UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	)	Chapter 11
OTB HOLDING LLC, *et al.*,[1]	)	Case No. 25-52415 (SMS)
	)	(Jointly Administered)
Debtors.	)	
	)	**Related to Docket Nos. 522, 523, 533**

CONSOLIDATED REPLY TO OBJECTION AND MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF DEBTORS' AMENDED JOINT CHAPTER 11 PLAN AS OF JULY 21, 2025

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: OTB Holding LLC (3213), OTB Acquisition LLC (8500), OTB Acquisition of New Jersey LLC (1506), OTB Acquisition of Howard County LLC (9865), Mt. Laurel Restaurant Operations LLC (5100), OTB Acquisition of Kansas LLC (9014), OTB Acquisition of Baltimore County, LLC (6963). OTB Holding LLC's service address is One Buckhead Plaza, 3060 Peachtree Road, NW, Atlanta, GA 30305.

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I. INTRODUCTION

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this consolidated reply to objection and memorandum of law (the "Memorandum") in support of (i) final approval of the *Disclosure Statement with Respect to the Amended Joint Chapter 11 Plan Dated as of July 21, 2025* [Docket No. 523] (as further modified, revised, supplemented and amended, the "Disclosure Statement") pursuant to section 1125 of title 11 of the United States Code (as modified or amended, the "Bankruptcy Code") and (ii) confirmation of the *Debtors' Amended Joint Chapter 11 Plan as of July 21, 2025* [Docket No. 522] (as further modified, revised, supplemented and amended, the "Plan") pursuant to sections 1123 and 1129 of the Bankruptcy Code. In addition, as set forth herein, the Debtors request a waiver of the 14-day stay of the Proposed Confirmation Order (as defined below) imposed by Rule 3020(e) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").[2]

This Memorandum, final approval of the Disclosure Statement and confirmation of the Plan, and entry of the Proposed Confirmation Order are supported by, *inter alia*, the following documents:

(i) *Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Setting a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation; (III) Approving Procedures for the Solicitation and Tabulation of Votes to Accept or Reject the Debtors' Chapter 11 Plan; and (IV) Approving Related Notice and Objection Procedures* [Docket No. 533], entered July 24, 2025 (the "Solicitation Procedures Order");

(ii) the Disclosure Statement;

(iii) the Plan;

[2] Capitalized terms used, but not otherwise defined herein, shall have the meanings ascribed to such terms in the Plan.

(iv) *Notice of (A) Entry of Order Approving Disclosure Statement on Interim Basis and Approving Solicitation Procedures; (B) Deadline for Casting Votes to Accept or Reject Chapter 11 Plan; (C) Hearing to Consider Final Approval of Disclosure Statement and Confirmation of Chapter 11 Plan; (C) Hearing to Consider Final Approval of Disclosure Statement and Confirmation of Chapter 11 Plan; and (D) Related Matters*, attached as Exhibit 3 to the Solicitation Procedures Order (the "Combined Hearing Notice");

(v) *Notice of Filing Plan Supplement*, filed August 15, 2025 [Docket No. 560] (the "Plan Supplement") which appends the Liquidating Trust Agreement as Exhibit A;

(vi) *Notice of Filing Proposed Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Amended Joint Chapter 11 Plan as of July 21, 2025*, filed August 15, 2025 [Docket No. 561] (the "Proposed Confirmation Order");

(vii) *Declaration of Jonathan Tibus in Support of Confirmation of the Debtors' Amended Joint Chapter 11 Plan as of July 21, 2025*, filed September 3, 2025 [Docket No. 590] (the "Tibus Declaration");

(viii) *Declaration of Darlene S. Calderon, Regarding the Solicitation and Tabulation of Votes on the Debtors' Amended Joint Chapter 11 Plan as of July 21, 2025*, filed August 26, 2025 [Docket No. 580] (the "Voting Affidavit"); and

(ix) the affidavits or proofs of service of notices with respect to the Combined Hearing, Notice of Non-Voting Status (as defined in the Solicitation Procedures Order) and solicitation of voting on the Plan (the "Solicitation Service Filings").

II. PRELIMINARY STATEMENT

1. As further described and set forth in the Disclosure Statement, prior to the Sale, the Debtors operated the well-known restaurant brand "On The Border Mexican Grill & Cantina", which engaged primarily in the development, operation and franchising of casual restaurants in the United States and South Korea. Pursuant to the Sale, substantially all of the Debtors' assets have been sold to Purchaser.

2. On May 16, 2025, the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division (the "Court") approved the sale of substantially all of the Debtors' assets.

See Docket No. 403. On May 30, 2025, the Debtors closed the Sale pursuant to the Asset Purchase Agreement. *See* Docket No. 431.

3. On July 21, 2025, the Debtors filed the Plan and Disclosure Statement. On July 24, 2025, the Court entered the Solicitation Procedures Order.

4. The Plan represents the agreement with respect to the terms of a plan of liquidation reached after arms'-length negotiations between, among other parties, the Committee (as defined below) and the Debtors. As described herein, the Plan provides for the establishment of a Liquidating Trust for the benefit of Holders of Allowed General Unsecured Claims. The Debtors believe that the Plan will accomplish the objections of chapter 11 of the Bankruptcy Code and that acceptance of the Plan is in the best interests of the Debtors, their creditors and their estates. The Plan was proposed by the Debtors with the support of the Committee and the Committee recommended that all Class 4 General Unsecured claimants vote to accept the Plan.

5. Additionally, as more fully described herein, the Plan satisfies all applicable requirements for confirmation under the Bankruptcy Code and all applicable law. The Debtors believe that the Plan represents the best opportunity to distribute the Estate's cash to creditors at the earliest possible date. The Plan has the support of the Debtors' various stakeholders and for the reasons set forth more fully in this Memorandum, the Court should confirm the Plan and overrule any outstanding objections.

III. BACKGROUND

A. The Debtors' Chapter 11 Cases

6. On March 4, 2025 (the "Petition Date") each of Debtors filed a voluntary petition with the Court for relief under chapter 11 of the Bankruptcy Code.[3]

7. On March 17, 2025, the Office of the United States Trustee for the Northern District of Georgia (the "U.S. Trustee") appointed an official committee of unsecured creditors in these Chapter 11 Cases [Docket No. 111] (the "Committee"). No request has been made for the appointment of a trustee or examiner.

B. The Plan

8. On July 1, 2025, the Debtors filed the *Debtors' Joint Chapter 11 Plan as of July 1, 2025* [Docket No. 493]. Subsequently, on July 21, 2025, respectively, the Debtors filed the Plan. *See* Docket No. 522.

9. The Plan is the culmination of the Debtors' substantial efforts over the past several months to bring these Chapter 11 Cases to a value maximizing close through the liquidation and distribution of proceeds resulting from the sale of substantially all of the Debtors' assets.

10. The Plan provides for equitable and prompt Distributions to creditors of the Debtors and maximizes the value of the Estates. The Debtors and the Committee believe that the Plan represents the best opportunity to distribute the Estate's assets to creditors at the earliest possible date.

[3] Further detail regarding the Debtors' business, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Jonathan M. Tibus in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 18] and the Disclosure Statement, which are fully incorporated herein by reference.

11. The Plan contemplates the creation of the Liquidating Trust, which shall be established to receive the Liquidating Trust Assets and to distribute proceeds thereof in accordance with the Plan.

12. The Plan provides for five (5) Classes of Claims against and/or Interests in the Debtors and provides the treatment described in the Plan, *see* Plan Article III, summarized in the following table:

Summary of Classification and Treatment of Classified Claims and Interests

Class	Claim	Status	Voting Rights
1	Miscellaneous Secured Claims	Unimpaired	Deemed to Accept
2	Secured Lender Claims	Unimpaired	Deemed to Accept
3	Other Priority Claims	Unimpaired	Deemed to Accept
4	General Unsecured Claims	Impaired	Entitled to Vote
5	Interests in the Debtors	Impaired	Deemed to Reject

13. Pursuant to the Solicitation Procedures Order, the Debtors solicited the votes of Holders of Claims in Class 4, which consists of Allowed General Unsecured Claims. Class 4 is the only Class of Claims that is both impaired and entitled to a Distribution under the Plan. The Plan qualifies for confirmation under all applicable provisions of chapter 11 of the Bankruptcy Code.

C. The Confirmation, Solicitation, and Notification Process

14. On July 24, 2025, the Court entered the Solicitation Procedures Order. *See* Docket No. 533. The Solicitation Procedures Order set the hearing on final approval of the Disclosure Statement and confirmation of the Plan (the "Combined Hearing") for September 5, 2025 at 9:30 a.m. (prevailing Eastern Time) and approved, among other things: (a) the proposed procedures for solicitation of the Plan; (b) the form of Notice of Non-Voting Status (as defined in

the Solicitation Procedures Order); and (c) the Solicitation Packages (as defined in the Solicitation Procedures Order).

15. On July 30, 2025, the Debtors caused Kurtzman Carson Consultants, LLC d/b/a Verita Global, as claims and noticing agent ("Voting Agent"), to serve the Solicitation Packages and other related notices and materials as set forth under the Solicitation Procedures Order. *See* Voting Affidavit, ¶¶ 6-9.

16. On August 15, 2025, the Debtors filed the Plan Supplement which included the form of Liquidating Trust Agreement attached thereto as Exhibit A. *See* Docket No. 560.

17. The deadline for all Holders of Class 4 Claims to vote on the Plan was August 21, 2025, at 4:00 p.m. (prevailing Eastern Time) (the "Voting Deadline"). The deadline to file objections to the final approval of the Disclosure Statement or confirmation of the Plan was August 22, 2025, at 4:00 p.m. (prevailing Eastern Time) (the "Disclosure Statement and Confirmation Objection Deadline").

18. As set forth in the Voting Affidavit, the Debtors have fully complied with each of the directives of the Soliciation Procedures Order. *See* Voting Affidavit, ¶¶ 6-16.

19. As further set forth in the Voting Affidavit, Class 4 voted to accept the Plan. *See* Voting Affidavit, ¶ 15.

IV. PENDING OBJECTION

20. The Debtors received one formal objection to confirmation of the Plan from Oma Mex LLC ("Oma Mex" and the objection filed by Oma Mex, the "Oma Mex Objection"). Oma Mex asserts in the Oma Mex Objection that the Plan (i) provides no information regarding who the Class 1 secured creditors are, (ii) provides no information regarding how much is to be paid to

the Class 1 secured creditors, and (iii) lacks sufficient information for secured creditors to properly confirm adequate payment of their secured claims.[4] However, as discussed in more detail below, the Plan classifies the Claims as required by the Bankruptcy Code, provides a mechanism for payment of Secured Claims in full, and satisfies all applicable requirements for plan confirmation. Accordingly, the Oma Mex Objection should be overruled, and the Plan should be confirmed.

V. THE DISCLOSURE STATEMENT SATISFIES THE REQUIREMENTS OF SECTION 1125 OF THE BANKRUPTCY CODE

21. The Debtors request that the Court approve the Disclosure Statement as containing "adequate information" in accordance with section 1125 of the Bankruptcy Code on a final basis. Section 1125(b) of the Bankruptcy Code states that "[a]n acceptance or rejection of a plan may not be solicited . . . unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b). In turn, section 1125(a) of the Bankruptcy Code defines "adequate information" as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the

[4] Although Oma Mex filed a secured claim against OTB Acquisition LLC, the Debtors have objected to Oma Mex's secured claim in that certain *Debtors' Third Omnibus Objection to Secured Claims Listed on Exhibit A* [Docket No. 542] (the "Third Omnibus Objection"). As stated in the Third Omnibus Objection, Oma Mex fails to identify any property owned by the Debtors in which it holds a valid and enforceable security interest.

> case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information.

11 U.S.C. § 1125(a)(1).

22. The primary purpose of a disclosure statement is to provide information that is "reasonably practicable" to permit an "informed judgment" by creditors and interest holders entitled to vote on the plan. *See In re New Power Corp.*, 438 F.3d 1113, 1118 (11th Cir. 2006); *In re Go-Go's Greek Grille, LLC*, 617 B.R. 394, 395 (Bankr. M.D. Fla. 2020); *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp*., 337 F.3d 314, 321 (3d Cir. 2003); *see also Century Glove, Inc. v. First Am. Bank N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) ("[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.").

23. Bankruptcy courts have broad discretion in determining whether a disclosure statement contains adequate information based on the unique facts and circumstances of each case. *See Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case."); *Lisanti v. Lubetkin (In re Lisanti Foods, Inc.)*, 329 B.R. 491, 507 (D.N.J. 2005), aff'd, 241 Fed. App'x. 1 (3d Cir. Aug. 2, 2007) ("Section 1125 affords the Court substantial discretion in considering the adequacy of a disclosure statement."); *In re Nw. Recreational Activities, Inc.*, 8 B.R. 10, 11 (Bankr. N.D. Ga. 1980) ("The quality of the Disclosure Statement which will qualify as 'adequate information' will vary with the circumstances. The kind and form of information is left to the judicial discretion of the court on a case by case basis."); *In re Brandon Mill Farms, Ltd.*, 37 B.R. 190, 191–92 (Bankr. N.D. Ga. 1984) ("Beyond the statutory guidelines described in the definition of 'adequate information,' the decision to approve or reject a disclosure statement is within the discretion of the Bankruptcy Court.").

24. In accordance with section 1125 of the Bankruptcy Code, the Disclosure Statement provides "adequate information" to allow holders of Claims entitled to vote to make an informed decision on the Plan. The Disclosure Statement is the product of the Debtors' extensive review and analysis of their business, assets and liabilities, and circumstances leading to the Chapter 11 Cases. The Disclosure Statement provides information regarding: (a) the terms of the Plan, including a summary of the classifications and treatment of all Classes of Claims and Interests (Article VI and Article II, § B); (b) the distributions to holders of Allowed Claims (Article VI, § E); (c) the effect of the Plan on Holders of Claims and Interests and other parties in interest thereunder (Article II, § B and Article VI, § C); (d) the Claims asserted against the Debtors and the estimated amount of Claims that will ultimately be Allowed (Article II, § B, Article VI, § C and Article X); (e) certain risk factors to consider that may affect the Plan (Article VII); (f) certain tax issues related to the Plan and distributions (Article IX) ; (g) the means for implementation of the Plan (Article VI, § N); and (h) a liquidation analysis under a hypothetical chapter 7 case (Article X, Appendix B).

25. Further, on August 15, 2025, the Debtors filed the Plan Supplement, through which the Debtors made additional disclosures regarding the Liquidating Trust Agreement.

26. Accordingly, the Disclosure Statement contains more than sufficient information for a hypothetical reasonable investor to make an informed judgment about the Plan and complies with all aspects of section 1125 of the Bankruptcy Code and should therefore be approved by the Court on a final basis.

VI. THE PLAN SATISFIES EACH OF THE REQUIREMENTS FOR CONFIRMATION UNDER THE BANKRUPTCY CODE

27. The Court has exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed. The Court has

jurisdiction over these Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the United States Constitution.

28. The Plan complies with all relevant sections of the Bankruptcy Code and the Bankruptcy Rules relating to confirmation. The Debtors bear the burden of proof on elements necessary for confirmation. *See In re Aspen Village at Lost Mountain Memory Care, LLC*, 609 B.R. 536, 543 (Bankr. N.D. Ga. 2019) ("The plan proponent bears the burden of evidence and persuasion of each element of section 1129."). The standard of proof required is the "preponderance of the evidence" standard. *See In re Union Meeting Partners*, 165 B.R. 553, 574 (Bankr. E.D. Pa. 1994), *aff'd mem.*, 52 F.3d 317 (3d Cir. 1995) (adopting preponderance standard with respect to requirements of section 1129 of the Bankruptcy Code); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 616 n. 23 (Bankr. D. Del. 2001) ("the proponent must show that a plan is fair and equitable by a preponderance of the evidence").

29. As set forth more specifically below, the Plan complies with each requirement of Bankruptcy Code sections 1123 and 1129. Pursuant to Bankruptcy Rule 9017 (incorporating Fed. R. Evid. 201 (Judicial Notice of Adjudicative Facts)), the Debtors request that the Court take judicial notice of the docket of the Chapter 11 Cases maintained by the Clerk of the Court, including, without limitation, all pleadings and other documents filed and orders entered thereon, as well as all evidence proffered or adduced and all arguments made at the hearings held before the Court during the pendency of these Chapter 11 Cases.

A. The Plan Satisfies Bankruptcy Code § 1129(a)(1)

30. Bankruptcy Code § 1129(a)(1) provides that a plan must "compl[y] with the applicable provisions of this title." 11 U.S.C. § 1129(a)(1). The legislative history of Bankruptcy Code § 1129(a)(1) indicates that the primary focus of this requirement is to ensure that the plan complies with Bankruptcy Code §§ 1122 and 1123, which govern classification of claims and interests and the contents of a plan, respectively. *See* S. Rep. No. 95-989, at 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5913 (1978); H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5962, 6368 (1977); *see also Kane v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 843 F.2d 636, 648-49 (2d Cir. 1988); *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 824 (Bankr. D. Del. 2008). The Plan complies with these provisions in all respects.

(1) The Plan Meets the Requirements of Bankruptcy Code § 1122

31. The Plan satisfies Bankruptcy Code § 1122, which provides that "a plan may place a claim or interest in a particular Class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). This subsection does not require that similar claims be classified together, only that claims grouped together in a class should be similar. *Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co. (In re U.S. Truck Co.)*, 800 F.2d 581, 585 (6th Cir. 1986). Plan proponents have significant flexibility in placing similar claims into different classes under Bankruptcy Code § 1122, provided there is a rational basis to do so and it is not done to gerrymander a consenting impaired class. *See In re Jersey City Med. Ctr.*, 817 F.2d 1055, 1060-61 (3d Cir. 1987) (observing that separate classes of claims must be reasonable and allowing a plan proponent to group similar claims in different classes."); *Frito-Lay, Inc. v. LTV Steel Co. (In re Chateaugay Corp.)*, 10 F.3d 944, 956-57 (2d Cir. 1993) (finding separate

classification appropriate because it had a rational basis; separate classification based on bankruptcy court-approved settlement); *Aetna Cas. & Sur. Co. v. Clerk of the U.S. Bankr. Ct. (In re Chateaugay Corp.),* 89 F.3d 942, 950 (2d Cir. 1996) (classification proper since the plan did not classify similar claims separately to gerrymander an impaired assenting class); *In re Adelphia Communications Corp.*, 368 B.R. 140, 246–47 (Bankr. S.D.N.Y. 2007) ("When considering assertions of gerrymandering, courts in the Second Circuit have inquired whether a plan proponent has classified substantially similar claims in separate classes for the sole purpose of obtaining at least one impaired assenting class.").

32. The Plan provides for a total of four (4) Classes of Claims and one (1) Class of Interests and provides the treatment described in the Plan. *See* Plan, Article III. As the foregoing descriptions of the Classes reflect, valid reasons exist for classifying the various Classes of Claims and Interests in the manner provided in the Plan. Namely, the Plan provides for the separate classification of Claims against the Debtors and Interests based upon the differences in the priority of distribution and/or legal rights of such Claims and Interests, and all Claims and Interests within each Class have the same or similar rights against the Debtors. Accordingly, the Plan properly classifies Claims and Interests, satisfying the requirements of Bankruptcy Code § 1122.

(2) The Plan Meets the Requirements of Bankruptcy Code § 1123(a)

33. Bankruptcy Code § 1123(a) sets forth seven requirements that every chapter 11 plan must comply with. The Plan satisfies each of these requirements.

34. ***Designation of Classes of Claims.*** Bankruptcy Code § 1123(a)(1) requires that a plan designate classes of claims, other than claims with the priority specified in Bankruptcy Code § 507(a) (2), (3) and (8). The Plan satisfies this requirement by designating classes of Claims and

Interests, and by not classifying Administrative Claims (entitled to priority under Bankruptcy Code § 507(a)(2)) or Priority Tax Claims (entitled to priority under Bankruptcy Code § 507(a)(8)). *See* Plan, Article III. Separately, the Plan specifies the statutorily required treatment for Administrative Claims and Priority Tax Claims. *See* 11 U.S.C. § 1129(a)(9) and Plan, Article III.

35. ***Specification of Unimpaired Classes and Treatment of Impaired Classes.*** Bankruptcy Code § 1123(a)(2) and (a)(3) require that a plan specify those classes or interests that are not impaired and specify treatment for those classes of claim or interests that are impaired. The Plan satisfies this requirement by specifying that Class 1 (Miscellaneous Secured Claims), Class 2 (Secured Lender Claims) and Class 3 (Other Priority Claims) are unimpaired and specifying that Class 4 (General Unsecured Claims) and Class 5 (Interests in the Debtors) are impaired and providing the treatment for those five classes. *See* Plan, Article II and III.

36. ***Equal Treatment.*** Bankruptcy Code § 1123(a)(4) requires that a plan provide the same treatment for each claim in a particular class, unless the holder of a claim in that class agrees to less favorable treatment for such claim. The Plan satisfies this requirement by providing identical treatment for all Holders of Claims or Interests within each Class. *See* Plan, Article III.

37. ***Means for Implementation.*** Bankruptcy Code § 1123(a)(5) requires that a plan provide "adequate means" for its implementation. *In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013); *see also In re Cent. Med. Ctr., Inc.*, 122 B.R. 568, 575 (Bankr. E.D. Mo. 1990) (concluding that a plan that "subjects all members of the same class to the same process for claim payment" is "sufficient to satisfy the requirements of section 1123(a)(4)").

38. Article VII of the Plan provides adequate means for the Plan's implementation, including, but not limited to: (a) the cancellation of certain existing agreements, obligations,

instruments, and Interests; (b) the appointment of the Wind-Down Officer to effectuate the Wind-Down Tasks and certain other claims reconciliation in accordance with the Plan; (c) the establishment and funding of the Liquidating Trust pursuant to the Liquidating Trust Agreement and the Plan; (d) the execution, delivery, filing, or recording of all contracts, instruments, releases, and other agreements or documents in furtherance of the Plan; and (e) the authorization of the Wind-Down Officer and the Liquidating Trustee, as applicable, to take all actions necessary to effectuate the Plan.

39. Additionally, Article VII of the Plan (section 7.01) provides for the substantive consolidation of the Debtors' Estates with respect to the treatment of all Claims and Interests. Bankruptcy Code § 1123(a)(5) expressly provides that a plan may provide for the consolidation of a debtor with one or more persons. The Debtors believe that such substantive consolidation is fair, appropriate, and necessary in these Chapter 11 Cases and should be approved.

40. Courts in the Eleventh Circuit consider the following factors, among others, when evaluating whether substantive consolidation is appropriate: (1) the presence or absence of consolidated financial statements; (2) the unity of interests and ownership between various corporate entities; (3) the existence of parent and intercorporate guarantees on loans; (4) the degree of difficulty in segregating and ascertaining individual assets and liabilities; (5) the existence of transfers of assets without formal observance of corporate formalities; (6) the commingling of assets and business functions; and (7) the profitability of consolidation at a single physical location. *Eastgroup Props. v. Southern Motel Assoc., Ltd.*, 935 F.2d 245, 249-250 (11th Cir. 1991).

41. The Debtors submit that substantive consolidation is necessary in these Chapter 11 Cases for the following reasons, among others. First, there is a strong unity of interest and

ownership between these Debtors because OTB Holding LLC wholly owns OTB Acquisition LLC ("Acquisition"), which wholly owns OTB Acquisition of New Jersey LLC, Mt. Laurel Restaurant Operations LLC and OTB Acquisition of Kansas LLC. Additionally, Acquisition owns 90% of the equity of OTB Acquisition of Howard County LLC and holds 100% of the Class A shares. Acquisition also owns 98% of the equity in OTB Acquisition of Baltimore County, LLC and holds 100% of the Class A Shares. Each of the Debtor entities are directly or indirectly owned by OTB Holding LLC.

42. Second, the Debtors have parent and intercorporate guarantees of loans from third parties as seen from the Prepetition Credit Agreement. For example, the Prepetition Credit Agreement contains intercorporate guarantees on the obligations contained within. Therefore, the Debtors (other than Acquisition) are all guarantors making the Debtors jointly and severally liable for the obligations due and owing by Acquisition under the Prepetition Credit Facility. The Debtors, therefore, satisfy this factor.

43. Lastly, it would be difficult to segregate and ascertain individual assets and liabilities for the Debtors. As described in the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Continued Use of Prepetition Bank Accounts, Cash Management System, Forms, and Books and Records and (II) Granting Related Relief* [Docket No. 14] (the "Cash Management Motion"), the Debtors utilized an integrated, centralized cash management system in the ordinary course of business to collect, concentrate and disburse funds generated by their pre-sale operations. The Debtors' ability to precisely record all assets, liabilities or amounts of cash disbursements with the correct legal entity is not certain, and the effort to do so would be, at best, significantly burdensome and expensive and potentially may not be possible given the

magnitude and volume of intercompany transactions. The Cash Management Motion further explains that the Debtors utilize a consolidated cash management system for collection and disbursement activities for the benefit of the Debtors and all parties in interest, which also exemplifies the commingling of assets and business functions.

44. Accordingly, the Debtors substantive consolidation is appropriate in these Chapter 11 Cases, and the Plan satisfies the requirements set forth in Bankruptcy Code § 1123(a)(5).

45. ***Non-Voting Stock.*** Bankruptcy Code § 1123(a)(6) requires that a debtor's corporate organizational documents prohibit the issuance of nonvoting equity securities. No equity securities are being issued pursuant to the Plan. Accordingly, Bankruptcy Code § 1123(a)(6) does not apply to the Plan.

46. ***Selection of Officers and Directors.*** Bankruptcy Code § 1123(a)(7) requires that a plan "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, directors, or trustee under the plan . . . ." 11 U.S.C. § 1123(a)(7).

47. The Plan does not provide for the reorganization of the Debtors. The Liquidating Trust Assets will be vested in the Liquidating Trust, which will be administered by the Liquidating Trustee, and the remaining assets will be vested in the post-confirmation Debtors, which will be administered by the Wind-Down Officer. The Plan and the Liquidating Trust Agreement, as applicable, provide for the appointment of a Wind-Down Officer and a Liquidating Trustee that are in the best interests of creditors and equity holders and public policy. Moreover, the Debtors have disclosed the identity of the Wind-Down Officer and the Liquidating Trustee. The Plan identifies Jonathan Tibus as the proposed Wind-Down Officer and META Advisors LLC as the

proposed Liquidating Trustee. Accordingly, the Debtors submit that the Plan satisfies the requirements of Bankruptcy Code § 1123(a)(7).

B. The Plan Complies With the Discretionary Provisions of Bankruptcy Code § 1123(b)

48. Bankruptcy Code § 1123(b) sets forth various discretionary provisions that may be incorporated into a chapter 11 plan. Among other things, Bankruptcy Code § 1123(b) provides that a plan may: (a) impair or leave unimpaired any class of claims or interests, (b) provide for the assumption or rejection of executory contracts and unexpired leases, (c) provide for the settlement or adjustment of any claim or interest belonging to the debtor or the estates, (d) provide for the sale of all or substantially all of the property of the estate, and (e) include any other appropriate provision not inconsistent with the applicable provisions of chapter 11. *See* 11 U.S.C. § 1123(b)(1)-(4) and (6). As provided herein, the Plan complies with Bankruptcy Code § 1123(b).

49. ***Impairment/Unimpairment of Classes of Claims and Interests.*** Bankruptcy Code § 1123(b)(1) provides that a plan may "impair or leave unimpaired any class of claims, secured or unsecured, or of interests." 11 U.S.C. § 1123(b)(1). As discussed above, consistent with Bankruptcy Code § 1123(b)(1), Article III of the Plan classifies and describes the treatment of each Impaired and Unimpaired Class.

50. ***Assumption, Assignment, and Rejection of Executory Contracts and Unexpired Leases.*** Bankruptcy Code § 1123(b)(2) permits a plan to provide for the assumption, assumption and assignment, or rejection of executory contracts and unexpired leases, subject to section 365 of the Bankruptcy Code. Article VI of the Plan addresses the assumption and rejection of executory contracts and unexpired leases and meets the requirements of Bankruptcy Code § 365. Consistent with Bankruptcy Code § 1123(b)(2), section 6.01 of the Plan provides that on the Effective Date,

except as otherwise provided in the Plan, each Debtor will be deemed to have rejected each Executory Contract or Unexpired Lease to which such Debtor is a party, unless such Executory Contract or Unexpired Lease (a) has previously been assumed, assumed and assigned, or rejected pursuant to an order of the 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.

51. ***The Injunction, Exculpation and Releases.*** In accordance with Bankruptcy Code §§ 1123(b)(3)(A) and 1123(b)(6), Article X of the Plan provides for Debtor Release, an injunction and exculpation. The scope of the "Releasees"[5] and "Exculpated Persons"[6] are limited to only those parties described in the respective definitions under the Plan. Importantly, the identity of such Released Parties and Exculpated Parties and the scope of the releases, injunction and exculpation have been the subject of negotiations with the Committee, and are integral components of the Plan, are appropriate and necessary under the circumstances, are consistent with the Bankruptcy Code, and comply with applicable law.

(i) <u>The Debtor Release Is Appropriate and Should be Approved</u>

52. The Debtor Release is appropriately tailored under the facts and circumstances of these Chapter 11 Cases, supported by ample consideration, comprises an integral part of the Plan, and provides appropriate levels of protection to the Releasees. Accordingly, the Debtor Release

[5] Under the Plan, "Releasees" means, collectively, the following Persons, each in their capacity as such: (a) the Debtors, and (b) the Committee and the Committee Members; and in each case the respective Related Persons of each of the foregoing Persons solely in their respective capacities as such; provided, however, that "Releasee" shall not include any Person that is or has been an Insider of any of the Debtors (other than those Insiders whose retention by the Debtors has been approved by the Bankruptcy Court).

[6] Under the Plan, "Exculpated Persons" means: (a) the Debtors, (b) any retained professional of the Debtors; (c) any retained professional of the Committee, (d) the directors, officers, managers, and employees of the Debtors and their Affiliates, as of the Petition Date; and (e) the Committee and the Committee Members; and, in each case, the respective Related Persons of each of the foregoing Entities described in (a) through (e).

represents the sound and valid exercise of the Debtors' business judgment and is permissible under Bankruptcy Code § 1123(b)(6).

53. Bankruptcy Code § 1123(b)(A) provides that a Chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." *See In re Winn-Dixie Stores, Inc*., 356 BR 239, 260 (Bankr. M.D. Fla. 2006); *Coram Healthcare*, 315 B.R. at 334 ("The standards for approval of settlement under section 1123 of the Bankruptcy Code are generally the same as those under Bankruptcy Rule 9019 . . . ."). Generally, bankruptcy courts approve a settlement by a debtor if the settlement "exceed[s] the lowest point in the range of reasonableness." *See, e.g., In re Exaeris, Inc*., 380 B.R. 741, 746–47 (Bankr. D. Del. 2008) (citing *Coram Healthcare*, 315 B.R. at 330). Furthermore, a debtor may release claims under Bankruptcy Code § 1123(b)(3)(A) "if the release is a valid exercise of the debtor's business judgment, is fair, reasonable, and in the best interests of the estate." *U.S. Bank Nat'l Ass'n v. Wilmington Trust Co. (In re Spansion. Inc.)*, 426 B.R. 114, 143 (Bankr. D. Del. 2010).

54. The Debtors have proposed the Debtor Release based on their business judgment, which is afforded wide deference when evaluating release of their own claims, and submits that the Debtor Release meets the standard for Court-approved settlements, which require that a settlement "exceed the lowest point in the range of reasonableness" to be approved. *See In re Martin*, 490 F.3d 1272, 1275-76 (11th Cir. 2007); *In re Exaeris, Inc.*, 380 B.R. 741, 746-47 (Bankr. D. Del. 2008); *In re Air Safety Int'l*, 336 B.R. 843, 852 (Bankr. S.D. Fla. 2005); *see also see In re Quincy Med. Ctr. Inc.*, No. 11-16394-MSH, 2011 WL 5592907, at *2 (Bankr. D. Mass. Nov. 16, 2011) ("With respect to a debtor's releases, there is no reason why a debtor in its reasonable

business judgment should not be permitted, as part of its own plan, to propose to release whomever it chooses").

55. The Debtor Release reflects the important and substantial contributions, concessions and compromises made between the Releasees in the process of formulating and supporting the Plan. The Debtor Release was negotiated in good faith and at arm's-length. As such, the Debtor Release is an integral component of the Plan and complies with the Bankruptcy Code and applicable law. Accordingly, because the Debtor Release is a sound exercise of the Debtors' business judgment, a valid compromise of litigation, a critical component of the Plan, and in the best interests of the Debtors, their Estates, and their creditors, the Debtor Release should be approved pursuant to Bankruptcy Code § 1123(b)(3)(A) and Bankruptcy Rule 9019(a).

(ii) The Exculpation Is Appropriate

56. Section 10.02 of the Plan (the "Exculpation Provision") provides that no Exculpated Party shall incur liability for "any claim asserted after the Effective Date to the extent arising from or related to such acts or omissions, 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: (i) any act of fraud, gross negligence, or willful misconduct (in each case as determined by a Final Order entered by a

court of competent jurisdiction); or (ii) any Claim against an Insider on account of a transfer of Property to such Insider prior to the Petition Date."

57. The Exculpation Provision complies with and satisfies the requirements of applicable law. Under the Plan, the Exculpated Persons, in their capacities as such, include "(a) the Debtors, (b) any retained professional of the Debtors; (c) any retained professional of the Committee, (d) the directors, officers, managers, and employees of the Debtors and their Affiliates, as of the Petition Date; and (e) the Committee and the Committee Members; and, in each case, the respective Related Persons of each of the foregoing Entities described in (a) through (e)." *See* Plan, Article I.

58. Consistent with a bankruptcy court's good-faith finding, it is appropriate to exculpate the parties involved in formulating the plan and to protect them from collateral attacks. *See* 11 U.S.C. § 1129(a)(3) (discussed below). As Judge Shannon stated in *Indianapolis Downs*, "a creditors' committee, its members, and estate professionals may be exculpated under a plan for their actions in the bankruptcy case except for willful misconduct or gross negligence." 486 B.R. at 306 (quoting *Washington Mutual*., 442 B.R. at 350).

59. Exculpation provisions are appropriate where the exculpated parties have participated in good faith and provided substantial contributions to a debtor's reorganization, *see In re Winn-Dixie Stores*, 356 B.R. at 261 (finding an exculpation provision that extended to Debtors' attorneys, the reorganized debtors, the creditors' committee and certain others was appropriate in light of the significant contributions made to the case by the beneficiaries of the exculpation clause), or where the exculpation provision is reasonable under the circumstances and in the best interests of the estate. *See Murphy v. Weathers*, 2008 WL 4426080 at *12-13 (M.D. Ga.

Sept. 25, 2008) (stating that the standard applicable to, in part, exculpation provisions, is "whether the provisions are reasonable under the circumstances and in the best interests of the estate"). Further, unlike a release, the effect of an exculpation provision is not to eliminate a claim, but rather to set a reasonable standard of care that provides fiduciaries and, in some instances, others, with an appropriate level of protection. *See In re Nickels Midway Pier*, No. 03-49462, 2010 WL 2034542, at *14 (Bankr. D.N.J. May 21, 2010) (citing *PWS Holding Corp*., 228 F.3d at 235); *In re Health Diagnostic Lab., Inc*., 551 B.R. 218, 234 (Bankr. E.D. Va. 2016) (stating that exculpation provisions do "not alter or release claims held by third parties against non-debtors in contravention of § 524(e) of the Bankruptcy Code"); Brief for American College of Bankruptcy as Amicus Curiae, p. 10, *Purdue Pharma L.P*., 144 S. Ct. 2071 (2024) ("The question presented in this case—whether the Bankruptcy Code permits nonconsensual releases of pre-bankruptcy claims—is entirely different from whether an exculpation clause in a chapter 11 plan is an 'appropriate provision'").

60. Accordingly, the Exculpation Provision is appropriate under the Bankruptcy Code and applicable law.

(iii) The Injunction Is Appropriate

61. Section 10.01 of the Plan contains an injunction (the "Injunction") that is necessary to effectuate the Debtor Release and Exculpation Provision contained in the Plan and to protect the Releasees and Exculpated Persons from any potential litigation from creditors after the Effective Date. Any such litigation would hinder the efforts of the Wind-Down Officer and Liquidating Trustee to fulfill their responsibilities effectively as contemplated under the Plan and, thereby, undermine the Debtors' efforts to maximize value for all Holders of Claims and Interests.

The Injunction therefore is a key provision of the Plan because it enforces the Debtor Release and Exculpation Provision that are critical to the Plan. As such, to the extent the Court finds that the Debtor Release and Exculpation Provision are appropriate, the Debtors respectfully request that the Injunction be approved in conjunction therewith.

62. ***Preservation of Causes of Action and Right to Defend and Contest.*** Bankruptcy Code § 1123(b)(3)(B) permits a chapter 11 plan to provide for the retention and enforcement of any claim or interest by the debtor, a trustee, or a representative of the estate. Article VIII of the Plan provides that, the Liquidating Trust shall retain and may enforce all rights to commence and pursue, as appropriate, all Causes of Action not otherwise released under the Plan, and the Liquidating Trust's rights to commence, prosecute, or settle such Liquidating Trust Claims shall be preserved notwithstanding the occurrence of the Effective Date or the dissolution of the Debtors. Accordingly, the Plan is consistent with Bankruptcy Code §1123(b)(3)(B).

C. <u>The Debtors Have Satisfied Bankruptcy Code § 1129(a)(2)</u>

63. Bankruptcy Code § 1129(a)(2) requires that the "proponent of a plan to compl[y] with "applicable provisions of [the Bankruptcy Code]." The principal purpose of § 1129(a)(2) is to ensure that a plan proponent has complied with the disclosure and solicitation requirements of Bankruptcy Code sections 1125 and 1126. *See In re PWS Holdings Corp.*, 228 F.3d 224, 248 (3d Cir. 2000) (Bankruptcy Code § 1129(a)(2) requires plan proponent to comply with adequate disclosure requirements of Bankruptcy Code §1125); *see also In re Lapworth*, No. 97-34529DWS, 1998 Bankr. LEXIS 1383, at *10 (Bankr. E.D. Pa. Nov. 2, 1998) ("The legislative history of § 1129(a)(2) specifically identifies compliance with the disclosure requirements of § 1125 as a requirement of §1129(a)(2)."); *Official Comm. v. Michelson (In re Michelson)*, 141 B.R. 715, 719

(Bankr. E.D. Cal. 1992) ("Compliance with the disclosure and solicitation requirements is the paradigmatic example of what the Congress had in mind when it enacted section 1129(a)(2)."); *In re Texaco Inc.*, 84 B.R. 893, 906-07 (Bankr. S.D.N.Y. 1988) (stating that the "principal purpose of Section 1129(a)(2) is to assure that the proponents have complied with the requirements of section 1125 in the solicitation of acceptances to the plan"); S. Rep. No. 95-989, at 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5912 (1978) ("Paragraph (2) of [section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6368 (1977). Additionally, the Debtors are proper debtors under Bankruptcy Code § 109.

(1) The Debtors Have Complied With the Requirements of Bankruptcy Code § 1125

64. The Debtors have complied with Bankruptcy Code § 1125. Pursuant to the Solicitation Procedures Order, before the Debtors solicited votes on the Plan, the Court determined on an interim basis that the Disclosure Statement contained adequate information within the meaning of Bankruptcy Code § 1125. *See* Solicitation Procedures Order, ¶ 2. As set forth in Section V above, the adequacy of the Disclosure Statement should be approved on a final basis. The Court also approved the contents of the Solicitation Packages provided to Holders of Claims entitled to vote on the Plan, the forms of notices provided to parties not entitled to vote on the Plan, and the relevant dates for voting on and objecting to the Plan. *See* Solicitation Procedures Order. Through the Voting Agent, the Debtors complied with the content and delivery requirements of the Solicitation Procedures Order, thereby satisfying Bankruptcy Code § 1125(a) and (b). *See* Voting Affidavit, ⁋⁋ 6-16.

(2) The Debtors Have Complied With the Requirements of Bankruptcy Rules 3017(d) and 3018(c)

65. Bankruptcy Rules 3017 and 3018 require, in relevant part, that a debtor transmit its plan and disclosure statement to all affected creditors and equity security holders, that it adopt effective procedures for the transmission of its plan and disclosure statement to beneficial owners of securities, and that it afford creditors and equity security holders a reasonable period of time in which to accept or reject the proposed plan. Bankruptcy Rule 3017(d) requires that, unless a court orders otherwise, a debtor must transmit to all creditors, equity security holders, and the Office of the United States Trustee: the plan, or a court-approved summary of the plan; the disclosure statement approved by the court; notice of the time within which acceptances and rejections of such plan may be filed; and such other information as the court may direct including any opinion of the court approving the disclosure statement or a court approved summary of the opinion. Bankruptcy Rule 3017 also requires that the debtor give notice of the time fixed for filing objections to the proposed disclosure statement and for the hearing on confirmation to all creditors and equity security holders and that a debtor mail a ballot to each creditor and equity security holder entitled to vote on the plan. Bankruptcy Rule 3018(c) governs the form of ballot for accepting or rejecting a plan, providing in relevant part that an "acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent and conform to the appropriate Official Form." The Debtors respectfully submit that they have met all such requirements.

66. Only Class 4 of the Plan is entitled to vote pursuant to Bankruptcy Code § 1126. Although "[t]he holder of a claim or interest allowed under section 502 of [the Bankruptcy Code] may accept or reject a plan," 11 U.S.C. § 1126(a), "a class that is not impaired under a plan, and

each holder of a claim or interest in such class, are conclusively presumed to have accepted the plan," *id.* 11 U.S.C. § 1126(f)), and "a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests." 11 U.S.C. § 1126(g). Classes 1, 2 and 3 are unimpaired under the Plan, and thus are deemed to have accepted the Plan. Class 5 is impaired under the Plan but does not vote and is deemed to have rejected the Plan because Class 5 will receive no distributions under the Plan.

67. The Debtors have satisfied Bankruptcy Rules 3017 and 3018 by following the procedures in the Solicitation Procedures Order for noticing matters with respect to confirmation of the Plan and soliciting acceptance of the Plan. The Disclosure Statement, Ballots (approved as to form by the Solicitation Procedures Order), and Combined Hearing Notice provided clear notice of the deadline to submit the Ballots, which the Court established as August 21, 2025 at 4:00 p.m. (Prevailing Eastern Time). *See* Solicitation Procedures Order, ¶ 13. The Debtors did not solicit acceptance or rejection of the Plan from any Holder of a Claim or Interest before the conditional approval of the Disclosure Statement by the Court.

(3) Bankruptcy Code § 1126 (c) and (d) and Bankruptcy Rule 3018(a) Were Satisfied

68. As to tabulating votes for impaired classes, subject to designation of claims under Bankruptcy Code § 1126(e), a plan is accepted (a) by a class of claims if at least two-thirds in dollar amount and one-half in number of holders of allowed claims vote to accept the plan and (b) by a class of interests if at least two-thirds in amount of allowed interests vote to accept the plan. *See* 11 U.S.C. § 1126(c) and (d). Also, Bankruptcy Rule 3018(a) and (c) and the Solicitation Procedures Order establish that Holders of Claims and Interests entitled to vote are those as of the

Voting Record Date of July 22, 2025, who must vote in the manner and by using the form sanctioned for these purposes.

69. The Debtors complied with the requirements of Bankruptcy Code § 1126(c) and (d) and Bankruptcy Rule 3018(a) and (c) because Class 4 voted to accept the Plan. In light of the evidence adduced above, reflecting that the Debtors' solicitation satisfies the requirements of Bankruptcy Code sections 1125 and 1126 and Bankruptcy Rules 3017(d) and (e), and 3018(a) and (c), the Debtors request that the Court grant the protections provided under Bankruptcy Code § 1125(e).

D. The Plan Has Been Proposed in Good Faith Pursuant to Bankruptcy Code § 1129(a)(3)

70. Bankruptcy Code § 1129(a)(3) requires that a plan be proposed in good faith and not by any means forbidden by law. Although the term "good faith" is not defined in the Bankruptcy Code, "[w]here the plan is proposed with legitimate and honest purpose to reorganize and has a reasonable hope of success the good faith requirements of Section 1129(a)(3) are satisfied." *In re McCormick*, 49 F.3d 1524, 1526 (11th Cir. 1995); *see also In re PWS Holding Corp.*, 228 F.3d 224, 242 (3d Cir. 2000) (quoting *In re Abbott Dairies of Pennsylvania*, 788 F.2d 143, 150 n.5 (3d Cir. 1986) (courts have determined that "[f]or purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such a plan will fairly achieve a result consistent with the objectives of the Bankruptcy Code."); *In re General Dev. Corp.*, 135 B.R. 1002, 1007 (Bankr. S.D. Fla. 1991) (citations omitted) (explaining that the "plan's proposal, as opposed to the contents of the plan, be in good faith and in compliance with all nonbankruptcy laws"). The requirement of good faith must be viewed in light of the totality of the circumstances surrounding the formulation and proposal of a Chapter 11 plan. *In re W.R.*

Grace & Co., 475 B.R. 34, 87 (D. Del. 2012). In determining whether the plan will succeed and accomplish goals consistent with the Bankruptcy Code, courts look to the terms of the plan itself. *See In re Sound Radio, Inc.*, 93 B.R. 849, 853 (Bankr. D.N.J. 1988) (concluding that the good-faith test provides courts with significant flexibility and is focused on examination of the plan itself, rather than external factors), *aff'd in part and remanded in part on other grounds*, 103 B.R. 521 (D.N.J. 1989), *aff'd*, 908 F.2d 964 (3d Cir. 1990).

71. Consistent with the overriding purposes of chapter 11 of the Bankruptcy Code, the Plan was negotiated and proposed with the intent of accomplishing a controlled liquidation of the Debtors and their assets and maximizing stakeholder value and for no ulterior purpose. The Plan is the result of negotiations among the Debtors and their key stakeholders, including, without limitation, the Committee. *See In re Eagle-Picher Indus., Inc.,* 203 B.R. 256, 274 (S.D. Ohio 1996) (finding that a plan of reorganization was proposed in good faith when, among other things, it was based on extensive arms-length negotiations among plan proponents and other parties in interest). The Holders of impaired claims in Class 4 voted to accept the Plan and thereby implement a result that is in keeping with—and, indeed, central to—the goals of the Bankruptcy Code: maximizing the assets available for distribution and to distributing them equitably. Further, the Plan contains only provisions that are consistent with the Bankruptcy Code. In light of the foregoing, the Plan complies with Bankruptcy Code § 1129(a)(3).

E. Payments for Services and Expenses (Bankruptcy Code § 1129(a)(4))

72. Bankruptcy Code § 1129(a)(4) requires that the Debtors not make any payment for services, costs, or expenses in connection with these Chapter 11 Cases unless such payments are disclosed and subject to bankruptcy court approval as reasonable. Pursuant to the Plan and other

orders of the Court, all Claims for professional fees are subject Court approval. *See* Plan, Article III (section 3.03(c)). Accordingly, the Plan complies with the requirements of Bankruptcy Code § 1129(a)(4).

F. Directors and Officers (Bankruptcy Code § 1129(a)(5))

73. Bankruptcy Code § 1129(a)(5) requires that the Debtors disclose the identity and affiliations of the individuals proposed to serve after confirmation as a director or officer and that the identity and nature of any insider compensation be disclosed. The Debtors have complied with Bankruptcy Code § 1129(a)(5) by disclosing the appointment and identity of the Wind-Down Officer and the Liquidating Trustee. *See, e.g.,* Plan, Article I. The Debtors submit that the foregoing provisions are "consistent with the interests of creditors and equity security holders and with public policy." Therefore, the requirements in Bankruptcy Code § 1129(a)(5) are satisfied.

G. Rate Changes (Bankruptcy Code § 1129(a)(6))

74. Bankruptcy Code § 1129(a)(6) permits confirmation only if any regulatory commission that has or will have jurisdiction over a debtor after confirmation has approved any rate change provided for in the plan. Bankruptcy Code § 1129(a)(6) is inapplicable in these Chapter 11 Cases.

H. The Plan Satisfies the "Best Interests" Test (Bankruptcy Code § 1129(a)(7))

75. The "best interests of creditors" test of Bankruptcy Code § 1129(a)(7) requires that, with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time. The best interests test focuses on

individual creditors' claims rather than classes of claims. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441 n. 13 (1999). The test requires that "if the holder of a claim impaired under a plan of reorganization has not accepted the plan, then such holder must 'receive . . . on account of such claim . . . property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive . . . if the debtor were liquidated under chapter 7 . . . on such date.'" *Id.* at 441; *United States v. Reorganized CF&I Fabricators of Utah, Inc*., 518 U.S. 213, 228 (1996); *In re Adelphia Commc'ns Corp*., 368 B.R. 140, 252 (Bankr. S.D.N.Y. 2007) ("In determining whether the best interests standard is met, the court must measure what is to be received by rejecting creditors in the impaired classes under the plan against what would be received by them in the event of liquidation under chapter 7."), *appeal dismissed*, 371 B.R. 660 (S.D.N.Y. 2007), *aff'd*, 544 F.3d 420 (2d Cir. 2008). The best interests of creditors test is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical chapter 7 liquidation of that debtor's estate against the estimated recoveries under that debtor's plan. *See In re Lason, Inc.*, 300 B.R. 227, 232 (Bankr. D. Del. 2003) ("Section 1129(a)(7)(A) requires a determination whether 'a prompt chapter 7 liquidation would provide a better return to particular creditors or interest holders than a chapter 11 reorganization'." (quoting *In re Sierra-Cal*, 201 B.R. 168, 171-72 (Bankr. E.D. Cal. 1997)); *see also Genesis Health Ventures*, 266 B.R. at 610–11.

76. Under Bankruptcy Code § 1129(a)(7), the best interests of creditors test applies only to non-accepting holders of Impaired Claims or Interests. For the reasons discussed in Article X.C of the Disclosure Statement and, as reflected in the Liquidation Analysis appended as Appendix B thereto, it is clear that the best interests of creditors test is satisfied as to all holders of

Claims and Interests in impaired Classes under the Plan. The Liquidation Analysis reflects that the distribution each holder of a Claim or Interest is projected to receive or retain under the Plan is not less than the distribution that such holder is projected and estimated to receive if the Chapter 11 Cases were converted to chapter 7 of the Bankruptcy Code. *See* Tibus Declaration at ¶¶ 44-48. Because the non-accepting holders of the Impaired Claims or Interests would not receive any greater recovery in a chapter 7 liquidation than under the Plan, the Plan satisfies the "best interests" of creditors test.

I. Acceptance by Classes (Bankruptcy Code § 1129(a)(8))

77. Bankruptcy Code § 1129(a)(8) requires that each class of claims or interests must either accept a plan or be unimpaired under a plan. As set forth above, Classes 1, 2, and 3 are unimpaired, holders of claims therein were not entitled to vote, and those Classes are deemed to have accepted the Plan pursuant to the conclusive presumption mandated by Bankruptcy Code § 1126(f). Also, as reflected in the Voting Affidavit, with respect to each Debtor that has Class 4 creditors entitled to vote on the Plan, the Plan was accepted by Class 4 Claims. Thus, as to the Impaired and accepting Claims in Class 4, the requirements of Bankruptcy Code § 1129(a)(8) have, likewise, been satisfied.

78. The Holders of Interests in Class 5 are not entitled to receive or retain any property from the Debtors' estates under the Plan on account of their Claims and Interests and, therefore, are deemed to reject the Plan pursuant to Bankruptcy Code § 1126(g). The Plan nonetheless may be confirmed under the "cram down" provisions of Bankruptcy Code § 1129(b), as discussed below.

J. Treatment of Priority Claims (Bankruptcy Code § 1129(a)(9))

79. Bankruptcy Code § 1129(a)(9) contains a number of requirements concerning the payment of priority claims. First, Bankruptcy Code § 1129(a)(9)(A) requires, *inter alia*, that claims of a kind specified in Bankruptcy Code § 507(a)(2), which provides first priority to certain administrative expenses, be paid in full in cash on the effective date of a plan. Second, Bankruptcy Code § 1129(a)(9)(B) requires that claims of a kind specified in Bankruptcy Code § 507(a)(1), (4), (5), (6) and (7) receive cash or, if the class accepts the plan, deferred cash payments equal to the allowed amount of such claims on the effective date. Third and finally, Bankruptcy Code § 1129(a)(9)(C) requires that the holder of a claim of a kind specified in Bankruptcy Code § 507(a)(8)—priority tax claims—must receive regular installment payments in cash of the total value equal to the allowed amount of such claim over a period ending not later than five years after the petition date that comprises treatment no less favorable than provided under the plan for any other non-priority, unsecured claim (other than claims in any administrative convenience class).

80. The Plan satisfies Bankruptcy Code § 1129(a)(9) because it provides that: (1) 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 Liquidating Trustee 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 Liquidating Trustee; 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 (*see* Plan, Article III, section 3.03) and (2) each Holder of an Allowed Priority Tax Claim shall receive, 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 Liquidating Trustee 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 Liquidating Trustee; 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 (*see* Plan, Article III § 3.04).

81. Accordingly, the Plan satisfies the requirements set forth in Bankruptcy Code § 1129(a)(9).

K. Acceptance by at Least One Impaired Class (Bankruptcy Code § 1129(a)(10))

82. Bankruptcy Code § 1129(a)(10) provides that, to the extent there is an impaired class of claims, at least one impaired class of claims must accept the plan, "without including any acceptance of the plan by any insider," as an alternative to the requirement under Bankruptcy Code § 1129(a)(8) that each class of claims or interests must either accept the plan or be unimpaired under the plan. As set forth in the Voting Affidavit, Class 4 (General Unsecured Claims) and Class

5 (Interests in the Debtors) are impaired, and Class 4 has voted to accept the Plan.[7] Accordingly, to the extent a Debtor has an impaired Class of Claims, at least one Impaired Class of Claims voted to accept the Plan, determined without including any acceptance of the Plan by any insider (as defined by the Bankruptcy Code), and the requirements of Bankruptcy Code § 1129(a)(10) are satisfied.

L. The Plan Is Feasible Pursuant to Bankruptcy Code § 1129(a)(11)

83. Bankruptcy Code § 1129(a)(11) provides that a plan may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtors or any successor to the debtors under the plan, unless such liquidation or reorganization is proposed in the plan."

84. Courts generally have held that the determination of the feasibility requirement contemplates "'the probability of actual performance of the provisions of the plan.'" *Clarkson v. Cooke Sale & Serv. Co. (In re Clarkson)*, 767 F.2d 417, 420 (8th Cir. 1985) (quoting *Chase Manhattan Mortgage & Realty Trust v. Bergman (In re Bergman)*, 585 F.2d 1171, 1179 (2d Cir. 1978) ("The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts.'"); *see also In re Orlando Investors, L.P.*, 103 B.R. 593, 600 (Bankr. E.D. Pa. 1989) ("Feasibility does not require that substantial consummation of the plan be guaranteed; rather the plan proponent must demonstrate that there be a reasonable assurance of compliance with plan terms."). Only a reasonable assurance of success is required. *Johns-Manville*

[7] As stated in the Voting Affidavit, the following Debtors did not have any Holders of Claims or Interests entitled to vote on the Plan: OTB Acquisition of New Jersey LLC, OTB Acquisition of Howard County LLC, Mt. Laurel Restaurant Operations LLC and OTB Acquisition of Baltimore County, LLC. *See* Voting Affidavit, ¶ 14. Accordingly, Bankruptcy Code § 1129(a)(10) is inapplicable to these Debtors because such Debtors did not have "a class of claims [] impaired under the [P]lan."

Corp., 843 F.2d at 649 ("[T]he feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed."); *W.R. Grace & Co*., 475 B.R. at 115 (same); *In re Flintkote Co*., 486 B.R. 99, 139 (Bankr. D. Del. 2012) (same). Further, "'a relatively low threshold of proof will satisfy § 1129(a)(11) so long as adequate evidence supports a finding of feasibility.'" *In re Prussia Assocs*., 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005) (quoting Collier on Bankruptcy, ¶ 1129.03[1] (15th rev. ed. 2005)); *see also In re Tribune Co*., 464 B.R. 126, 185 (Bankr. D. Del.), modified, 464 B.R. 208 (Bankr. D. Del. 2011).

85. Bankruptcy Code §1129(a)(11) requires that the Court find that confirmation is not likely to be followed by the liquidation of the Debtors or by the need for further financial reorganization, unless the plan contemplates such liquidation.

86. The Plan is feasible. The Plan is a liquidating plan under which the Initial Distribution Amount shall be used to pay the Undisputed Claims on the Effective Date (*see* Plan, Article V, section 5.02) and each Holder of an Allowed General Unsecured Claim shall receive, on account and in exchange for such Allowed General Unsecured Claim, its Pro Rata share of the Liquidating Trust Interests, on or as soon as reasonably practicable after, the Effective Date (*see* Plan, Article III § 3.08). The Plan provides for the Wind-Down Officer and Liquidating Trustee, as applicable, to make the necessary distributions under the Plan. The Plan further provides a mechanism for the time and method of distributions. Moreover, as reflected in the Tibus Declaration, the Debtors believe that the Debtors and the Liquidating Trustee, as applicable, will have sufficient assets to make distributions required under the Plan, including payment of Allowed Administrative Claims, Priority Tax Claims, and Other Priority Claims. *See* Tibus Declaration, ¶¶ 52-54.

87. Accordingly, the Plan satisfies the requirements of feasibility under Bankruptcy Code § 1129(a)(11).

M. Payment of Certain Fees (Bankruptcy Code § 1129(a)(12))

88. Bankruptcy Code § 1129(a)(12) requires that certain fees listed in 28 U.S.C. § 1930, determined by the Court at the hearing on confirmation of a plan, be paid or that provision be made for their payment. The Plan includes a provision requiring that, on and after the Effective Date, the Liquidating Trustee shall pay any and all U.S. Trustee's Fee Claims when due and payable. *See* Plan, Article III, section 3.03(b). Consequently, Bankruptcy Code § 1129(a)(12) is satisfied.

N. Continuation of the Debtors' Obligations to Pay Retiree Benefits (Bankruptcy Code § 1129(a)(13))[8]

89. Bankruptcy Code § 1129(a)(13) is inapplicable to the Plan, as it requires that a plan provide for the continuation of all retiree benefits at the level established by agreement or by court order pursuant to Bankruptcy Code § 111 at any time prior to confirmation of the plan, for the duration of the period that the debtor has obligated itself to provide such benefits. The Debtors have no retiree benefit plans. Accordingly, Bankruptcy Code § 1129(b)(13) is inapplicable to the Plan.

O. The "Cramdown" Requirements of Bankruptcy Code § 1129(b)(1)

90. Bankruptcy Code § 1129(b) provides a mechanism for confirmation of a plan in circumstances where not all impaired classes of claims and interests accept a plan, as required by § 1129(a)(8), which is referred to as "cramdown:"

[8] The remaining elements of Bankruptcy Code § 1129(a), namely, subsections (a)(14) (domestic obligations), (15) (individual debtors) and (16) (nonprofit entities), are inapplicable to the Debtors and will not be discussed. *See* 11 U.S.C. § 1129(a)(14), (a)(15) and (a)(16).

> [I]f all of the applicable requirements of [section 1129(a) of the Bankruptcy Code] other than [the requirement contained in section 1129(a)(8) that a plan must be accepted by all impaired classes] are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1).

91. Thus, under Bankruptcy Code § 1129(b), a bankruptcy court may "cram down" a plan over the rejection (or deemed rejection) of a plan by an impaired class of claims or interests as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such class. *See Johns-Manville Corp*., 843 F.2d at 650 (2d Cir. 1988); *John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs*., 987 F.2d 154, 157 n.5 (3d Cir. 1993); *Zenith*, 241 B.R. at (explaining that "[w]here a Class of creditors or shareholders has not accepted a plan of reorganization, the court shall nonetheless confirm the plan if it does not discriminate unfairly and is fair and equitable").

92. The "unfair discrimination" standard of Bankruptcy Code § 1129(b)(1) requires that a dissenting class receive "treatment which allocates value to the [dissenting] class in a manner consistent with the treatment afforded to other classes with similar legal claims against the debtor," so that "a dissenting class will receive relative value equal to the value given to all other similarly situated classes." 11 U.S.C. § 1129(b)(1); *see also In re Armstrong World Indus., Inc.*, 348 B.R. 111, at 120 (D. Del. 2006). Generally speaking, Bankruptcy Code § 1129(b)(1) is intended to prevent a plan proponent from "segregat[ing] two similar claims or groups of claims into separate classes and provide disparate treatment for those classes." *Id*.; *see also In re Lernout & Hauspie Speech Prods.*, N.V., 301 B.R. 651, 661 (Bankr. D. Del. 2003); *see also In re Buttonwood Partners,*

Ltd., 111 B.R. 57, 63 (Bankr. S.D.N.Y. 1990) ("some courts hold that for discriminatory treatment of claims to be fair, four tests must be satisfied: (i) there is a reasonable basis for discriminating, (ii) the debtor cannot consummate the plan without discrimination, (iii) the discrimination is proposed in good faith, and (iv) the degree of discrimination is in direct proportion to its rationale"); *Zenith*, 241 B.R. at 105 (Bankr. D. Del. 1999) (explaining that '[w]here a class of creditors or shareholders has not accepted a plan. . . , the court shall nonetheless confirm the plan if it 'does not discriminate unfairly and is fair and equitable'"); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 157 (Bankr. D.N.J. 2010) (citing *Armstrong World Indus*., 348 B.R. at 121).

93. Under the foregoing standards, the Plan does not "discriminate unfairly" against any Holder of a Class 5 Interest that is deemed to reject the Plan (the "Nonaccepting Class"). The treatment of Holders of Interests in the Nonaccepting Class is proper because all similarly situated Holders of Interests will receive the same treatment under the Plan. *See* 11 U.S.C. § 1129(b)(2)(B)(ii) ("[T]he condition that a plan be fair and equitable with respect to a class includes the following requirements: . . . [w]ith respect to a class of unsecured claims–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.").

94. Bankruptcy Code §§ 1129(b)(2)(B) and 1129(b)(2)(C) set forth the requirements of the "fair and equitable" test with respect to unsecured creditors and equity holders, with each subsection specifying an alternative requirement. A chapter 11 plan must satisfy the applicable requirement to be found to be fair and equitable with respect to a dissenting class of unsecured creditors or equity interests. *See In re P.J. Keating Co*., 168 B.R. 464, 468 (Bankr. D. Mass. 1994) (noting that the "test under Section 1129(b)(2)(C) is an alternative one").

95. The Bankruptcy Code states that a plan is "fair and equitable" with respect to a class of unsecured claims if "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. . . ." 11 U.S.C. § 1129(b)(2)(B)(ii). Further, a plan is fair and equitable with respect to a class of interests if the plan provides 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." *Id.,* § 1129(b)(2)(C)(ii).

96. As stated above, Holders of Class 5 Interests are deemed to reject the Plan. Notwithstanding, the Court can properly "cram down" the Plan, in respect of the proposed treatment of Class 5 Interests, as authorized by Bankruptcy Code § 1129(b) because the Plan does not unfairly discriminate and is fair and equitable with respect to Class 5.

97. Accordingly, the Plan does not unfairly discriminate and is "fair and equitable" with respect to the Nonaccepting Class and, thus, satisfies Bankruptcy Code § 1129(b).

P. The Plan Is the Only Plan in these Chapter 11 Cases (Bankruptcy Code § 1129(c))

98. The Plan satisfies Bankruptcy Code § 1129(c), which provides that, with a limited exception, a bankruptcy court may only confirm one plan. The Plan is the only plan that has been filed in these Chapter 11 Cases and is the only plan that satisfies the requirements of subsections (a) and (b) of §1129. Accordingly, the requirements of Bankruptcy Code § 1129(c) are satisfied.

Q. The Plan's Purpose Is Consistent with the Bankruptcy Code (Bankruptcy Code § 1129(d))

99. Bankruptcy Code § 1129(d) provides that a court may not confirm a plan if the principal purpose of the plan is to avoid taxes or the application of section 5 of the Securities Act

of 1933, 15 U.S.C. § 77(e). The principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of section 5 of the Securities Act of 1933. Instead, the Plan reflects extensive arm's-length negotiations with various stakeholders in furtherance of maximizing the Debtors' assets for the benefit of all stakeholders.

R. Good Cause Exists to Waive the Stay of the Confirmation Order

100. The Debtors respectfully request that the Court cause the Confirmation Order to become effective immediately upon its entry notwithstanding the 14-day stay imposed by operation of Bankruptcy Rule 3020(e), which states that "[a]n order confirming a plan is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P 3020(e); *see also* Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend. (stating that a "court may, in its discretion, order that Rule 3020(e) is not applicable so that the plan may be implemented and distributions may be made immediately"). According to the Advisory Committee notes to the 1999 amendments to the Bankruptcy Rules, the purpose of Bankruptcy Rule 3020(e) is to permit a party in interest to request a stay of the confirmation order pending appeal before the plan is implemented and an appeal becomes moot. Fed. R. Bankr. P. 3020(e), Adv. Comm. Notes, 1999 Amend. To the extent a party wishes to seek an appeal, it may seek to stay the effectiveness of the Confirmation Order in connection with the appeal.[9]

101. As noted above, the Chapter 11 Cases have been conducted in good faith and with a high degree of transparency and public dissemination of information. Thus, the Debtors

[9] If for some reason a party in interest appeals the Confirmation Order, such party is on notice that the Debtors are asking the Court for a waiver of the stay imposed by Bankruptcy Rule 3020(e). Therefore, such party is on notice that it must request a stay pending appeal immediately after the entry of the Confirmation Order. *See, e.g., Nordhoff Invs., Inc. v. Zenith Elecs. Corp*., 258 F.3d 180, 187 (3d Cir. 2001) (noting that all parties were on notice that plan called for "Immediate Effectiveness," allowing appellants the opportunity to seek a stay immediately upon confirmation of the plan).

respectfully request a waiver of the stay imposed by the Bankruptcy Rules so that the Proposed Confirmation Order (as amended, revised or otherwise modified) may become effective immediately upon its entry.

VII. THE OMA MEX OBJECTION SHOULD BE OVERRULED

102. The Oma Mex Objection should be overruled. The Oma Mex Objection alleges that the Plan (i) provides no information regarding who the Class 1 creditors are, (ii) provides no information regarding how much is to be paid to the Class 1 creditors, and (iii) lacks sufficient information for secured creditors to properly confirm adequate payment of their secured claims. However, Oma Mex fails to identify any section of the Bankruptcy Code or case law supporting its objection.

103. Contrary to Oma Mex's suggestion, there is no requirement in the Bankruptcy Code that the Plan list out each individual secured Claim or assign a value to each individual Claim in the Plan. Comparatively, Bankruptcy Code § 1123(a)(1) requires that a plan designate classes of claims, other than claims with the priority specified in Bankruptcy Code § 507(a) (2), (3) and (8). The Plan satisfies this requirement by designating classes of Claims and Interests, and by not classifying Administrative Claims (entitled to priority under Bankruptcy Code § 507(a)(2)) or Priority Tax Claims (entitled to priority under Bankruptcy Code § 507(a)(8)). *See* Plan, Article III. Separately, the Plan specifies the statutorily required treatment for Administrative Claims and Priority Tax Claims. *See* 11 U.S.C. § 1129(a)(9) and Plan, Article III.

104. Additionally, as discussed above, the Plan is feasible and provides a mechanism for payment of Class 1 Miscellaneous Secured Claims and Class 2 Secured Lender Claims in full. Oma Mex's one-sentence objection to the contrary is not based in fact or law. The Plan provides

for the Wind-Down Officer and Liquidating Trustee, as applicable, to make the necessary distributions under the Plan. The Plan further provides a mechanism for the time and method of distributions and requires that the Liquidating Trust establish a Plan Payment Reserve for payment of Allowed Administrative Claims, Priority Tax Claims, Other Priority Claims, Miscellaneous Secured Claims and Secured Lender Claims that are not Undisputed Claims. Moreover, as reflected in the Tibus Declaration, the Debtors believe that the Debtors and the Liquidating Trustee, as applicable, will have sufficient assets to make distributions required under the Plan. *See* Tibus Declaration, ¶¶ 52-54. The Plan is feasible and provides a mechanism for payment of, among other claims, the Class 1 Miscellaneous Secured Claims and Class 2 Secured Lender Claims.

105. Accordingly, the Oma Mex Objection should be overruled and the Plan should be confirmed.

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VIII. CONCLUSION

WHEREFORE, for the reasons set forth in this Memorandum, which confirm that the Plan fully satisfies all applicable requirements of the Bankruptcy Code and all remaining unresolved objections to the Plan as of the commencement of the Combined Hearing should be overruled, the Debtors respectfully request that the Court enter an order confirming the Plan and approving the Disclosure Statement on a final basis, substantially in the form of the Proposed Confirmation Order, subject to any revisions made thereto in advance of the Combined Hearing.

Date: September 3, 2025
Atlanta, GA

Respectfully submitted,

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