confirmation of the Plan, the Bankruptcy Court will be required to determine that the Plan is feasible pursuant to section 1129(a)(11) of the Bankruptcy Code, which means that the confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors.

The Plan itself is premised on a Sale of the substantially all of the Debtors' assets, and thus meets the feasibility test embodied in section 1129(a)(11) of the Bankruptcy Code. The Purchaser closed the transaction and paid the Purchase Price. In addition, the Debtors believe that the fact that the Plan contemplates the funding of the Liquidating Trust and the GUC Trust to, in part, realize the value of the Debtors' assets for the benefit of creditors and the Estates ensures that no further financial restructuring will be necessary. The Debtors should have sufficient cash to fund their activities through the closing of the Sale contemplated by the Plan. Accordingly, the Debtors believe that the Plan complies with the financial feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

B. Acceptance of the Plan

As a condition to Confirmation, the Bankruptcy Code requires that each Class of Impaired Claims vote to accept the Plan, except under certain circumstances.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the Plan. Thus, Holders of Claims in each of Classes 2 and 4 will have voted to accept the Plan only if two-thirds (2/3) in amount and a majority in number of

the Claims actually voting in each Class cast their ballots in favor of acceptance. Holders of Claims who fail to vote are not counted as either accepting or rejecting the Plan.

C. Best Interests Test

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

To calculate the probable distribution to holders of each impaired class of claims and interests if the debtor were liquidated under chapter 7, a bankruptcy court must first determine the aggregate dollar amount that would be generated from the debtor’s assets if its chapter 11 case were converted to a chapter 7 case under the Bankruptcy Code. This “liquidation value” would consist primarily of the proceeds from a forced sale of the debtor’s assets by a chapter 7 trustee.

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

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

D. Liquidation Analysis

For purposes of the best interests test, in order to determine the amount of liquidation value available to Creditors, the Debtors, with the assistance of their financial advisors, prepared a liquidation analysis, annexed hereto as Appendix B (the “Liquidation Analysis”), which concludes that in the event of an orderly liquidation of the Debtors’ assets in chapter 7, the aggregate value to be realized by the Debtors’ estates would be approximately \$44,359,761. In the event of a forced liquidation of the Debtors’ assets in chapter 7, the aggregate value to be realized by the Debtors’ estates would be less. In either event, substantially all such value would be distributed to Holders of Allowed Class 2 Secured Lender Claims, and no other Holder of a Claim, including unpaid Administrative Priority Claims incurred during the administration of the Debtors’ Chapter 11 Cases, would receive a distribution. These conclusions are premised upon the assumptions set forth in Appendix B, which the Debtors and A&M believe are reasonable.

The Debtors believe that any liquidation analysis with respect to the Debtors is inherently speculative. The Liquidation Analysis for the Debtors necessarily contains estimates of the net proceeds that would be received from a forced or orderly sale of assets and/or business units, as well as the amount of Claims that would ultimately become Allowed Claims. Claims estimates are based solely upon the Debtors’ books and records. No order or finding has been entered by the Bankruptcy Court estimating or otherwise fixing the amount of Claims at the projected amounts of Allowed Claims set forth in the Liquidation Analysis. In preparing the Liquidation Analysis, the Debtors have projected an amount of Allowed Claims that represents their best estimate of the chapter 7 liquidation dividend to Holders of Allowed Claims. The estimate of the amount of Allowed Claims set forth in the Liquidation Analysis should not be relied on for any other purpose, including, without limitation, any determination of the value of any distribution to be made on account of Allowed Claims under the Plan.

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

It is impossible to determine with certainty the value each Holder of a Claim will receive under the Plan as a percentage of any Allowed Claim. Notwithstanding the difficulty in quantifying recoveries with precision, the Debtors believe that the financial disclosures contained herein imply a greater recovery to Holders of Claims in Impaired Classes than the recovery available in a chapter 7 liquidation. Accordingly, the Debtors believe that the “best interests” test of section 1129 of the Bankruptcy Code is satisfied.

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

In the event any Class of Impaired Claims rejects the Plan, the Debtors may seek confirmation of the Plan pursuant to the “cramdown” provisions of the Bankruptcy Code.

Section 1129(b) of the Bankruptcy Code provides that a plan can be confirmed even if the plan is not accepted by all impaired classes, as long as at least one impaired class of claims has accepted it. The Bankruptcy Court may confirm a plan at the request of a debtor if

the plan “does not discriminate unfairly” and is “fair and equitable” as to each impaired class that has not accepted the plan. A plan does not discriminate unfairly within the meaning of the Bankruptcy Code if a dissenting class is treated equally with respect to other classes of equal rank. The Debtors believe the Plan does not discriminate unfairly with respect to the Claims and Interests in Classes 2 and 4.

A plan is “fair and equitable” as to holders of unsecured claims that reject the plan if the plan provides either that: (a) each holder of a claim of such class receives or retains on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

A plan is fair and equitable as to a class of equity interests that rejects a plan if the plan provides (a) that each holder of an interest included in the rejecting class receive or retain on account of that interest property that has a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled or the value of such interest or (b) that the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property at all.

The Debtors believe that they could, if necessary, meet the “fair and equitable” requirements of section 1129(b) of the Bankruptcy Code with respect to Holders of Claims and Interests in Classes 2 and 4.

XI. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

The Debtors believe that the Plan affords Holders of Claims in Classes 2 and 4 the potential for the greatest realization on the Debtors’ assets and, therefore, is in the best interests of such Holders. If, however, the requisite acceptances are not received, or the Plan is not confirmed and consummated, the theoretical alternatives include (a) formulation of an alternative plan or plans of reorganization or (b) liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

A. Alternative Plan(s) of Liquidation

If the requisite acceptances are not received or if the Plan is not confirmed, the Debtors (or, if the Debtors’ exclusive periods in which to file and solicit acceptances of a plan of reorganization have expired, any other party-in-interest) could attempt to formulate and propose a different plan or plans of liquidation. Such a plan or plans might involve an orderly liquidation of assets. The Debtors believe that the Plan enables Creditors to realize the greatest possible value under the circumstances and has the greatest chance to be confirmed and consummated.

B. Liquidation Under Chapter 7

If no plan is confirmed, the Debtors’ cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be elected or appointed to

liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code. It is impossible to predict with certainty how the proceeds of the liquidation would be distributed to the respective Holders of Claims against or Interests in the Debtors. It is, however, possible to predict that the Secured Lenders would assert that they held security interests in substantially all assets to be liquidated, likely resulting in nothing to distribute to any other Class of Claims or Interests.

The Debtors believe that a liquidation under chapter 7 would cause a substantial diminution in the Debtors' Estates given the substantial premium in the enterprise value of their businesses over the liquidation value of their assets, and the additional administrative expenses involved in the appointment of a trustee or trustees and attorneys, accountants and other professionals to assist such trustees. The assets available for distribution to Creditors would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, arising by reason of the liquidation and from the rejection of leases and other executory contracts in connection with the cessation of operations and the failure to realize the greater going concern value of the Debtors' assets. More importantly, conversion to a chapter 7 liquidation would likely result in the immediate cessation of the Debtors' businesses, as most chapter 7 trustees are disinclined to continue operations.

XII. THE SOLICITATION; VOTING PROCEDURES

A. Parties in Interest Entitled to Vote

In general, a holder of a claim or interest may vote to accept or to reject a plan if the claim or interest is "allowed," which means generally that no party in interest has objected to such claim or interest, and (b) the claim or interest is "impaired" by the plan but entitled to receive or retain property under the plan.

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

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

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

Holders of Claims in Classes 2 and 4 are entitled to vote to accept or reject the Plan. By operation of law, each Unimpaired Class of Claims is deemed to have accepted the Plan and each Impaired Class of Claims or Interests that will receive nothing under the Plan is deemed to have rejected the Plan and, therefore, the Holders of Claims or Interests in such

Classes are not entitled to vote to accept or reject the Plan. Consequently, Classes 1, 3 and 5 are deemed to have accepted the Plan and Class 6 is deemed to have rejected the Plan and, therefore, none of the Holders of Claims or Interests in such Classes are entitled to vote to accept or reject the Plan.

C. Solicitation Order

Upon approval of this Disclosure Statement, the Bankruptcy Court entered an order that, among other things, determines the dates, procedures and forms applicable to the process of soliciting votes on the Plan and establishes certain procedures with respect to the tabulation of such votes (the “Solicitation Order”). Parties in interest may obtain a copy of the Solicitation Order through the Bankruptcy Court’s electronic case filing system, by downloading the Solicitation Order from the Debtors’ case website at www.gardencitygroup.com/cases/IRG or by making written request upon the Debtors’ counsel or Voting Agent.

D. Waivers of Defects, Irregularities, Etc.

All questions with respect to the validity, form, eligibility (including time of receipt), acceptance and revocation or withdrawal of ballots will be determined by the Bankruptcy Court. As indicated below under “Withdrawal of Ballots; Revocation,” effective withdrawals of ballots must be delivered to the Voting Agent prior to the Voting Deadline. The Debtors reserve the absolute right to contest the validity of any such withdrawal. The Debtors also reserve the right to seek rejection of any and all ballots not in proper form. The Debtors further reserve the right to seek waiver of any defects or irregularities or conditions of delivery as to any particular ballot. Neither the Debtors nor any other Person will be under any duty to provide notification of defects or irregularities with respect to deliveries of ballots nor will any of them incur any liabilities for failure to provide such notification. Ballots previously furnished (and as to which any irregularities have not theretofore been cured or waived) may be invalidated by the Bankruptcy Court.

E. Withdrawal of Ballots; Revocation

Any party who has delivered a valid ballot for the acceptance or rejection of the Plan may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. A notice of withdrawal, to be valid, must (a) contain the description of the Claim(s) to which it relates and the aggregate principal amount represented by such Claim(s), (b) be signed by the withdrawing party in the same manner as the ballot being withdrawn, (c) contain a certification that the withdrawing party owns the Claim(s) and possesses the right to withdraw the vote sought to be withdrawn and (d) be received by the Voting Agent in a timely manner via regular mail, at Ignite Restaurant Group, Inc. c/o GCG, P.O. Box 10448, Dublin, Ohio 43017-4048, or via overnight courier or hand delivery at Ignite Restaurant Group, Inc. c/o GCG, 5151 Blazer Parkway, Suite A, Dublin, OH 43017. The Debtors intend to consult with the Voting Agent to determine whether any withdrawals of ballots were received and whether the requisite acceptances of the Plan have been received. As stated above, the Debtors expressly reserve the absolute right to contest the validity of any such withdrawals of ballots.

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

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed ballot may revoke such ballot and change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed ballot for acceptance or rejection of the Plan. In the case where more than one timely, properly completed ballot is received, only the ballot which bears the latest date will be counted for purposes of determining whether the requisite acceptances have been received.

F. Voting Rights of Disputed Claimants

Holders of Disputed Claims in Classes 2 and 4 whose Claims are (a) asserted as wholly unliquidated or wholly contingent in Proofs of Claim filed prior to the Voting Record Date or (b) whose Claims are asserted in Proofs of Claim as to which an objection to the entirety of the Claim is pending as of the Voting Record Date (collectively, the “Disputed Claimants”) are not permitted to vote on the Plan except as provided in the Solicitation Order. Pursuant to the procedures outlined in the Solicitation Order, Disputed Claimants may obtain a ballot for voting on the Plan only by filing a motion under Bankruptcy Rule 3018(a) seeking to have their Claims temporarily Allowed for voting purposes (a “Rule 3018 Motion”). Any such Rule 3018 Motion must be filed and served upon the Debtors’ counsel and the Voting Agent no later than 4:00 p.m. (Central time) on the seventh (7th) day after the later of (i) the Solicitation Date and (ii) the date of service of an objection, if any, to such claim. The ballot of any creditor filing such a motion, will not be counted unless temporarily allowed by the Bankruptcy Court for voting purposes, after notice and a hearing. Any party timely filing and serving a Rule 3018 Motion will be provided a ballot and be permitted to cast a provisional vote to accept or reject the Plan. If and to the extent that the Debtors and such party are unable to resolve the issues raised by the Rule 3018 Motion prior to the Voting Deadline established by the Bankruptcy Court, then at the Confirmation Hearing the Bankruptcy Court will determine whether the provisional ballot should be counted as a vote on the Plan. Nothing herein affects the Debtors’ right to object to any Proof of Claim after the Distribution Record Date. With respect to any such objection, the Debtors may request that any vote cast by the Holder of the Claim subject to the objection be disallowed and not counted in determining whether the requirements of section 1126(c) of the Bankruptcy Code have been met.

G. Further Information; Additional Copies

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

If by regular mail:

IGNITE RESTAURANT GROUP, INC.
C/O GCG
P.O. BOX 10448
DUBLIN, OH 43017-4048

If by overnight courier or hand delivery:

IGNITE RESTAURANT GROUP, INC.
C/O GCG
5151 BLAZER PARKWAY, SUITE A
DUBLIN, OH 43017

If by telephone:

GCG
(844) 752-2747

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XIII. RECOMMENDATION AND CONCLUSION

For all of the reasons set forth in this Disclosure Statement, the Debtors believe that confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Debtors urge all Holders of Claims in Classes 2 and 4 to vote to ACCEPT the Plan, and to complete and return their ballots so that they will be RECEIVED on or before **November 21, 2017** at 4:00 p.m. prevailing Central time.

Dated September 18, 2017

IGNITE RESTAURANT GROUP, INC.; IGNITE RESTAURANT GROUP – RSC LLC; JOE’S CRAB SHACK, LLC; JOE’S CRAB SHACK – REDONDO BEACH, INC.; BHTT ENTERTAINMENT, LLC; IGNITE RESTAURANTS – NEW JERSEY, LLC; JOE’S CRAB SHACK – MARYLAND, LLC; JOE’S CRAB SHACK – ANNE ARUNDEL MD, LLC; BRICK HOUSE DEVELOPMENT, LLC; JCS MONMOUTH MALL – NJ, LLC; AND JCS DEVELOPMENT, LLC

By: /s/ Jonathan Tibus
Name: Jonathan Tibus
Title: Chief Executive Officer

Appendix A

The Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:)	Chapter 11
)	
IGNITE RESTAURANT GROUP, INC., <i>et al.</i> , ¹)	Case No. 17-33550 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	

DEBTORS' JOINT CHAPTER 11 PLAN AS OF SEPTEMBER 18, 2017

The above-captioned debtors and debtors in possession hereby submit their Joint Chapter 11 Plan dated as of September 18, 2017.

Date: September 18, 2017
Houston, Texas

KING & SPALDING LLP

/s/ Edward L. Ripley
Edward L. Ripley (Texas Bar No. 16935950)
1100 Louisiana Street, Suite 4000
Houston, Texas 77002
Telephone: 713-751-3200
Facsimile: 713-751-3290
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-and-

Sarah R. Borders (admitted *pro hac vice*)
Jeffrey R. Dutson (admitted *pro hac vice*)
Elizabeth T. Dechant (admitted *pro hac vice*)
1180 Peachtree Street, NE
Atlanta, Georgia 30309
Telephone: 404-572-4600
Email: SBorders@kslaw.com
JDutson@kslaw.com
EDechant@kslaw.com

Counsel for the Debtors and Debtors-in-Possession

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (if any), are: Ignite Restaurant Group, Inc. (1359); Ignite Restaurant Group – RSC LLC (1791); Joe's Crab Shack, LLC (4189); Joe's Crab Shack – Redondo Beach, Inc. (5107); BHTT Entertainment, LLC (9818); Ignite Restaurants – New Jersey, LLC (5907); Joe's Crab Shack – Maryland, LLC (5297); Joe's Crab Shack – Anne Arundel MD, LLC (9318); Brick House Development, LLC (2944); JCS Monmouth Mall – NJ, LLC (3509); JCS Development LLC (4235). The Debtors' service address is: 10555 Richmond Avenue, Houston, Texas 77042.

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INTRODUCTION

This joint chapter 11 plan (as amended or modified hereafter in accordance with its terms, the “Plan”), dated as of September 18, 2017, is proposed by Ignite Restaurant Group, Inc., Ignite Restaurant Group – RSC LLC, Joe’s Crab Shack, LLC, Joe’s Crab Shack – Redondo Beach, Inc., BHTT Entertainment, LLC, Ignite Restaurants – New Jersey, LLC, Joe’s Crab Shack – Maryland, LLC, Joe’s Crab Shack – Anne Arundel MD, LLC, Brick House Development LLC, JCS Monmouth Mall – NJ, LLC, and JCS Development LLC. (each a “Debtor” and collectively, the “Debtors”). The Debtors are proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL CREDITORS OF THE DEBTORS ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. SUBJECT TO CERTAIN RESTRICTIONS AND REQUIREMENTS SET FORTH IN SECTION 1127 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 3019 AND THE PLAN, THE DEBTORS RESERVE THE RIGHT TO ALTER, AMEND, MODIFY, REVOKE OR WITHDRAW THE PLAN PRIOR TO ITS SUBSTANTIAL CONSUMMATION.

Capitalized terms used herein shall have the meanings set forth in Article I hereof. The Debtors have obtained Bankruptcy Court authority to have the Chapter 11 Cases jointly administered for administrative and procedural purposes only. Accordingly, the Plan is being proposed as a joint plan of the Debtors. Claims against, and Interests in, the Debtors (other than Administrative Claims and Priority Tax Claims) are classified in Article II hereof and treated in Article III hereof.

ARTICLE I. DEFINITIONS, INTERPRETATION AND EXHIBITS.

Section 1.01 Definitions. Unless the context requires otherwise, the following terms shall have the following meanings whether presented in the Plan or the Disclosure Statement with initial capital letters or otherwise. As used herein:

“Administrative Claim” means a Claim for: (a) any cost or expense of administration (including, without limitation, the fees and expenses of Professionals) of any of the Chapter 11 Cases asserted or arising under sections 503, 507(a)(2), 507(b) or 1114(e)(2) of the Bankruptcy Code including, but not limited to (i) any actual and necessary post-Petition Date cost or expense of preserving the Debtors’ respective Estates or operating the businesses of the Debtors, in each case incurred prior to the Effective Date, (ii) compensation or reimbursement of expenses of Professionals to the extent Allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code, (iii) Allowed Cure Amounts, and (iv) all Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court under section 546 of the Bankruptcy Code; (b) any fees or charges assessed against the Debtors’ respective Estates under section 1930 of title 28 of the United States Code; and (c) any Allowed administrative claim or superpriority claim granted to, or for the benefit of, the Secured Lenders pursuant to the Cash Collateral Order.

“Administrative Claim Bar Date” means the first Business Day that is thirty (30) days following the Effective Date, except as specifically set forth in the Plan or a Final Order.

“Affiliate” shall have the meaning set forth in section 101(2) of the Bankruptcy Code.

“Allowed” means, with respect to a Claim or Interest, an Allowed Claim or an Allowed Interest in a particular Class or category specified. Any reference herein to the allowance of a particular Allowed Claim includes both the secured and unsecured portions of such Claim.

“Allowed Claim” means a Claim that is not a Disputed Claim or a Disallowed Claim and (a) for which a Proof of Claim has been timely Filed by the applicable Bar Date and as to which no objection to allowance thereof has been timely interposed within the applicable period of time fixed by this Plan, the Bankruptcy Code, the Bankruptcy Rules or order of the Bankruptcy Court; (b) that has been listed by the Debtors in their Schedules as liquidated in a specified amount and is not Disputed or contingent and for which no contrary Proof of Claim has been timely Filed; or (c) that is expressly Allowed pursuant to the terms of this Plan or a Final Order of the Bankruptcy Court. The term “Allowed Claim” shall not, for purposes of computing Distributions under this Plan, include interest on such Claim from and after the Petition Date, except as provided in sections 506(b) or 511 of the Bankruptcy Code or as otherwise expressly set forth in this Plan or a Final Order of the Bankruptcy Court.

“Allowed ____ Claim” means an Allowed Claim of the type described.

“Allowed Interest” means any Interest that is not a Disputed Interest and (a) as to which no objection to allowance has been timely interposed in accordance with section 502 of the Bankruptcy Code or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder; or (b) that is expressly allowed by this Plan.

“Allowed ____ Interest” means an Allowed Interest of the type described.

“Asset Purchase Agreement” means that certain Asset Purchase Agreement dated as of August 11, 2017 by and among the Debtors, as sellers, and Landry’s, Inc., as buyer, which provides for the sale of certain or substantially all of the Debtors’ assets.

“Assumed Contracts” means the certain executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Purchaser, as set forth on the Schedule of Assumed Contracts.

“Assumed Liabilities” means those liabilities of the Debtors assumed by the Purchaser pursuant to the Asset Purchase Agreement.

“Avoidance Actions” means any and all Causes of Action that may be brought by and on behalf of the Debtors or their Estates under sections 544, 545, 547, 548, 549, 550, or 553 of the Bankruptcy Code (other than those which are released or dismissed as part of and pursuant to the

Plan) or under other similar or related state or federal statutes or common law, including fraudulent conveyance laws.

“Ballot” means the forms of ballots accompanying the Disclosure Statement upon which Holders of Impaired Claims entitled to vote on the Plan shall, among other things, indicate their acceptance or rejection of the Plan in accordance with the instructions regarding voting.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as in effect on the Petition Date, together with all amendments and modifications thereto that subsequently may be made applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas, Houston Division or, if such court ceases to exercise jurisdiction over these proceedings, the court or adjunct thereof that exercises jurisdiction over the Chapter 11 Cases.

“Bankruptcy Rules” means: (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended; (b) the Federal Rules of Civil Procedure, as amended; (c) any local rules applicable to the Bankruptcy Court; and (d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto that were subsequently made applicable to the Chapter 11 Cases or proceedings therein, as the case may be.

“Bar Date” means the applicable bar date by which a proof of claim must be, or must have been, Filed, as established by an order of the Bankruptcy Court.

“Business Day” means any day which is not a Saturday, a Sunday, a “legal holiday” as defined in Bankruptcy Rule 9006(a), or a day on which banking institutions in the State of Texas are authorized or obligated by law, executive order or governmental decree to be closed.

“Cash” means money, currency and coins, negotiable checks, balances in bank accounts and other lawful currency of the United States of America and its equivalents.

“Cash Collateral” has the meaning set forth in paragraph E of the Cash Collateral Order.

“Cash Collateral Order” means the Final Order, as in effect from time-to-time, entered by the Bankruptcy Court authorizing and approving the Debtors’ use of cash collateral pursuant to section 363 of the Bankruptcy Code (Docket No. 481), and any extensions or amendments thereof.

“Cash Collateral Waivers” means the limitations and waivers of the Debtors’ and their respective Estates’ rights and remedies under or pursuant to Sections 506(c) and 552(b) of the Bankruptcy Code as set forth in paragraphs L, 11, and 12 of the Cash Collateral Order.

“Causes of Action” means any claims, causes of action (including Avoidance Actions), controversies, demands, actions, rights, suits, obligations, liabilities, cross-claims, counterclaims, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in contract, in tort,

in law (whether domestic or foreign), or in equity, or pursuant to any other theory of law, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise, based in whole or in part upon any act or omission or other event occurring prior to the Petition Date or during the course of the Chapter 11 Cases, including through the Effective Date.

“Chapter 11 Cases” means the cases under chapter 11 of the Bankruptcy Code commenced by the Debtors in the Bankruptcy Court on the Petition Date.

“Claim” shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

“Claims Objection Deadline” means the later of: (a) 120 days after the Effective Date; and (b) such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) above.

“Class” means each class, subclass or category of Claims or Interests as classified in Article II of the Plan.

“Closing” shall have the meaning set forth in section 2.9 of the Asset Purchase Agreement.

“Closing Date” means the date of the Closing.

“Commercial Tort Claim” has the meaning set forth in section 9-102(a)(13) of the Uniform Commercial Code.

“Committee” means the official committee of unsecured creditors appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code by the United States Trustee, as the membership of such committee is from time to time constituted and reconstituted.

“Committee Members” means the members of the Committee, in their capacities as such.

“Confirmation” or “Confirmed” means the entry by the Bankruptcy Court of the Confirmation Order.

“Confirmation Date” means the date on which the Clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Court with respect to the Chapter 11 Cases.

“Confirmation Hearing” means the hearing held before the Bankruptcy Court to consider Confirmation of the Plan pursuant to sections 1128 and 1129 of the Bankruptcy Code.

“Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

“Consummation Date” means the later of: (a) the date on which the Liquidation Trustee makes the Final Distribution in accordance with the Plan; and (b) the date on which the GUC Trustee makes the Final Distribution in accordance with the Plan.

“Convenience Claims” means Allowed General Unsecured Claims having a value less than or equal to the Convenience Class Cap, provided that the aggregate value of all such claims does not exceed \$150,000, and provided further that in the event the aggregate value of Convenience Claims exceeds \$150,000, then all such claims shall be classified as, and subject to the same Plan treatment as, General Unsecured Claims.

“Convenience Class Cap” means One Thousand Dollars (\$1,000.00).

“Creditor” means any Person that is the Holder of any Claim against any of the Debtors.

“Cure Amounts” means all amounts that must be paid by the Debtors and all obligations that otherwise must be satisfied pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of the Assumed Contracts to Purchaser as provided in the Asset Purchase Agreement and the Sale and Bid Procedures Order.

“Day(s)” means, unless expressly otherwise provided, calendar day(s).

“Debtors” shall have the meaning set forth in the Introduction.

“Disallowed” means a finding of the Bankruptcy Court in a Final Order, or provision in the Plan providing that a Disputed Claim or Interest shall not be an Allowed Claim or Interest.

“Disallowed Claim” means a Claim, or any portion thereof, that is Disallowed.

“Disallowed Interest” means an Interest, or any portion thereof, that is Disallowed.

“Disclosure Statement” means the Debtors’ Disclosure Statement With Respect to the Joint Chapter 11 Plan Dated as of September 18, 2017, including all exhibits, appendices, schedules and annexes, if any, attached thereto, as submitted by the Debtors, as the same may be altered, amended, supplemented or modified from time to time, and which was prepared and distributed in accordance with sections 1125 of the Bankruptcy Code and Bankruptcy Rule 3017.

“Disputed” means, with respect to any Interest in or Claim against a Debtor, including any portion thereof, any Interest or Claim (a) that is listed on the Schedules as contingent, unliquidated, or disputed, (b) as to which the Debtors or any other party in interest has interposed a timely objection or request for estimation in accordance with the Bankruptcy Code and Bankruptcy Rules or that is otherwise disputed by any Debtor, the GUC Trustee or the Liquidation Trustee in accordance with applicable law, which objection, request for estimation, or dispute has not been determined by a Final Order, or (c) with respect to which a proof of claim was required to be filed by order of the Bankruptcy Court but as to which such proof of claim was not timely or properly filed.

“Disputed Claim” means a Claim, or any portion thereof, that is Disputed. For purposes of the Plan, a Claim that has been neither Allowed nor Disallowed shall be considered a Disputed Claim.

“Disputed Interest” means an Interest, or any portion thereof, that is Disputed. For purposes of the Plan, an Interest that has been neither Allowed nor Disallowed shall be considered a Disputed Interest.

“Distribution” means any distribution by the Debtors, the Liquidation Trustee or GUC Trustee to a Holder of an Allowed Claim.

“Distribution Date” means (a) the Initial Distribution Date, and (b) the first Business Day after the end of the months of June and December, commencing with the first such date to occur more than ninety (90) days after the Initial Distribution Date and continuing until the Final Distribution Date; provided, however, that a Distribution Date (other than the Initial Distribution Date and the Final Distribution Date) shall not occur if the aggregate value of the consideration to be distributed on account of all Allowed Claims on such Distribution Date is less than \$175,000, in which case the amount to be distributed shall be retained and added to the amount to be distributed on the next Distribution Date.

“D&O Releasees” means the directors, members, managers, officers and employees of the Debtors, in each case as of the Petition Date or that have become directors, members, managers, officers, or employees thereafter but prior to the Effective Date, but only to the extent each such party agrees to forever release, waive and discharge those Claims, obligations, suits, judgments, remedies, damages, demands, debts, rights, causes of action, and liabilities whatsoever against the Debtors, the Estates, the Liquidating Trust, the Liquidation Trustee, the GUC Trust, the GUC Trustee and other Releasees (with respect to such other Releasees, solely to the extent that such releases are in all respects reciprocal and so evidenced in writing, which for the avoidance of doubt includes not opting out of the releases pursuant to the Ballot), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence, taking place on or prior to the Effective Date in any way relating to the Debtors, the Estates, the conduct of the Debtors’ businesses, the Chapter 11 Case, the Plan, the Liquidating Trust, the Liquidation Trustee, the GUC Trust, or the GUC Trustee; provided, however, that the foregoing released parties shall be released only from liabilities arising out of actions taken in such capacity. Notwithstanding anything to the contrary in this Plan, no claim held by the D&O Releasees shall be released to the extent that it must be preserved in order to prosecute and maintain coverage under all applicable insurance policies maintained by or for the benefit of the D&O Releasees and provided, however, that such claims shall only be used to obtain the benefits of such insurance.

“Effective Date” means the first Business Day following the date on which all conditions to consummation set forth in Article IX of the Plan have been satisfied or waived (if capable of being duly and expressly waived), provided that no stay of the Confirmation Order is then in effect.

“Employee Benefit Plan” means any “employee benefit plan” (as defined in ERISA § 3(3)) and any other benefit or compensation plan, program, agreement or arrangement maintained, sponsored, or contributed or required to be contributed to by any Debtor or any ERISA Affiliate or with respect to which any Debtor or any ERISA Affiliate has any liability.

“Entity” means any individual, corporation, limited or general partnership, joint venture, association, joint stock company, limited liability company, estate, trustee, United States Trustee, unincorporated organization, government, Governmental Unit, agency or political subdivision thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rules issued thereunder.

“ERISA Affiliate” means any Person that, at any relevant time, is or was treated as a single employer with any Debtor for purposes of section 414 of the Internal Revenue Code.

“Estates” means the estates created in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code upon commencement of the Chapter 11 Cases.

“Excluded Assets” means those assets that the Purchaser is not acquiring pursuant to the Asset Purchase Agreement, including but not limited to Retained Actions.

“Exculpated Persons” means: (a) directors, officers and employees of the Debtors, as of the Petition Date but prior to the Effective Date, and the Debtors’ agents and professionals; (b) Secured Lenders (if Class 2 votes to accept the Plan and to the extent the applicable Secured Lender does not opt out of the release provided for herein); (c) the Committee and the Committee Members (if Class 4 votes to accept the Plan and to the extent the applicable Committee member does not opt out of the release provided for herein); and (d) the Liquidation Trustee and the GUC Trustee; and, in each case, the respective Related Persons of each of the foregoing Entities.

“File, Filed or Filing” means file, filed or filing with the Bankruptcy Court in the Chapter 11 Cases.

“Final Decree” means the final decree entered by the Bankruptcy Court after the Effective Date and pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022.

“Final Distribution” means the Distribution by the Liquidation Trustee and GUC Trustee, as applicable, that satisfies all Claims to the extent provided in accordance with this Plan.

“Final Distribution Date” means the Distribution Date on which the Final Distribution is made.

“Final Order” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, as entered on the docket of such court, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial,

reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not preclude such order from being a Final Order.

“General Unsecured Claims” means, collectively, any Claim against the Debtors that is not a/an Administrative Claim, Priority Tax Claim, Professional Fee Claim, Miscellaneous Secured Claim, Other Priority Claim, or Secured Lender Claim. For the avoidance of doubt, Rejection Claims, and the Secured Lender Deficiency Claims are General Unsecured Claims. To the extent applicable, the limitations imposed by section 502 of the Bankruptcy Code shall apply to the relevant General Unsecured Claim, including, without limitation, subsection 502(b)(6) and subsection 502(b)(7) thereof.

“General Unsecured Creditors Fund” means Cash in an aggregate amount equal to \$900,000 from the Sale Proceeds.

“Governmental Unit” shall have the meaning set forth in section 101(27) of the Bankruptcy Code.

“GUC Aggregate Litigation Proceeds” means the aggregate net proceeds recovered by the GUC Trust from Avoidance Actions and Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender).

“GUC Initial Litigation Proceeds” means the first \$500,000 of the GUC Aggregate Litigation Proceeds.

“GUC Trust” means the trust to be established in accordance with Section 5.05 of the Plan.

“GUC Trust Agreement” means the agreement to be executed between the GUC Trustee and the Debtors establishing the GUC Trust, which will be filed with the Plan Supplement.

“GUC Trust Assets” means the General Unsecured Creditors Fund, the GUC Initial Litigation Proceeds, Avoidance Actions and Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender) and the assets to be transferred to the GUC Trust on the Effective Date pursuant to Section 5.05 of the Plan.

“GUC Trust Documents” means the GUC Trust Agreement and any ancillary documents relating thereto.

“GUC Trustee” means the Person to be chosen by the Committee to serve as trustee of the GUC Trust, which Person shall be identified in the Plan Supplement and be reasonably acceptable to the Secured Lenders, or any successor trustee of the GUC Trust.

“Holder” means an Entity holding a beneficial interest in a Claim or Interest and, when used in conjunction with a Class or type of Claim or Interest, means a holder of a beneficial interest in a Claim or Interest in such Class or of such type.

“Impaired” means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Impaired Claim” means a Claim which is Impaired.

“Impaired Interest” means an Interest which is Impaired.

“Initial Distribution Date” means the Effective Date or as soon as reasonably practical thereafter; provided, however, that in no event shall the Initial Distribution Date be more than thirty (30) days after the Effective Date unless otherwise ordered by the Bankruptcy Court.

“Interests” means any and all equity interests, ownership interests or shares in the Debtors issued by the Debtors prior to the Petition Date (including, without limitation, all capital stock, stock certificates, common stock, preferred stock, partnership interests, membership and other interests in a corporation or limited liability company, rights, options, warrants, contingent warrants, convertible or exchangeable securities, investment securities, subscriptions or other agreements and contractual rights to acquire or obtain such an interest or share in the Debtors, conversion rights, repurchase rights, redemption rights, dividend rights, preemptive rights and liquidation preferences, puts, calls or commitments of any character whatsoever relating to any such equity, ownership interests or shares of capital stock of the Debtors or obligating the Debtors to issue, transfer or sell any shares of capital stock) whether or not certificated, transferable, voting or denominated “stock” or a similar security, and any Claim or Cause of Action related to or arising from any of the foregoing (including those subordinated pursuant to section 510(b) of the Bankruptcy Code).

“Liens” means, with respect to any asset or Property (or the rents, revenues, income, profits or proceeds therefrom), and in each case, whether the same is consensual or nonconsensual or arises by contract, operation of law, legal process or otherwise to the extent set forth in section 101(37) of the Bankruptcy Code: (a) any and all mortgages, liens, pledges, attachments, charges, leases evidencing a capitalizable lease obligation, conditional sale or other title retention agreement, or other security interest or encumbrance or other legally cognizable security devices of any kind in respect of any asset or Property, or upon the rents, revenues, income, profits or proceeds therefrom; or (b) any arrangement, express or implied, under which any Property is transferred, sequestered or otherwise identified for the purpose of subjecting or making available the same for the payment of debt or performance of any other obligation in priority to the payment of general unsecured Creditors.

“Lien and Claim Perfection Matters” has the meaning set forth in paragraph 14(a) of the Cash Collateral Order.

“Liquidating Trust” means the trust to be established in accordance with Section 5.05 of the Plan.

“Liquidating Trust Agreement” means the agreement to be executed between the Liquidation Trustee and the Debtors establishing the Liquidating Trust, which will be filed with the Plan Supplement.

“Liquidating Trust Assets” means the assets to be transferred to the Liquidating Trust on the Effective Date pursuant to Section 5.05 of the Plan.

“Liquidating Trust Documents” means the Liquidating Trust Agreement and any ancillary documents relating thereto.

“Liquidating Trust Reserve” means the Cash transferred to the Liquidating Trust on the Effective Date from the Sale Proceeds to fund the Unimpaired Claims Amount and the initial operations of the Liquidating Trust, which reserve shall not exceed \$400,000 plus the Unimpaired Claims Amount.

“Liquidation Trustee” means Mark A. Roberts, Managing Director with Alvarez & Marsal, or any successor trustee of the Liquidating Trust.

“Miscellaneous Secured Claims” means any Secured Claim other than the Secured Lender Claims, including without limitation, any Secured Claim arising from a Tax.

“Miscellaneous Secured Claims Collateral” means any Property subject to a Lien securing a Miscellaneous Secured Claim, which Lien is senior in priority to the Liens of the Petition Agent under applicable law and the Cash Collateral Order.

“Miscellaneous Secured Claim Sale Proceeds” means the Sale Proceeds, if any, attributable to Miscellaneous Secured Claims Collateral.

“Objection” means any objection, application, motion, complaint or any other legal proceeding seeking, in whole or in part, to Disallow, determine, liquidate, classify, reclassify or establish the priority, expunge, subordinate or estimate any Claim (including the resolution of any request for payment of any Administrative Claim) or Interest other than a Claim or an Interest that is Allowed.

“Other Priority Claims” means any Claim against the Debtors entitled to priority pursuant to section 507(a) of the Bankruptcy Code, other than a Priority Tax Claim or an Administrative Claim.

“Person” shall have the meaning set forth in section 101(41) of the Bankruptcy Code.

“Petition Date” means June 6, 2017.

“Plan” means this Joint Chapter 11 Plan dated as of September 18, 2017, including all exhibits, appendices, schedules and annexes, if any, attached hereto, as submitted by the Debtors, including the Plan Supplement, as such Plan may be altered, amended, supplemented or modified from time to time in accordance with the terms hereof, provisions of the Bankruptcy Code and the provisions of the Bankruptcy Rules, the Confirmation Order and the terms and conditions of Section 12.04 of the Plan.

“Plan Supplement” means the supplement to this Plan to be Filed with the Bankruptcy Court on or before the date that is ten (10) days prior to the Voting Deadline.

“Prepetition Agent” means Credit Suisse AG, Cayman Islands Branch (f/k/a Credit Suisse AG), in its capacity as administrative agent under the Prepetition Credit Documents.

“Prepetition Credit Documents” means that certain Credit and Security Agreement dated as of August 13, 2014 (as amended, restated, supplemented or otherwise modified from time to time), and all Loan Documents (as defined in such Credit and Security Agreement).

“Priority Tax Claim” means any and all Claims accorded priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

“Pro Rata Share” means, with respect to any Claim, a proportionate share, so that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the consideration distributed on account of all Allowed Claims in that Class is the same as the ratio such Claim bears to the total amount of all Allowed Claims in that Class (plus Disputed Claims in that Class until Disallowed).

“Professional Fee Claim” means a claim for compensation and/or reimbursement of expenses pursuant to sections 327, 328, 330, 331 or 503(b) of the Bankruptcy Code relating to services incurred on and after the Petition Date and prior to and including the Effective Date in connection with an application made to the Bankruptcy Court by Professionals in the Chapter 11 Cases.

“Professionals” means any professional employed in these Chapter 11 Cases pursuant to sections 327, 363 or 1103 of the Bankruptcy Code or any Professional entitled to compensation pursuant to sections 327, 328, 330, 331, 503(b)(2) or (4), or 1103 of the Bankruptcy Code.

“Property” means all assets or property of the Debtors’ respective Estates of any nature whatsoever, real or personal, tangible or intangible, including contract rights, accounts and Causes of Action, previously or now owned by the Debtors, or acquired by the Debtors’ respective Estates, as defined in section 541 of the Bankruptcy Code.

“Purchaser” means the purchaser under the Asset Purchase Agreement.

“Rejection Claims” means: (a) claims of any non-Debtor counterparty to any unexpired lease or any executory contract arising on account of the rejection of such lease or contract during the administration of these Chapter 11 Cases under section 365 of the Bankruptcy Code or pursuant to the Plan; and (b) any claims arising from the termination of or withdrawal from any pension plan of the Debtors qualified under ERISA.

“Related Persons” means, with respect to any Person, such Person’s predecessors, successors, assigns (whether by operation of law or otherwise) and present and former Affiliates and subsidiaries, and each of their respective current and former officers, directors, principals, employees, shareholders, members (including *ex officio* members), managers, managed accounts or funds, management companies, fund advisors, advisory board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants,

representatives, and other professionals, in each case acting in such capacity at any time on or after the Petition Date, and any Person claiming by or through any of them, including such Related Persons' respective heirs, executors, estates, servants, and nominees; provided, however, that no insurer of any Debtor shall constitute a Related Person.

"Releasees" means: (a) the Debtors, (b) the Secured Lenders (if Class 2 votes to accept the Plan and to the extent the applicable Secured Lender does not opt out of the release provided for herein), (c) the Committee and members of the Committee (if Class 4 votes to accept the Plan and to the extent the applicable Committee member does not opt out of the release provided for herein), (d) Landry's, Inc. (if Landry's, Inc. and its affiliated assignees under the Asset Purchase Agreement execute, prior to the Effective Date, a general release of the parties set forth in Section 10.03(b) of this Plan consistent with the release set forth in Section 10.03(b)); and (e) the Liquidation Trustee and the GUC Trustee; and in each case the respective Related Persons of each of the foregoing Entities, except as set forth in the Releases; provided, however, that the foregoing released parties above shall be released only from liabilities arising out of actions taken in such capacity; provided, further, however, the Debtors' former directors, members, managers, officers and employees as of the Petition Date shall not be considered Releasees.

"Retained Actions" means all claims, Causes of Action, rights of action, suits and proceedings, whether in law or in equity, whether known or unknown, which any Debtor or any Debtor's Estate may hold against any Person, including, without limitation, (a) claims and Causes of Action brought prior to the Effective Date, (b) claims and Causes of Action against any Persons for failure to pay for products or services provided or rendered by any of the Debtors, (c) claims and Causes of Action relating to strict enforcement of any of the Debtors' intellectual property rights, including patents, copyrights and trademarks, (d) claims and Causes of Action seeking the recovery of any of the Debtors' accounts receivable or other receivables or rights to payment created or arising in the ordinary course of any of the Debtors' businesses, including, without limitation, claim overpayments and tax refunds, (e) Commercial Tort Claims and (f) all Causes of Action that are Avoidance Actions.

"Sale" means the sale of certain or substantially all of the Debtors' assets under or in connection with the Asset Purchase Agreement.

"Sale and Bid Procedures" means the sale, bid and auction procedures set forth in the Sale and Bid Procedures Order.

"Sale and Bid Procedures Order" means the orders of the Bankruptcy Court (Docket Nos. 314 and 615) in the Chapter 11 Cases approving the Sale and Bid Procedures Motion.

"Sale Documents" means the Asset Purchase Agreement, the Schedule of Assumed Contracts, and any schedules, exhibits or other documents attached thereto or contemplated thereby, in each case as amended from time to time in accordance with their terms.

"Sale Proceeds" means, collectively, the proceeds arising from or in connection with the Sale under the Asset Purchase Agreement and the proceeds arising from or in connection with the sale, release, transfer, or other disposition of the Excluded Assets, whenever arising or occurring, whether before or after the Effective Date.

“Schedule of Assumed Contracts” means the schedule listing certain executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Purchaser under or in connection with the Asset Purchase Agreement, which schedule shall be set forth in or as an attachment or exhibit to the Asset Purchase Agreement.

“Scheduled” means with respect to any Claim or Interest, the status and amount, if any, of such Claim or Interest as set forth in the Schedules.

“Schedules” means the schedules of assets and liabilities and statements of financial affairs Filed by any of the Debtors in the Chapter 11 Cases, as required by section 521 of the Bankruptcy Code, as the same may have been or may be amended, modified or supplemented.

“Secured Claim” means any Claim that is secured in whole or part by a Lien which is valid, perfected and enforceable under applicable law on Property in which any of the Debtors’ respective Estates has an interest and is not subject to avoidance under the Bankruptcy Code or applicable non-bankruptcy law or that is subject to setoff under section 553 of the Bankruptcy Code, but in each case only to the extent of the value of the Claim holder’s interest in such Estate’s interest in such Property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code, as the case may be.

“Secured Lenders” means, collectively, the “Secured Parties” as defined in the Credit and Security Agreement, dated August 13, 2014, and the Prepetition Agent.

“Secured Lender Claims” means Claims of the Secured Lenders arising under the Prepetition Credit Documents but only to the extent that such Claims are Secured Claims.

“Secured Lender Collateral” means all Property subject to any Lien of the Prepetition Agent or any other Secured Lender.

“Secured Lender Fund” means, collectively, (a) all Sale Proceeds, less the aggregate, without duplication, of the following: (i) all amounts required to be paid by the Debtors under the Asset Purchase Agreement, including, without limitation, Cure Amounts; (ii) the General Unsecured Creditors Fund; (iii) the Liquidating Trust Reserve; (iv) the Breakup Fee (as defined in the Sale and Bid Procedures Order); (v) the GUC Initial Litigation Proceeds; (vi) all amounts allocable to the GUC Trust and (vii) the amount required to pay in full all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Convenience Claims (with respect to this clause (vii), in each case only to the extent such Allowed Claim is expressly included in the Approved Budget and is not an Assumed Liability under the Asset Purchase Agreement) and the reasonable fees, costs and expenses of the Liquidation Trustee, in each case in accordance with Section 5.02 of the Plan, plus (b) the amount of any Cash Collateral that existed as of the Closing Date.

“Secured Lender Fund Initial Payment Amount” means Cash in an aggregate amount of not less than \$38,000,000 from the Secured Lender Fund to be distributed on the Effective Date to holders of Allowed Class 2 Secured Lender Claims.

“Secured Lender Deficiency Claims” means Claims of the Secured Lenders arising under the Prepetition Credit Documents but only to the extent such Claims are not Secured Claims.

“Securities Act” means the Securities Act of 1933, as amended.

“Settlement Term Sheet” means the term sheet attached hereto as Exhibit A.

“Subsidiary Debtors” means all of the Debtors other than Ignite Restaurant Group, Inc.

“Tax” means any tax, charge, fee, levy, impost or other assessment by any federal, state, local or foreign governmental authority, including, without limitation, income, excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, *ad valorem*, estimated, severance, stamp, occupation and withholding tax, together with any interest, penalties, fines or additions attributable to, imposed by, or collected by any such federal, state, local or foreign Governmental Unit.

“Transferred Employees” shall have the meaning set forth in section 9.1(a) of the Asset Purchase Agreement.

“Unclaimed Property” means any Distribution of Cash or any other Property made to the Holder of an Allowed Claim pursuant to the Plan that is returned to the Debtors, the Liquidation Trustee or the GUC Trustee as undeliverable and no appropriate forwarding address is received prior to the date on which the Final Decree is entered in the Chapter 11 Cases, in the case of a Distribution made in the form of a check, is not negotiated and no request for reissuance is made as provided for in Section 5.07 of the Plan.

“Unimpaired” means any Claim that is not Impaired within the meaning of section 1124 of the Bankruptcy Code.

“Unimpaired Claims Amount” means Cash in an aggregate amount not to exceed \$6,700,000 from the Sale Proceeds, which aggregate amount shall be used solely to pay the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Convenience Claims, in each case only to the extent such Allowed Claim is expressly included in the Approved Budget and is not an Assumed Liability under the Asset Purchase Agreement.

“United States Trustee” means the United States Trustee appointed under section 581(a)(3) of title 28 of the United States Code to serve in the Southern District of Texas.

“U.S. Trustee’s Fee Claims” means any fees assessed against the Debtors’ Estates pursuant to section 1930(a)(6) of title 28 of the United States Code.

“Voting Agent” means Garden City Group.

Section 1.02 Rules of Interpretation. All references to “the Plan” herein shall be construed, where applicable, to include references to this document and all its exhibits, appendices, schedules and annexes, if any (and any amendments thereto made in accordance with the Bankruptcy Code). Whenever from the context it appears appropriate, each term stated

in either the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to the Plan as a whole and not to any particular paragraph, subparagraph, or clause contained in the Plan. The words “includes” and “including” are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included. The captions and headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Any term used in the Plan that is not defined in the Plan, either in Article I hereof or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in (and shall be construed in accordance with the rules of construction under) the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the case of a conflict or ambiguity). Without limiting the preceding sentence, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the Plan, unless superseded herein. In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) and Section 12.15 hereof shall apply, but Bankruptcy Rule 9006(a) shall govern.

Section 1.03 Exhibits. All Exhibits to the Plan, including the Plan Supplement, are incorporated into and are a part of the Plan as if set forth in full herein, regardless of when Filed.

ARTICLE II. CLASSIFICATION OF CLAIMS AND INTERESTS

Section 2.01 Summary. Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims and Interests. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class to the extent the Claim or Interest qualifies within the description of that different Class. Notwithstanding anything to the contrary herein, a Claim or Interest is placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim or an Allowed Interest in that Class and such Allowed Claim is not an Assumed Liability and has not been paid, released, settled or otherwise satisfied prior to the Effective Date. The classification of Claims under this Plan is as follows:

Class	Claim	Status	Entitled to Vote
1	Miscellaneous Secured Claims	Unimpaired	No
2	Secured Lender Claims	Impaired	Yes
3	Other Priority Claims	Unimpaired	No
4	General Unsecured Claims	Impaired	Yes
5	Convenience Claims	Unimpaired	No
6	Interests in the Debtors	Impaired	No

Section 2.02 Unclassified Claims. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims are not classified and are excluded from the Classes designated in this Article II of the Plan. The treatment accorded Administrative Claims and Priority Tax Claims is set forth in Article III of the Plan.

Section 2.03 Unimpaired Classes Deemed to Accept. The Plan classifies the following Unimpaired Claims that are not entitled to vote on the Plan. Pursuant to section 1126(f) of the Bankruptcy Code, each Holder of a Claim in the following Classes is conclusively presumed to have accepted the Plan in respect of such Claims and is not entitled to vote to accept or reject the Plan:

Class 1 shall consist of all Miscellaneous Secured Claims.

Class 3 shall consist of all Other Priority Claims.

Class 5 shall consist of all Convenience Claims.

Section 2.04 Impaired Classes Entitled to Vote. The Plan classifies the following Classes as the only Impaired Classes that may receive a Distribution under the Plan and that are entitled to vote to accept or reject the Plan:

Class 2 shall consist of all Secured Lender Claims.

Class 4 shall consist of all General Unsecured Claims (other than Convenience Claims).

Section 2.05 Impaired Classes Deemed to Reject. The Plan classifies the following Impaired Class of Interests as an Impaired Class that is not entitled to vote to accept or reject the Plan. Pursuant to section 1126(g) of the Bankruptcy Code, each Holder of an Interest in this Class is conclusively presumed to have rejected the Plan in respect of such Interests because the Plan does not entitle the Holders of such Interests to receive or retain any Property under the Plan on account of such Interests. Accordingly, Holders of such Interests are not entitled to vote to accept or reject the Plan:

Class 6 shall consist of all Interests in the Debtors.

ARTICLE III. PROVISIONS FOR TREATMENT OF CLASSES OF CLAIMS AND INTERESTS

Section 3.01 Satisfaction of Claims and Interests. The treatment of and consideration to be received by Holders of Allowed Claims or Allowed Interests pursuant to this Article III and the Plan shall be in full satisfaction, settlement, release, and extinguishment of their respective Claims against or Interests in the Debtors and the Debtors' respective Estates, except as otherwise provided in the Plan or the Confirmation Order.

Section 3.02 Unclassified Claims, Classified Unimpaired and Impaired Claims and Classified Interests. Administrative Claims and Priority Tax Claims are treated in accordance

with section 1129(a)(9)(A) and section 1129(a)(9)(C) of the Bankruptcy Code, respectively. Such Claims are Unimpaired under the Plan and, in accordance with section 1123(a)(1) of the Bankruptcy Code, are not designated as Classes of Claims for purposes of this Plan and for purposes of sections 1123, 1124, 1126 and 1129 of the Bankruptcy Code. In addition, Class 1, Class 3 and Class 5 Claims are classified as Unimpaired. In accordance with section 1126(f) of the Bankruptcy Code, the Holders of Claims in such Classes are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan. Class 2 Claims and Class 4 Claims are Impaired and the Holders thereof are entitled to vote to accept or reject the Plan on account of such Allowed Claims. Class 6 Interests are Impaired under the Plan and the Holders thereof will neither receive nor retain any Property on account of such Interests and, pursuant to section 1126(g) of the Bankruptcy Code, Holders of such Interests are conclusively presumed to have rejected the Plan and are not entitled to vote to accept or reject the Plan on account of such Interests.

Section 3.03 Administrative Claims.

- (a) General. Unless otherwise provided for herein, and subject to (x) the bar date provisions set forth in subsection (c) of this Section 3.03 and (y) additional requirements for Professionals and certain other entities set forth in this Section 3.03, each Holder of an Allowed Administrative Claim shall receive in full satisfaction, settlement, release, and extinguishment of such Claim in accordance with Section 5.02 of the Plan: (a) the amount of such unpaid Allowed Claim in Cash on or as soon as reasonably practicable after the later of (i) the Effective Date, (ii) the date on which such Administrative Claim becomes Allowed, (iii) a date agreed to in writing by the Debtors and the Holder of such Administrative Claim, and (iv) the date on which the Administrative Claim becomes due in accordance with its terms if not Disputed; or (b) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors or as the Bankruptcy Court may order; provided, however, that any Administrative Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser.
- (b) Payment of Statutory Fees. All U.S. Trustee's Fee Claims, as determined, if necessary, by the Bankruptcy Court at the hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid on or before the Effective Date by the Debtors. On and after the Effective Date, the Liquidating Trust shall pay any and all such fees when due and payable and in accordance with Section 5.02 of this Plan, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the United States Trustee. Each Debtor shall remain obligated to pay quarterly fees to the Office of the United States Trustee until the earliest of that particular Debtor's case being closed, dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.
- (c) Bar Date for Administrative Claims.

- (i) General. Except for Administrative Claims of Professionals for Professional Fee Claims, which are addressed in Section 3.03(c)(ii) below, and except as otherwise provided herein, requests for payment of Administrative Claims must be Filed and served on counsel for the Debtors no later than (x) the Administrative Claim Bar Date, or (y) such later date, if any, as the Bankruptcy Court shall order upon application made prior to the end of the Administrative Claim Bar Date. Holders of Administrative Claims (including, without limitation, the holders of any Claims for federal, state or local taxes) that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date shall be forever barred from asserting such Claims against any of the Debtors, the Liquidation Trustee, the GUC Trustee or any of their respective properties.
- (ii) Professionals. Applications for compensation for services rendered and reimbursement of expenses incurred by Professionals from the Petition Date through the Effective Date shall be Filed no later than forty-five (45) days after the Effective Date or such later date as the Bankruptcy Court approves. Such applications shall be served on: (a) the Debtors; (b) Sarah Robinson Borders, King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, counsel to the Debtors; (c) the Office of the United States Trustee; (d) Keith Simon and David Hammerman, Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022, counsel for the Secured Lenders; and (e) Bradford J. Sandler, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, counsel to the Official Committee of Unsecured Creditors. Applications that are not timely Filed will not be considered by the Court. The Debtors, Liquidation Trustee, and the GUC Trustee, as the case may be, may pay any Professional fees and expenses incurred after the Effective Date without any application to the Bankruptcy Court, in each case subject to Section 5.02 of the Plan.

Section 3.04 [RESERVED]

Section 3.05 Priority Tax Claims. Each Holder of an Allowed Priority Tax Claim shall receive, in the sole discretion of the Debtors, in full satisfaction, settlement, release, and extinguishment of such Claim and in accordance with Section 5.02 of the Plan: (a) Cash equal to the amount of such Allowed Priority Tax Claim on or as soon as practicable after the latest of (i) the Effective Date, (ii) the date that such Priority Tax Claim becomes Allowed, and (iii) a date agreed to by the Debtors and the Holder of such Priority Tax Claim; or (b) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors; provided, however, that any Priority Tax Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.

Section 3.06 Class 1: Miscellaneous Secured Claims.

- (a) Classification: Class 1 consists of all Miscellaneous Secured Claims against the Debtors.

- (b) Treatment: The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Allowed Miscellaneous Secured Claims. In accordance with Section 5.02 of the Plan, each Holder of an Allowed Class 1 Miscellaneous Secured Claim shall receive, in the sole discretion of the Debtors in full satisfaction, settlement, release, and extinguishment of such Claim: (a) Cash equal to the amount of such Allowed Miscellaneous Secured Claim solely from the Miscellaneous Secured Claim Sale Proceeds on or as soon as practicable after the latest of (i) the Effective Date, (ii) the date that such Miscellaneous Secured Claim becomes Allowed, and (iii) a date agreed to by the Debtors and the Holder of such Class 1 Miscellaneous Secured Claim; (b) the Property securing such Miscellaneous Secured Claim without representation or warranty by or recourse against the Debtors; (c) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; or (d) such other less favorable treatment on such other terms and conditions as may be agreed upon in writing by the Holder of such Claim and the Debtors; provided, however, that any Class 1 Miscellaneous Secured Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.
- (c) Voting: Class 1 is Unimpaired and the Holders of Class 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 1 are not entitled to vote to accept or reject the Plan.

Section 3.07 Class 2: Secured Lender Claims.

- (a) Classification: Class 2 consists of all Secured Lender Claims against the Debtors.
- (b) Allowance. As of the Effective Date, the Secured Lender Claims are Allowed Claims, and shall not be subject to any avoidance, reductions, setoff, offset, recoupment, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, crossclaims, defenses, disallowance, impairment, objection, or any other challenges under any applicable law or regulation by any Person or Entity to the extent provided for in the Final Cash Collateral Order and this Plan.
- (c) Treatment: Class 2 Secured Lender Claims are Impaired. Subject to Section 5.02 of this Plan, each Holder of an Allowed Class 2 Secured Lender Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Claim, (i) on the Effective Date, and as a condition precedent thereto, its Pro Rata Share of the Secured Lender Fund Initial Payment Amount; and (ii) on each Distribution Date subsequent to the Effective Date, or as soon thereafter as is reasonably practicable, its Pro Rata Share of any available funds in the Secured Lender Fund until the Consummation Date.

- (d) Voting: Class 2 is Impaired and the Holders of Class 2 Claims are entitled to vote to accept or reject the Plan.

Section 3.08 Class 3: Other Priority Claims.

- (a) Classification: Class 3 consists of all Other Priority Claims.
- (b) Treatment: The legal, equitable and contractual rights of the Holders of Allowed Class 3 Claims are unaltered by this Plan. On, or as soon as reasonably practicable after, the later of (i) the Initial Distribution Date if such Class 3 Claim is an Allowed Class 3 Claim as of the Effective Date and (ii) the date on which such Class 3 Claim becomes an Allowed Class 3 Claim, each Holder of an Allowed Class 3 Claim shall receive in full satisfaction, settlement, discharge and release of, and in exchange for, such Allowed Class 3 Claim, at the election of the Debtors, but in each case with the consent of the Secured Lenders and in accordance with Section 5.02 of the Plan: (A) Cash equal to the amount of such Allowed Class 3 Claim; (B) such other less favorable treatment as to which the Debtors and the Holder of such Allowed Class 3 Claim shall have agreed upon in writing; or (C) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code; provided, however, that Class 3 Claims incurred by any Debtor in the ordinary course of business may be paid in the ordinary course of business by such applicable Debtor in accordance with the terms and conditions of any agreements relating thereto without further notice to or order of the Bankruptcy Court; provided further that any Class 3 Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.
- (c) Voting: Class 3 is Unimpaired and the Holders of Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 3 are not entitled to vote to accept or reject the Plan.

Section 3.09 Class 4: General Unsecured Claims.

- (a) Classification: Class 4 consists of all General Unsecured Claims against the Debtors (other than Convenience Claims, if any).
- (b) Treatment: Subject to Section 5.02 of this Plan, on either (i) the first Distribution Date after the Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed, or (ii) the first Distribution Date after the date on which any objection to such General Unsecured Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court, each Holder of an Allowed Class 4 General Unsecured Claim (excluding the Secured Lender Deficiency Claims) shall receive, in accordance with the GUC Trust Documents, its Pro Rata Share of the General Unsecured Creditors Fund and the GUC Initial

Litigation Proceeds. On each subsequent Distribution Date or as soon thereafter as is reasonably practicable, the GUC Trustee shall, until the Consummation Date, continue to distribute to (i) Holders of Allowed Class 4 General Unsecured Claims (excluding the Secured Lender Deficiency Claims) their respective Pro Rata Shares of any available funds in the General Unsecured Creditors Fund and the GUC Initial Litigation Proceeds and (ii) Holders of Allowed Class 4 General Unsecured Claims (including the Secured Lender Deficiency Claims) their respective Pro Rata Shares of the GUC Aggregate Litigation Proceeds to the extent that the GUC Aggregate Litigation Proceeds exceeds \$500,000. Notwithstanding anything to the contrary herein, any Class 4 General Unsecured Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.

- (c) Voting: Class 4 is Impaired and the Holders of Class 4 Claims are entitled to vote to accept or reject the Plan.

Section 3.10 Class 5: Convenience Claims.

- (a) Classification: Class 5 consists of all Convenience Claims, if any, against the Debtors.
- (b) Treatment: On either (i) the first Distribution Date after the Claims Objection Deadline has occurred, if no objection to such Claim has been timely filed, or (ii) the first Distribution Date after the date on which any objection to such Convenience Claim is settled, withdrawn or overruled pursuant to a Final Order of the Bankruptcy Court, each Holder of an Allowed Class 5 Convenience Claim shall receive, in full satisfaction, settlement, release, and extinguishment of such Claim, Cash in an amount equal to 100% of such Allowed Claim in accordance with Section 5.02 of the Plan. Any Holder of an Allowed General Unsecured Claim in excess of the Convenience Class Cap may elect to reduce its Claim to the Convenience Class Cap. Notwithstanding anything to the contrary herein, any Class 5 Convenience Claim that constitutes an Assumed Liability under the Asset Purchase Agreement that remains unpaid as of the Closing Date shall be paid in full in Cash by the Purchaser in the ordinary course of business.
- (c) Voting: Class 5 is Unimpaired and the Holders of Class 5 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, the Holders of Claims in Class 5 are not entitled to vote to accept or reject the Plan.

Section 3.11 Class 6: Interests in the Debtors.

- (a) Classification: Class 6 consists of all Interests in the Debtors.
- (b) Treatment: Holders of Class 6 Interests in all of the Debtors shall not receive or retain any distribution or Property under the Plan on account of such Interests. On the Effective Date, all Interests shall be cancelled without further notice to, approval of, or action by any Entity.
- (c) Voting: Class 6 is an Impaired Class. Pursuant to section 1126(g) of the Bankruptcy Code, Holders of Class 6 Interests are conclusively deemed to have rejected this Plan and, therefore, are not entitled to vote to accept or reject the Plan.

**ARTICLE IV.
ACCEPTANCE OR REJECTION OF THE PLAN; CRAMDOWN**

Section 4.01 Acceptance by Impaired Classes of Claims and Interests. Pursuant to section 1126(c) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted the Plan if: (a) the Holders of at least two-thirds (2/3) in dollar amount of the Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept the Plan, and (b) more than one-half (1/2) in number of the Holders of such Allowed Claims actually voting in such Class (other than Claims held by any Holder designated pursuant to section 1126(e) of the Bankruptcy Code) have timely and properly voted to accept the Plan. No Class of Interests is entitled to vote on the Plan pursuant to section 1126 of the Bankruptcy Code.

Section 4.02 Voting Classes. Except as otherwise required by the Bankruptcy Code or the Bankruptcy Rules or as otherwise provided in this Section 4.02, the Holders of Claims in Classes 2 and 4 shall be entitled to vote to accept or reject the Plan in accordance with Section 4.01 of the Plan. Classes of Claims Unimpaired under the Plan (Miscellaneous Secured Claims (Class 1), Other Priority Claims (Class 3), and Convenience Class Claims (Class 5)) shall not be entitled to vote to accept or reject the Plan, and shall be conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Class of Interests that is Impaired under the Plan and whose Holders neither receive nor retain any property on account of such Interests under the Plan (Interests in the Debtors (Class 6)) shall not be entitled to vote to accept or reject the Plan and shall be conclusively presumed to have rejected the Plan. Administrative Claims and Priority Tax Claims are Unimpaired and not classified under the Plan and hence are not entitled to vote to accept or reject the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Section 4.03 Ballot Instructions. Each Holder of a Claim entitled to vote on the Plan will be asked to complete and return a Ballot to the Voting Agent, which will compile the votes so received. Any questions as to the validity, form, and eligibility (including time of receipt) of Ballots will be resolved by the Bankruptcy Court upon application or at the Confirmation Hearing.

Section 4.04 Elimination of Vacant Classes. Any Class of Claims that is not occupied as of the commencement of the Confirmation Hearing by an Allowed Claim or a Claim temporarily allowed under Bankruptcy Rule 3018, and as to which no vote is cast, shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

Section 4.05 Cramdown. If all applicable requirements for Confirmation of the Plan are met as set forth in section 1129(a) of the Bankruptcy Code except subsection (8) thereof, the Debtors may request that the Bankruptcy Court confirm the Plan in accordance with section 1129(b) of the Bankruptcy Code, notwithstanding the requirements of section 1129(a)(8) thereof, on the bases that the Plan is fair and equitable, and does not discriminate unfairly, with respect to each Class of Claims or Interests that is Impaired under, and has not accepted, the Plan.

ARTICLE V. PROVISIONS GOVERNING DISTRIBUTIONS UNDER THE PLAN

Section 5.01 Timing of Distributions. Except as specifically set forth in the Plan and as otherwise provided in this Article V, Distributions to be made on the Effective Date to Holders of Claims that are Allowed as of the Effective Date will be deemed made on the Effective Date if made on the Effective Date or as promptly thereafter as practicable, but in any event no later than: (a) 30 days after the Effective Date or (b) 30 days after such later date when the applicable conditions of Section 6.02 (regarding cure payments for executory contracts and unexpired leases being assumed) and Section 5.05 (regarding undeliverable Distributions) are satisfied. Distributions on account of Claims that become Allowed Claims after the Effective Date will be made pursuant to Section 5.03 of the Plan.

Section 5.02 Sources and Uses of Property for Plan Distributions.

- (a) Unimpaired Claims. Notwithstanding anything in this Plan to the contrary, the Debtors and Liquidation Trustee shall satisfy the Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, and Allowed Convenience Claims solely from the Liquidating Trust Assets, and no other asset or Property of the Debtors, or their Estates and no other portion of the Sale Proceeds or Secured Lender Fund, shall be required to be used or otherwise monetized to pay or otherwise fund such Claims, whether Allowed as of the Effective Date or thereafter.
- (b) Distributions to the Prepetition Agent. In accordance with the Lien and Claim Perfection Matters, no Distribution or other payment made by a Debtor or its estate in accordance with the Plan to the Prepetition Agent shall, after receipt thereof by the Prepetition Agent, be subject to avoidance, disgorgement, recoupment, return, or other challenge.
- (c) Professional Fee Claims of the Committee. In the event and only to the extent that the allowed Professional Fee Claims of the Committee exceeds \$500,000 in

the aggregate, such excess amount shall be paid by the GUC Trustee solely from the General Unsecured Creditors Fund (for the avoidance of doubt, the first \$500,000 of allowed Professional Fee Claims of the Committee are being paid under the Final Cash Collateral Order from funds of the Debtors and their estates).

- (d) Maximum Class 4 Recovery Percentage. In accordance with the Settlement Term Sheet, the percentage recovery to Holders of Allowed Class 4 General Unsecured Claims (excluding the Secured Lender Deficiency Claims) may not exceed the percentage recovery to Holders of Allowed Class 2 Secured Lender Claims. In such event, the GUC Trustee shall provide such additional Distributions to the Prepetition Agent on behalf of Holders of Allowed Class 2 Secured Lender Claims as may be required to equalize such percentage recoveries.
- (e) Miscellaneous Secured Lender Claims. The Debtors and the Liquidation Trustee shall fund all Distributions in respect of Miscellaneous Secured Lender Claims, if any, from Miscellaneous Secured Lender Sale Proceeds.
- (f) Liquidation Trustee. The reasonable fees, costs, and expenses of the Liquidation Trustee (including any reasonable fees, costs, and expenses incurred by professionals to or advisors for the Liquidation Trustee) shall be paid solely from the Liquidation Trust Reserve and any other proceeds of the Liquidation Trust Assets.
- (g) GUC Trustee. The reasonable fees, costs, and expenses of the GUC Trustee (including any reasonable fees, costs, and expenses incurred by professionals to or advisors for the GUC Trustee) shall be paid solely from the General Unsecured Creditors Fund and the GUC Initial Litigation Proceeds.

Section 5.03 Distributions to Holders of Allowed Claims. Except as otherwise provided herein, the Debtors, the Liquidation Trustee, or the GUC Trustee, as applicable, shall make all Distributions required under the Plan in a manner consistent with the Plan. Distributions to Holders of Allowed Claims will be made in accordance with Article III and Section 5.02 of the Plan. If any dispute arises as to the identity of a Holder of an Allowed Claim who is to receive any Distribution, the Liquidation Trustee, the GUC Trustee or the Debtors shall, as appropriate and in lieu of making such Distribution to such Holder, delay such Distribution until the disposition thereof shall be determined by Final Order of the Bankruptcy Court or by written agreement among the interested parties to such dispute.

Section 5.04 Distributions After Allowance. As soon as practicable after (a) the occurrence of the applicable Claims Objection Deadline, if no objection to such Claim has been timely filed, or (b) the Disputed Claim becomes an Allowed Claim, the Debtors, the Liquidation Trustee or the GUC Trustee, as the case may be, will distribute to the Holder thereof all Distributions to which such Holder is then entitled under this Plan in accordance with Article III and Section 5.02 of the Plan. All Distributions made under this Section of the Plan will be made together with any dividends, payments, or other Distributions made on account of, as well as any obligations arising from, the distributed property as if such Claim had been an Allowed Claim on

the dates Distributions were previously made to Allowed Holders included in the applicable Class in accordance with Article III and Section 5.02 of the Plan.

Section 5.05 Liquidating Trust; GUC Trust. The Liquidating Trust shall be established to receive certain Property of the Debtors and to distribute such Property to certain Creditors in accordance with the Plan. Except as otherwise expressly provided in the Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all Property comprising the Estates of the Debtors not conveyed to the Purchaser under the Asset Purchase Agreement excluding the General Unsecured Creditors Fund, Avoidance Actions, Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender), and GUC Aggregate Litigation Proceeds, shall automatically vest in the Liquidating Trust, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished subject to the rights of Holders of Allowed Claims to obtain distributions provided for in this Plan; provided that the Secured Lender Fund and the Secured Lender Collateral shall continue to be subject to the Liens of the Prepetition Agent and other Secured Lenders. In no event shall any property of any kind be returned by, or otherwise transferred from, the Liquidating Trust to any Debtor.

The Liquidating Trust shall qualify as a liquidating trust as described in Treasury Regulation section 301.7701-4(d) and shall be treated as a grantor trust for United States federal income tax purposes. The Debtors with the agreement of the Secured Lenders and any Committee shall appoint the Liquidation Trustee, who shall have the authority to manage the day-to-day operations of the Liquidating Trust, including, without limitation, by disposing of the assets of the Liquidating Trust, appearing as a party in interest, calculating distributions, paying taxes and such other matters as more particularly described in Section 7.03 of the Plan and the Liquidating Trust Agreement. The reasonable expenses of the Liquidating Trust, including the reasonable expenses of the Liquidation Trustee and his representatives and professionals, will be satisfied from the assets of the Liquidating Trust and its proceeds, as set forth in the Liquidating Trust Agreement, in each case in accordance with Section 5.02 of the Plan.

The GUC Trust shall be established to receive the General Unsecured Creditors Fund, Avoidance Actions, Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender), GUC Aggregate Litigation Proceeds, and any other Property allocable to the GUC Trust under the terms of the Plan and to distribute proceeds thereof in accordance with the Plan. Except as otherwise expressly provided in the Plan, pursuant to sections 1123(a)(5), 1123(b)(3) and 1141(b) of the Bankruptcy Code, all such Property shall automatically vest in the GUC Trust, free and clear of all Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests of Creditors and equity security holders on the Effective Date, with all such Claims, Liens, contractually-imposed restrictions, charges, encumbrances and Interests being extinguished subject to the rights of Holders of Allowed Claims to obtain distributions provided for in this Plan. In no event shall any property of any kind be returned by, or otherwise transferred from, the GUC Trust to any Debtor.

The GUC Trust shall qualify as a liquidating trust as described in Treasury Regulation section 301.7701-4(d) and shall be treated as a grantor trust for United States federal income tax purposes. The GUC Trustee shall have the authority to manage the day-to-day operations of the GUC Trust, including, without limitation, by disposing of the assets of the GUC Trust, appearing as a party in interest, calculating distributions, paying taxes and such other matters as more particularly described in Section 7.03 of the Plan and the GUC Trust Agreement. The reasonable expenses of the GUC Trust, including the reasonable expenses of the GUC Trustee and his representatives and professionals, will be satisfied from the assets of the GUC Trust and its proceeds, as set forth in the GUC Trust Agreement, in each case in accordance with Section 5.02 of the Plan.

Section 5.06 Delivery of Distributions. Distributions to Holders of Allowed Claims shall be made by the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate: (a) at the last known addresses of such Holders or (b) at the addresses set forth in any written notices of address changes delivered to the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate. If any Holder's Distribution is returned as undeliverable, no further Distributions to such Holder shall be made unless and until to the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, is notified of such Holder's then current address, at which time all missed distributions shall be made to such Holder without interest. Distributions on account of the Allowed Secured Lender Claims and Allowed Secured Lender Deficiency Claims shall be made to the Prepetition Agent, who shall act as the distribution agent with respect to such Claims in accordance with the terms and conditions of this Plan and the Prepetition Credit Documents.

Section 5.07 Method of Cash Distributions. Any Cash payment to be made pursuant to the Plan may be made by Cash, draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law at the option of the Liquidation Trustee, the GUC Trustee, or the Debtors, as appropriate.

Section 5.08 Failure to Negotiate Checks. Checks issued in respect of Distributions under the Plan shall be null and void if not negotiated within sixty (60) days after the date of issuance. Any amounts returned to the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, in respect of such non-negotiated checks shall be forwarded to (if necessary) and held by the Debtors, the Liquidation Trustee or the GUC Trustee, as the case may be. Requests for reissuance for any such check shall be made directly to the issuer of the check by the Holder of the Allowed Claim with respect to which such check originally was issued. All amounts represented by any voided check will be held until the earlier of: (a) one (1) month after the date on which the check is voided, and (b) the date on which the Bankruptcy Court enters the Final Decree, and all requests for reissuance by the Holder of the Allowed Claim in respect of a voided check are required to be made prior to such date. Thereafter, all such amounts shall be deemed to be Unclaimed Property, in accordance with Section 5.09 of the Plan, and all Holders of Claims in respect of void checks shall be forever barred, estopped and enjoined from asserting a claim to such funds in any manner against the Debtors or their respective assets, the Liquidation Trustee, the Liquidating Trust, the GUC Trustee or the GUC Trust notwithstanding any federal or state escheat laws to the contrary. In such case, any Cash held for payment on account of such Claims shall revert to the Liquidating Trust or the GUC Trust, as appropriate, free and clear of any restrictions thereon except as provided elsewhere in the Plan, and shall thereafter be distributed in accordance with Article III and Section 5.02 of the Plan.

Section 5.09 Unclaimed Distributions. All Property distributed on account of Claims must be claimed prior to the date on which the Bankruptcy Court enters the Final Decree, or, in the case of a Distribution made in the form of a check, must be negotiated and a request for reissuance be made as provided for in Section 5.08 of the Plan. All Unclaimed Property will be retained by and will vest in the Liquidating Trust or the GUC Trust, as appropriate, to be subsequently distributed in accordance with Article III and subject to Section 5.02 of this Plan. All full or partial payments made by the Debtors and received by the Holder of a Claim prior to the Effective Date will be deemed to be payments under the Plan for purposes of satisfying the obligations of the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, pursuant to the Plan. Nothing contained in the Plan shall require the Debtors, the Liquidation Trustee or the GUC Trustee to attempt to locate any Holder of an Allowed Claim other than by reviewing the records of the Debtors and any Claims filed in the Chapter 11 Cases. All Claims in respect of Unclaimed Property shall be deemed Disallowed and the Holder of any Claim Disallowed in accordance with this Section 5.09 will be forever barred, expunged, estopped and enjoined from asserting such Claim in any manner against the Debtors or their respective assets, the Liquidation Trustee, the Liquidation Trust, the GUC Trustee or the GUC Trust notwithstanding any federal or state escheat laws to the contrary.

Section 5.10 Expunging of Certain Claims. All Claims marked or otherwise designated as “contingent, unliquidated or disputed” on the Debtors’ Schedules and for which no proof of claim has been timely filed, shall be deemed Disallowed and such Claim may be expunged without the necessity of filing a claim objection and without any further notice to, or action, order or approval of the Bankruptcy Court.

Section 5.11 No Distributions on Late-Filed Claims. Except as otherwise provided in a Final Order of the Bankruptcy Court, any Claim as to which a proof of claim was required to be filed and was first filed after the applicable Bar Date in the chapter 11 Cases, including, without limitation, any Bar Date established in the Plan or in the Confirmation Order, shall automatically be deemed a late-filed Claim that is Disallowed in the chapter 11 Cases, without the need for (a) any further action by the Liquidation Trustee or the GUC Trustee, as appropriate, or (b) an order of the Bankruptcy Court. Nothing in this paragraph is intended to expand or modify the applicable Bar Dates or any orders of the Bankruptcy Court relating thereto.

Section 5.12 Limitation on Distribution Rights. Except with respect to the Allowed Secured Lender Claims and Allowed Secured Lender Deficiency Claims, if a claimant holds more than one Claim in any one Class, all Claims of the claimant in that Class will be aggregated into one Claim and one distribution will be made with respect to the aggregated Claim.

Section 5.13 Fractional Dollars. Notwithstanding any other provision of the Plan, Cash distributions of fractions of dollars will not be made; rather, whenever any payment of a fraction of a dollar would be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash remains undistributed as a result of the rounding of such fraction to the nearest whole cent, such Cash shall be treated as Unclaimed Property pursuant to Section 5.09 of this Plan.

Section 5.14 Compliance With Tax Requirements. In connection with each Distribution with respect to which the filing of an information return (such as an Internal

Revenue Service Form 1099 or 1042) or withholding is required, the Debtors, the Liquidation Trustee and/or the GUC Trustee, as appropriate, shall file such information return with the Internal Revenue Service and provide any required statements in connection therewith to the recipients of such Distribution or effect any such withholding and deposit all moneys so withheld as required by law. With respect to any Person from whom a tax identification number, certified tax identification number or other tax information required by law to avoid withholding has not been received by the Debtors, the Liquidation Trustee and/or the GUC Trustee, as appropriate, within thirty (30) days from the date of such request, the Debtors, the Liquidation Trustee and/or the GUC Trustee, as appropriate, may, at their or its option, withhold the amount required and distribute the balance to such Person or decline to make such Distribution until the information is received.

Section 5.15 Character of Distributions. To the extent that any Allowed Claim entitled to a Distribution under the Plan comprises indebtedness and accrued but unpaid interest thereon, such Distribution shall, to the extent permitted by applicable law, be allocated for income tax purposes to the principal amount of the Claim first and then, to the extent that the consideration exceeds the principal amount of the Claim, to the portion of such Claim representing accrued but unpaid interest.

Section 5.16 De Minimis Distributions. No Cash payment of less than fifty (\$50.00) dollars shall be made to any Holder of an Allowed Claim on account of such Allowed Claim.

Section 5.17 No Payment or Distribution Pending Allowance. All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by agreement of the Debtors, the Liquidation Trustee, or the GUC Trustee, as appropriate, and the Holder of such Claim, by operation of law, by Final Order, or by this Plan. Notwithstanding any other provision in the Plan, no payment or distribution shall be made on account of or with respect to any Claim to the extent it is a Disputed Claim unless and until the Disputed Claim becomes an Allowed Claim.

Section 5.18 Distributions on Insured Claims. If any Holder has asserted a Claim that is covered as to liability, in whole or in part, by an insurance policy that is assumed or otherwise remains in effect pursuant to the terms of this Plan, such Holder will have an Allowed Claim entitled to a Distribution under this Plan only to the extent of any deductible or self-insured retention under the applicable insurance policy that was unpaid or otherwise unexhausted as of the Petition Date. Notwithstanding the foregoing, the Holder shall be entitled to pursue recovery of any amount in excess of such unpaid deductible or self-insured retention from the applicable insurance carrier, and, in connection therewith, such Holder may continue to pursue the balance of such Claim against the Debtors solely for the purposes of liquidating such Claim and obtaining payment of the balance of such liquidated Claim from any otherwise applicable insurance policy. Except as otherwise provided in the applicable insurance policy, the applicable insurance carrier may, at its expense, employ counsel, direct the defense, and determine whether and on what terms to settle any Claim for the purposes of determining the amount of insurance proceeds that will be paid on account of such Claim. If after liquidation of a Claim pursuant to this Section, it is determined that there are insufficient insurance proceeds available to satisfy the amount of such Claim that is in excess of any unpaid deductible or self-insured retention, then the Holder of such Claim shall have an Allowed Claim in the amount of such insufficiency. For the avoidance of doubt, the Holder of a claim arising under the Debtors' workers compensation

program that is covered as to liability, in whole or in part, by an insurance policy that is assumed or otherwise remains in effect, shall be entitled to pursue recovery of any amount from the applicable insurance carrier, and, in connection therewith, such Holder may continue to pursue the such Claim against the Debtors solely for the purposes of liquidating such Claim and obtaining payment from any otherwise applicable insurance policy.

ARTICLE VI.
EXECUTORY CONTRACTS AND UNEXPIRED LEASES; INDEMNIFICATION
OBLIGATIONS; BENEFIT PROGRAMS

Section 6.01 Treatment of Executory Contracts and Unexpired Leases. All executory contracts and unexpired leases of the Debtors shall be deemed rejected by the Debtors as of the Effective Date, except for any executory contract or unexpired lease that: (a) has previously been assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court on or prior to the Confirmation Date or (b) is the subject of a pending motion to assume, assume and assign, or reject as of the Confirmation Date. The assumption, assumption and assignment, and rejection of executory leases and unexpired contracts under this Plan shall be governed by the terms of the Asset Purchase Agreement, the Sale Documents, the Sale and Bid Procedures, and other orders of the Bankruptcy Court.

Section 6.02 Cure of Defaults for Assumed Contracts and Leases. The cure of all defaults under executory contracts and unexpired leases to be assumed and assigned under the Asset Purchase Agreement, including the resolution of all objections to the adequacy of assurance of future performance under such contracts and leases and as to the adequacy of amounts proposed to cure defaults under such contracts and leases, shall be governed by the terms and conditions of the Sale and Bid Procedures, the Asset Purchase Agreement, the Sale Documents, any order approving the Asset Purchase Agreement or authorizing the Sale, and other orders of the Court; provided however that any amounts to be paid by the Debtors in respect of such Assumed Contracts and Leases, including without limitation Cure Amounts, shall be funded in accordance with Section 5.02 of the Plan from the Sale Proceeds.

Section 6.03 Bar Date for Claims for Rejection Damages. Claims arising out of the rejection of any executory contract or unexpired lease pursuant to Article VI of the Plan must be filed with the Bankruptcy Court no later than the later of (a) thirty (30) days after the Effective Date, and (b) thirty (30) days after the entry of an order rejecting such executory contract or unexpired lease. Any Claim not filed within such time period shall be forever barred. The Debtors, the Liquidation Trustee, the GUC Trustee, and other parties in interest to the extent provided by section 502(a) of the Bankruptcy Code shall have the right to object to any Claim arising out of the rejection of an executory contract or unexpired lease pursuant to the terms of Section 8.04 of this Plan.

Section 6.04 Treatment of Rejection Claims. The Bankruptcy Court shall determine any objections Filed in accordance with Section 8.04 hereof at a hearing to be held on a date to be determined by the Bankruptcy Court. Subject to any statutory limitation, including, but not limited to the limitations contained in sections 502(b)(6) and 502(b)(7) of the Bankruptcy Code, any Claims arising out of the rejection of executory contracts and unexpired leases shall,

pursuant to section 502(g) of the Bankruptcy Code, be treated as either Class 4 or Class 5 Claims in accordance with Article III of the Plan.

Section 6.05 Employee Benefit Programs.

- (a) Employment Agreements. Except and to the extent previously rejected by an order of the Bankruptcy Court on or before the Effective Date, all employment and severance agreements between the Debtors and their employees entered into before or after the Petition Date and not since terminated, shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected under Section 6.01 of the Plan, except for any such employment agreement that is specifically assumed under Section 6.01 of the Plan. Any Claim arising out of such rejection shall be treated in accordance with Section 6.04 of the Plan.
- (b) Employee Benefit Plans. Except and to the extent previously rejected by an order of the Bankruptcy Court on or before the Effective Date, all Employee Benefit Plans entered into before or after the Petition Date and not since terminated, shall be deemed to be, and shall be treated as though they are, executory contracts that are rejected under Section 6.01 of the Plan. Any Claim arising out of such rejection shall be treated in accordance with Section 6.04 of the Plan.

Section 6.06 Survival of Certain Indemnification Obligations. Notwithstanding any other provision of this Plan, the obligations of the Debtors pursuant to their certificates or articles of incorporation, bylaws and other organizational documents to indemnify persons serving after the Petition Date as officers, directors, agents, or employees of the Debtors with respect to actions, suits and proceedings against the Debtors or such officers, directors, agents, or employees, based upon any act or omission for, on behalf of, or relating to the Debtors and occurring prior to or after the Petition Date, shall continue (and shall not be discharged or impaired by the confirmation of the Plan) solely to the extent there is available insurance that provides coverage for such obligations and shall be recoverable solely from such available insurance.

Section 6.07 Insurance Coverage. Nothing in this Plan shall impair in any way the right or ability of any Person or Entity to make a claim under any applicable insurance policy or against any insurer (or nominally against the Debtors or the D&O Releasees) with respect to such applicable insurance policy.

**ARTICLE VII.
MEANS FOR IMPLEMENTATION OF THE PLAN**

Section 7.01 Substantive Consolidation. The Plan is premised on the substantive consolidation of all of the Debtors with respect to the treatment of all Claims and Interests. This Plan shall serve as a request by the Debtors, in lieu of a separate motion, to the Bankruptcy Court, that it grant substantive consolidation with respect to the treatment of all Claims and Interests as follows: on the Effective Date, (a) all assets and liabilities of the Debtors will be merged or treated as though they were merged; (b) all guarantees of the Debtors of the

obligations of any of Debtor and any joint and several liability of any of the Debtors shall be eliminated; (c) each and every Claim of a Debtor held against another Debtor shall be deemed released, cancelled and terminated; and (d) each and every Claim and Interest against any Debtor shall be deemed Filed against the consolidated Debtors and all Claims Filed against more than one Debtor for the same liability shall be deemed one Claim against any obligation of the consolidated Debtors.

Section 7.02 Continued Corporate Existence. Each Debtor will continue to exist after the Effective Date as a separate corporate or limited liability company entity, with all of the powers of a corporation under applicable law in the jurisdiction in which it is incorporated or otherwise formed and pursuant to its certificate or articles of incorporation and by-laws or other organizational documents in effect prior to the Effective Date, without prejudice to the right of any Debtor to dissolve (subject to its obligations under this Plan) under applicable law and file a certificate of dissolution (or its equivalent) with the secretary of state or similar official of the jurisdiction of incorporation after the Effective Date.

Section 7.03 Powers and Duties of the Liquidation Trustee and the GUC Trustee. The Liquidation Trustee shall administer the Liquidating Trust and its assets in accordance with this Plan, the Liquidating Trust Agreement, and the other Liquidating Trust Documents and shall be responsible for, among other things, making certain Distributions required under this Plan. The GUC Trustee shall administer the GUC Trust and its assets in accordance with this Plan, the GUC Trust Agreement, and the other GUC Trust Documents and shall be responsible for, among other things, making certain Distributions required under this Plan. From and after the Effective Date and continuing through the date of entry of a Final Decree, each of the Liquidation Trustee and the GUC Trustee shall: (a) possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under, or related to the Chapter 11 Cases and, in connection therewith, shall (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts, (ii) be entitled to notice and opportunity for hearing on all such issues, (iii) participate in all matters brought before the Bankruptcy Court, and (iv) receive notice of all applications, motions, and other papers and pleadings filed in the Bankruptcy Court; (b) as to the Liquidation Trustee only, have the authority to act on behalf of the Debtors in all adversary proceedings and contested matters pending in the Bankruptcy Court and in all actions and proceedings pending elsewhere; and (c) have the authority to retain such personnel or professionals (including, without limitation, legal counsel, financial advisors or other agents) as it deems appropriate and compensate such personnel and professionals as it deems appropriate in accordance with Section 5.02 of the Plan, all without prior notice to or approval of the Bankruptcy Court. Professionals and personnel retained or employed by the Liquidating Trust, the Liquidation Trustee, the GUC Trust or the GUC Trustee need not be disinterested as that term is defined in the Bankruptcy Code.

Section 7.04 Corporate Action. The entry of the Confirmation Order shall constitute authorization for the Debtors to take or to cause to be taken all corporate and limited liability company actions necessary or appropriate to consummate and implement the provisions of the Plan prior to, on and after the Effective Date, and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court. All such actions shall be deemed to have occurred and shall be in effect pursuant to applicable non-bankruptcy law and the Bankruptcy Code, without any requirement of further action by the

stockholders or directors of the Debtors. On the Effective Date, the appropriate officers and managers of the Debtors are authorized and directed to execute and deliver the agreements, documents and instruments contemplated by the Plan and the Plan Supplement in the name and on behalf of the Debtors

Section 7.05 Cancellation of Existing Securities and Agreements. Except for the purpose of evidencing a right to Distribution under the Plan and except as otherwise set forth in the Plan, on the Effective Date, all notes, stock, agreements, instruments, certificates, and other documents evidencing any Claim against or Interest in the Debtors shall be cancelled and the obligations of the Debtors thereunder or in any way related thereto shall be fully released. Notwithstanding the foregoing, the Prepetition Credit Documents shall continue in effect solely for the purposes of, as applicable: (a) allowing the Secured Lenders to receive Distributions under the Plan; and (b) allowing and preserving the rights of the Prepetition Agent to (i) make distributions in satisfaction of Allowed Class 2 and 4 Claims (solely to the extent the Secured Lenders hold Class 4 Claims) and (ii) appear in these Chapter 11 Cases. For the avoidance of doubt, all indemnification obligations and expense reimbursement obligations of the Debtors arising under the Prepetition Credit Documents in favor of the Secured Lenders, and each of its respective directors, officers, employees, agents, affiliates, controlling persons, and legal and financial advisors, shall survive, remain in full force and effect, and be enforceable against the Debtors, their Estates or the Liquidating Trust on and after the Effective Date.

Section 7.06 Amendment of Charters. On and as of the Effective Date, the charters of any Debtors that are corporations shall be deemed to have been amended to prohibit the issuance of nonvoting equity securities to the extent required by Section 1123(a)(6) of the Bankruptcy Code.

ARTICLE VIII. PRESERVATION OF CAUSES OF ACTION AND RIGHT TO DEFEND AND CONTEST

Section 8.01 Preservation of Rights. Except to the extent that any Claim is Allowed during the Chapter 11 Cases or expressly by this Plan, the Asset Purchase Agreement, or the Confirmation Order, nothing, including, but not limited to, the failure of the Debtors to object to a Claim or Interest for any reason during the pendency of the Chapter 11 Cases, shall affect, prejudice, diminish or impair the rights and legal and equitable defenses of the Debtors, the Liquidation Trustee or the GUC Trustee with respect to any Claim or Interest, including, but not limited to, all rights of the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, to contest or defend themselves against such Claims or Interests in any lawful manner or forum when and if such Claim or Interest is sought to be enforced by the Holder thereof.

Section 8.02 Rights of Action. Except as otherwise provided in this Plan, the Asset Purchase Agreement or the Confirmation Order, in accordance with section 1123(b)(3) of the Bankruptcy Code, the Liquidation Trustee (as a representative of the Debtors' Estates) will retain and may exclusively enforce any Retained Actions other than Avoidance Actions and Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender), subject only to any express waiver or release thereof in the Plan or in any other contract, instrument, release, indenture or other agreement entered into in connection with the

Plan, and the Confirmation Order's approval of the Plan shall be deemed a res judicata determination of such rights to retain and exclusively enforce such Retained Actions other than Avoidance Actions and Commercial Tort Claims (to the extent the latter are not subject to the pre-petition Liens of any Secured Lender) which shall be retained and exclusively enforced by the GUC Trustee, and none of such Retained Actions is deemed waived, released or determined by virtue of the entry of the Confirmation Order or the occurrence of the Effective Date, notwithstanding that the specific Retained Actions are not identified or described. Absent such express waiver or release by the Debtors, the Liquidation Trustee may pursue Retained Actions, as appropriate, in accordance with the best interests of the Liquidating Trust.

In accordance with section 1123(b)(3) of the Bankruptcy Code, the GUC Trustee will retain and may exclusively enforce any Retained Actions (to the extent such Retained Actions constitute GUC Trust Assets) subject only to any express waiver or release thereof in the Plan or in any other contract, instrument, release, indenture or other agreement entered into in connection with the Plan, and the Confirmation Order's approval of the Plan shall be deemed a res judicata determination of such rights to retain and exclusively enforce such Retained Actions, and none of such Retained Actions is deemed waived, released or determined by virtue of the entry of the Confirmation Order or the occurrence of the Effective Date, notwithstanding that the specific Retained Actions are not identified or described. Absent such express waiver or release by the Debtors, the GUC Trustee may pursue such Retained Actions, as appropriate, in accordance with the best interests of the GUC Trust.

Absent an express waiver or release as referenced above, nothing in the Plan shall (or is intended to) prevent, estop or be deemed to preclude the Liquidation Trustee or the GUC Trustee, as appropriate, from utilizing, pursuing, prosecuting or otherwise acting upon all or any of its respective Retained Actions and, therefore, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches shall apply to such Retained Actions upon or after Confirmation, the Effective Date or the consummation of the Plan. By example only, and without limiting the foregoing, the utilization or assertion of a Retained Action, or the initiation of any proceeding with respect thereto against a Person, by the Liquidation Trustee or the GUC Trustee, as appropriate, shall not be barred (whether by estoppel, collateral estoppel, res judicata or otherwise) as a result of (a) the solicitation of a vote on the Plan from such Person or such Person's predecessor in interest; (b) the Claim, Interest or Administrative Claim of such Person or such Person's predecessor in interest having been listed in a Debtor's Schedules, list of Holders of Interests, or in the Plan, Disclosure Statement or any exhibit thereto; (c) prior objection to or allowance of a Claim or Interest of the Person or such Person's predecessor in interest; or (d) Confirmation of the Plan. **No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against them as an indication that the Debtors, Liquidation Trustee or GUC Trustee will not pursue any and all available Causes of Action against them. The Debtors, Liquidation Trustee and GUC Trustee expressly reserve all rights to prosecute any and all Causes of Action against any Entity, except as otherwise expressly provided herein.**

Notwithstanding any allowance of a Claim, but subject to and without limiting, altering or impairing the Lien and Claim Perfection Matters with respect to Allowed Class 2 Claims, the Debtors, the Liquidation Trustee and the GUC Trustee, as appropriate, reserve the right to seek,

among other things, to have such Claim Disallowed if the Debtor, the Liquidation Trustee or the GUC Trustee, as the case may be, at the appropriate time, determines that it has a defense under section 502(d) of the Bankruptcy Code, e.g., the GUC Trustee holds an Avoidance Action against the Holder of such Claim and such Holder after demand refuses to pay the amount due in respect thereto.

Section 8.03 Setoffs. Except to the extent that any Claim is Allowed, the Debtors, the Liquidation Trustee or the GUC Trustee, as applicable, may, but shall not be required to, set off against any Claims and the payments or Distributions to be made pursuant to the Plan in respect of such Claims, any and all debts, liabilities, Causes of Action and claims of every type and nature whatsoever which the Estates, the Debtors, the Liquidation Trustee or the GUC Trustee may have against such Creditors, but neither the failure to do so nor the allowance of any such Claims, whether pursuant to the Plan or otherwise, shall constitute a waiver or release by the Debtors, the Liquidation Trustee or the GUC Trustee of any such claims or Causes of Action the Debtors, the Liquidation Trustee or the GUC Trustee may have against such Creditors, and all such claims and Retained Actions which are not expressly released, conveyed or compromised pursuant to the Plan or the Asset Purchase Agreement shall be conveyed to the Liquidating Trust or the GUC Trust as provided in the Plan.

Section 8.04 Resolution of Disputed Claims. Unless otherwise ordered by the Court after notice and a hearing, the Debtors, the Liquidation Trustee, the GUC Trustee and other parties in interest to the extent provided by section 502(a) of the Bankruptcy Code, on and after the Effective Date, shall have the right to File objections to Claims (except those specifically Allowed by this Plan) and shall serve a copy of each such objection upon the Holder of the Claim to which the objection is made as soon as practicable, but in no event later than the applicable Claims Objection Deadline. The foregoing deadlines may be extended by order of the Court. An objection to any Claim shall be deemed properly served on the Holder thereof if the Liquidation Trustee or the GUC Trustee, as appropriate, effects service in any of the following manners: (a) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Federal Rule of Bankruptcy Procedure 7004; (b) by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified in the proof of claim or any attachment thereto; or (c) by first class mail, postage prepaid, on any counsel that has appeared on the Holder's behalf in the Chapter 11 Cases.

After the Effective Date, the Debtors, the Liquidation Trustee, or the GUC Trustee, as appropriate, may settle or compromise any Disputed Claim without approval of the Bankruptcy Court upon written notice to the United States Trustee and the Secured Lenders; provided that (a) the Debtors, the Liquidation Trustee, or the GUC Trustee, as appropriate, shall promptly File with the Bankruptcy Court a written notice of any settlement or compromise of a Claim that results in an Allowed Claim in excess of \$500,000 and (b) the United States Trustee and the Secured Lenders shall be authorized to contest the proposed settlement or compromise (whether such settlement is above or below \$500,000) by Filing a written objection with the Bankruptcy Court and serving such objection on the Debtors, the Liquidation Trustee, or the GUC Trustee, as appropriate, within 20 days of the service of the proposed settlement notice. If no such objection is Filed, the applicable settlement or compromise shall be deemed final without further action of the Bankruptcy Court.

**ARTICLE IX.
CONDITIONS TO CONSUMMATION OF THE PLAN**

Section 9.01 [RESERVED] .

Section 9.02 Conditions to Effective Date. The Plan shall not be consummated, and the Effective Date shall not occur, unless and until the following conditions have occurred or been duly waived (if waivable) pursuant to Section 9.03 below:

- (a) the Bankruptcy Court shall have approved the information contained in the Disclosure Statement as adequate;
- (b) the Confirmation Order shall be in full force and effect, shall have become a Final Order, and shall not have been amended, modified, reversed, vacated, or stayed pending appeal;
- (c) the transactions contemplated in the Asset Purchase Agreement have been consummated;
- (d) the Bankruptcy Court shall have entered an order (contemplated to be part of the Confirmation Order) authorizing and directing the Debtors to take all actions necessary or appropriate to enter into, implement, and consummate the documents created, amended, supplemented, modified or adopted in connection with the Plan;
- (e) each of the Secured Lender Fund Initial Payment Amount, the Unimpaired Claims Amount, and the Liquidating Trust Reserve shall be in an amount acceptable to the Prepetition Agent acting at the direction of the Required Lenders (as defined in the Credit and Security Agreement);
- (f) all authorizations, consents and regulatory approvals required, if any, in connection with the Plan's effectiveness shall have been obtained;
- (g) the Debtors shall have appointed the Liquidation Trustee, and the Liquidating Trust Agreement and the other Liquidating Trust Documents shall have been executed and delivered;
- (h) the Committee shall have appointed the GUC Trustee, and the GUC Trust Agreement and the other GUC Trust Documents shall have been executed and delivered; and
- (i) no order of a court shall have been entered and shall remain in effect restraining the Debtors from consummating the Plan.

Section 9.03 Waiver of Conditions to Consummation. The conditions to consummation in Section 9.02 (other than Sections 9.02(a)-(e)) may be waived at any time by a writing signed by an authorized representative of each of the Debtors (in consultation with the Committee and

the Prepetition Agent) without notice or order of the Bankruptcy Court or any further action other than proceeding to consummation of the Plan.

Section 9.04 Effect of Failure or Absence of Waiver of Conditions Precedent to the Effective Date of the Plan. In the event that one or more of the conditions specified in Section 9.02 of the Plan have not occurred (or been waived), upon notification submitted by the Debtors to the Bankruptcy Court (in consultation with the Committee and the Prepetition Agent): (a) the Confirmation Order, automatically and without further order of the Bankruptcy Court, shall be, and shall be deemed, vacated, null and void, with no force or legal effect whatsoever; (b) no Distributions under the Plan shall be made; (c) all Property of the Estates shall remain vested in the Debtors' Estates, subject to any applicable Liens; (d) the Debtors and all Holders of Claims and Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date as though the Confirmation Date never occurred; and (e) the Debtors' obligations with respect to the Claims and Interests shall remain unchanged and nothing contained herein shall constitute or be deemed a waiver or release of any Claims or Interests by or against the Debtors (or any Liens securing such Claims) or any other Person or Entity or to prejudice in any manner the rights of the Debtors or any Person or Entity in any further proceedings involving the Debtors.

ARTICLE X. EFFECTS OF CONFIRMATION

Section 10.01 Injunction.

- (a) **Claims and Interests.** Except as otherwise expressly provided for in the Plan or the Confirmation Order and to the fullest extent authorized or provided by the Bankruptcy Code, including section 1141 thereof, the entry of the Confirmation Order shall, provided that the Effective Date occurs, permanently enjoin all Persons that have held, currently hold or may hold a Claim or other debt or liability or an Interest or other right of an equity security holder that is Impaired or terminated pursuant to the terms of the Plan from taking any of the following actions against the Debtors, the Liquidating Trust, the Liquidation Trustee, the GUC Trust, the GUC Trustee, the Purchaser, or the Property of any of the foregoing on account of any such Claims, debts or liabilities or such terminated Interests or rights: (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (b) enforcing, levying, attaching, collecting or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree or order; (c) creating, perfecting or enforcing in any manner, directly or indirectly, any Lien or encumbrance of any kind; (d) asserting any setoff, offset, right of subrogation or recoupment of any kind, directly or indirectly, against any debt, liability or obligation due to the Debtors; and (e) proceeding in any manner in any place whatsoever, including employing any process, that does not conform to or comply with or is inconsistent with the provisions of the Plan; provided that the foregoing shall not limit the ability of any Person or Entity to enforce the Plan and the contracts, instruments,

releases, indentures and other agreements or documents delivered under or in connection with the Plan.

- (b) **Released Claims.** As of the Effective Date, the Confirmation Order shall constitute an injunction permanently enjoining any Person that has held, currently holds or may hold a Claim, demand, debt, right, Cause of Action or liability that is released pursuant to Section 10.03 of the Plan from enforcing or attempting to enforce any such Claim, demand, debt, right, Cause of Action or liability against (i) any Debtor, (ii) the Liquidating Trust or the GUC Trust, (iii) any Releasee, (iv) any D&O Releasee, or (v) any Exculpated Person, or any of their respective Property, based on, arising from or relating to, in whole or in part, any act, omission, or other occurrence taking place on or prior to the Effective Date with respect to or in any way relating to the Chapter 11 Cases, all of which claims, demands, debts, rights, Causes of Action or liabilities shall be deemed released on and as of the Effective Date; provided, however, that with respect to the directors, officers and employees of the Debtors that ceased serving in such capacities before the Petition Date, this injunction shall apply only to the enforcement of Claims, demands, debts, rights, Causes of Action or liabilities with respect to which such former directors, officers and employees would be entitled to indemnification from the Debtors under contract or law; and, provided further, however, that this injunction shall not apply to (a) any claims Creditors may assert under the Plan to enforce their rights thereunder to the extent permitted by the Bankruptcy Code or (b) any claims Creditors or other third parties may have against each other, which claims are not related to the Debtors, it being understood, however, that any defenses, offsets or counterclaims of any kind or nature whatsoever which the Debtors may have or assert in respect of any of the claims of the type described in (a) or (b) of this proviso are fully preserved.

Section 10.02 **Exculpation.** None of the Debtors, the Committee, the Liquidation Trustee, the GUC Trustee, J.H. Whitney VI, LP and Whitney Strategic Partners VI, LP. or any Exculpated Person shall have or incur any liability to any Person, including, without limitation, any Holder of a Claim or Interest or any other party in interest, or any of their respective Related Persons, for any act taken or omission made in connection with, relating to, or arising out of, the Chapter 11 Cases, filing, negotiating, prosecuting, administering, formulating, implementing, confirming or consummating this Plan, or the Property to be distributed under this Plan, including all activities leading to the promulgation and confirmation of the Plan, the Disclosure Statement (including any information provided or statement made in the Disclosure Statement or omitted therefrom), or any contract, instrument, release or other agreement or document created in connection with or related to the Plan or the administration of the Debtors or these Chapter 11 Cases, provided, however, that the foregoing exculpation shall not apply to any act of gross negligence or willful misconduct.

Section 10.03 **Releases.**

- (a) **Releases by Debtors.** (i) Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, for good and valuable consideration, the adequacy of which is hereby confirmed, the Debtors, in their individual capacities and as debtors in possession, will be deemed to have forever released, and waived the Releasees and the D&O Releasees from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtors, the Liquidation Trustee or the GUC Trustee, as appropriate, to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered under or in connection with the Plan), whether for tort, contract, violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, other than claims or liabilities arising out of or relating to any act or omission of a Releasee or D&O Releasee that is determined by a Final Order to have constituted gross negligence, willful misconduct, actual fraud or a criminal act; **provided, however,** that (a) no Releasee or D&O Releasee shall be released from any Claims, obligations, suits, judgments, debts or Causes of Action arising out of or in connection with indebtedness for money borrowed by any such person from any of the Debtors and (b) no Cause of Action against any insurer arising out of or relating to matters for which the Debtors would otherwise be liable or suffer an insurable loss shall be released, including without limitation, any Cause of Action against the Debtors' Directors and Officers insurance carrier(s).
- (b) **Releases by Holders of Claims and Interests.** Effective as of the Effective Date, and except as otherwise provided in the Plan or the Confirmation Order, to the fullest extent permitted under applicable law, in consideration for the obligations of the Persons set forth below under the Plan and, if applicable, the Cash, securities, contracts, releases and other agreements or documents to be delivered in connection with the Plan, each Holder of a Claim or Interest, except with respect to those Holders of Claims or Interests who vote to reject the Plan or are deemed to reject the Plan, shall be deemed to have forever waived and released (i) the Debtors, (ii) the Liquidation Trustee and the GUC Trustee, (iii) the Liquidating Trust and the GUC Trust, (iv) the Releasees, and (v) the D&O Releasees and their respective Related Persons from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of such Persons or Entities to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered under or in connection with the Plan), whether for tort, contract,

violations of federal or state securities laws, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or part on any act, omission, transaction, event or other occurrence, including actions in connection with indebtedness for money borrowed by the Debtors, taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, or the Plan, other than claims or liabilities arising out of or relating to any act or omission of any of the Persons set forth in clauses (i) through (v) of this Section 10.03(b) that is determined by a final order to have constituted gross negligence, willful misconduct, actual fraud or a criminal act by such Person; provided, however, that this Section 10.03(b) shall not release any Releasees or the D&O Releasee from any Causes of Action held by a Governmental Unit existing as of the Effective Date based on (i) any criminal laws of the United States or any domestic state, city or municipality or (ii) sections 1104-1109 and 1342(d) of ERISA; provided, however, that no Cause of Action against any insurer arising out of or relating to matters for which the Debtors would otherwise be liable or suffer an insurable loss shall be released, including without limitation, any Cause of Action against the Debtors' Directors and Officers insurance carrier(s) and only to the extent of such insurance.

Section 10.04 Other Documents and Actions. The Debtors, the GUC Trustee and Liquidation Trustee are authorized to execute such documents and take such other action as is necessary to effectuate the transactions provided for in the Plan.

Section 10.05 Term of Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Cases under sections 105(a) or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

Section 10.06 Preservation of Insurance. Except as necessary to be consistent with the Plan, the Plan shall not diminish or impair (a) the enforceability of insurance policies that may cover Claims against the Debtors or any other Person or Entity or (b) the continuation of workers' compensation programs in effect, including self-insurance programs.

Section 10.07 Guaranties. Notwithstanding the existence of guaranties by the Debtors of obligations of any Entity or Entities, and the Debtors' joint obligations with another Entity or Entities with respect to the same obligations, all Claims against the Debtors based upon any such guaranties shall be satisfied and released in the manner provided in this Plan and the Holders of Claims shall be entitled to only one distribution with respect to any given obligation of the Debtors.

Section 10.08 Subordination Rights. Any Distributions under the Plan shall be received and retained free of and from any obligations to hold or transfer the same to any other Creditor, and shall not be subject to levy, garnishment, attachment or other legal process by any Holder by reason of claimed contractual subordination rights, which rights shall be waived and the

Confirmation Order shall constitute an injunction enjoining any Person from enforcing or attempting to enforce any contractual, legal or equitable subordination rights to Property distributed under the Plan, in each case other than as provided in the Plan.

Section 10.09 No Successor Liability. Except as otherwise expressly provided in the Plan or the Asset Purchase Agreement, the Liquidation Trustee, the GUC Trustee, the Purchaser and the Purchaser's Affiliates do not, pursuant to the Plan or otherwise, assume, agree to perform, pay, or indemnify or otherwise have any responsibilities for any liabilities or obligations of the Debtors or any other party relating to or arising out of the operations of or assets of the Debtors, whether arising prior to, on, or after the Effective Date. The Liquidating Trust, the Liquidation Trustee, the GUC Trust, and the GUC Trustee are not, and shall not be, successors to the Debtors by reason of any theory of law or equity, and none shall have any successor or transferee liability of any kind or character, except that they shall assume their respective and applicable obligations as specified in the Plan, the Liquidating Trust Agreement, the other Liquidating Trust Documents, the GUC Trust Agreement, the other GUC Trust Documents and the Confirmation Order.

ARTICLE XI. RETENTION OF JURISDICTION

Section 11.01 Exclusive Jurisdiction of Bankruptcy Court. Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain after the Effective Date exclusive jurisdiction of all matters arising out of, arising in or related to the Chapter 11 Cases to the fullest extent permitted by applicable law, including, without limitation, jurisdiction to:

(a) classify or establish the priority or secured or unsecured status of any Claim (whether Filed before or after the Effective Date and whether or not contingent, Disputed or unliquidated) or resolve any dispute as to the treatment of any Claim pursuant to the Plan;

(b) grant or deny any applications for allowance of compensation or reimbursement of expenses pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code or otherwise provided for in the Plan, for periods ending on or before the Effective Date;

(c) determine and resolve any matters related to the assumption, assumption and assignment or rejection of any executory contract or unexpired lease to which any Debtor is a party or with respect to which any Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

(d) ensure that all payments due under the Plan and performance of the provisions of the Plan are accomplished as provided herein and resolve any issues relating to distributions to Holders of Allowed Claims pursuant to the provisions of the Plan;

(e) construe, take any action and issue such orders, prior to and following the Confirmation Date and consistent with section 1142 of the Bankruptcy Code, as may be necessary for the enforcement, implementation, execution and consummation of the Plan and all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, including, without limitation, the Disclosure Statement and the

Confirmation Order, for the maintenance of the integrity of the Plan and protection of the Liquidation Trustee and GUC Trustee in accordance with sections 524 and 1141 of the Bankruptcy Code following consummation;

(f) determine and resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation, implementation or enforcement of the Plan (and all Exhibits to the Plan and the Plan Supplement) or the Confirmation Order, including the indemnification and injunction provisions set forth in and contemplated by the Plan or the Confirmation Order, or any Entity's rights arising under or obligations incurred in connection therewith;

(g) hear any application of the Debtors or the Liquidation Trustee or GUC Trustee to modify the Plan after the Effective Date pursuant to section 1127 of the Bankruptcy Code and Section 12.04 hereof or modify the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, or remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code and the Plan;

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

(i) enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(j) determine any other matters that may arise in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, the Asset Purchase Agreement, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement, the Asset Purchase Agreement or the Confirmation Order, except as otherwise provided in the Plan;

(k) determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(l) hear and determine any other matters related hereto and not inconsistent with chapter 11 of the Bankruptcy Code;

(m) hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan or the Asset Purchase Agreement;

(n) enter one or more Final Decrees closing each of the Chapter 11 Cases;

(o) determine and resolve any and all controversies relating to the rights and obligations of the Liquidation Trustee or GUC Trustee in connection with the Chapter 11 Cases;

(p) allow, disallow, determine, liquidate or estimate any Claim, including the compromise, settlement and resolution of any request for payment of any Claim, the resolution of any Objections to the allowance of Claims and to hear and determine any other issue presented hereby or arising hereunder, including during the pendency of any appeal relating to any Objection to such Claim (to the extent permitted under applicable law);

(q) permit the Debtors (and the Liquidation Trustee or the Purchaser, to the extent provided for in the Plan, the Asset Purchase Agreement or the Liquidating Trust Agreement) to recover all assets of the Debtors and Property of their respective Estates, wherever located, and permit the GUC Trustee to recover all GUC Trust Assets, wherever located;

(r) hear and determine any motions or contested matters involving taxes, tax refunds, tax attributes and tax benefits and similar or related matters with respect to the Debtors or the Debtors' respective Estates arising prior to the Effective Date or relating to the period of administration of the Chapter 11 Cases, including, without limitation, matters concerning federal, state and local taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(s) hear and determine any motions, applications, adversary proceedings, contested matters and other litigated matters pending on, Filed or commenced after the Effective Date that may be commenced by the Liquidation Trustee or GUC Trustee thereafter, including their respective Retained Actions, proceedings with respect to the rights of the Liquidation Trustee or GUC Trustee, as appropriate, to recover Property under sections 542, 543 or 553 of the Bankruptcy Code, or proceedings to otherwise collect to recover on account of any claim or Cause of Action that the Debtors may have had; and

(t) hear any other matter not inconsistent with the Bankruptcy Code.

Section 11.02 Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction over any matter arising under, arising in or related to the Debtors, including with respect to the matters set forth above in Section 11.01 hereof, this Article XI shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such subject matter.

ARTICLE XII. MISCELLANEOUS PROVISIONS

Section 12.01 Binding Effect of Plan. The provisions of the Plan shall be binding upon and inure to the benefit of the Debtors, the Estates, the Committee, the Liquidation Trustee, the Liquidating Trust, the GUC Trustee, the GUC Trust, the Purchaser, any and all Holders of Claims against or Interests in the Debtors, or any Person named, described or referred to in the Plan, the Liquidating Trust Documents, or the GUC Trust Documents each entity acquiring property under the Plan, and all non-Debtor parties to executory contracts and unexpired leases with the Debtors, and the respective heirs, executors, administrators, representatives, predecessors, successors, assigns, agents, officers and directors of each of the foregoing, and, to the fullest extent permitted under the Bankruptcy Code and other applicable law, each other Person affected by the Plan.

Section 12.02 Withdrawal of the Plan. The Debtors reserve the right, at any time prior to Confirmation of the Plan, to withdraw the Plan. If the Plan is withdrawn, the Plan shall be null and void and have no force and effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtors or any other Person (or Liens securing any Claims) or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Debtors.

Section 12.03 Final Order. Except as otherwise expressly provided in the Plan or the Asset Purchase Agreement, any requirement in the Plan for a Final Order may be waived by the Debtors or, after the Effective Date, the Liquidation Trustee or GUC Trustee, as appropriate, upon written notice to the Bankruptcy Court. No such waiver shall prejudice the right of any party in interest to seek a stay pending appeal of any order that is not a Final Order.

Section 12.04 Modification of the Plan. The Debtors may alter, amend or modify the Plan in accordance with section 1127 of the Bankruptcy Code or as otherwise permitted at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of the Plan, and in accordance with the provisions of section 1127(b) of the Bankruptcy Code and the Bankruptcy Rules, the Debtors may, so long as the treatment of Holders of Claims or Interests under the Plan is not adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order and any other matters as may be necessary to carry out the purposes and effects of the Plan; provided, however, prior notice of such proceedings shall be served in accordance with Bankruptcy Rules 2002 and 9014. In accordance with, and to the extent provided by, section 1127 of the Bankruptcy Code, a Holder of a Claim that has accepted this Plan shall be deemed to have accepted this Plan, as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the Claim of such Holder.

Section 12.05 Business Days. If any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

Section 12.06 Severability. Should the Bankruptcy Court determine, prior to the Confirmation Date, that any provision of the Plan is either illegal on its face or illegal as applied to any Claim or Interest, such provision shall be unenforceable as to all Holders of Claims or Interests or to the specific Holder of such Claim or Interest, as the case may be, as to which such provision is illegal. Unless otherwise determined by the Bankruptcy Court, such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan. The Debtors reserve the right not to proceed with Confirmation or consummation of the Plan if any such ruling occurs.

Section 12.07 Governing Law. EXCEPT TO THE EXTENT THAT THE BANKRUPTCY CODE OR BANKRUPTCY RULES OR OTHER FEDERAL LAWS ARE APPLICABLE, AND SUBJECT TO THE PROVISIONS OF ANY CONTRACT, INSTRUMENT, RELEASE, INDENTURE OR OTHER AGREEMENT OR DOCUMENT ENTERED INTO IN CONNECTION WITH THE PLAN, THE CONSTRUCTION,

IMPLEMENTATION AND ENFORCEMENT OF THE PLAN AND ALL RIGHTS AND OBLIGATIONS ARISING UNDER THE PLAN SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO CONFLICTS-OF-LAW PRINCIPLES WHICH WOULD APPLY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF TEXAS.

Section 12.08 Dissolution of Committee. On the Effective Date, the Committee shall be automatically dissolved and all of its members, Professionals and agents shall be deemed released of their duties, responsibilities and obligations, and shall be without further duties, responsibilities and authority in connection with the Debtors, the Chapter 11 Cases, the Plan or its implementation. After the date of dissolution, the Debtors and the Liquidating Trust shall not be responsible for paying any fees, costs, or expenses incurred by the members of, or professionals or advisors to, the Committee after the Effective Date.

Section 12.09 Post-Confirmation Operating Reports. The Liquidation Trustee shall file quarterly operating reports as required by the United States Trustee until such time as a Final Decree or other order is entered under section 350(a) of the Bankruptcy Code closing the Bankruptcy Cases.

Section 12.10 Notices. Any notice required or permitted to be provided under this Plan to the Debtors, or any request for information with respect to the Plan, shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight delivery service, freight prepaid, to be addressed as follows:

Ignite Restaurant Group, Inc.
10555 Richmond Avenue
Houston, Texas 77042
Attention: Jonathan Tibus

With a copy to:

King & Spalding LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
Attn.: Sarah Robinson Borders
Email: sborders@kslaw.com

Section 12.11 Filing of Additional Documents. On or before substantial consummation of the Plan, the Debtors shall issue, execute, deliver, and File with the Bankruptcy Court or record any agreements and other documents, and take any action as may be necessary or appropriate to effectuate, consummate and further evidence the terms and conditions of the Plan.

Section 12.12 Section 1125 of the Bankruptcy Code. The Debtors have, and upon Confirmation of the Plan shall be deemed to have, solicited acceptances of the Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code. The Debtors (and each of their respective Related Persons) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the formation and solicitation of this Plan,

and are not, and will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan.

Section 12.13 Section 1146 Exemption. To the fullest extent permitted under section 1146(a) of the Bankruptcy Code, the issuance, transfer or exchange of any security under the Plan, if any, or the execution, delivery or recording of an instrument of transfer under the Plan, or the revesting, transfer or sale of any real or other Property of or to the Debtors, the Liquidating Trust or the GUC Trust, shall not be taxed under any state or local law imposing a document recording tax, stamp tax, conveyance fee, sales tax, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or fee or governmental assessment. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or Governmental Unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, mortgage recording tax, intangible tax or similar tax.

Section 12.14 Section 1145 Exemption. To the fullest extent permitted under section 1145 of the Bankruptcy Code, the issuance of any interests in the Liquidating Trust or the GUC Trust on or around the Effective Date shall be exempt from the registration requirements of Section 5 of the Securities Act and any and all federal, state and local laws requiring the registration or licensing of an issuer, underwriter, broker or dealer in such securities.

Section 12.15 Time. Unless otherwise specified herein, in computing any period of time prescribed or allowed by the Plan, the day of the act or event from which the designated period begins to run shall not be included. The last day of the period so computed shall be included, unless it is not a Business Day, in which event the period runs until the end of next succeeding day that is a Business Day. Otherwise, the provisions of Bankruptcy Rule 9006 shall apply.

Section 12.16 No Attorneys' Fees. No attorneys' fees will be paid by the Debtors with respect to any Claim or Interest except as expressly specified herein or by order of the Bankruptcy Court.

Section 12.17 No Injunctive Relief. No Claim or Interest shall under any circumstances be entitled to specific performance or other injunctive, equitable or other prospective relief (other than the rights of such Persons or Entities to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered under or in connection with the Plan).

Section 12.18 Continued Confidentiality Obligations. Pursuant to the terms thereof, members of and advisors to any Committee, any other Holder of a Claim or Interest, the Purchaser, and their respective predecessors, successors and assigns shall continue to be obligated and bound by the terms of any confidentiality agreement executed by them in connection with these Chapter 11 Cases or the Debtors, to the extent that such agreement, by its terms, may continue in effect after the Confirmation Date.

Section 12.19 No Admissions or Waivers. Prior to the occurrence of the Effective Date, and notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed an admission or waiver by the Debtors or any other Person with respect to any matter set forth herein, including, without limitation, liability on any Claim or Interest or the propriety of any classification of any Claim or Interest.

Section 12.20 Entire Agreement. The Plan (and all Exhibits to the Plan and the Plan Supplement) sets forth the entire agreement and undertakings relating to the subject matter hereof and supersedes all prior discussions and documents. Prior to the occurrence of the Effective Date, the Debtors and other parties in interest shall not be bound by any terms, conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof, other than as expressly provided for herein or as may hereafter be agreed to by the parties in writing.

Section 12.21 Waiver. The Debtors reserve the right to waive any provision of this Plan to the extent such provision is for the sole benefit of the Debtors and/or their officers or directors.

Section 12.22 Confirmation of Plans for Separate Debtors. In the event the Debtors are unable to confirm this Plan with respect to all Debtors, the Debtors reserve the right, unilaterally and unconditionally, to proceed with this Plan with respect to any Debtor for which the confirmation requirements of the Bankruptcy Code are met.

Section 12.23 Conflicts. In the event that a provision of the Plan Supplement or the Disclosure Statement (including any and all exhibits and attachments thereto) conflicts with a provision of the Plan or the Confirmation Order, the provision of the Plan and the Confirmation Order (as applicable) shall govern and control to the extent of such conflict. In the event that a provision of the Plan conflicts with a provision of the Confirmation Order, the provision of the Confirmation Order shall govern and control to the extent of such conflict.

Section 12.24 No Strict Construction. This Plan is the product of extensive discussions and negotiations between and among, *inter alia*, the Debtors, the Committee, the Prepetition Agent, the Prepetition Lenders, and their respective professionals. Each of the foregoing was represented by counsel of its choice who either participated in the formulation and documentation of, or was afforded the opportunity to review and provide comments on, the Plan, the Disclosure Statement, the exhibits and the plan schedules, and the agreements and documents ancillary or related thereto. Accordingly, unless explicitly indicated otherwise, the general rule of contract construction known as “contra proferentem” or other rule of strict construction shall not apply to the construction or interpretation of any provision of the Plan, the Disclosure Statement, the exhibits and the plan schedules, or the documents ancillary and related thereto.

Section 12.25 Closing of Chapter 11 Cases. The Liquidation Trustee shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

CONFIRMATION REQUEST

The Debtors hereby request confirmation of the Plan pursuant to section 1129(a) or section 1129(b) of the Bankruptcy Code.

Dated: September 18, 2017

Ignite Restaurant Group, Inc.
Ignite Restaurant Group – RSC LLC
Joe’s Crab Shack, LLC
Joe’s Crab Shack – Redondo Beach, Inc.
BHTT Entertainment, LLC
Ignite Restaurants – New Jersey, LLC
Joe’s Crab Shack – Maryland, LLC
Joe’s Crab Shack – Anne Arundel MD, LLC
Brick House Development LLC
JCS Monmouth Mall – NJ, LLC
JCS Development LLC

By: /s/ Jonathan Tibus
Name: Jonathan Tibus
Title: Chief Executive Officer

EXHIBIT A

SETTLEMENT TERM SHEET

SECURED LENDER/CREDITORS' COMMITTEE SETTLEMENT TERM SHEET¹

1.	Minimum Sale Proceeds Amount	On the Effective Date, the first \$800,000 of net sale proceeds, in the aggregate, will be deposited into a general unsecured creditor trust (the " <u>GUC Trust</u> ") with the trustee thereto (the " <u>GUC Trustee</u> ") selected by the Creditors' Committee that is reasonably acceptable to the Required Lenders.
2.	Upside Sharing	<p>On the Effective Date, the GUC Trust will receive the following sharing percentages, on an incremental basis, to the extent the Purchase Price of the Purchaser exceeds \$55,000,000 in Cash, in each case based on net dollars, excluding the breakup fee:</p> <ul style="list-style-type: none"> • Five percent (5.0%) for the Purchase Price between \$55,000,001-\$60,000,000; • Ten percent (10.0%) for the Purchase Price between \$60,000,001-\$80,000,000; • Fifteen percent (15.0%) for the Purchase Price over and above \$80,000,000²
3.	Avoidance Actions & Commercial Torts	To the extent they are Excluded Assets or otherwise not released under the Asset Purchase Agreement, avoidance actions and commercial tort claims (to the extent the latter are not subject to the Prepetition Liens) will be deposited into the GUC Trust, and the GUC Trust will receive the first \$500,000 of aggregate net proceeds recovered from such

¹ Capitalized terms used but not defined herein or in the final cash collateral order shall have the meaning set forth in the chapter 11 plan filed by the Debtors on July 6, 2017 (Docket No. 307, the "Plan").

² For example, if the Purchase Price were equal to \$55,000,000, then the GUC Trust would receive \$800,000 in the aggregate as the Minimum Sale Proceeds Amount.

If the Purchase Price were equal to \$70,000,000, then the GUC Trust would receive \$2,050,000 in the aggregate, comprised of (i) the \$800,000 Minimum Sale Proceeds Amount; plus (ii) \$250,000 (which equals 5% of the Purchase Price between \$55,000,001-\$60,000,000); plus (iii) \$1,000,000 (which equals 10% of the Purchase Price between \$60,000,001-\$70,000,000).

If the Purchase Price were equal to \$90,000,000, then the GUC Trust would receive \$4,550,000 in the aggregate, comprised of (i) the \$800,000 Minimum Sale Proceeds Amount; plus (ii) \$250,000 (which equals 5% of the Purchase Price between \$55,000,001-\$60,000,000); plus (iii) \$2,000,000 (which equals 10% of the Purchase Price between \$60,000,001-\$80,000,000); plus (iv) \$1,500,000 (which equals 15% of the Purchase Price over and above \$80,000,000).

In each of the above examples, the remainder of the Purchase Price would be allocated to holders of Allowed Class 2 Secured Lender Claims.

		avoidance actions and commercial tort claims (with net proceeds over and above such \$500,000 minimum amount to be shared on a pro rata basis with the Secured Lender Deficiency Claims).
4.	Secured Lender Deficiency Claims	The Secured Lender Deficiency Claims will not share in the distributions from the GUC Trust to the extent of the amounts set forth in items 1-3 above.
5.	Maximum Recovery Amount	Notwithstanding items 1-3 above, the percentage recovery to holders of Allowed Class 4 General Unsecured Claims (excluding the Secured Lender Deficiency Claims) may not exceed the percentage recovery to holders of Allowed Class 2 Secured Lender Claims.
6.	Approved Budget for Creditors' Committee	The Approved Budget for the Retained Professionals to the Creditors' Committee will equal \$500,000 in the aggregate for the Chapter 11 Cases. Any allowed amounts over and above such \$500,000 amount will be paid solely from the GUC Trust (<i>i.e.</i> , the amounts that would otherwise be distributed to holders of Allowed Class 4 General Unsecured Claims pursuant to items 1-3 above).
7.	Lien Investigation and Challenge Period	The Creditors' Committee will acknowledge the validity and perfection of the claims and liens of the Secured Lenders so the investigation budget and challenge period will be eliminated. The Lien and Claim Perfection Matters shall become final and binding on the Creditors' Committee on the Effective Date, meaning that the net sale proceeds not given to the GUC Trust pursuant to items 1-2 above shall be allocated to the holders of Allowed Class 2 Secured Lender Claims.
8.	Section 506(c) and 552(b) Waivers	The Creditors' Committee will support the Section 506(c) and 552(b) waivers set forth in the final cash collateral order through any termination of consensual use of cash collateral; <u>provided</u> that such waivers shall become final and binding on the Effective Date.
9.	Funding of Approved Budget	The Secured Lenders will fund the Approved Budget (as may be amended from time to time) as and to the extent set forth in the final cash collateral order, subject to item #6 above.
10.	Plan Support	The Required Lenders and Creditors' Committee will support a chapter 11 plan that is consistent with the above terms and conditions.
11.	Credit Bid	The Creditors' Committee will not contest or challenge (or support any person or entity that contests or challenges) a credit bid by the Administrative Agent or Secured Lenders so long as the same economics are provided to the GUC Trust as described above in such credit bid.

Appendix B

Liquidation Analysis

Ignite Restaurant Group, Inc.
 Proceeds and Recoveries - Hypothetical Liquidation under Ch. 7
 Summary

	Book Value (1)	Notes	Estimated Recovery %	Estimated Recovery \$
Assets available for Distribution				
Cash and cash equivalents	\$44,838,233	(2)	100%	\$44,838,233
Furniture, Fixtures, & Equipment	4,973,576	(3)	10%	497,358
Other Assets (incl. Liquor Licenses)	1,635,500	(4)	49%	806,738
Prepaid Expenses & Deposits Recovered	4,340,093	(5)	0%	5,106
Estimated Net Proceeds available from Assets	55,787,401			46,147,434
Total Chapter 7 Proceeds before expenses (A)				\$46,147,434
Estimated Chapter 7 Expenses				
Ch. 7 Trustee		(6)		1,437,673
Ch. 7 Trustee's Professionals		(7)		250,000
Other (Records storage, other sale fees, etc.)		(8)		100,000
Subtotal: Chapter 7 Expenses (B)				1,787,673
Total Proceeds by Class				
Proceeds Available for Secured, Priority & Admin Creditors				43,553,023
Proceeds Available for Unsecured Creditors		(9)		806,738
Total (A - B)				\$ 44,359,761
Estimated Recoveries				
Class 1 - Miscellaneous Secured Claims	-	(10)	n/a	-
Class 2 - Secured Lender Claims	43,553,023	(11)	100%	43,553,023
Class 3 - Other Priority Claims	1,099,308	(12)	0%	-
Class 4 - General Unsecured Claim - Deficiency Claim	-	(13)	n/a	-
Class 4 - General Unsecured Claims	133,747,546	(14)	1%	806,738
Class 5 - Convenience Claims	-	(15)	n/a	-
Class 6 - Interests in the Debtors	tbd	(16)	n/a	-
				44,359,761
				-
Notes				

- (1) Book balances estimated as of the Plan Effective Date (11/6/17).
 (2) Cash and Cash Equivalents as of the Plan Effective Date, including restricted cash per supplemental cash collateral budget (as filed on 8/11/2017)
 (3) Net proceeds from sales of FF&E from closed stores by means of an auctioneer
 (4) Sales of liquor licenses related to closed stores, including licenses under contract as of the filing date of this analysis. Assumes no recovery from avoidance actions.
 (5) Balance of Pre-paid assets that represent excluded assets under the APA as of closing of the APA (8/28)
 (6) Chapter 7 Trustee Commission is calculated in accordance with 11 U.S.C. section 326(a).
 (7) Assumes liquidating trustee hires additional professionals to administer the Ch. 7 process
 (8) Contingency for record keeping, storage, bank fees, and other Trust expenses
 (9) Assumes agreement between the First Lien Lenders and the UCC is vacated by the conversion to Ch. 7 and, further, that sales from the sale of liquor licenses inures to the benefit of the unsecured creditors
 (10) Assumes no claims in Class 1
 (11) Reflects the value of the secured portion of the Secured Lenders claims
 (12) No recovery to class as proceeds are assumed distributed per absolute priority to the Sr. Secured claims
 (13) Lenders' deficiency claim subsumed in the General Unsecured Claim pool
 (14) No recovery to class as proceeds are assumed distributed per absolute priority to the Sr. Secured claims
 (15) Class created by the Plan; assumes this class does not come into existence in the absence of a confirmed Plan
 (16) No recovery to class as proceeds are assumed distributed per absolute priority to the Sr. Secured claims

Appendix C

Financial Data for the Periods Ended December 31, 2015 and December 31, 2016

IGNITE RESTAURANT GROUP, INC.

CONSOLIDATED BALANCE SHEETS

(in thousands, except par value)

	January 2, 2017	December 28, 2015
ASSETS		
Current assets		
Cash and cash equivalents	\$ 430	\$ 7,817
Accounts receivable, net	5,195	3,385
Inventories	3,845	5,272
Other current assets	3,736	4,677
Total current assets	13,206	21,151
Property and equipment, net	129,324	176,307
Intangible assets, net	4,464	5,482
Other assets	1,422	2,242
Total assets	<u>\$ 148,416</u>	<u>\$ 205,182</u>
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	\$ 11,885	\$ 18,406
Accrued liabilities	29,453	31,532
Current portion of debt obligations	1,180	1,621
Total current liabilities	42,518	51,559
Long-term debt obligations	117,806	123,112
Deferred rent	17,788	20,193
Other long-term liabilities	6,744	3,705
Total liabilities	<u>184,856</u>	<u>198,569</u>
Commitments and contingencies (Note 11)		
Stockholders' equity (deficit)		
Preferred stock, \$0.01 par value per share, 100,000 shares authorized; zero shares issued and outstanding	-	-
Common stock, \$0.01 par value per share, 500,000 shares authorized; 26,246 and 26,180 shares issued and outstanding, respectively	259	258
Additional paid-in capital	93,928	92,621
Accumulated deficit	(130,627)	(86,266)
Total stockholders' equity (deficit)	(36,440)	6,613
Total liabilities and stockholders' equity (deficit)	<u>\$ 148,416</u>	<u>\$ 205,182</u>

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except earnings per share)

	Fiscal Year		
	2016	2015	2014
Revenues	\$ 450,279	\$ 492,044	\$ 503,508
Costs and expenses			
Restaurant operating costs and expenses			
Cost of sales	147,036	154,270	163,407
Labor expenses	134,048	142,209	142,662
Occupancy expenses	38,312	40,890	39,401
Other operating expenses	83,582	95,384	94,086
General and administrative	23,487	30,523	38,669
Depreciation and amortization	23,227	25,831	23,901
Pre-opening costs	876	927	2,799
Asset impairments and closures	31,360	10,497	1,980
Loss (gain) on disposal of assets	623	(121)	1,340
Total costs and expenses	482,551	500,410	508,245
Loss from operations	(32,272)	(8,366)	(4,737)
Interest expense, net	(12,603)	(16,363)	(12,521)
Gain (loss) on insurance settlements	755	(428)	89
Loss from continuing operations before income taxes	(44,120)	(25,157)	(17,169)
Income tax expense (benefit)	241	(308)	16,213
Loss from continuing operations	(44,361)	(24,849)	(33,382)
Loss from discontinued operations, net of tax	-	(21,516)	(20,167)
Net loss	<u>\$ (44,361)</u>	<u>\$ (46,365)</u>	<u>\$ (53,549)</u>
Net loss per share			
Basic and diluted			
Loss from continuing operations	\$ (1.72)	\$ (0.97)	\$ (1.30)
Loss from discontinued operations, net of tax	\$ -	\$ (0.84)	\$ (0.79)
Net loss	<u>\$ (1.72)</u>	<u>\$ (1.80)</u>	<u>\$ (2.09)</u>
Weighted average shares outstanding			
Basic	25,834	25,731	25,659
Diluted	25,834	25,731	25,659

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)

(in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Earnings (Deficit)	Total
	Shares	Amount			
Balance at December 30, 2013	25,796	\$ 256	\$ 87,703	\$ 13,648	\$ 101,607
Net loss	-	-	-	(53,549)	(53,549)
Issuance of equity awards, net	398	-	-	-	-
Vesting of restricted stock	-	1	(1)	-	-
Taxes paid related to net share settlement of equity awards	(11)	-	(124)	-	(124)
Stock-based compensation	-	-	3,365	-	3,365
Balance at December 29, 2014	26,183	\$ 257	\$ 90,943	\$ (39,901)	\$ 51,299
Net loss	-	-	-	(46,365)	(46,365)
Issuance of equity awards, net	29	-	-	-	-
Vesting of restricted stock	-	1	(1)	-	-
Taxes paid related to net share settlement of equity awards	(32)	-	(134)	-	(134)
Stock-based compensation	-	-	1,813	-	1,813
Balance at December 28, 2015	26,180	\$ 258	\$ 92,621	\$ (86,266)	\$ 6,613
Net loss	-	-	-	(44,361)	(44,361)
Issuance of equity awards, net	83	-	-	-	-
Vesting of restricted stock	-	1	(1)	-	-
Taxes paid related to net share settlement of equity awards	(17)	-	(29)	-	(29)
Stock-based compensation	-	-	1,337	-	1,337
Balance at January 2, 2017	26,246	\$ 259	\$ 93,928	\$ (130,627)	\$ (36,440)

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Fiscal Year		
	2016	2015	2014
<i>Cash flows from operating activities</i>			
Net loss	\$ (44,361)	\$ (46,365)	\$ (53,549)
Loss from discontinued operations, net of tax	-	21,516	20,167
Adjustments to reconcile loss from continuing operations to net cash provided by operating activities:			
Depreciation and amortization	23,227	25,831	23,901
Amortization of debt issuance costs	1,117	1,663	3,121
Amortization of debt discount	514	870	177
Stock-based compensation	1,337	2,065	2,877
Asset impairments	26,237	9,409	1,770
Deferred income tax	196	(324)	15,023
Gain on insurance related to property and equipment	(705)	(695)	(89)
Non-cash loss (gain) on disposal of assets	543	(133)	(649)
Decrease (increase) in operating assets:			
Accounts receivable	(2,063)	4,076	3,289
Inventories	1,427	576	(92)
Other operating assets	1,416	1,006	1,314
Increase (decrease) in operating liabilities:			
Accounts payable and accrued liabilities	(3,358)	3,808	(2,783)
Other operating liabilities	623	2,076	3,915
Net cash provided by operating activities - continuing operations	6,150	25,379	18,392
Net cash provided by (used in) operating activities - discontinued operations	-	2,668	(1,432)
Net cash provided by operating activities	6,150	28,047	16,960
<i>Cash flows from investing activities</i>			
Purchases of property and equipment	(9,360)	(16,633)	(25,859)
Proceeds from property insurance claims	705	695	89
Proceeds from disposal of assets	1,759	2,030	41
Purchases of intangible assets	-	-	(150)
Net cash used in investing activities - continuing operations	(6,896)	(13,908)	(25,879)
Net cash provided by investing activities - discontinued operations	240	11,639	585
Net cash used in investing activities	(6,656)	(2,269)	(25,294)
<i>Cash flows from financing activities</i>			
Borrowings on revolving credit facility	43,050	-	109,000
Payments on revolving credit facility	(37,050)	-	(194,207)
Proceeds from long-term debt	-	-	162,525
Payments on long-term debt	(12,852)	(36,100)	(46,775)
Debt issuance costs paid	-	-	(4,784)
Taxes paid related to net share settlement of equity awards	(29)	(134)	(124)
Net cash provided by (used in) financing activities	(6,881)	(36,234)	25,635
Net increase (decrease) in cash and cash equivalents	(7,387)	(10,456)	17,301
Change in cash and cash equivalents - discontinued operations	-	(2,291)	(573)
Cash and cash equivalents at beginning of period	7,817	20,564	3,836
Cash and cash equivalents at end of period	\$ 430	\$ 7,817	\$ 20,564

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.
Notes to Consolidated Financial Statements

Note 1—Description of Business

Ignite Restaurant Group, Inc. (referred to herein as the “Company,” “Ignite,” “we,” “us” or “our”) operates two full service, casual dining restaurant brands under the names Joe’s Crab Shack (“Joe’s”) and Brick House Tavern + Tap (“Brick House”). As of January 2, 2017, we operated 112 Joe’s restaurants and 25 Brick House restaurants in 32 states within the United States, and franchised three Joe’s restaurants in Dubai, U.A.E.

J.H. Whitney VI, L.P., an affiliate of J.H. Whitney Capital Partners, LLC, owns approximately 66.1% of our total outstanding common stock as of January 2, 2017.

Note 2—Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Ignite and its wholly-owned subsidiaries as of January 2, 2017. All significant intercompany balances and transactions have been eliminated in consolidation. On April 17, 2015, we completed the sale of Romano’s Macaroni Grill (“Macaroni Grill”). The operating results of Macaroni Grill for the prior periods have been aggregated and reclassified as discontinued operations in our consolidated statements of operations. See Note 4 for further discussion.

Fiscal Year

Our fiscal year ends on the Monday nearest to December 31 of each year. Fiscal year 2016 was a 53-week year. Fiscal years 2015 and 2014 were 52-week years. References to 2016, 2015 and 2014 are references to fiscal years ended January 2, 2017, December 28, 2015, and December 29, 2014 respectively.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Fair Value Measurements

We apply fair value accounting for all financial assets and liabilities and nonfinancial assets and liabilities that are recognized or disclosed at fair value in the financial statements. We define fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities that are required to be recorded at fair value, we assume the highest and best use of the asset by market participants in which we would transact and the market-based risk measurements or assumptions that market participants would use in pricing the asset or liability, such as inherent risk, transfer restrictions, and credit risk.

We apply the following fair value hierarchy, which prioritizes the inputs used to measure fair value into three levels, and base the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- | | |
|----------|--|
| Level 1— | Quoted prices in active markets for identical assets or liabilities. |
| Level 2— | Observable inputs other than quoted prices in active markets for identical assets or liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities. |
| Level 3— | Inputs that are both unobservable and significant to the overall fair value measurement reflect an entity’s estimates of assumptions that market participants would use in pricing the asset or liability. |

Financial Instruments

We record all financial instruments at cost, which is the fair value at the date of transaction. The amounts reported in the consolidated balance sheets for cash and cash equivalents, accounts receivable, and accounts payable and accrued liabilities approximate their fair value because of the short-term maturities of these instruments.

Revenue Recognition

Revenues from food and beverage sales are recognized when payment is tendered at the point-of-sale and are presented net of promotional allowances, discounts, and employee meals. Sales taxes collected from customers and remitted to governmental authorities are presented on a net basis, or excluded from revenues, in our consolidated statements of operations. Initial franchise fees received are deferred and recognized as revenue upon opening of the franchised restaurant, which is when we have performed substantially all initial services required by the franchise agreement. Continuing licensing and royalty revenues are recognized when earned. Licensing and royalty revenues were \$0.3 million, \$0.2 million, and \$4 thousand in 2016, 2015, and 2014, respectively.

Proceeds from the sale of gift cards are deferred and recognized as revenue upon redemption. Deferred gift card revenue is included in accrued liabilities in our consolidated balance sheets. Our gift cards do not have an expiration date and we do not deduct non-usage fees from outstanding gift card balances. We recognize gift card breakage income exclusive of amounts subject to state escheatment laws when the likelihood of redemption of the cards becomes remote. We recorded breakage income of \$0.5 million, \$0.4 million, and \$0.3 million during 2016, 2015 and 2014, respectively, which is included in revenues in our consolidated statements of operations.

We also benefit from certain vendor rebates which are recorded as a reduction to cost of sales. Additionally, we may enter into certain contracts that provide marketing allowances, which are amortized over the life of the contract.

Cash and Cash Equivalents

We consider cash on hand in restaurants, deposits in banks, and short-term marketable securities with original maturities of 90 days or less as cash and cash equivalents.

Accounts Receivable

Accounts receivable, net of allowance for doubtful accounts, represent their estimated net realizable value, and includes receivables from credit card processors, franchisees, the sale of gift cards in retail outlets, and allowances due to us from landlords based on lease terms.

Inventories

Inventories are stated at the lower of cost or market, and consist of food, beverage, and retail merchandise. Inventory cost is determined using the average cost method.

Property and Equipment

Property and equipment acquired is stated at cost less accumulated depreciation and impairment. Depreciation is calculated using the straight-line method, based on the following estimated useful lives:

	Shorter of effective lease term or estimated useful life (in years)
Leasehold improvements	
Restaurant equipment	10
Furniture and fixtures	5 – 10
Computer equipment and software	3 – 5

We capitalize major replacements and improvements that increase the useful life of the asset, whereas we expense repairs and maintenance as incurred. The cost and accumulated depreciation and impairment of assets sold, retired or otherwise disposed of are removed from the balance sheet and any gain or loss is included in the statement of operations.

We capitalize direct costs associated with the site acquisition and construction of restaurant units, including direct internal payroll and payroll-related costs, incremental travel expenses, and interest cost as leasehold improvements. If we subsequently determine that we will not continue acquiring or developing a project for which we have been capitalizing costs, any previously capitalized internal development and third-party costs will be written off as dead deals and included in general and administrative expenses.

Impairment of Long-Lived Assets

We evaluate the recoverability of the carrying amount of long-lived assets, including property and equipment, whenever events and circumstances indicate that the carrying value of an asset may not be fully recoverable. Our review for impairment of these long-lived assets takes into account estimates of future undiscounted cash flows. Factors considered include, but are not limited to, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Our asset group for impairment testing is comprised of the assets and liabilities of each of our individual restaurants, since this is the lowest level of identifiable cash flows. We estimate the future cash flows expected to result from the use of the long-lived assets and their eventual disposition. An impairment loss may be recognized if the future undiscounted cash flows associated with the assets are less than their carrying value. Impairment losses are measured as the amount by which the carrying values of the assets exceed their fair values. We estimate fair value by discounting the expected future cash flows of our restaurants over their remaining lease terms. We recorded impairment charges of \$26.2 million, \$9.4 million and \$1.8 million in fiscal year 2016, 2015 and 2014, respectively, which is included in asset impairments and closures in our consolidated statements of operations.

From time to time, we have decided to close or dispose of restaurants. Typically, such decisions are made based on operating performance or strategic considerations and must be made before the actual costs or proceeds of disposition are known, and management must make estimates of these outcomes. Such outcomes could include the sale of a leasehold, mitigating costs through a tenant or subtenant, or negotiating a buyout of a remaining lease term. In these instances, management evaluates possible outcomes, frequently using outside real estate and legal advice, and records provisions for the effect of such outcomes. The accuracy of such provisions can vary materially from original estimates, and management regularly monitors the adequacy of the provisions until final disposition occurs.

Intangible Assets

We recognize acquired intangible assets apart from goodwill whenever the intangible asset arises from contractual or other legal rights, or whenever it can be separated or divided from the acquired entity and sold, transferred, licensed, rented, or exchanged, either individually or in combination with a related contract, asset or liability. Intangible assets subject to amortization are amortized on a straight-line basis over their estimated useful lives. We evaluate the recoverability of the carrying amount of intangible assets with definite useful lives whenever events and circumstances indicate that the carrying value of the asset may not be fully recoverable. Impairment losses are recognized if the carrying value of an intangible asset is not recoverable from expected future cash flows and its carrying amount exceeds its estimated fair value.

Intangible assets consist of the following (in thousands):

	January 2, 2017			December 28, 2015		
	Cost	Accumulated Amortization and Impairment	Carrying Value	Cost	Accumulated Amortization and Impairment	Carrying Value
Definite lived:						
Trademarks	\$ 4,580	\$ 4,417	\$ 163	\$ 4,580	\$ 4,029	\$ 551
Indefinite lived:						
Liquor licenses	4,376	75	4,301	4,931	-	4,931
	<u>\$ 8,956</u>	<u>\$ 4,492</u>	<u>\$ 4,464</u>	<u>\$ 9,511</u>	<u>\$ 4,029</u>	<u>\$ 5,482</u>

The costs of purchasing transferable liquor licenses through open markets in jurisdictions with a limited number of authorized liquor licenses are capitalized as indefinite-lived intangibles and included in intangible assets, net in the consolidated balance sheets. The costs of obtaining non-transferable liquor licenses that are directly issued by local government agencies are expensed as incurred. Annual liquor license renewal fees are expensed over the renewal term. Liquor licenses are reviewed for impairment annually or whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. We determined estimated fair value based on prices in the open market for licenses in similar jurisdictions (level 2 in the fair value hierarchy). We recorded impairment charges for liquor licenses in 2016 of \$0.1 million. In 2016, we sold two liquor licenses for \$0.5 million. No impairment charge for liquor licenses was recorded in 2015.

Definite-lived trademarks are amortized on a straight-line basis over their estimated useful life of 10 years. Amortization expense for definite-lived trademarks was approximately \$0.4 million, \$0.5 million and \$0.5 million for 2016, 2015 and 2014, respectively.

Scheduled amortization of definite-lived intangible assets is as follows (in thousands):

Fiscal Year	Amount
2017	35
2018	35
2019	29
2020	15
2021	15
Thereafter	34
	<u>\$ 163</u>

Deferred Charges

Debt issuance costs representing costs to obtain long-term financing are accounted for as a deferred charge and are included in our consolidated balance sheets in other assets for our revolving credit facility and as a reduction to our debt obligation for our term loan. They are amortized using the interest method for the term loan and straight-line method for the revolving credit facility over the term of the related financing. Amortization of debt issuance costs, which was approximately \$1.1 million, \$1.7 million, and \$3.1 million for 2016, 2015 and 2014, respectively, is included in interest expense in our consolidated statements of operations. See Note 7 regarding write-off of debt issuance costs related to debt pay down and refinancing transactions.

Leases

We currently lease all of our restaurant locations under leases classified as operating leases. Minimum base rent for our operating leases, which generally have escalating rentals over the term of the lease, is recorded on a straight-line basis over the lease term. As such, an equal amount of rent expense is attributed to each period during the term of the lease regardless of when actual payments occur. Lease terms begin on the date we take effective control of the property and include cancelable option periods where failure to exercise such options would result in an economic penalty. The difference between rent expense and actual cash payments is classified as deferred rent in the consolidated balance sheets.

Certain leases contain provisions that require additional rental payments based upon restaurant sales volume. Contingent rentals are accrued each period as the liabilities are incurred, in addition to the straight-line rent expense noted above.

Insurance Liabilities

We maintain large deductibles on workers' compensation, general liability, property, and business interruption insurance coverage. These policies have been structured to limit our per-occurrence exposure. Our estimated liabilities for workers' compensation and general liability are undiscounted and are based on our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation, and our claims settlement practices.

Advertising Expenses

Advertising production costs are expensed at the time the advertising is first aired. All other advertising costs are expensed as incurred. Advertising expenses were approximately \$16.1 million, \$22.9 million and \$22.9 million for 2016, 2015 and 2014, respectively, and are included in other operating expenses in our consolidated statements of operations.

Pre-opening Costs

Non-capital expenditures associated with the opening of new or converted restaurants are expensed as incurred. Pre-opening costs consist of costs incurred prior to opening a new or converted restaurant and are made up primarily of manager salaries, employee payroll, and other costs related to training and preparing new or converted restaurants for opening. Pre-opening costs also include an accrual for straight-line rent recorded during the period between the date we take effective control of our leased properties and the restaurant opening date.

Stock-based Compensation

We recognize expense for stock-based compensation awards, which is equal to the fair value of the awards at grant date, ratably in labor expenses and general and administrative expenses in our consolidated statements of operations over the requisite service period.

The following table provides the significant weighted average assumptions used to determine the fair value of stock appreciation rights on the grant date using the Black-Scholes option-pricing model for awards granted during the fiscal years 2016, 2015 and 2014:

	Fiscal Year					
	2016		2015		2014	
Expected term (in years)	6.3		6.3		6.3	
Expected volatility	46.4%		43.9%		42.5%	
Dividend yield	0.0%		0.0%		0.0%	
Risk-free interest rate	1.3%	- 1.6%	1.5%	- 1.9%	1.7%	- 2.0%

Since we have limited historical exercise experience on stock appreciation rights, we used the simplified method of estimating expected term. We estimated expected volatility by supplementing our own historical volatility with the volatility of a peer group over a recent historical period equal to the same expected term of the award. The expected dividend yield is based on our history of not paying regular dividends in the past and our current intention to not pay regular dividends in the foreseeable future. Risk-free rate is based on the U.S. Treasury yield curve in effect at the time of the grant using the term equal to our expected term. Restricted stock is valued using the closing stock price of the business day prior to the grant date.

Income Taxes

We are subject to U.S. federal income tax and income taxes imposed in the state and local jurisdictions where we operate our restaurants. Deferred income taxes are provided on temporary differences between financial statement and income tax reporting. Temporary differences are differences between the amounts of assets and liabilities reported for financial statement purposes and their tax bases. Deferred tax assets are recognized for temporary differences that will be deductible in future years' tax returns and for operating loss and tax credit carryforwards. We evaluate our deferred tax assets on a quarterly basis to determine whether a valuation allowance is required. We assess whether a valuation allowance should be established based on our determination of whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. We consider the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Deferred tax liabilities are recognized for temporary differences that will be taxable in future years' tax returns.

We account for uncertain tax positions using a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined as a tax position that is more likely than not to be sustained upon examination by tax authorities, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. See Note 10 for information regarding changes in our unrecognized tax benefits.

Net Loss per Share

Basic net loss per share is computed using the weighted average number of common shares outstanding during the period, while diluted net loss per share is computed using the weighted average number of common shares outstanding plus all potentially dilutive common share equivalents outstanding during the period. The following table summarizes the components to determine the denominators of basic and diluted net loss per share (in thousands):

	Fiscal Year		
	2016	2015	2014
Denominator:			
Basic weighted average shares outstanding	25,834	25,731	25,659
Effect of dilutive securities	-	-	-
Diluted weighted average shares outstanding	<u>25,834</u>	<u>25,731</u>	<u>25,659</u>

For fiscal year 2016, 2015 and 2014, we excluded 0.7 million, 1.2 million and 1.6 million stock appreciation rights (“SARs”) and 349 thousand, 405 thousand and 510 thousand restricted stock, respectively, from the calculation of net loss per share because the effect was anti-dilutive due to the net loss during the respective periods.

Claims and Other Contingencies

We recognize legal claims and other loss contingencies when information becomes available indicating that a loss is probable and the amount can be reasonably estimated. Predicting the outcome of claims and litigation involves substantial uncertainties that could cause actual results to vary materially from estimates. We recognize legal expenses, including those related to loss contingencies, as incurred.

Generally, we do not recognize gain contingencies until all contingencies have been resolved, but we recognize gain contingencies that are recoveries of previously recognized contingent losses when realization of the recovery is deemed probable and reasonably estimable.

Reclassifications

We reclassified certain items in the prior year financial statements to conform to the current year financial statement presentation. The reclassification had no effect on our previously reported financial position, results of operations or cash flows.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) and the International Accounting Standards Board issued a converged standard on revenue recognition, Accounting Standards Update (“ASU”) No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*. Under this guidance, an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The guidance also specifies the accounting for some costs to obtain or fulfill a contract with a customer. Its disclosure guidance requires an entity to disclose sufficient information to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers, including qualitative and quantitative information about contracts with customers, including revenue and impairments recognized, disaggregation of revenue and information about contract balances and performance obligations; significant judgments and changes in judgments; and assets recognized from the costs to obtain or fulfill a contract. This ASU’s effective date has been deferred by the issuance of ASU No. 2015-14, and is effective for us for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Early application is permitted, but not before the original effective date of December 15, 2016. This ASU permits the use of either the retrospective or cumulative effect transition method. We are in the process of selecting a transition method. This guidance will not impact our recognition of revenue for company-operated restaurant sales.

In August 2014, the FASB issued ASU No. 2014-15, *Presentation of Financial Statements – Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern*. This update requires management to assess an entity’s ability to continue as a going concern by incorporating and expanding on certain principles that are currently in U.S. auditing standards. Specifically, ASU No. 2014-15 (1) provides a definition of the term substantial doubt, (2) requires an evaluation every reporting period including interim periods, (3) provides principles for considering the mitigating effects of management’s plans, (4) requires certain disclosures when substantial doubt is alleviated as a result of consideration of management’s plans, (5) requires an express statement and other disclosures when substantial doubt is not alleviated, and (6) requires an assessment for a period of one year after the date that the financial statements are issued or available to be issued. This update is effective for the fiscal years ending after December 15, 2016, and for annual periods and interim periods thereafter. As of January 2, 2017, we adopted ASU 2014-15. Please see Note 3.

In April 2015, the FASB issued ASU No. 2015-03, *Interest—Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*, to simplify the presentation of debt issuance costs in the balance sheet. The ASU specifies that debt issuance costs related to a note shall be reported in the balance sheet as a direct deduction from the face amount of that note, and that amortization of debt issuance costs also shall be reported as interest expense. The ASU does not affect the current guidance on the recognition and measurement of debt issuance costs. The update is effective for us in fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is allowed for all entities for financial statements that have not been previously issued. Entities would apply the new guidance retrospectively to all prior periods presented. Our adoption of this ASU effective December 29, 2015 did not have a significant impact on our consolidated financial statements. We reclassified \$2.2 million of debt issuance costs related to our term loan from other assets to reduce the carrying value of our debt obligations as of December 28, 2015 to conform to current year financial statement presentation. The debt issuance costs balance related to our revolving credit facility will continue to be classified in other assets in our consolidated balance sheets.

In August 2015, the FASB issued ASU No. 2015-15, *Interest—Imputation of Interest (Subtopic 835-30): Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements*, to amend SEC paragraphs in Subtopic 835-30 pursuant to SEC Staff announcement at the Emerging Issues Task Force meeting on June 18, 2015. The ASU addresses presentation and subsequent measurement of debt issuance costs related to line-of-credit arrangements, which were not addressed in ASU No. 2015-03. Given the absence of authoritative guidance within ASU No. 2015-03 for debt issuance costs related to line-of credit arrangements, the SEC Staff would not object to an entity deferring and presenting debt issuance costs as an asset and subsequently amortizing the deferred debt issuance costs ratably over the term of the line-of-credit arrangement regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The effective date and transition guidance of this ASU is in conjunction with the effective date and transition guidance of ASU No. 2015-03. Our adoption of this ASU effective December 29, 2015 did not have a significant impact on our consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. This guidance requires the recognition of assets and liabilities that arise from lease transactions wherein current off-balance sheet leasing activities is required to be reflected in the balance sheet. The FASB lessee accounting model retains two types of leases, and is consistent with the lessee accounting model under existing GAAP. One type of lease (finance leases) will be accounted for in substantially the same manner as capital leases are accounted for under existing GAAP. The other type of lease (operating leases) will be accounted for (both in the income statement and statement of cash flows) in a manner consistent with operating leases under existing GAAP. However, as it relates to the balance sheet, lessees will recognize lease liabilities based upon the present value of remaining lease payments and corresponding lease assets for operating leases with limited exception. The new standard also will require lessees and lessors to provide additional qualitative and quantitative disclosures regarding the amount, timing, and uncertainty of cash flows arising from leases. These disclosures are intended to supplement the amounts recorded in the financial statements and provide supplemental information about the nature of an organization's leasing activities. This ASU is effective for annual reporting periods beginning after December 15, 2018, including interim periods within those annual reporting periods. We are currently evaluating the impact of the adoption of this guidance on our consolidated financial statements, but we expect this will have a material effect on our balance sheet since we have a significant amount of operating leases.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*, which simplifies several aspects of the accounting for employee share-based payment transactions for both public and nonpublic entities, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. This ASU is effective for us for annual reporting periods beginning after December 15, 2016, including interim periods within those annual reporting periods, with early adoption permitted. We are currently evaluating the impact of this ASU on our consolidated financial statements.

In April 2016, the FASB issued ASU No. 2016-10, *Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing*, which amends certain aspects of ASU 2014-09, specifically the standard's guidance on identifying performance obligations and the implementation guidance on licensing. This ASU's effective date and transition provisions are aligned with the requirements of ASU 2014-09. We are currently evaluating the impact of this ASU on our consolidated financial statements, including the recognition of transactions such as franchise area development fees and initial fees from franchisees.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*, which addresses the classification of cash receipts and cash payments and their presentation in the statement of cash flows. This ASU is effective for annual reporting periods beginning after December 15, 2017. We are currently evaluating the impact of this ASU on our consolidated financial statements.

Note 3—Going Concern

We have continued to experience declines in comparable restaurant sales and income from operations at Joe's and Brick House. We have closed underperforming restaurants and implemented cost reduction measures to help mitigate the effect of these declines and improve our financial position and liquidity. In late 2016, we engaged a financial advisor to assist us in evaluating various strategic alternatives potentially available to us. As part of this ongoing evaluation of strategic alternatives, we announced that our Board of Directors, working together with our management team and financial advisor, has commenced a process to pursue the sale of our business, which could be sold as an entirety or through the separate sales of Joe's or Brick House.

As of January 2, 2017, we were in compliance with all of our debt covenants. However, we are forecasting in 2017 that we may no longer be in compliance with the financial covenant ratios in our 2014 Credit Agreement. In an event of default, our lenders may accelerate the maturity of all of our indebtedness. If our lenders accelerate the maturity of our indebtedness, we will not have sufficient liquidity to repay the entire balance of our outstanding borrowings. The uncertainty associated with our ability to repay our outstanding debt obligations as they become due raises substantial doubt about our ability to continue as a going concern for one year after the issuance date of the financial statements.

We are currently in discussions with our lenders in connection with our pursuit of various strategic alternatives to improve our capital structure. It is possible that even a successful implementation of one of the strategic alternatives that we are pursuing will require us to make a filing for protection under Chapter 11 of the U.S. Bankruptcy Code. Our consolidated financial statements as of and for the year ended January 2, 2017 have been prepared assuming we will continue as a going concern, which contemplates continuity of operations, realization of assets and the satisfaction of liabilities in the normal course of business for the twelve month period following the date of these consolidated financial statements.

Note 4—Sale of Macaroni Grill

On April 17, 2015, we completed the sale of Macaroni Grill for \$7.3 million, net of directly related selling expenses, of which \$7.1 million was received in 2015 and \$0.2 million was received in 2016. During the thirteen weeks ended March 30, 2015, we recorded a \$22.4 million impairment charge to write down the net assets of Macaroni Grill to their estimated fair value less cost to sell, which is included in loss from discontinued operations in our condensed consolidated statements of operations. In addition, during the thirteen weeks ended June 29, 2015, we recorded a \$6.1 million loss on disposal of the Macaroni Grill business in loss from discontinued operations.

The table below reconciles significant items that comprise loss from discontinued operations before income taxes (in thousands):

	2015	2014
Revenues	\$ 88,439	\$ 333,677
Cost of sales	23,187	89,848
Labor expenses	31,266	114,473
Occupancy expenses	9,987	38,499
Other operating expenses	18,190	81,427
General and administrative	2,149	6,619
Depreciation and amortization	2,066	9,873
Asset impairments and closures	22,807	10,714
Loss (gain) on disposal of assets	4,339	(859)
Other non-operating items	(1,038)	124
Loss from discontinued operations before income taxes	<u>\$ (24,514)</u>	<u>\$ (17,041)</u>

Note 5—Selected Balance Sheet Accounts

The components of other current assets are as follows (in thousands):

	January 2, 2017	December 28, 2015
Prepaid insurance	\$ 1,709	\$ 1,663
Prepaid rent	851	-
Prepaid licenses and fees	308	742
Prepaid taxes	166	1,194
Prepaid advertising	43	135
Other	659	943
	<u>\$ 3,736</u>	<u>\$ 4,677</u>

The components of accrued liabilities are as follows (in thousands):

	January 2, 2017	December 28, 2015
Payroll and related costs	\$ 7,272	\$ 8,084
Insurance	6,953	7,158
Property taxes	3,139	3,476
Deferred gift card revenue	3,060	3,833
Restaurant closures liability	2,540	384
Sales and alcohol taxes	1,741	1,652
Utilities	1,187	1,466
Occupancy	1,071	936
Interest	913	2,664
Other	1,577	1,879
	<u>\$ 29,453</u>	<u>\$ 31,532</u>

Note 6—Property and Equipment, net

Property and equipment consisted of the following (in thousands):

	January 2, 2017	December 28, 2015
Leasehold improvements	\$ 226,146	\$ 257,244
Equipment	35,010	37,193
Furniture and fixtures	17,897	19,165
Construction in progress	266	8,607
	<u>279,319</u>	<u>322,209</u>
Less accumulated depreciation	149,995	145,902
	<u>\$ 129,324</u>	<u>\$ 176,307</u>

Depreciation expense was approximately \$22.8 million, \$25.4 million and \$23.4 million fiscal years 2016, 2015 and 2014, respectively.

Note 7—Debt Obligations

Debt obligations consisted of the following as of the dates presented below (in thousands):

	January 2, 2017	December 28, 2015
Term loan, due February 2019	\$ 115,301	\$ 128,350
Revolving credit facility, expiring February 2019	6,000	-
Less unamortized debt discount and loan costs	<u>2,315</u>	<u>3,617</u>
Total debt, net of debt discount and loan costs	118,986	124,733
Less current portion	<u>1,180</u>	<u>1,621</u>
Long-term debt obligations	<u>\$ 117,806</u>	<u>\$ 123,112</u>

On August 13, 2014, we entered into a new senior secured credit facility (“2014 Credit Agreement”), which consists of a \$30.0 million revolving credit facility (“2014 Revolving Credit Facility”) and a \$165.0 million term loan (“2014 Term Loan”), which both mature on February 13, 2019. The 2014 Term Loan was issued at 98.5% of par. The principal amount of the 2014 Term Loan is payable in consecutive quarterly installments of \$412,500, commencing on December 31, 2014, with the balance payable in full at maturity. Since December 2015, we have made \$46.5 million in voluntary prepayments on our 2014 Term Loan, which reduced our quarterly installment payments to \$294,886.

Interest rates for borrowings under the 2014 Credit Agreement for the revolver and the term loan are equal to, at our option, either LIBOR (subject to a 1% floor) or the base rate as defined in the agreement, plus a margin of 7.0% for LIBOR loans and 6.0% for base rate loans. The interest rate for the 2014 Term Loan and 2014 Revolving Credit Facility was 8.0% as of January 2, 2017. In addition, we are required to pay commitment fees on the unused portion of the 2014 Revolving Credit Facility. The commitment fee rate is currently at 0.5%. The commitment fee is subject to adjustment on a quarterly basis based on our leverage ratio as defined by the credit agreement.

The 2014 Credit Agreement is guaranteed by each of our subsidiaries and secured by substantially all of our present and future assets and a lien on the capital stock or other equity interests of our direct and indirect subsidiaries. The 2014 Credit Agreement contains covenants which, among other things, limit our ability to incur additional indebtedness, create liens on our assets, make certain investments or loans, merge or otherwise dispose of assets other than in the ordinary course of business, make acquisitions, and pay dividends or make other restricted payments. The 2014 Credit Agreement also contains customary covenants regarding, among other matters, the maintenance of insurance, the preservation and maintenance of our corporate existence, material compliance with laws, and the payment of taxes and other material obligations.

The 2014 Credit Agreement provides that (a) the leverage ratio shall not exceed (i) 5.75x through December 29, 2014, (ii) 5.5x from December 30, 2014 through June 29, 2015, (iii) 5.25x from June 30, 2015 through December 28, 2015, (iv) 5.0x from December 29, 2015 through March 28, 2016, (v) 4.75x from March 29, 2016 through June 27, 2016, (vi) 4.25x from June 28, 2016 through September 26, 2016, (vii) 4.0x from September 27, 2016 through April 3, 2017, (viii) 3.75x from April 4, 2017 through October 2, 2017, (ix) 3.5x from October 3, 2017 through April 2, 2018, (x) 3.25x from April 3, 2018 through December 31, 2018, and (xi) 3.0x from January 1, 2019 through maturity date; and requires (b) an interest coverage ratio of at least (i) 2.0x through June 29, 2015, (ii) 2.25x from June 30, 2015 through March 28, 2016, (iii) 2.5x from March 29, 2016 through June 27, 2016, (iv) 2.75x from June 28, 2016 through January 2, 2017, (v) 3.0x from January 3, 2017 through July 3, 2017, (vi) 3.25x from July 4, 2017 through April 2, 2018, (vii) 3.5x from April 3, 2018 through December 31, 2018, and (viii) 3.75x from January 1, 2019 through maturity date. The 2014 Credit Agreement limits capital expenditures to an amount in respect of any period not to exceed (i) \$29.5 million from the closing date through December 29, 2014, (ii) \$45.5 million for fiscal 2015, (iii) \$45.8 million for fiscal 2016, (iv) \$52.5 million for fiscal 2017, (v) \$53.7 million for fiscal 2018, and (vi) \$58.6 million from January 1, 2019 through maturity date, provided that the amount of permitted capital expenditures in any period can be increased by the unused permitted capital expenditures from the immediately preceding period, subject to certain limitations as defined by the agreement. We were in compliance with these covenants as of January 2, 2017.

In December 2015, we made a \$35.0 million voluntary prepayment of our 2014 Term Loan and we wrote off \$0.6 million of debt issuance costs and \$0.4 million of debt discount, which are included in interest expense. In 2016 we made \$11.5 million in voluntary prepayments and we wrote off \$161 thousand of debt issuance costs and \$105 thousand of debt discount, which are included in interest expense.

As of January 2, 2017, we had letters of credit of approximately \$10.1 million outstanding under the 2014 Revolving Credit Facility and had available borrowing capacity of approximately \$13.9 million.

The carrying value of our long-term debt approximates fair value. The estimated fair value of our debt is based on observable market information from a third party pricing source, which is classified as a level 2 input within the fair value hierarchy.

Note 8—Restaurant Closures

Costs associated with restaurant closures are recorded when the restaurant is closed. Expenses and losses related to closed restaurants are recorded in asset impairments and closures and loss on disposal of assets in our consolidated statements of operations.

During fiscal year 2016, we closed 18 Joe's restaurants and one Brick House restaurant. We recognized \$5.0 million in closure-related expenses, including \$5.1 million in asset impairments and closures primarily related to future minimum lease obligations, and a net gain of \$0.1 million recorded in loss (gain) on disposal of assets. We also reclassified \$3.9 million of accrued liabilities to the restaurant closure liability, primarily related to the deferred rent balances for the closed restaurants. The corresponding restaurant closure liability is approximately \$7.0 million of which \$4.5 million is reflected in other long-term liabilities in our consolidated balance sheet as of January 2, 2017.

During fiscal year 2015, we closed nine Joe's restaurants, included in the nine restaurants closed in the current year were three that were converted to Brick House restaurants and one Joe's that was sold resulting in a net gain of \$2.5 million. We recognized \$2.0 million in closure-related expenses, including \$1.0 million in asset impairments and closures primarily related to future minimum lease obligations, \$1.7 million of accelerated depreciation, and a net gain of \$0.7 million recorded in loss (gain) on disposal of assets. The corresponding restaurant closure liability was approximately \$1.3 million of which \$0.9 million is reflected in other long-term liabilities in our consolidated balance sheet as of December 28, 2015.

An analysis of our restaurant closure liability, including current and long-term portions, is shown below (in thousands):

	December 29, 2014				December 28, 2015				January 2, 2017
		Additions	Adjustments	Payments		Additions	Adjustments	Payments	
Facility and other exit costs	\$ 272	\$ 1,041	\$ 560	\$ (606)	\$ 1,267	\$ 4,926	\$ 3,913	\$ (3,111)	\$ 6,995
Severance costs	-	46	-	(46)	-	196	-	(196)	-
Restaurant closure liability	<u>\$ 272</u>	<u>\$ 1,087</u>	<u>\$ 560</u>	<u>\$ (652)</u>	<u>\$ 1,267</u>	<u>\$ 5,122</u>	<u>\$ 3,913</u>	<u>\$ (3,307)</u>	<u>\$ 6,995</u>

Note 9—Insurance and Other Recoveries

Our Joe's restaurant in Oceanside, New York was temporarily closed in the fourth quarter of 2012 due to damage sustained from Hurricane Sandy. In 2014, we received \$89 thousand in insurance proceeds related to Hurricane Sandy.

In 2015, a Joe's restaurant in Indianapolis was razed by fire. We recorded a \$0.4 million loss in the third quarter of 2015 related to this fire.

In 2016, we recorded \$0.8 million gain related to insurance claims for two restaurants damaged by fire in a prior year, partially offset by a loss on one restaurant damaged by fire in 2016.

In relation to each of these casualty events, the following amounts were recorded in our consolidated financial statements (in thousands):

	2016	2015	2014
Proceeds from property insurance claims	\$ 705	\$ 695	\$ 89
Gain on insurance related to property and equipment	\$ 705	\$ 695	\$ 89

Note 10—Income Taxes

Income tax expense (benefit) included in continuing operations consisted of the following (in thousands):

	Fiscal Year		
	2016	2015	2014
Current income tax			
Federal	\$ 28	\$ 106	\$ (1,457)
State	17	(100)	2,618
Foreign	-	10	29
	<u>45</u>	<u>16</u>	<u>1,190</u>
Deferred income tax			
Federal	3	(481)	14,372
State	193	157	651
	<u>196</u>	<u>(324)</u>	<u>15,023</u>
Total income tax expense (benefit)	<u>\$ 241</u>	<u>\$ (308)</u>	<u>\$ 16,213</u>

In addition, included in discontinued operations was an income tax expense (benefit) of (\$3.0) million and \$3.1 million in 2015 and 2014, respectively.

At January 2, 2017, we had federal income tax credit carryforwards of approximately \$29.3 million, comprised of a \$28.8 million credit for FICA and Medicare taxes paid on reported employee tip income, Alternative Minimum Tax ("AMT") credits of approximately \$0.4 million, and a Texas margin tax credit of approximately \$0.1 million. The FICA credit will begin to expire in 2031 if unused prior to that time, while the AMT credit may be carried forward indefinitely. The Texas margin tax credit will expire in 2028 if unused prior to that time. We also have state net operating loss carryforwards of approximately \$74.2 million which will begin to expire in 2024 if unused prior to that time. At January 2, 2017, we have federal net operating loss carryforwards of approximately \$68.1 million, which will begin to expire in 2036 if unused prior to that time. In addition, at January 2, 2017, we have federal capital loss carryforwards of approximately \$4.1 million, which will begin to expire in 2021 if unused prior to that time.

We evaluate our deferred tax assets on a quarterly basis to determine whether a valuation allowance is required. We assess whether a valuation allowance should be established based on our determination of whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible and prior to the expiration of our credit carryforwards which begin to expire in 2031. We consider the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Due to the continued operating losses and the asset impairments we are in a three-year cumulative loss position. According to ASC Topic No. 740, *Income Taxes*, cumulative losses in recent years represent significant negative evidence in considering whether deferred tax assets are realizable. During fiscal year 2016, we recorded a valuation allowance of \$17.8 million. During fiscal year 2015 and 2014, we recorded a valuation allowance of \$12.8 million and \$25.6 million for continuing operations and \$6.8 million and \$10.3 million for discontinued operations, respectively, against our deferred tax assets. We excluded the deferred tax liabilities related to certain indefinite lived intangibles when calculating the amount of valuation allowance needed as these liabilities cannot be considered as a source of income when determining the realizability of the net deferred tax assets. The valuation allowance was recorded as a reduction to our income tax benefit in our consolidated statement of operations. If we are able to generate sufficient taxable income in the future such that it becomes more likely than not that we will be able to fully utilize the net deferred tax assets on which a valuation allowance was recorded, our effective tax rate may decrease if the valuation allowance is reversed.

	Fiscal Year		
	2016	2015	2014
Tax expense (benefit) at the federal statutory income tax rate	\$ (15,442)	\$ (8,805)	\$ (6,009)
Permanent differences	15	191	45
State income taxes, net of federal impact	(453)	(1,410)	51
Tax credit carryforwards	(2,766)	(3,377)	(3,662)
Change in valuation allowance	17,781	12,807	25,632
Other	1,106	286	156
Total income tax expense (benefit)	\$ 241	\$ (308)	\$ 16,213
Effective income tax rate	(0.5%)	1.2%	(94.4%)

The components of our deferred tax assets and liabilities are as follows (in thousands):

	January 2, 2017	December 28, 2015
Deferred tax assets		
Credit carryforwards	\$ 29,333	\$ 25,080
Net operating loss carryforwards	28,345	20,610
Deferred rent	6,975	7,955
Closure reserve	2,661	494
Accrued insurance	2,000	2,103
Property and equipment	1,858	-
Intangibles	1,037	1,030
Stock-based compensation	820	1,752
Accrued expenses	64	347
Other	858	866
Valuation allowance	(73,305)	(55,598)
	646	4,639
Deferred tax liabilities		
Property and equipment	-	(3,475)
Intangibles	(387)	(393)
Prepaid expenses	(188)	(319)
Net deferred tax asset	\$ 71	\$ 452

We file income tax returns in the U.S. federal jurisdiction and various state and local jurisdictions. We are subject to U.S. federal income tax examinations by tax authorities for the fiscal years ended December 30, 2013, December 29, 2014 and December 28, 2015. We did not have any tax examinations during fiscal year 2016, and we have no other income tax audits open at this time. We are also subject to various state income tax examinations by state tax authorities for the fiscal year ended December 30, 2013 and forward.

The following table shows the changes in the amount of our uncertain tax positions, exclusive of the effect of interest and penalties (in thousands):

	Fiscal Year		
	2016	2015	2014
Balance at beginning of year	\$ 470	\$ 609	\$ 582
Additions for tax positions of the current year	53	119	122
Reductions for tax positions of prior years	(186)	(258)	(95)
Balance at end of year	<u>\$ 337</u>	<u>\$ 470</u>	<u>\$ 609</u>

The full balance of approximately \$337 thousand, if recognized, would affect the annual effective rate, net of any federal tax benefits. We do not expect any changes that will significantly impact our uncertain tax positions within the next twelve months.

We accrue interest and penalties related to our uncertain tax positions as a component of income tax expense. During the fiscal years 2016, 2015 and 2014, we recognized approximately (\$93) thousand, (\$43) thousand and \$32 thousand of interest and penalties (reversals), net, respectively. We had approximately \$50 thousand and \$143 thousand accrued for interest and penalties as of January 2, 2017 and December 28, 2015, respectively.

Note 11—Commitments and Contingencies

In the course of business affairs and operations, we are subject to possible loss contingencies arising from third-party litigation and federal, state, and local environmental, health, and safety laws and regulations.

Minimum Lease Commitments

We lease our restaurants, office facilities, and certain equipment under operating lease agreements. The future minimum rental commitments for these noncancelable operating leases with initial or remaining lease terms in excess of one year are as follows (in thousands):

Fiscal Year	Amount
2017	\$ 29,655
2018	28,485
2019	27,606
2020	25,569
2021	22,603
Thereafter	96,819
	<u>\$ 230,737</u>

The above amounts do not include property taxes, insurance, and normal maintenance that we are required to pay. Rental expense relating to operating leases amounted to approximately \$32.4 million, \$35.5 million and \$34.7 million for 2016, 2015 and 2014, respectively. A number of our leases also provide for contingent rentals based on a percentage of sales above a specified minimum. Total contingent rentals, included in rent expense, amounted to approximately \$1.4 million, \$1.6 million and \$1.9 million for 2016, 2015 and 2014, respectively.

Litigation

We are a defendant or otherwise involved in a number of lawsuits in the ordinary course of business, including personal injury claims, contract claims, claims alleging violation of federal and state law regarding workplace and employment matters, discrimination claims and similar matters. When the potential liability can be estimated and the loss is considered probable, we record the estimated loss. Due to uncertainties related to the resolution of lawsuits and claims, the ultimate outcome may differ from our estimates. We believe that the ultimate exposure with respect to these pending lawsuits and claims is not expected to have a material adverse effect, individually or in the aggregate, on our consolidated financial position, results of operations, or cash flows.

On July 20, 2012, a putative class action complaint was filed in the U.S. District Court for the Southern District of Texas against us following our announced intention to restate our financial statements for the fiscal years ended December 28, 2009, January 3, 2011 and January 2, 2012 and related interim periods. The complaint lodged against us, certain of our directors and officers and the underwriters in the initial public offering (“IPO”) was based on allegations related to the Company’s disclosures in its registration statement and prospectus for its IPO. On July 4, 2014, we reached a confidential agreement in principle to settle all pending claims, subject to submission and approval by the court. On January 30, 2015, the court issued preliminary approval of the settlement in the amount of \$1.8 million of which \$1.6 million is covered by insurance. On June 5, 2015, the court issued final approval of the settlement and termination of all proceedings in this matter.

On August 28, 2013, in the United States District Court, Western District of New York, six former tipped employees of various Joe’s Crab Shack locations filed a complaint against us and certain of our officers alleging that the employees were not paid the minimum wage required by federal law as well as the wage-hour laws of the respective states in which they worked. These former employees purport to represent a nationwide class of tipped employees on their federal claims and separate subclasses of tipped employees regarding their state law claims. By order dated January 27, 2015, the court granted conditional certification to the class. We are vigorously contesting this matter and have answered and asserted affirmative defenses. There are pending motions and discovery issues regarding members of the putative class. At this early stage, we cannot predict with any certainty whether the former employees will prevail or the amount of damages they might recover were they to prevail.

On August 22, 2016, in the Superior Court of California, County of San Francisco, a former manager at Joe’s Crab Shack in San Francisco filed a complaint against the Company alleging that he, and all other salaried employees in California (with the exception of those who worked at restaurants in Orange County, Los Angeles County and/or Ventura County), were misclassified as exempt employees and are therefore entitled to unpaid overtime, as well as compensation for missed meal and rest breaks. This former employee purports to represent a statewide class of salaried employees as to their state law claims. We have removed this complaint to federal court, answered and asserted affirmative defenses and are vigorously contesting this matter. At this stage, we cannot predict with any certainty whether the former employees will prevail or the amount of damages they might recover were they to prevail.

On August 24, 2016, in the Superior Court of California, County of Los Angeles, two former managers at Joe’s Crab Shack locations in California filed a complaint against the Company alleging that they, and all other salaried employees who worked at Joe’s Crab Shack locations in Orange County, Los Angeles County and/or Ventura County, California, were misclassified as exempt employees and are therefore entitled to unpaid overtime, as well as compensation for missed meal and rest breaks. These former employees purport to represent a statewide class of salaried employees as to their state law claims. We have removed this complaint to federal court, answered and asserted affirmative defenses and are vigorously contesting this matter. At this stage, we cannot predict with any certainty whether the former employees will prevail or the amount of damages they might recover were they to prevail.

In July 2016, we were contacted by counsel for two former Joe’s Crab Shack managers concerning a potential nationwide collective action and state class action alleging, on behalf of the subordinate Joe’s Crab Shack managers outside of California, that they were misclassified as exempt from federal and state overtime laws. In September 2016, we entered into a tolling agreement with these former managers so that the parties could gather information, examine the allegations in more detail and engage in discussions via mediation, which ultimately took place on January 30, 2017. The mediation did not result in a resolution and the former managers have threatened to move forward with the filing of a putative class action lawsuit. At this stage, we cannot predict with any certainty whether the former employees will prevail or the amount of damages they might recover were they to prevail.

Note 12—Stock-Based Compensation

In May 2012, our stockholders approved the adoption of our 2012 Omnibus Incentive Plan (“2012 Plan”). Under the 2012 Plan, we are authorized to grant stock-based awards in the form of stock options, restricted stock, restricted stock units, SARs, and other stock-based awards. The maximum number of common shares reserved for the grant of awards under the 2012 Plan is 3,180,074 shares. Other specific terms for awards granted under the 2012 Plan shall be determined by our board of directors (or a committee of its members). As of January 2, 2017, 1,623,856 shares were available for future grants under the 2012 Plan.

Stock-based compensation expense was approximately \$1.3 million, \$2.1 million and \$2.9 million for fiscal years 2016, 2015 and 2014, respectively. As of January 2, 2017, we had unrecognized stock-based compensation expense of approximately \$1.1 million related to stock-based compensation awards granted. That cost is expected to be recognized over a weighted average period of 2.4 years.

Stock Appreciation Rights

Stock appreciation rights granted under the 2012 Plan generally vest over four years from the date of grant with 25% vesting each year following the date of grant. SARs may not have a term exceeding ten years from the date of grant. The weighted average grant date fair value of SARs granted during the fiscal years 2016, 2015 and 2014 was \$1.22, \$1.94 and \$6.34, respectively.

Below is a summary of SARs activity during the fiscal year ended January 2, 2017:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 28, 2015	1,222,573	\$ 10.55		
Granted	421,078	\$ 2.63		
Forfeited	(719,013)	\$ 11.94		
Outstanding at January 2, 2017	924,638	\$ 5.86	8.5	\$ -
Exercisable at January 2, 2017	236,522	\$ 10.51	7.4	\$ -

No SARs were exercised during fiscal years 2016, 2015 and 2014.

Restricted Stock

Restricted stock, which converts one for one at the end of the vesting period, has been granted to certain employees and independent directors. Restricted stock generally vests from one to five years from the date of grant.

The following table summarizes restricted stock activity for the fiscal year ended January 2, 2017:

	Number of Shares	Weighted Average Grant Date Fair Value
Nonvested at December 28, 2015	404,948	\$ 6.42
Granted	172,875	\$ 2.72
Vested	(125,726)	\$ 4.71
Forfeited	(89,798)	\$ 7.39
Nonvested at January 2, 2017	362,299	\$ 5.01

The aggregate fair value of restricted stock that vested during the fiscal years 2016, 2015 and 2014 was \$0.6 million, \$1.1 million and \$629 thousand, respectively. The weighted average grant date fair value of restricted stock granted in fiscal years 2016, 2015 and 2014 was \$2.72, \$4.05 and \$12.54, respectively.

Note 13 —Related Party Transaction

Under an eighteen month contract which ended September 30, 2015, we received certain creative marketing-related services, including print design, digital branding, and food photography from Norton Creative LLC ("Norton"). We also engaged Norton for television direction and production services, which were not covered in the scope of the original agreement. On September 12, 2015, our then President and CEO married the majority owner and CEO of Norton. Prior to becoming a related party, Norton provided services in the amount of \$2.2 million during fiscal year 2015, of which \$162 thousand related to discontinued operations. Amounts billed to us for services provided by Norton after becoming a related party, which were reviewed and approved by the Audit Committee, totaled \$341 thousand for fiscal year 2015. As of December 28, 2015, we no longer used Norton for creative marketing services.

Note 14—Supplemental Disclosure of Cash Flow Information

The following table sets forth certain cash and non-cash activities from continuing operations, as follows (in thousands):

	2016	2015	2014
Cash paid for interest, net of capitalized interest	\$ 12,723	\$ 13,031	\$ 7,360
Cash paid (refunded) for income taxes	\$ (515)	\$ (445)	\$ 1,581
Supplemental noncash investing and financing activities			
Increase (decrease) in unpaid liabilities for property and equipment	\$ (5,604)	\$ 3,911	\$ (358)

Note 15—Segment Information

All of our restaurants compete in the full-service casual dining industry. Our brands also possess similar production methods, distribution methods, and economic characteristics, resulting in similar long-term expected financial performance characteristics. We believe reporting information about each of our brands is useful to readers of our financial statements and is consistent with how management evaluates brand performance. We also believe that providing this additional financial information for each of our brands provides a better understanding of our overall operating results. Income (loss) from operations represents revenues less restaurant operating costs and expenses, directly allocable general and administrative expenses, and other restaurant-level expenses directly associated with each brand including depreciation and amortization, pre-opening costs, asset impairments and closures, and loss on disposal of assets. Unallocated corporate expenses, capital expenditures, property and equipment, and other intangibles assets are presented below as reconciling items to the amounts presented in the consolidated financial statements.

The following tables present information about our reportable segments for the respective periods (in thousands):

	Fiscal Year		
	2016	2015	2014
Revenues			
Joe's Crab Shack	\$ 366,617	\$ 414,335	\$ 432,969
Brick House Tavern + Tap	83,662	77,709	70,539
	<u>\$ 450,279</u>	<u>\$ 492,044</u>	<u>\$ 503,508</u>
Income (loss) from operations			
Joe's Crab Shack	\$ (16,606)	\$ 9,539	\$ 21,458
Brick House Tavern + Tap	2,164	5,541	3,828
Corporate	(17,830)	(23,446)	(30,023)
	<u>\$ (32,272)</u>	<u>\$ (8,366)</u>	<u>\$ (4,737)</u>
Depreciation and amortization			
Joe's Crab Shack	\$ 17,307	\$ 20,304	\$ 18,654
Brick House Tavern + Tap	4,900	4,483	4,190
Corporate	1,020	1,044	1,057
	<u>\$ 23,227</u>	<u>\$ 25,831</u>	<u>\$ 23,901</u>
Capital expenditures			
Joe's Crab Shack	\$ 2,092	\$ 7,804	\$ 19,390
Brick House Tavern + Tap	6,121	7,916	5,502
Corporate	1,147	913	967
	<u>\$ 9,360</u>	<u>\$ 16,633</u>	<u>\$ 25,859</u>

	January 2, 2017	December 28 2015
Property and equipment, net		
Joe's Crab Shack	\$ 82,993	\$ 122,450
Brick House Tavern + Tap	44,060	51,351
Corporate	2,271	2,506
	<u>\$ 129,324</u>	<u>\$ 176,307</u>
Intangible assets, net		
Joe's Crab Shack	\$ 2,576	\$ 3,559
Brick House Tavern + Tap	1,881	1,913
Corporate	7	10
	<u>\$ 4,464</u>	<u>\$ 5,482</u>

Note 16—Quarterly Financial Information (Unaudited)

The following table summarizes unaudited quarterly data for 2016 and 2015 (in thousands, except per share data):

	Fiscal Year 2016			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenues	\$ 117,899	\$ 130,757	\$ 119,937	\$ 81,686
Loss from continuing operations(1)	\$ (1,626)	\$ (10,443)	\$ (15,163)	\$ (17,129)
Loss from continuing operations per share				
Basic and diluted	\$ (0.06)	\$ (0.40)	\$ (0.59)	\$ (0.66)
	Fiscal Year 2015			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenues	\$ 122,219	\$ 143,170	\$ 133,357	\$ 93,298
Income (loss) from continuing operations(2)	\$ (3,196)	\$ 1,731	\$ (4,288)	\$ (19,096)
Income (loss) from continuing operations per share				
Basic and diluted	\$ (0.12)	\$ 0.07	\$ (0.17)	\$ (0.74)

- (1) Full year 2016 loss from continuing operations includes \$5.1 million of costs related to conversions, remodels and closures (\$0.1 million in the first quarter, \$0.3 million in the second quarter, \$4.5 million in the third quarter and a \$0.2 million in the fourth quarter); \$0.3 million in debt issuance cost and debt discount write-offs (\$0.1 million in the second quarter and \$0.2 million in the third quarter); \$26.2 million in asset impairment (\$8.0 million in the second quarter, \$11.1 million in the third quarter and \$7.1 million in the fourth quarter); \$0.8 million in gain on insurance settlements (in the second quarter); and \$17.8 million in deferred tax asset valuation allowance (\$0.5 million in the first quarter, \$4.8 million in the second quarter, \$6.4 million in the third quarter and \$6.1 million in the fourth quarter).
- (2) Full year 2015 loss from continuing operations includes \$2.0 million of costs related to conversions, remodels and closures (\$0.1 million in the first quarter, \$1.6 million in the third quarter and a \$0.3 million in the fourth quarter); \$1.0 million in debt issuance cost and debt discount write-offs (in the fourth quarter); \$9.4 million in asset impairment (\$3.9 million in the third quarter and \$5.5 million in the fourth quarter); \$0.4 million in loss on insurance settlements (in the third quarter); and \$12.8 million in deferred tax asset valuation allowance (\$2.1 million in the first quarter, \$0.6 million in the second quarter, \$2.6 million in the third quarter and \$7.5 million in the fourth quarter).

Note 17—Subsequent Event

On March 31, 2017, we entered into a forbearance agreement with certain of the lenders and the Administrative Agent (collectively, the “Forbearing Lenders”) under the 2014 Credit Facility, whereby the Forbearing Lenders agreed to, among other things, forbear from taking any action to enforce certain of their rights or remedies under the 2014 Credit Agreement with respect to certain defaults, events of default, and anticipated events of default (the “Forbearance Agreement”). Absent any additional default or the occurrence of certain events, the Forbearance Agreement will be effective until May 9, 2017. Should we be in default of the forbearance agreement or should the required lenders and the Administrative Agent not agree to further extend such forbearance agreement, the Administrative Agent and lenders would be free to exercise any rights and remedies with respect to such default and events of defaults pursuant to the terms of the 2014 Credit Facility, which could include accelerating the maturity of all our indebtedness.

IGNITE RESTAURANT GROUP, INC.

CONSOLIDATED BALANCE SHEETS

(in thousands, except par value)

	December 28, 2015	December 29, 2014
ASSETS		
Current assets		
Cash and cash equivalents	\$ 7,817	\$ 20,564
Accounts receivable, net	3,385	7,992
Inventories	5,272	5,848
Other current assets	4,677	6,614
Assets of discontinued operations	-	82,465
Total current assets	21,151	123,483
Property and equipment, net	176,307	192,942
Intangible assets, net	5,482	5,940
Other assets	4,431	5,355
Total assets	<u>\$ 207,371</u>	<u>\$ 327,720</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	\$ 18,406	\$ 15,651
Accrued liabilities	31,532	29,002
Current portion of debt obligations	1,621	1,650
Liabilities of discontinued operations	-	47,986
Total current liabilities	51,559	94,289
Long-term debt obligations	125,301	161,052
Deferred rent	20,193	19,457
Other long-term liabilities	3,705	1,623
Total liabilities	200,758	276,421
Commitments and contingencies (Note 10)		
Stockholders' equity		
Preferred stock, \$0.01 par value per share, 100,000 shares authorized; zero shares issued and outstanding	-	-
Common stock, \$0.01 par value per share, 500,000 shares authorized; 26,180 and 26,183 shares issued and outstanding, respectively	258	257
Additional paid-in capital	92,621	90,943
Accumulated deficit	(86,266)	(39,901)
Total stockholders' equity	6,613	51,299
Total liabilities and stockholders' equity	<u>\$ 207,371</u>	<u>\$ 327,720</u>

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except earnings per share)

	Fiscal Year		
	2015	2014	2013
Revenues	\$ 492,044	\$ 503,508	\$ 499,151
Costs and expenses			
Restaurant operating costs and expenses			
Cost of sales	154,270	163,407	153,820
Labor expenses	142,209	142,662	137,286
Occupancy expenses	40,890	39,401	35,471
Other operating expenses	95,384	94,086	90,727
General and administrative	30,523	38,669	42,321
Depreciation and amortization	25,831	23,901	21,415
Pre-opening costs	927	2,799	4,824
Asset impairments and closures	10,497	1,980	169
Loss (gain) on disposal of assets	(121)	1,340	2,067
Total costs and expenses	500,410	508,245	488,100
Income (loss) from operations	(8,366)	(4,737)	11,051
Interest expense, net	(16,363)	(12,521)	(5,245)
Gain (loss) on insurance settlements	(428)	89	1,161
Income (loss) from continuing operations before income taxes	(25,157)	(17,169)	6,967
Income tax expense (benefit)	(308)	16,213	(868)
Income (loss) from continuing operations	(24,849)	(33,382)	7,835
Loss from discontinued operations, net of tax	(21,516)	(20,167)	(14,420)
Net loss	\$ (46,365)	\$ (53,549)	\$ (6,585)
Net loss per share			
Basic and diluted			
Income (loss) from continuing operations	\$ (0.97)	\$ (1.30)	\$ 0.31
Loss from discontinued operations, net of tax	\$ (0.84)	\$ (0.79)	\$ (0.56)
Net loss	\$ (1.80)	\$ (2.09)	\$ (0.26)
Weighted average shares outstanding			
Basic	25,731	25,659	25,629
Diluted	25,731	25,659	25,636

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

(in thousands)

	Common Stock		Additional Paid-in Capital	Accumulated Earnings (Deficit)	Total
	Shares	Amount			
Balance at December 31, 2012	25,633	\$ 256	\$ 85,728	\$ 20,233	\$ 106,217
Net loss	-	-	-	(6,585)	(6,585)
Issuance of equity awards, net	163	-	-	-	-
Capital contribution	-	-	23	-	23
Taxes paid related to net share settlement of equity awards	-	-	(2)	-	(2)
Stock-based compensation	-	-	1,954	-	1,954
Balance at December 30, 2013	25,796	\$ 256	\$ 87,703	\$ 13,648	\$ 101,607
Net loss	-	-	-	(53,549)	(53,549)
Issuance of equity awards, net	398	-	-	-	-
Vesting of restricted stock	-	1	(1)	-	-
Taxes paid related to net share settlement of equity awards	(11)	-	(124)	-	(124)
Stock-based compensation	-	-	3,365	-	3,365
Balance at December 29, 2014	26,183	\$ 257	\$ 90,943	\$ (39,901)	\$ 51,299
Net loss	-	-	-	(46,365)	(46,365)
Issuance of equity awards, net	29	-	-	-	-
Vesting of restricted stock	-	1	(1)	-	-
Taxes paid related to net share settlement of equity awards	(32)	-	(134)	-	(134)
Stock-based compensation	-	-	1,813	-	1,813
Balance at December 28, 2015	26,180	\$ 258	\$ 92,621	\$ (86,266)	\$ 6,613

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	Fiscal Year		
	2015	2014	2013
<i>Cash flows from operating activities</i>			
Net loss	\$ (46,365)	\$ (53,549)	\$ (6,585)
Loss from discontinued operations, net of tax	21,516	20,167	14,420
Adjustments to reconcile income (loss) from continuing operations to net cash provided by operating activities:			
Depreciation and amortization	25,831	23,901	21,415
Amortization of debt issuance costs	1,663	3,121	1,095
Amortization of debt discount	870	177	-
Stock-based compensation	2,065	2,877	1,819
Asset impairments	9,409	1,770	-
Deferred income tax	(324)	15,023	(7,970)
Gain on insurance related to property and equipment	(695)	(89)	(681)
Non-cash loss (gain) on disposal of assets	(133)	(649)	535
Decrease (increase) in operating assets:			
Accounts receivable	4,076	3,289	(3,979)
Inventories	576	(92)	(914)
Other operating assets	1,006	1,314	(2,005)
Increase (decrease) in operating liabilities:			
Accounts payable and accrued liabilities	3,808	(2,783)	15,851
Other operating liabilities	2,076	3,915	5,242
Net cash provided by operating activities - continuing operations	25,379	18,392	38,243
Net cash provided by (used in) operating activities - discontinued operations	2,668	(1,432)	(21,324)
Net cash provided by operating activities	28,047	16,960	16,919
<i>Cash flows from investing activities</i>			
Purchases of property and equipment	(16,633)	(25,859)	(49,818)
Proceeds from property insurance claims	695	89	681
Proceeds from disposal of assets	2,030	41	30
Purchases of intangible assets	-	(150)	(1,222)
Net cash used in investing activities - continuing operations	(13,908)	(25,879)	(50,329)
Net cash provided by (used in) investing activities - discontinued operations	11,639	585	(56,806)
Net cash used in investing activities	(2,269)	(25,294)	(107,135)
<i>Cash flows from financing activities</i>			
Borrowings on revolving credit facility	-	109,000	110,668
Payments on revolving credit facility	-	(194,207)	(70,461)
Proceeds from long-term debt	-	162,525	50,000
Payments on long-term debt	(36,100)	(46,775)	(3,225)
Debt issuance costs paid	-	(4,784)	(2,744)
Capital contribution	-	-	23
Taxes paid related to net share settlement of equity awards	(134)	(124)	(2)
Net cash provided by (used in) financing activities	(36,234)	25,635	84,259
Net increase (decrease) in cash and cash equivalents	(10,456)	17,301	(5,957)
Change in cash and cash equivalents - discontinued operations	(2,291)	(573)	2,864
Cash and cash equivalents at beginning of period	20,564	3,836	6,929
Cash and cash equivalents at end of period	\$ 7,817	\$ 20,564	\$ 3,836

See accompanying notes to consolidated financial statements.

IGNITE RESTAURANT GROUP, INC.
Notes to Consolidated Financial Statements

Note 1—Description of Business

Ignite Restaurant Group, Inc. (referred to herein as the “Company,” “Ignite,” “we,” “us” or “our”) owns and operates two full service, casual dining restaurant brands under the names Joe’s Crab Shack (“Joe’s”) and Brick House Tavern + Tap (“Brick House”). As of December 28, 2015, we operated 130 Joe’s restaurants and 23 Brick House restaurants in 32 states within the United States, and franchised one Joe’s restaurant in Dubai, U.A.E.

J.H. Whitney VI, L.P., an affiliate of J.H. Whitney Capital Partners, LLC, owns approximately 66.3% of our total outstanding common stock as of December 28, 2015.

Note 2—Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of Ignite and its wholly-owned subsidiaries as of December 28, 2015. All significant intercompany balances and transactions have been eliminated in consolidation. On April 17, 2015, we completed the sale of Romano’s Macaroni Grill (“Macaroni Grill”). As of December 29, 2014, the assets and associated liabilities of Macaroni Grill have been reclassified as discontinued operations. The operating results of Macaroni Grill for the current and prior periods have been aggregated and reclassified as discontinued operations in our consolidated statements of operations. See Note 3 for further discussion.

Fiscal Year

Our fiscal year ends on the Monday nearest to December 31 of each year. Fiscal years 2015, 2014 and 2013 were all 52-week years. References to 2015, 2014 and 2013 are references to fiscal years ended December 28, 2015, December 29, 2014 and December 30, 2013, respectively.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Fair Value Measurements

We apply fair value accounting for all financial assets and liabilities and nonfinancial assets and liabilities that are recognized or disclosed at fair value in the financial statements. We define fair value as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities that are required to be recorded at fair value, we assume the highest and best use of the asset by market participants in which we would transact and the market-based risk measurements or assumptions that market participants would use in pricing the asset or liability, such as inherent risk, transfer restrictions, and credit risk.

We apply the following fair value hierarchy, which prioritizes the inputs used to measure fair value into three levels, and base the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

- Level 1— Quoted prices in active markets for identical assets or liabilities.
- Level 2— Observable inputs other than quoted prices in active markets for identical assets or liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3— Inputs that are both unobservable and significant to the overall fair value measurement reflect an entity's estimates of assumptions that market participants would use in pricing the asset or liability.

Financial Instruments

We record all financial instruments at cost, which is the fair value at the date of transaction. The amounts reported in the consolidated balance sheets for cash and cash equivalents, accounts receivable, and accounts payable and accrued liabilities approximate their fair value because of the short-term maturities of these instruments.

Revenue Recognition

Revenues from food and beverage sales are recognized when payment is tendered at the point-of-sale and are presented net of promotional allowances, discounts, and employee meals. Sales taxes collected from customers and remitted to governmental authorities are presented on a net basis, or excluded from revenues, in our consolidated statements of operations. Initial franchise fees received are deferred and recognized as revenue upon opening of the franchised restaurant, which is when we have performed substantially all initial services required by the franchise agreement. Continuing licensing and royalty revenues are recognized when earned. Licensing and royalty revenues were \$0.2 million, \$4 thousand and \$60 thousand in 2015, 2014 and 2013, respectively.

Proceeds from the sale of gift cards are deferred and recognized as revenue upon redemption. Deferred gift card revenue is included in accrued liabilities in our consolidated balance sheets. Our gift cards do not have an expiration date and we do not deduct non-usage fees from outstanding gift card balances. We recognize gift card breakage income exclusive of amounts subject to state escheatment laws when the likelihood of redemption of the cards becomes remote. We recorded breakage income of \$0.4 million, \$0.3 million and \$0.2 million during 2015, 2014 and 2013, respectively, which is included in revenues in our consolidated statements of operations.

We also benefit from certain vendor rebates which are recorded as a reduction to cost of sales. Additionally, we may enter into certain contracts that provide marketing allowances, which are amortized over the life of the contract.

Cash and Cash Equivalents

We consider cash on hand in restaurants, deposits in banks, and short-term marketable securities with original maturities of 90 days or less as cash and cash equivalents.

Accounts Receivable

Accounts receivable, net of allowance for doubtful accounts, represent their estimated net realizable value, and includes receivables from credit card processors, franchisees, the sale of gift cards in retail outlets, and allowances due to us from landlords based on lease terms.

Inventories

Inventories are stated at the lower of cost or market, and consist of food, beverage, and retail merchandise. Inventory cost is determined using the average cost method.

Property and Equipment

Property and equipment acquired is stated at cost less accumulated depreciation and impairment. Depreciation is calculated using the straight-line method, based on the following estimated useful lives:

Leasehold improvements	Shorter of effective lease term or estimated useful life		
Restaurant equipment	10 years		
Furniture and fixtures	5	–	10 years
Computer equipment and software	3	–	5 years

We capitalize major replacements and improvements that increase the useful life of the asset, whereas we expense repairs and maintenance as incurred. The cost and accumulated depreciation and impairment of assets sold, retired or otherwise disposed of are removed from the balance sheet and any gain or loss is included in the statement of operations.

We capitalize direct costs associated with the site acquisition and construction of restaurant units, including direct internal payroll and payroll-related costs, incremental travel expenses, and interest cost as leasehold improvements. If we subsequently determine that we will not continue acquiring or developing a project for which we have been capitalizing costs, any previously capitalized internal development and third-party costs will be written off as dead deals and included in general and administrative expenses.

Impairment of Long-Lived Assets

We evaluate the recoverability of the carrying amount of long-lived assets, including property and equipment, whenever events and circumstances indicate that the carrying value of an asset may not be fully recoverable. Our review for impairment of these long-lived assets takes into account estimates of future undiscounted cash flows (level 3 in the fair value hierarchy). Factors considered include, but are not limited to, significant underperformance relative to historical or projected future operating results, significant changes in the manner of use of the acquired assets or the strategy for the overall business, and significant negative industry or economic trends. Our asset group for impairment testing is comprised of the assets and liabilities of each of our individual restaurants, since this is the lowest level of identifiable cash flows. An impairment loss is recognized if the future undiscounted cash flows associated with the assets are less than their carrying value. Impairment losses are measured as the amount by which the carrying values of the assets exceed their fair values. For assets held for sale or disposal, we measure fair value using quoted market prices or an estimation of net realizable value.

From time to time, we have decided to close or dispose of restaurants. Typically, such decisions are made based on operating performance or strategic considerations and must be made before the actual costs or proceeds of disposition are known, and management must make estimates of these outcomes. Such outcomes could include the sale of a leasehold, mitigating costs through a tenant or subtenant, or negotiating a buyout of a remaining lease term. In these instances, management evaluates possible outcomes, frequently using outside real estate and legal advice, and records provisions for the effect of such outcomes. The accuracy of such provisions can vary materially from original estimates, and management regularly monitors the adequacy of the provisions until final disposition occurs. We recorded impairment charges of \$9.4 million and \$1.8 million in fiscal year 2015 and 2014, respectively, which is included in asset impairments and closures in our consolidated statements of operations, related to Joe's long-lived assets (see Note 7). For assets held for sale or disposal, we measure fair value using quoted market prices or an estimation of net realizable value.

Intangible Assets

We recognize acquired intangible assets apart from goodwill whenever the intangible asset arises from contractual or other legal rights, or whenever it can be separated or divided from the acquired entity and sold, transferred, licensed, rented, or exchanged, either individually or in combination with a related contract, asset or liability. Intangible assets subject to amortization are amortized on a straight-line basis over their estimated useful lives. We evaluate the recoverability of the carrying amount of intangible assets with definite useful lives whenever events and circumstances indicate that the carrying value of the asset may not be fully recoverable. Impairment losses are recognized if the carrying value of an intangible asset is not recoverable from expected future cash flows and its carrying amount exceeds its estimated fair value.

Intangible assets consist of the following (in thousands):

	December 28, 2015			December 29, 2014		
	Cost	Accumulated Amortization and Impairment	Carrying Value	Cost	Accumulated Amortization and Impairment	Carrying Value
Definite lived:						
Trademarks	\$ 4,580	\$ 4,029	\$ 551	\$ 4,580	\$ 3,571	\$ 1,009
Indefinite lived:						
Liquor licenses	4,931	-	4,931	4,931	-	4,931
	<u>\$ 9,511</u>	<u>\$ 4,029</u>	<u>\$ 5,482</u>	<u>\$ 9,511</u>	<u>\$ 3,571</u>	<u>\$ 5,940</u>

The costs of purchasing transferable liquor licenses through open markets in jurisdictions with a limited number of authorized liquor licenses are capitalized as indefinite-lived intangibles and included in intangible assets, net in the consolidated balance sheets. The costs of obtaining non-transferable liquor licenses that are directly issued by local government agencies are expensed as incurred. Annual liquor license renewal fees are expensed over the renewal term. Liquor licenses are reviewed for impairment annually or whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. We determined estimated fair value based on prices in the open market for licenses in similar jurisdictions (level 2 in the fair value hierarchy). No impairment charge for liquor licenses was recorded in 2015, 2014 and 2013.

Definite-lived trademarks are amortized on a straight-line basis over their estimated useful life of 10 years. Amortization expense for definite-lived trademarks was approximately \$0.5 million, \$0.5 million and \$0.4 million for 2015, 2014 and 2013, respectively.

Scheduled amortization of definite-lived intangible assets is as follows (in thousands):

Fiscal Year	Amount
2016	\$ 387
2017	35
2018	35
2019	29
2020	15
Thereafter	50
	<u>\$ 551</u>

Deferred Charges

Debt issuance costs representing costs to obtain long-term financing are accounted for as a deferred charge and are included in other assets in our consolidated balance sheets. They are amortized using the interest method for the term loan and straight-line method for the revolving credit facility over the term of the related financing. Amortization of debt issuance costs, which was approximately \$1.7 million, \$3.1 million and \$1.1 million for 2015, 2014 and 2013, respectively, is included in interest expense in our consolidated statements of operations. See Note 6 regarding write-off of debt issuance costs related to debt paydown and refinancing transactions.

Leases

We currently lease all of our restaurant locations under leases classified as operating leases. Minimum base rent for our operating leases, which generally have escalating rentals over the term of the lease, is recorded on a straight-line basis over the lease term. As such, an equal amount of rent expense is attributed to each period during the term of the lease regardless of when actual payments occur. Lease terms begin on the date we take effective control of the property and include cancelable option periods where failure to exercise such options would result in an economic penalty. The difference between rent expense and actual cash payments is classified as deferred rent in the consolidated balance sheets.

Certain leases contain provisions that require additional rental payments based upon restaurant sales volume. Contingent rentals are accrued each period as the liabilities are incurred, in addition to the straight-line rent expense noted above.

Insurance Liabilities

We maintain large deductibles on workers' compensation, general liability, property, and business interruption insurance coverage. These policies have been structured to limit our per-occurrence exposure. Our estimated liabilities for workers' compensation and general liability are undiscounted and are based on our judgment regarding a number of assumptions and factors, including the frequency and severity of claims, claims development history, case jurisdiction, applicable legislation, and our claims settlement practices.

Advertising Expenses

Advertising production costs are expensed at the time the advertising is first aired. All other advertising costs are expensed as incurred. Advertising expenses were approximately \$22.9 million for each of the fiscal years 2015, 2014 and 2013, and are included in other operating expenses in our consolidated statements of operations.

Pre-opening Costs

Non-capital expenditures associated with the opening of new or converted restaurants are expensed as incurred. Pre-opening costs consist of costs incurred prior to opening a new or converted restaurant and are made up primarily of manager salaries, employee payroll, and other costs related to training and preparing new or converted restaurants for opening. Pre-opening costs also include an accrual for straight-line rent recorded during the period between the date we take effective control of our leased properties and the restaurant opening date.

Stock-based Compensation

We recognize expense for stock-based compensation awards, which is equal to the fair value of the awards at grant date, ratably in labor expenses and general and administrative expenses in our consolidated statements of operations over the requisite service period.

The following table provides the significant weighted average assumptions used to determine the fair value of stock appreciation rights on the grant date using the Black-Scholes option-pricing model for awards granted during the fiscal years 2015, 2014 and 2013:

	Fiscal Year					
	2015		2014		2013	
Expected term (in years)	6.3		6.3		6.3%	
Expected volatility	43.9%		42.5%		46.3%	
Dividend yield	0.0%		0.0%		0.0%	
Risk-free interest rate	1.5%	- 1.9%	1.7%	- 2.0%	1.2%	- 2.2%

Since we have limited historical exercise experience on stock appreciation rights, we used the simplified method of estimating expected term. We estimated expected volatility by supplementing our own historical volatility with the volatility of a peer group over a recent historical period equal to the same expected term of the award. The expected dividend yield is based on our history of not paying regular dividends in the past and our current intention to not pay regular dividends in the foreseeable future. Risk-free rate is based on the U.S. Treasury yield curve in effect at the time of the grant using the term equal to our expected term. Restricted stock is valued using the closing stock price of the business day prior to the grant date.

Income Taxes

We are subject to U.S. federal income tax and income taxes imposed in the state and local jurisdictions where we operate our restaurants. Deferred income taxes are provided on temporary differences between financial statement and income tax reporting. Temporary differences are differences between the amounts of assets and liabilities reported for financial statement purposes and their tax bases. Deferred tax assets are recognized for temporary differences that will be deductible in future years' tax returns and for operating loss and tax credit carryforwards. We evaluate our deferred tax assets on a quarterly basis to determine whether a valuation allowance is required. We assess whether a valuation allowance should be established based on our determination of whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. We consider the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Deferred tax liabilities are recognized for temporary differences that will be taxable in future years' tax returns.

We account for uncertain tax positions using a minimum probability threshold that a tax position must meet before a financial statement benefit is recognized. The minimum threshold is defined as a tax position that is more likely than not to be sustained upon examination by tax authorities, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. See Note 9 for information regarding changes in our unrecognized tax benefits.

Net Income (Loss) per Share

Basic net income (loss) per share is computed using the weighted average number of common shares outstanding during the period, while diluted net income (loss) per share is computed using the weighted average number of common shares outstanding plus all potentially dilutive common share equivalents outstanding during the period. The following table summarizes the components to determine the denominators of basic and diluted net income (loss) per share (in thousands):

	Fiscal Year		
	2015	2014	2013
Denominator:			
Basic weighted average shares outstanding	25,731	25,659	25,629
Effect of dilutive securities	-	-	7
Diluted weighted average shares outstanding	25,731	25,659	25,636

For fiscal year 2015, we excluded 1.2 million stock appreciation rights (“SARs”) and 405 thousand shares of restricted stock from the calculation of net loss per share, and for fiscal year 2014, we excluded 1.6 million SARs and 510 thousand shares of restricted stock from the calculation of net loss per share because the effect was anti-dilutive due to the net loss during the respective periods. For fiscal year 2013, we excluded 1.2 million SARs from the calculation of net loss per share because their effect was anti-dilutive.

Claims and Other Contingencies

We recognize legal claims and other loss contingencies when information becomes available indicating that a loss is probable and the amount can be reasonably estimated. Predicting the outcome of claims and litigation involves substantial uncertainties that could cause actual results to vary materially from estimates. We recognize legal expenses, including those related to loss contingencies, as incurred.

Generally, we do not recognize gain contingencies until all contingencies have been resolved, but we recognize gain contingencies that are recoveries of previously recognized contingent losses when realization of the recovery is deemed probable and reasonably estimable.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) and the International Accounting Standards Board issued a converged standard on revenue recognition, Accounting Standards Update (“ASU”) No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*. Under this guidance, an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The guidance also specifies the accounting for some costs to obtain or fulfill a contract with a customer. Its disclosure guidance requires an entity to disclose sufficient information to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers, including qualitative and quantitative information about contracts with customers, including revenue and impairments recognized, disaggregation of revenue and information about contract balances and performance obligations; significant judgments and changes in judgments; and assets recognized from the costs to obtain or fulfill a contract. The ASU’s effective date has been deferred by the issuance of ASU No. 2015-14, and is effective for us for annual reporting periods beginning after December 15, 2017, including interim periods within that reporting period. Early application is permitted, but not before the original effective date. This ASU permits the use of either the retrospective or cumulative effect transition method. We are in the process of selecting a transition method and are evaluating the impact of this guidance on our consolidated financial statements and related disclosures.

In August 2014, the FASB issued ASU No. 2014-15, *Presentation of Financial Statements – Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern*. This update requires management to assess an entity's ability to continue as a going concern by incorporating and expanding on certain principles that are currently in U.S. auditing standards. Specifically, ASU No. 2014-15 (1) provides a definition of the term substantial doubt, (2) requires an evaluation every reporting period including interim periods, (3) provides principles for considering the mitigating effects of management's plans, (4) requires certain disclosures when substantial doubt is alleviated as a result of consideration of management's plans, (5) requires an express statement and other disclosures when substantial doubt is not alleviated, and (6) requires an assessment for a period of one year after the date that the financial statements are issued or available to be issued. This update is effective for the fiscal years ending after December 15, 2016, and for annual periods and interim periods thereafter. Early application is permitted. We have evaluated the ASU and determined that there is no material impact on our consolidated financial statements.

In April 2015, the FASB issued ASU No. 2015-03, *Interest—Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs*, to simplify the presentation of debt issuance costs in the balance sheet. The ASU specifies that debt issuance costs related to a note shall be reported in the balance sheet as a direct deduction from the face amount of that note, and that amortization of debt issuance costs also shall be reported as interest expense. The ASU does not affect the current guidance on the recognition and measurement of debt issuance costs. The update is effective for us in fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is allowed for all entities for financial statements that have not been previously issued. Entities would apply the new guidance retrospectively to all prior periods presented. The balance of unamortized debt issuance costs related to our term loan as of December 28, 2015 was \$2.2 million. We have evaluated the ASU and determined that it has no material impact on our consolidated statements of operations and cash flows.

In April 2015, the FASB issued ASU No. 2015-05, *Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Fees Paid in a Cloud Computing Agreement*, as part of the FASB's simplification initiative to reduce the diversity in practice, and reduce the costs and complexity of assessing fees paid in a cloud computing arrangement. The update provides guidance as to whether a cloud computing arrangement includes a software license and, based on that determination, how to account for such arrangements using existing accounting models. The update is effective for us in annual periods, including interim periods, beginning after December 15, 2015, with early application permitted. Companies will have the option of transitioning to the new guidance either retrospectively or prospectively for all new transactions entered into or materially modified after the date of adoption. We have evaluated the ASU and determined that it has no material impact on our consolidated financial statements.

In July 2015, the FASB issued ASU No. 2015-11, *Inventory (Topic 330): Simplifying the Measurement of Inventory*, which requires entities to measure most inventory at the lower of cost and net realizable value. The ASU eliminates the need to determine replacement cost and evaluate whether it is above the ceiling (or net realizable value) or below the floor (or net realizable value less normal profit margin). The ASU also defines net realizable value as the "estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation." The update does not amend other guidance on measuring inventory, such as FIFO, LIFO, or average cost method. The update is effective for us prospectively for annual periods beginning after December 15, 2016, and interim periods therein. Early application of the ASU is permitted. We have evaluated the ASU and determined that it has no material impact on our consolidated financial statements.

In August 2015, the FASB issued ASU No. 2015-15, *Interest—Imputation of Interest (Subtopic 835-30): Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements*, to amend SEC paragraphs in Subtopic 835-30 pursuant to SEC Staff announcement at the Emerging Issues Task Force meeting on June 18, 2015. The ASU addresses presentation and subsequent measurement of debt issuance costs related to line-of-credit arrangements, which were not addressed in ASU No. 2015-03. Given the absence of authoritative guidance within ASU No 2015-03 for debt issuance costs related to line-of credit arrangements, the SEC Staff would not object to an entity deferring and presenting debt issuance costs as an asset and subsequently amortizing the deferred debt issuance costs ratably over the term of the line-of-credit arrangement regardless of whether there are any outstanding borrowings on the line-of-credit arrangement. The effective date and transition guidance of this ASU is in conjunction with the effective date and transition guidance of ASU No. 2015-03. We have evaluated the ASU and determined that it has no material impact on our consolidated statements of operations and cash flows.

In November 2015, the FASB issued ASU No. 2015-17, *Income Taxes (Topic 740): Balance Sheet Classification of Deferred Taxes*, which simplifies the presentation of all deferred tax assets and liabilities by classifying them as noncurrent on the balance sheet. As a result, each jurisdiction will now only have one net noncurrent deferred tax asset or liability. The guidance does not change the existing requirement that only permits offsetting within a jurisdiction, that is, companies are still prohibited from offsetting deferred tax liabilities from one jurisdiction against deferred tax assets of another jurisdiction. The guidance may be applied either prospectively, for all deferred tax assets and liabilities, or retrospectively (i.e., by reclassifying the comparative balance sheet). If applied prospectively, entities are required to include a statement that prior periods were not retrospectively adjusted. If applied retrospectively, entities are also required to include quantitative information about the effects of the change on prior periods. The ASU is effective for us in fiscal years beginning after December 16, 2016, including interim periods within those years. We early adopted ASU No. 2015-17, and as such applied the prospective method for the consolidated balance sheet as of December 28, 2015. The comparative balance as of December 29, 2014 was not retrospectively adjusted. Our prospective adoption of this guidance in the fourth quarter of 2015 did not have a material impact on our consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. This guidance requires the recognition of assets and liabilities that arise from lease transactions wherein current off-balance sheet leasing activities is required to be reflected in the balance sheet. The FASB lessee accounting model retains two types of leases, and is consistent with the lessee accounting model under existing GAAP. One type of lease (finance leases) will be accounted for in substantially the same manner as capital leases are accounted for under existing GAAP. The other type of lease (operating leases) will be accounted for (both in the income statement and statement of cash flows) in a manner consistent with operating leases under existing GAAP. However, as it relates to the balance sheet, lessees will recognize lease liabilities based upon the present value of remaining lease payments and corresponding lease assets for operating leases with limited exception. The new standard also will require lessees and lessors to provide additional qualitative and quantitative disclosures regarding the amount, timing, and uncertainty of cash flows arising from leases. These disclosures are intended to supplement the amounts recorded in the financial statements and provide supplemental information about the nature of an organization's leasing activities. We are evaluating our expected adoption method of ASU 2016-02 and we expect its adoption to have a significant impact on our consolidated financial position and results of operations.

Note 3—Sale of Macaroni Grill

On April 17, 2015, we completed the sale of Macaroni Grill for \$7.3 million, net of directly related selling expenses, of which \$7.1 million was received as of June 29, 2015. During the thirteen weeks ended March 30, 2015, we recorded a \$22.4 million impairment charge to write down the net assets of Macaroni Grill to their estimated fair value less cost to sell, which is included in loss from discontinued operations in our condensed consolidated statements of operations. In addition, during the thirteen weeks ended June 29, 2015, we recorded a \$6.1 million loss on disposal of the Macaroni Grill business in loss from discontinued operations.

The following tables present the carrying amounts of the major classes of assets and liabilities associated with the discontinued operations of Macaroni Grill (in thousands):

	December 29, 2014
Assets of discontinued operations	
Accounts receivable, net	\$ 4,721
Inventories	3,471
Other current assets	3,031
Property and equipment, net	43,012
Intangible assets, net	23,039
Other assets	5,191
Total	<u>\$ 82,465</u>
Liabilities of discontinued operations	
Accounts payable	\$ 9,730
Accrued liabilities	22,507
Deferred rent	4,799
Unfavorable leases	5,385
Noncurrent deferred tax liability	4,450
Other long-term liabilities	1,115
Total	<u>\$ 47,986</u>

The table below reconciles significant items that comprise loss from discontinued operations before income taxes (in thousands):

	2015	2014	2013
Revenues	\$ 88,439	\$ 333,677	\$ 261,697
Cost of sales	23,187	89,848	73,751
Labor expenses	31,266	114,473	96,035
Occupancy expenses	9,987	38,499	30,298
Other operating expenses	18,190	81,427	69,585
General and administrative	2,149	6,619	10,144
Depreciation and amortization	2,066	9,873	6,092
Asset impairments and closures	22,807	10,714	1,202
Loss (gain) on disposal of assets	4,339	(859)	534
Other non-operating items	(1,038)	124	1
Loss from discontinued operations before income taxes	<u>\$ (24,514)</u>	<u>\$ (17,041)</u>	<u>\$ (25,945)</u>

Note 4—Selected Balance Sheet Accounts

The components of other current assets are as follows (in thousands):

	December 28, 2015	December 29, 2014
Prepaid insurance	\$ 1,663	\$ 1,461
Prepaid taxes	1,194	1,506
Prepaid licenses and fees	742	557
Prepaid advertising	135	193
Prepaid rent	-	939
Deferred tax asset	-	335
Other	943	1,623
	<u>\$ 4,677</u>	<u>\$ 6,614</u>

The components of accrued liabilities are as follows (in thousands):

	December 28, 2015	December 29, 2014
Payroll and related costs	\$ 8,084	\$ 7,245
Insurance	7,158	7,642
Deferred gift card revenue	3,833	3,598
Property taxes	3,476	2,632
Interest	2,664	1,865
Sales and alcohol taxes	1,652	1,807
Utilities	1,466	1,258
Occupancy	936	1,053
Other	2,263	1,902
	<u>\$ 31,532</u>	<u>\$ 29,002</u>

Note 5—Property and Equipment, net

Property and equipment consisted of the following (in thousands):

	December 28, 2015	December 29, 2014
Leasehold improvements	\$ 257,244	\$ 254,115
Equipment	37,193	36,740
Furniture and fixtures	19,165	18,475
Construction in progress	8,607	3,637
	<u>322,209</u>	<u>312,967</u>
Less accumulated depreciation	145,902	120,025
	<u>\$ 176,307</u>	<u>\$ 192,942</u>

Depreciation expense was approximately \$25.4 million, \$23.4 million and \$20.8 million for fiscal years 2015, 2014 and 2013, respectively.

Note 6—Debt Obligations

Debt obligations consisted of the following as of the dates presented below (in thousands):

	December 28, 2015	December 29, 2014
Term loan, due February 2019	\$ 128,350	\$ 165,000
Less unamortized debt discount	1,428	2,298
Total debt, net of debt discount	126,922	162,702
Less current portion	1,621	1,650
Long-term debt obligations	<u>\$ 125,301</u>	<u>\$ 161,052</u>

To finance the acquisition of Macaroni Grill, in 2013, we amended our October 2012 Revolving Credit Facility (“2013 Revolving Credit Facility”), of which \$10.0 million was drawn at closing, and added a \$50.0 million term loan facility (the “2013 Term Loan” and together with the 2013 Revolving Credit Facility, the “2013 Credit Facility”). The initial interest rate for borrowings under the 2013 Credit Facility was at LIBOR plus a margin of 3.5%, or the base rate (as defined in the agreement) plus a margin of 2.5%, as we elected. Thereafter, the applicable margins were subject to adjustment based on our maximum leverage ratio (as defined in the agreement), as determined on a quarterly basis, with the margins ranging from 1.25% to 4.25% on LIBOR-based loans, and from 0.25% to 3.25% on base rate-based loans. In addition, we were required to pay a commitment fee on the unused portion of the 2013 Revolving Credit Facility. The commitment fee rate was 0.50% per annum, and was subject to adjustment thereafter on a quarterly basis based on our leverage ratio.

We wrote off \$0.5 million of debt issuance costs in connection with our amendment to our Revolving Credit Facility in April 2013, which was included in interest expense. Additionally, the remaining \$1.5 million of unamortized debt issuance costs relating to our Revolving Credit Facility were included as a component of other assets and were being amortized over the term of the amended facility.

On October 25, 2013, we entered into a First Amendment (the “2013 Amendment”) to our 2013 Credit Facility. The initial interest rate for borrowings under the amendment were at LIBOR plus a margin of 4.5% or the base rate (as defined in the agreement) plus a margin of 3.5%, as we may elect. Thereafter, the applicable margins were subject to adjustment based on our maximum leverage ratio (as defined in the agreement), as determined on a quarterly basis, with the margins ranging from 1.75% to 4.5% on LIBOR-based loans, and from 0.75% to 3.5% on base rate-based loans. In connection with the 2013 Amendment, we prepaid \$2.0 million of the 2013 Term Loan with a borrowing under the Revolving Credit Facility.

On August 13, 2014, we entered into a new senior secured credit facility (“2014 Credit Agreement”), which consists of a \$30.0 million revolving credit facility (“2014 Revolving Credit Facility”) and a \$165.0 million term loan (“2014 Term Loan”), which both mature on February 13, 2019. The 2014 Term Loan was issued at 98.5% of par. The principal amount of the 2014 Term Loan is payable in consecutive quarterly installments of \$412,500, commencing on December 31, 2014, with the balance payable in full at maturity. At closing, we repaid the balance of our previous amended 2013 Credit Facility using the proceeds from the 2014 Term Loan.

Interest rates for borrowings under the 2014 Credit Agreement for the revolver and the term loan are equal to, at our option, either LIBOR (subject to a 1% floor) or the base rate as defined in the agreement, plus a margin of 7.0% for LIBOR loans and 6.0% for base rate loans. The interest rate for the 2014 Term Loan was 8.0% as of December 28, 2015. In addition, we are required to pay commitment fees on the unused portion of the 2014 Revolving Credit Facility. The commitment fee rate is currently at 0.5%. The commitment fee is subject to adjustment on a quarterly basis based on our leverage ratio as defined by the credit agreement.

The 2014 Credit Agreement is guaranteed by each of our subsidiaries and secured by substantially all of our present and future assets and a lien on the capital stock or other equity interests of our direct and indirect subsidiaries. The 2014 Credit Agreement contains covenants which, among other things, limit our ability to incur additional indebtedness, create liens on our assets, make certain investments or loans, merge or otherwise dispose of assets other than in the ordinary course of business, make acquisitions, and pay dividends or make other restricted payments. The 2014 Credit Agreement also contains customary covenants regarding, among other matters, the maintenance of insurance, the preservation and maintenance of our corporate existence, material compliance with laws, and the payment of taxes and other material obligations.

The 2014 Credit Agreement provides that (a) the leverage ratio shall not exceed (i) 5.75x through December 29, 2014, (ii) 5.5x from December 30, 2014 through June 29, 2015, (iii) 5.25x from June 30, 2015 through December 28, 2015, (iv) 5.0x from December 29, 2015 through March 28, 2016, (v) 4.75x from March 29, 2016 through June 27, 2016, (vi) 4.25x from June 28, 2016 through September 26, 2016, (vii) 4.0x from September 27, 2016 through April 3, 2017, (viii) 3.75x from April 4, 2017 through October 2, 2017, (ix) 3.5x from October 3, 2017 through April 2, 2018, (x) 3.25x from April 3, 2018 through December 31, 2018, and (xi) 3.0x from January 1, 2019 through maturity date; and requires (b) an interest coverage ratio of at least (i) 2.0x through June 29, 2015, (ii) 2.25x from June 30, 2015 through March 28, 2016, (iii) 2.5x from March 29, 2016 through June 27, 2016, (iv) 2.75x from June 28, 2016 through January 2, 2017, (v) 3.0x from January 3, 2017 through July 3, 2017, (vi) 3.25x from July 4, 2017 through April 2, 2018, (vii) 3.5x from April 3, 2018 through December 31, 2018, and (viii) 3.75x from January 1, 2019 through maturity date. The 2014 Credit Agreement limits capital expenditures to an amount in respect of any period not to exceed (i) \$29.5 million from the closing date through December 29, 2014, (ii) \$45.5 million for fiscal 2015, (iii) \$45.8 million for fiscal 2016, (iv) \$52.5 million for fiscal 2017, (v) \$53.7 million for fiscal 2018, and (vi) \$58.6 million from January 1, 2019 through maturity date, provided that the amount of permitted capital expenditures in any period can be increased by the unused permitted capital expenditures from the immediately preceding period, subject to certain limitations as defined by the agreement. We were in compliance with these covenants as of December 28, 2015.

During fiscal year 2014, we wrote off \$2.2 million of debt issuance costs related to the 2013 Credit Facility, and at closing paid \$4.8 million in additional debt issuance costs. The debt issuance costs paid at closing and the remaining unamortized debt issuance costs from the 2013 Credit Facility are recorded in other assets and are being amortized over the term of the 2014 Credit Agreement. The debt discount is included as a reduction to the carrying value of the debt obligations and is being amortized over the term of the 2014 Term Loan using the effective interest rate method.

In December 2015, we made a \$35.0 million voluntary prepayment of our 2014 Term Loan, which reduced our quarterly installment payments to \$324,116. In connection with the \$35.0 million prepayment, we wrote off \$0.6 million of debt issuance costs and \$0.4 million of debt discount, which are included in interest expense.

As of December 28, 2015, we had letters of credit of approximately \$3.6 million outstanding under the 2014 Revolving Credit Facility and had available borrowing capacity of approximately \$26.4 million.

The carrying value of our long-term debt approximates fair value, and the estimated fair value of our debt is based on observable market information from a third party pricing source, which is classified as a level 2 input within the fair value hierarchy.

Note 7—Restaurant Closures and Impairments

Costs associated with restaurant closures are recorded when the restaurant is closed. Expenses and losses related to closed restaurants are recorded in asset impairments and closures and loss on disposal of assets in our consolidated statements of operations.

During fiscal year 2015, we closed nine Joe's restaurants. Included in the nine restaurants closed in the current year were three that will be converted to Brick House restaurants and one Joe's that was sold resulting in a net gain of \$1.5 million. We recognized \$2.0 million in closure-related expenses, including \$1.0 million in asset impairments and closures primarily related to future minimum lease obligations, \$1.7 million of accelerated depreciation, and a net gain of \$0.7 million recorded in loss (gain) on disposal of assets. The corresponding restaurant closure liability is approximately \$1.3 million and \$0.3 million as of December 28, 2015 and December 29, 2014, respectively, of which \$0.9 million and \$0.1 million is reflected in other long-term liabilities in our consolidated balance sheet.

An analysis of our restaurant closure liability, including current and long-term portions, is shown below (in thousands):

	December 30, 2013	Additions	Payments	December 29, 2014	Additions	Adjustments	Payments	December 28, 2015
Facility and other exit costs	\$ 524	\$ 167	\$ (419)	\$ 272	\$ 1,041	\$ 560	\$ (606)	\$ 1,267
Severance costs	-	43	(43)	-	46	-	(46)	-
Restaurant closure liability	<u>\$ 524</u>	<u>\$ 210</u>	<u>\$ (462)</u>	<u>\$ 272</u>	<u>\$ 1,087</u>	<u>\$ 560</u>	<u>\$ (652)</u>	<u>\$ 1,267</u>

During the third quarter of 2015, we recorded an impairment charge of approximately \$3.9 million to reduce the carrying value of the long-lived assets of one Joe's restaurant to its estimated fair value. This restaurant was opened in 2013 and has significantly underperformed compared to expectations in addition to having a relatively higher cost to operate than our standard Joe's restaurant. We closed the restaurant in September 2015 but continue to negotiate with the landlord for subleasing the property or terminating the lease. During the fourth quarter of 2015, we recorded an impairment charge of approximately \$5.5 million to reduce the carrying value of the long-lived assets of five Joe's restaurants to their estimated fair value. During the third quarter of 2014, we recorded an impairment charge of approximately \$1.8 million to reduce the carrying value of the long-lived assets of a Joe's restaurant to its estimated fair value.

Note 8—Insurance and Other Recoveries

Our Joe's restaurant in Oceanside, New York was temporarily closed in the fourth quarter of 2012 due to damage sustained from Hurricane Sandy. In 2013 and 2014, we received \$1.1 million and \$89 thousand, respectively, in insurance proceeds related to Hurricane Sandy, of which \$480 thousand was for business interruption recovery and other expenses.

In 2015, a Joe's restaurant in Indianapolis was razed by fire. We recorded a \$0.4 million loss in the third quarter of 2015 related to this fire.

In relation to each of these casualty events, the following amounts were recorded in our consolidated financial statements (in thousands):

	2015	2014	2013
Proceeds from property insurance claims	\$ 695	\$ 89	\$ 681
Business interruption recoveries	\$ -	\$ -	\$ 480
Gain on insurance related to property and equipment	\$ 695	\$ 89	\$ 681

Note 9—Income Taxes

Income tax expense (benefit) included in continuing operations consisted of the following (in thousands):

	Fiscal Year		
	2015	2014	2013
Current income tax			
Federal	\$ 106	\$ (1,457)	\$ 5,774
State	(100)	2,618	1,304
Foreign	10	29	24
	16	1,190	7,102
Deferred income tax			
Federal	(481)	14,372	(7,282)
State	157	651	(688)
	(324)	15,023	(7,970)
Total income tax expense (benefit)	\$ (308)	\$ 16,213	\$ (868)

In addition, included in discontinued operations was an income tax expense (benefit) of (\$3.0) million, \$3.1 million and (\$11.5) million in 2015, 2014 and 2013, respectively.

At December 28, 2015, we had federal income tax credit carryforwards of approximately \$25.1 million, comprised of a \$24.6 million credit for FICA and Medicare taxes paid on reported employee tip income, Alternative Minimum Tax ("AMT") credits of approximately \$0.4 million, and a Texas margin tax credit of approximately \$0.1 million. The FICA credit will begin to expire in 2031 if unused prior to that time, while the AMT credit may be carried forward indefinitely. The Texas margin tax credit will expire in 2028 if unused prior to that time. We also have state net operating loss carryforwards of approximately \$62.9 million which will begin to expire in 2019 if unused prior to that time. At December 28, 2015, we have federal net operating loss carryforwards of approximately \$46.6 million, which will begin to expire in 2036 if unused prior to that time. In addition, at December 28, 2015, we have federal capital loss carryforwards of approximately \$4.1 million, which will begin to expire in 2021 if unused prior to that time.

We evaluate our deferred tax assets on a quarterly basis to determine whether a valuation allowance is required. We assess whether a valuation allowance should be established based on our determination of whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible and prior to the expiration of our credit carryforwards which begin to expire in 2031. We consider the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Due to the continued operating losses and the asset impairments recorded during 2015 and 2014, we are in a three-year cumulative loss position. According to ASC Topic No. 740, *Income Taxes*, cumulative losses in recent years represent significant negative evidence in considering whether deferred tax assets are realizable. Therefore, during fiscal year 2015 and 2014, we recorded a valuation allowance of \$12.8 million and \$25.6 million for continuing operations and \$6.8 million and \$10.3 million for discontinued operations, respectively, against our deferred tax assets. We excluded the deferred tax liabilities related to certain indefinite lived intangibles when calculating the amount of valuation allowance needed as these liabilities cannot be considered as a source of income when determining the realizability of the net deferred tax assets. The valuation allowance was recorded as a reduction to our income tax benefit in our consolidated statement of operations. If we are able to generate sufficient taxable income in the future such that it becomes more likely than not that we will be able to fully utilize the net deferred tax assets on which a valuation allowance was recorded, our effective tax rate may decrease if the valuation allowance is reversed.

A reconciliation between the amount of income tax expense (benefit) included in continuing operations determined by applying the applicable U.S. statutory income tax rate to income (loss) from continuing operations before income taxes is as follows (in thousands):

	Fiscal Year		
	2015	2014	2013
Tax expense (benefit) at the federal statutory income tax rate	\$ (8,805)	\$ (6,009)	\$ 2,438
Permanent differences	191	45	17
State income taxes, net of federal impact	(1,410)	51	407
Tax credit carryforwards	(3,377)	(3,662)	(3,454)
Change in valuation allowance	12,807	25,632	-
Other	286	156	(276)
Total income tax expense (benefit)	\$ (308)	\$ 16,213	\$ (868)
Effective income tax rate	1.2%	(94.4%)	(12.5%)

The components of our deferred tax assets and liabilities are as follows (in thousands):

	December 28, 2015	December 29, 2014
Deferred tax assets		
Credit carryforwards	\$ 25,080	\$ 20,025
Net operating loss carryforwards	20,610	1,058
Deferred rent	7,955	7,254
Accrued insurance	2,103	1,500
Stock-based compensation	1,752	1,620
Intangibles	1,030	1,177
Closure reserve	494	108
Accrued expenses	347	73
Other	866	514
Valuation allowance	(55,598)	(25,632)
	4,639	7,697
Deferred tax liabilities		
Property and equipment	(3,475)	(7,171)
Intangibles	(393)	-
Prepaid expenses	(319)	-
Net deferred tax asset	\$ 452	\$ 526

In addition to the deferred income taxes reflected in the table above, included in the consolidated balance sheet of discontinued operations as of December 29, 2014 is a net deferred tax liability of \$3.4 million.

We file income tax returns in the U.S. federal jurisdiction and various state and local jurisdictions. We are subject to U.S. federal income tax examinations by tax authorities for the fiscal years ended December 30, 2013 and December 29, 2014. We did not have any tax examinations during fiscal year 2015, and we have no other income tax audits open at this time. We are also subject to various state income tax examinations by state tax authorities for the fiscal year ended January 2, 2012 and forward.

The following table shows the changes in the amount of our uncertain tax positions, exclusive of the effect of interest and penalties (in thousands):

	Fiscal Year					
	2015		2014		2013	
Balance at beginning of year	\$	609	\$	582	\$	886
Additions for tax positions of the current year		119		122		163
Reductions for tax positions of prior years		(258)		(95)		(467)
Balance at end of year	\$	<u>470</u>	\$	<u>609</u>	\$	<u>582</u>

The full balance of approximately \$470 thousand, if recognized, would affect the annual effective rate, net of any federal tax benefits. We do not expect any changes that will significantly impact our uncertain tax positions within the next twelve months.

We accrue interest and penalties related to our uncertain tax positions as a component of income tax expense. During the fiscal years 2015, 2014 and 2013, we recognized approximately (\$43) thousand, \$32 thousand and (\$58) thousand of interest and penalties (reversals), respectively. We had approximately \$143 thousand and \$186 thousand accrued for interest and penalties as of December 28, 2015 and December 29, 2014, respectively.

Note 10—Commitments and Contingencies

In the course of business affairs and operations, we are subject to possible loss contingencies arising from third-party litigation and federal, state, and local environmental, health, and safety laws and regulations.

Minimum Lease Commitments

We lease our restaurants, office facilities, and certain equipment under operating lease agreements. The future minimum rental commitments for these noncancelable operating leases with initial or remaining lease terms in excess of one year are as follows (in thousands):

Fiscal Year	Amount
2016	\$ 29,741
2017	30,154
2018	28,679
2019	27,839
2020	25,689
Thereafter	121,132
	<u>\$ 263,234</u>

The above amounts do not include property taxes, insurance, and normal maintenance that we are required to pay. Rental expense relating to operating leases amounted to approximately \$35.5 million, \$34.7 million and \$32.2 million for 2015, 2014 and 2013, respectively. A number of our leases also provide for contingent rentals based on a percentage of sales above a specified minimum. Total contingent rentals, included in rent expense, amounted to approximately \$1.6 million, \$1.9 million and \$1.9 million for 2015, 2014 and 2013, respectively.

Litigation

We are a defendant or otherwise involved in a number of lawsuits in the ordinary course of business, including personal injury claims, contract claims, and claims alleging violation of federal and state law regarding workplace and employment matters, discrimination and similar matters. When the potential liability can be estimated and the loss is considered probable, we record the estimated loss. Due to uncertainties related to the resolution of lawsuits and claims, the ultimate outcome may differ from our estimates. We believe that the ultimate exposure with respect to these pending lawsuits and claims is not expected to have a material adverse effect on our consolidated financial position, results of operations, or cash flows.

On July 20, 2012, a putative class action complaint was filed in the U.S. District Court for the Southern District of Texas against us following our announced intention to restate our financial statements for the fiscal years ended December 28, 2009, January 3, 2011 and January 2, 2012 and the related interim periods. The complaint lodged against us, certain of our directors and officers and the underwriters in the initial public offering (“IPO”) was based on allegations related to the Company’s disclosures in its registration statement and prospectus for its IPO. On July 4, 2014, we reached a confidential agreement in principle to settle all pending claims, subject to submission and approval by the court. On January 30, 2015, the court issued preliminary approval of the settlement in the amount of \$1.8 million of which \$1.6 million is covered by insurance. On June 5, 2015, the court issued final approval of the settlement and termination of all proceedings in this matter.

On August 28, 2013, in the United States District Court, Western District of New York, six former tipped employees of various Joe’s locations filed a complaint against us and certain of our officers alleging that the employees were not paid the minimum wage required by federal law as well as the wage-hour laws of the respective states in which they worked. These former employees purport to represent a nationwide class of tipped employees on their federal claims and separate subclasses of tipped employees regarding their state law claims. By order dated January 27, 2015, the court granted conditional certification to the class. We are vigorously contesting this matter and have answered and asserted affirmative defenses. There are pending motions and discovery issues regarding members of the putative class. At this early stage, it is impossible to predict with any certainty whether the former employees will prevail or the amount of damages they might recover were they to prevail.

Note 11—Stock-Based Compensation

In May 2012, our stockholders approved the adoption of our 2012 Omnibus Incentive Plan (“2012 Plan”). Under the 2012 Plan, we are authorized to grant stock-based awards in the form of stock options, restricted stock, restricted stock units, SARs, and other stock-based awards. The maximum number of common shares reserved for the grant of awards under the 2012 Plan is 1,980,074, subject to adjustment as provided by the 2012 Plan. On July 23, 2013, our stockholders approved an amendment to our 2012 Plan to increase the aggregate number of shares of common stock which may be issued under the 2012 Plan by 1,200,000 shares to 3,180,074 shares. Other specific terms for awards granted under the 2012 Plan shall be determined by our board of directors (or a committee of its members). As of December 28, 2015, 1,393,265 shares were available for future grants under the 2012 Plan.

The following table summarizes the stock-based compensation expense recorded in the last three fiscal years (in thousands):

	Fiscal Year		
	2015	2014	2013
Stock-based compensation expense	\$ 2,065	\$ 2,877	\$ 1,819
Related tax benefit	(805)	(1,007)	(637)
	<u>\$ 1,260</u>	<u>\$ 1,870</u>	<u>\$ 1,182</u>

As of December 28, 2015, we had unrecognized stock-based compensation expense of approximately \$2.4 million related to stock-based compensation awards granted. That cost is expected to be recognized over a weighted average period of 2.9 years.

Stock Appreciation Rights

Stock appreciation rights granted under the 2012 Plan generally vest over four years from the date of grant with 25% vesting each year following the date of grant. SARs may not have a term exceeding ten years from the date of grant. The weighted average grant date fair value of SARs granted during the fiscal years 2015, 2014 and 2013 was \$1.94, \$6.34 and \$8.15, respectively.

Below is a summary of SARs activity during the fiscal year ended December 28, 2015:

	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at December 29, 2014	1,570,048	\$ 15.50		
Granted	845,043	\$ 4.33		
Forfeited	(1,192,518)	\$ 12.66		
Outstanding at December 28, 2015	1,222,573	\$ 10.55	8.4	\$ 65
Exercisable at December 28, 2015	466,217	\$ 15.64	7.2	\$ -

The aggregate intrinsic value of SARs exercised during fiscal year 2013 was \$3 thousand for which 97 shares were issued. No SARs were exercised during fiscal years 2015 and 2014.

Restricted Stock

Restricted stock, which converts one for one at the end of the vesting period, has been granted to certain employees and independent directors. Restricted stock generally vests from one to five years from the date of grant.

The following table summarizes restricted stock activity for the fiscal year ended December 28, 2015:

	Number of Shares	Weighted Average Grant Date Fair Value
Nonvested at December 29, 2014	509,842	\$ 12.41
Granted	312,022	\$ 4.05
Vested	(134,377)	\$ 7.84
Forfeited	(282,539)	\$ 11.75
Nonvested at December 28, 2015	404,948	\$ 6.42

The aggregate fair value of restricted stock that vested during the fiscal years 2015, 2014 and 2013 was \$1.1 million, \$629 thousand and \$210 thousand, respectively. The weighted average grant date fair value of restricted stock granted in fiscal years 2015, 2014 and 2013 was \$4.05, \$12.54 and \$12.55, respectively.

Unit Grants

Prior to the IPO, certain key members of the executive management team and certain members of the Board of Directors were granted common units of equity in JCS Holdings, LLC, Ignite's former parent company, in conjunction with the Third Amended and Restated Limited Liability Company Operating Agreement (the "LLC Agreement") under a Unit Grant Agreement. One-half of each recipient's non-vested common unit award generally step vests for a period of five years, while the other half vests based on time and our performance, except for a certain executive grant that cliff vests after five years, and converts one common unit to one common share upon vesting. Performance conditions include pre-established annual and/or cumulative EBITDA thresholds, as defined in each employee's unit agreement. No further grants will be issued under the Unit Grant Agreement.

The following table summarizes the activity of the common unit grants for the fiscal year ended December 28, 2015:

	Number of Shares	Weighted Average Grant Date Fair Value
Unvested at December 29, 2014	15,885	\$ 1.59
Vested	(2,647)	\$ 1.59
Forfeited	(13,238)	\$ 1.59
Unvested at December 28, 2015	-	

Since the former parent company's membership interest had no active market, we estimated the fair value of each common unit for units granted on the date of grant based on a variety of considerations and assumptions, including but not limited to a third-party valuation, which utilized the market and income approaches with an appropriate discount factor for the common unit's lack of marketability. No units were granted in fiscal years 2015, 2014 or 2013. The aggregate intrinsic value of common units that vested was approximately \$21 thousand, \$1.5 million and \$2 thousand during fiscal years 2015, 2014 and 2013, respectively. The intrinsic value amount for 2015, 2014 and 2013 is based on the stock price of our common shares at the time of vesting.

Note 12—Related Party Transaction

Under an eighteen month contract which ended September 30, 2015, we received certain creative marketing-related services, including print design, digital branding, and food photography from Norton Creative LLC ("Norton"). We also engaged Norton for television direction and production services, which were not covered in the scope of the original agreement. On September 12, 2015, our then President and CEO married the majority owner and CEO of Norton. Prior to becoming a related party, Norton provided services in the amount of \$2.2 million during fiscal year 2015, of which \$162 thousand related to discontinued operations. Amounts billed to us for services provided by Norton after becoming a related party, which were reviewed and approved by the Audit Committee, totaled \$341 thousand for fiscal year 2015. As of December 28, 2015, we no longer use Norton for creative marketing services.

Note 13—Supplemental Disclosure of Cash Flow Information

The following table sets forth certain cash and non-cash activities from continuing operations, as follows (in thousands):

	2015	2014	2013
Cash paid for interest, net of capitalized interest	\$ 13,031	\$ 7,360	\$ 4,333
Cash paid (refunded) for income taxes	\$ (445)	\$ 1,581	\$ 1,522
Supplemental noncash investing and financing activities			
Increase (decrease) in unpaid liabilities for property and equipment	\$ 3,911	\$ (358)	\$ (204)

Note 14—Segment Information

All of our restaurants compete in the full-service casual dining industry. Our brands also possess similar production methods, distribution methods, and economic characteristics, resulting in similar long-term expected financial performance characteristics. We believe reporting information about each of our brands is useful to readers of our financial statements and is consistent with how management evaluates brand performance. We also believe that providing this additional financial information for each of our brands provides a better understanding of our overall operating results. Income (loss) from operations represents revenues less restaurant operating costs and expenses, directly allocable general and administrative expenses, and other restaurant-level expenses directly associated with each brand including depreciation and amortization, pre-opening costs, asset impairments and closures, and loss on disposal of assets. Unallocated corporate expenses, capital expenditures, property and equipment, and other intangible assets are presented below as reconciling items to the amounts presented in the consolidated financial statements.

The following tables present information about our reportable segments for the respective periods (in thousands):

	Fiscal Year		
	2015	2014	2013
Revenues			
Joe's Crab Shack	\$ 414,335	\$ 432,969	\$ 447,771
Brick House Tavern + Tap	77,709	70,539	51,380
	<u>\$ 492,044</u>	<u>\$ 503,508</u>	<u>\$ 499,151</u>
Income (loss) from operations			
Joe's Crab Shack	\$ 9,539	\$ 21,458	\$ 45,635
Brick House Tavern + Tap	5,541	3,828	1,197
Corporate	(23,446)	(30,023)	(35,781)
	<u>\$ (8,366)</u>	<u>\$ (4,737)</u>	<u>\$ 11,051</u>
Depreciation and amortization			
Joe's Crab Shack	\$ 20,304	\$ 18,654	\$ 16,970
Brick House Tavern + Tap	4,483	4,190	3,403
Corporate	1,044	1,057	1,042
	<u>\$ 25,831</u>	<u>\$ 23,901</u>	<u>\$ 21,415</u>
Capital expenditures			
Joe's Crab Shack	\$ 7,804	\$ 19,390	\$ 37,341
Brick House Tavern + Tap	7,916	5,502	11,069
Corporate	913	967	1,408
	<u>\$ 16,633</u>	<u>\$ 25,859</u>	<u>\$ 49,818</u>

	December 28, 2015	December 29, 2014
Property and equipment, net		
Joe's Crab Shack	\$ 122,450	\$ 149,105
Brick House Tavern + Tap	51,351	40,715
Corporate	2,506	3,122
	<u>\$ 176,307</u>	<u>\$ 192,942</u>
Intangible assets, net		
Joe's Crab Shack	\$ 3,559	\$ 3,981
Brick House Tavern + Tap	1,913	1,946
Corporate	10	13
	<u>\$ 5,482</u>	<u>\$ 5,940</u>

Note 15—Quarterly Financial Information (Unaudited)

The following table summarizes unaudited quarterly data for 2015 and 2014 (in thousands, except per share data):

	Fiscal Year 2015			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenues	\$ 122,219	\$ 143,170	\$ 133,357	\$ 93,298
Income (loss) from continuing operations(1)	\$ (3,196)	\$ 1,731	\$ (4,288)	\$ (19,096)
Income (loss) from continuing operations per share				
Basic and diluted	\$ (0.12)	\$ 0.07	\$ (0.17)	\$ (0.74)

	Fiscal Year 2014			
	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenues	\$ 123,095	\$ 143,283	\$ 139,272	\$ 97,858
Income (loss) from continuing operations(2)	\$ 145	\$ 2,334	\$ (2,374)	\$ (33,487)
Income (loss) from continuing operations per share				
Basic and diluted	\$ 0.01	\$ 0.09	\$ (0.09)	\$ (1.30)

- (1) Full year 2015 loss from continuing operations includes \$2.0 million of costs related to conversions, remodels and closures (\$0.1 million in the first quarter, \$1.6 million in the third quarter and a \$0.3 million in the fourth quarter); \$1.0 million in debt issuance cost and debt discount write-offs (in the fourth quarter); \$9.4 million in asset impairment (\$3.9 million in the third quarter and \$5.5 million in the fourth quarter); \$0.4 million in loss on insurance settlements (in the third quarter); and \$12.8 million in deferred tax asset valuation allowance (\$2.1 million in the first quarter, \$0.6 million in the second quarter, \$2.6 million in the third quarter and \$7.5 million in the fourth quarter).
- (2) Full year 2014 loss from continuing operations includes \$0.1 million of costs related to conversions, remodels and closures (in the third quarter); \$2.2 million in debt issuance cost write-offs (in the third quarter); \$1.8 million in asset impairment in the third quarter; \$0.5 million in transaction costs related to debt refinancing and other strategic initiatives (\$0.1 million in the second quarter and \$0.4 million in the third quarter); and \$25.6 million in deferred tax asset valuation allowance (in the fourth quarter).