

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

AGT WIND DOWN ACQUISITION LLC, *et al.*,  
  
Debtors.

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Chapter 11

Case No. 09-12889 (REG)

(Jointly Administered)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
RELATING TO, AND ORDER CONFIRMING, FIRST MODIFIED  
PLAN OF LIQUIDATION OF AGT WIND DOWN  
ACQUISITION, LLC, ET AL. UNDER CHAPTER 11 OF THE  
BANKRUPTCY CODE AND GRANTING RELATED RELIEF**

WHEREAS, on March 18, 2010, this Court entered an order [ECF Doc. No. 651] (the “Disclosure Statement Approval Order”) <sup>1</sup> approving the Disclosure Statement of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) <sup>2</sup> with respect to the First Modified Joint Plan of Liquidation on behalf of AGT Wind Down Acquisition LLC., *et al.*, dated March 17, 2010 (as it may be further amended or supplemented, the “Plan”) [ECF Doc. No. 650], under chapter 11 of title 11, United States Code (the “Bankruptcy Code”), and fixing the date for the hearing to consider confirmation of the Plan, and establishing certain procedures for soliciting and tabulating votes with respect to the Plan; and

WHEREAS, the Debtors through their claims and noticing agent filed several affidavits of service [ECF Doc. Nos. 657, 658, 659, 660, 661 and 662] (the “Plan Mailing Affidavits”), verifying that, in accordance with (i) the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (ii) the Local Bankruptcy Rules for the United States Bankruptcy Court for Southern District of New York (the “Local Bankruptcy Rules”) and (iii) the Disclosure Statement Approval Order:

- i) On April 1, 2010, the Debtors served by first class mail, postage prepaid, on the parties holding Class 2A and Class 3, Administrative Claims, Priority Tax Claims and Secured Claim of CH Fitness: (a) the Notice of Hearing to Confirm Plan of Liquidation; (b) the Disclosure Statement; (c) the Plan; (d) the Ballots; (e) the order of the Court approving the Disclosure Statement; and, (f) a solicitation letter signed by Committee Counsel; (the “Solicitation Materials”); and
- ii) On April 1, 2010, the Debtors served by first class mail, postage prepaid, on the parties holding Class 1 and Class 2B Claims (a) notice of the filing of the Disclosure Statement and the Plan; (b) notice of the Court’s approval of the Disclosure Statement; (c) information regarding the Confirmation Hearing; (d) detailed instructions for filing objections to confirmation of the Plan by the Confirmation Objection Deadline; and (e) information about how any such claimant may receive a copy of the Plan and Disclosure Statement; and
- iii) On April 1, 2010, the Debtors served by first class mail, postage prepaid, on the parties holding Class 4 Claims a Solicitation Package which included, in lieu of a Ballot, a notice of non-voting status.

(collectively, with the Solicitation Materials, the “Solicitation Packages”); and

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan or in the Disclosure Statement.

<sup>2</sup> The Debtors in these cases are: AGT Acquisition Wind Down LLC, Sports & Fitness Ventures LLC, AGT Services Wind Down LLC, CFI Wind Down, LLC, AGT Atlanta Wind Down LLC, CFI Georgia Wind Down, LLC, CFI Atlanta Wind Down, LLC, AGT Crunch Chicago LLC, Crunch CFI GW, LLC, AGT Los Angeles Wind Down LLC, AGT Union Street LLC, AGT Miami Wind Down LLC, AGT New York Wind Down LLC, Fort Greene Sports Club, LLC, Hauppauge Sports Club, LLC, CFI New York Wind Down, LLC, Park Slope Sports Club, LLC, 113 4th Sports Club, LLC, AGT San Francisco Wind Down LLC, CFI San Francisco Wind Down, LLC, AGT Washington D.C. Wind Down LLC, and The Silver Springs Sports Club, L.L.C.

WHEREAS, on July 9, 2010, the counsel to the Official Committee of Unsecured Creditors (the “Committee”) filed the “Declaration Regarding Voting On and Tabulation of Ballots Accepting and Rejecting the First Amended Joint Plan of Liquidation of AGT Wind Down Acquisition LLC, *et al.*” (the “Certification of Ballots”); and

WHEREAS, no formal objections to confirmation of the Plan were filed; and

WHEREAS, the United States Trustee has not objected to confirmation of the Plan; and

WHEREAS, pursuant to Bankruptcy Code section 1128(a), this Court held a hearing on July 15, 2010 (the “Confirmation Hearing”) to consider confirmation of the Plan.

NOW, THEREFORE, based upon this Court’s review of the affidavits, reports, and various certificates of service previously filed with this Court, including the Plan Mailing Affidavits and the Certification of Ballots; and upon all of the evidence proffered or adduced, and arguments of counsel made, at the Confirmation Hearing; and after due deliberation, and upon the entire record of these chapter 11 cases;

#### **FACTS AND CONCLUSIONS OF LAW**

**IT IS HEREBY FOUND AND DETERMINED by this Court that:**<sup>3</sup>

A. Core Proceeding (28 U.S.C. § 157(b)(2))

This is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

B. Transmittal and Mailing of Materials; Notice

The (a) Disclosure Statement Approval Order, which gave notice of the (1) approval of the Disclosure Statement, (2) hearing on confirmation of the Plan, (3) deadline and procedures for filing objections to confirmation of the Plan, (4) deadline and procedures for temporary allowance of claims for voting purposes, (5) treatment of certain unliquidated contingent or disputed Claims for notice, voting, and distribution purposes, (6) Voting Record Date, (7) approval of the Notice of Confirmation Hearing, (8) approval of the Solicitation Packages, (9) approval of the Ballots, (10) Voting Deadline, and (11) approval of procedures for tabulation of votes; (b) the Disclosure Statement; and (c) the Plan; and, as applicable, the Ballots were transmitted and served in compliance with the Bankruptcy Rules, the Local Bankruptcy Rules, and the Disclosure Statement Approval Order, and such transmittal and service were adequate and sufficient. Adequate and sufficient notice of the Confirmation Hearing and other bar dates and hearings described in the Disclosure Statement Approval Order was given in compliance with the Bankruptcy Rules, the Local Bankruptcy Rules, and the Disclosure Statement Approval Order, and no further notice is required. The solicitation of votes was made in good faith and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and all other rules, laws, and regulations.

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact where appropriate.

C. Plan Compliance with Bankruptcy Code (11 U.S.C. § 1129(a)(1))

Article IV of the Plan adequately and properly identifies and classifies all Claims and Equity Interests. The Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(1) and, as required by Bankruptcy Rule 3016(a), is dated and specifically identifies the Debtors and the Committee as the proponents of the Plan.

(a) Proper Classification (11 U.S.C. §§ 1122 and 1123(a)(1)). Article IV of the Plan adequately and properly identifies and classifies all Claims and Equity Interests. The Plan designates three (3) Classes of Claims and one (1) Class of Equity Interests. The Claims or Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests, as the case may be, in each such Class, and such classification therefore satisfies Bankruptcy Code section 1122. Valid business and legal reasons exist for the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between holders of Claims or Equity Interests. Thus, the Plan satisfies Bankruptcy Code section 1123(a)(1).

(b) Specified Treatment of Unimpaired Class (11 U.S.C. § 1123(a)(2)). The Plan specifies that Classes 1 and 2B are not impaired under the Plan, thereby satisfying Bankruptcy Code section 1123(a)(2).

(c) Specified Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan specifies the Classes of Claims and Equity Interests which are impaired and the treatment of the impaired Classes (Classes 2A, 3 and 4) in Articles IV and V of the Plan, thereby satisfying Bankruptcy Code section 1123(a)(3).

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). Except as described herein, Articles IV and V of the Plan provides for the same treatment for each Claim or Equity Interests in each respective Class unless the holder of a particular Class or Equity Interests has agreed to a less favorable treatment of such Claim or Equity Interests, thereby satisfying Bankruptcy Code section 1123(a)(4).

(e) Implementation of the Plan (11 U.S.C. § 1123(a)(5)). Articles VI and VIII of the Plan provides adequate and proper means for implementation of the Plan, thereby satisfying Bankruptcy Code section 1123(a)(5).

(f) Nonvoting Equity Securities (11 U.S.C. § 1123(a)(6)). Because the Plan provides for the liquidation of each Debtors entity, this provision is not applicable to the Plan.

(g) Selection of Officers, Directors, and Liquidating Trustee (11 U.S.C. § 1123(a)(7)). Upon the Effective Date of the Plan, all current directors and officers of the Debtors shall be relieved of all their positions and corresponding duties and obligations. On the Effective Date, Marianne O'Toole will become the Distribution Agent. The Distribution Agent was selected by the Committee. The Distribution Agent shall be considered a successor to the Debtors and/or an estate representative appointed pursuant to Bankruptcy Code section 1123, and the Distribution Agent shall have all of the powers, authority and responsibilities specified in

the Plan. The appointment of the Distribution Agent is consistent with the interests of creditors and with public policy and, thus, satisfies Bankruptcy Code section 1123(a)(7).

D. Debtors' Compliance with the Bankruptcy Code (11 U.S.C. § 1129(a)(2))

The Debtors have complied with the applicable provisions of the Bankruptcy Code, thereby satisfying Bankruptcy Code section 1129(a)(2):

(a) The Debtors are proper debtors under Bankruptcy Code section 109.

(b) On May 6, 2009, the Debtors filed voluntary chapter 11 petitions pursuant to Bankruptcy Code section 301.

(c) This Court has jurisdiction over the Debtors' Chapter 11 Cases pursuant to 28 U.S.C. § 1334.

(d) Venue of these Chapter 11 Cases is proper in this district pursuant to 28 U.S.C. § 1408.

(e) The Committee and the Debtors are proper proponents of the Plan pursuant to Bankruptcy Code section 1121(a).

(f) The Debtors and the Committee, as the proponents of the Plan, complied with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Approval Order in transmitting the Solicitation Packages and notices and in soliciting and tabulating votes on the Plan.

E. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3))

The Debtors and the Committee have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying Bankruptcy Code section 1129(a)(3).

F. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4))

Any payment made or to be made by the Debtors, or by a person issuing securities or 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, this Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

G. Directors, Officers, and Trustees (11 U.S.C. § 1129(a)(5))

Because the Plan provides for the liquidation of the Debtors, Bankruptcy Code section 1129(a)(5) is not applicable to the Plan. The Debtors have disclosed the identity and affiliations of the individual proposed to serve, after confirmation of the Plan, as the Distribution Agent, and her appointment to such office is consistent with the interests of creditors and with public policy.

H. No Rate Changes (11 U.S.C. § 1129(a)(6))

The Debtors have not operated in a regulated industry, and, accordingly, Bankruptcy Code section 1129(a)(6) is not applicable to the Plan.

I. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7))

The Plan satisfies Bankruptcy Code section 1129(a)(7) as set forth below.

(a) The statements regarding potential liquidation of the Debtors under chapter 7 of the Bankruptcy Code contained in the Disclosure Statement and in other evidence presented at the Confirmation Hearing have not been controverted by other evidence.

(b) Each holder of a Claim or Equity Interests in each impaired Class either has accepted the Plan or will likely receive or retain under the Plan on account of such Claim or Equity Interests 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 under chapter 7 of the Bankruptcy Code on such date. No Class has made an election under Bankruptcy Code section 1111(b)(2).

J. Non-acceptance by Certain Classes (11 U.S.C. § 1129(a)(8))

Classes 2A and 3 are impaired, and because no distributions will be made to the holders of Class 4 Equity Interests, nor will such holders retain any property, such holders are deemed to have rejected the Plan. Because not all impaired Classes of Claims or Equity Interests have accepted the Plan, the requirements of Bankruptcy Code section 1129(a)(8) have not been met, thus requiring resort to Bankruptcy Code section 1129(b).

K. Treatment of Administrative and Tax Claims (11 U.S.C. § 1129(a)(9))

The treatment of Administrative Expense Claims, Priority Tax Claims, and Priority Non-Tax Claims under Sections 4.01, 4.02, 4.03 and 4.04 of the Plan, respectively, satisfies the requirements of Bankruptcy Code sections 1129(a)(9)(A) and (B), and the treatment of Priority Tax Claims under Section 4.02 of the Plan satisfies the requirements of Bankruptcy Code section 1129(a)(9)(C).

L. Acceptance by Impaired Classes (11 U.S.C. § 1129 (a)(10))

At least one Class of Claims that is impaired under the Plan has accepted the Plan, as determined without including any acceptance of the Plan by any insider of the Debtors holding a Claim in such Class, thereby satisfying Bankruptcy Code section 1129(a)(10).

M. Feasibility (11 U.S.C. § 1129(a)(11))

The feasibility requirement of Bankruptcy Code section 1129(a)(11) is satisfied because the Plan provides for the liquidation of the Debtors. Based on the reliable and credible evidence presented at the Confirmation Hearing, the Distribution Agent will be able to make or cause to

be made, the distributions required under the Plan, and it will be able to perform its obligations under the Plan following the Confirmation Date and the Effective Date.

N. Payment of Fees (11 U.S.C. § 1129(a)(12))

All fees payable under 28 U.S.C. § 1930 have been paid or will be paid on or before the Effective Date pursuant to Section 4.06 of the Plan, thereby satisfying Bankruptcy Code section 1129(a)(12).

O. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13))

Because the Debtors never maintained a plan providing retiree benefits, as that term is defined in Bankruptcy Code section 1114, Bankruptcy Code section 1129(a)(13) is not applicable to the Plan.

P. Fair and Equitable; No Unfair Discrimination (11 U.S.C. § 1129(b))

Class 4 is an impaired Class of Equity Interests that is deemed to have rejected the Plan pursuant to Bankruptcy Code section 1126(g). This is the only Class that has not accepted, or is deemed not to have accepted, the Plan. Pursuant to Bankruptcy Code section 1129(b), this Court finds that the Plan does not discriminate unfairly, and is fair and equitable, with respect to Class 4. Specifically, (a) with respect to Class 4, the holder of any Claim or Equity Interests that is junior to the Equity Interests of Class 4 will not receive or retain any property under the Plan on account of such Equity Interests, and (b) the Equity Interests in Class 4 have no value. Thus, the Plan satisfies the requirements of Bankruptcy Code section 1129(b) as to Class 4.

Q. Principal Purpose of Plan (11 U.S.C. § 1129(d))

The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933, as amended (15 U.S.C. § 77e), and no governmental unit has requested that this Court not confirm the Plan for this reason. Therefore, the Plan satisfies the requirements of Bankruptcy Code section 1129(d).

R. Objections

All objections to the confirmation of the Plan filed with this Court have been withdrawn, settled or overruled.

S. Non-Material Modifications

The modifications of the Plan (the “Modifications”) described in Section 24 hereof, and as further described at the Confirmation Hearing, do not constitute material modifications of the Plan, will not alter the economic effect of any of the distributions provided for in the Plan, and, accordingly, do not require a re-solicitations of votes with respect to the Plan, and hereby are approved in their entirety.

T. Good Faith Solicitation (11 U.S.C. § 1125(e))

The Debtors and the Committee, and their agents, accountants, business consultants, representatives, attorneys, and advisors, through their participation in the negotiation and preparation of the Plan and the Disclosure Statement and their efforts to confirm the Plan, have solicited acceptances and rejections of the Plan in good faith and participated in these Chapter 11 Cases in compliance with the applicable provisions of the Bankruptcy Code.

U. Substantive Consolidation

This Plan provides for substantive consolidation of the Debtors' Estates in all respects, including for purposes of voting, confirmation, and making distributions to the holders of Allowed Claims under the Plan. On the Effective Date: (i) all guarantees by any Debtor of the payment, performance or collection by another Debtor with respect to Claims against such second Debtor, and all Claims based on such guarantees, shall be deemed eliminated, cancelled, released and of no further force and effect; (ii) any obligation of any Debtor and all guarantees by another Debtor with respect to Claims of the first Debtor shall be treated as a single obligation; (iii) each Claim against any Debtor shall be deemed to be against the consolidated Debtors and shall be deemed a single Claim against, and a single obligation of, the consolidated Debtors; (iv) all Inter-Company Claims shall be deemed eliminated as a result of the substantive consolidation of the Debtors, and therefore holders thereof shall not be entitled to vote on the Plan, or receive any Distributions or other allocations of value under the Plan; and (v) the Distribution Agent shall promptly move to close each of the Debtors' cases other than that of AGT Wind Down Acquisition LLC.

V. Release, Indemnification, Injunction, and Exculpation

Each of the release, indemnification, and exculpation provisions contained in Article XIII of the Plan:

(a) falls within the jurisdiction of this Court under 28 U.S.C. §§ 1334(a), (b), and (d);

(b) is an essential means of implementing the Plan pursuant to Bankruptcy Code section 1123(a)(5);

(c) is important to the overall objectives of the Plan to finally resolve, except to the extent otherwise provided in the Plan, all claims among or against the parties in interest in the Chapter 11 Cases; and

(d) is consistent with Bankruptcy Code sections 105, 1123, 1129, and other applicable provisions of the Bankruptcy Code.

The failure to effect the discharge, release, injunction, indemnification, and exculpation provisions of the Plan would seriously impair the Debtors' and the Committee's ability to confirm the Plan.

W. Conditions To Confirmation and Effective Date

Upon entry of this Order, any conditions precedent to confirmation of the Plan will be satisfied. The occurrence of the Effective Date is conditioned upon the satisfaction of each of the conditions precedent set forth in Section 13.01 of the Plan.

X. Jurisdiction

This Court may properly retain jurisdiction over the matters set forth in Section 12.01 of the Plan.

Y. Payments The Debtors have paid, or shall pay as provided by the Plan, all amounts then due under 28 U.S.C. § 1930, thereby satisfying the requirements of Bankruptcy Code section 1129(a)(12).

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT,**

1. Confirmation

The Plan, in the form attached hereto as Exhibit A, subject to the Modifications described in Section 24 hereof, is hereby confirmed, and all acceptances and rejections previously cast for or against the Plan are hereby deemed to constitute acceptances or rejections of the Plan as modified by this Order.

2. Objections

Each objection to confirmation of the Plan that has not been withdrawn, waived, or settled is overruled. To the extent that pleadings filed by individuals or entities constitute objections to confirmation of the Plan and have not been withdrawn, waived, or settled, they are denied.

3. Provisions of Plan and Order Nonseverable and Mutually Dependent

The provisions of this Order, including the findings of fact and conclusions of law set forth herein, are nonseverable and mutually dependent.

4. Executory Contracts and Unexpired Leases

This Order constitutes approval of this Court that under Bankruptcy Code section 365 and Sections 9.01 and 9.02 of the Plan, on the Confirmation Date, all executory contracts and unexpired leases that exist between the Debtors and any Person shall be deemed rejected as of the Confirmation Date, except for (a) any executory contract or unexpired lease that has been assumed or rejected pursuant to an order of the Court entered prior to the Confirmation Date, and (b) any executory contract or unexpired lease as to which a motion for approval of the assumption of such contract or lease has been filed and served prior to the Confirmation Date. The Debtors' decision regarding the assumption or rejection of executory contracts and unexpired leases, as authorized by Bankruptcy Code section 1123(b)(2) and as provided for in

Article IX of the Plan, are reasonable exercises of sound business judgment and are in the best interests of the Debtors and their Estates.

5. Releases.

(a) Releases, Injunction and Exculpation. All, releases, injunctions, and exculpations provided under the Plan, including those described in Section 13.03 of the Plan, are fair, equitable, reasonable, and in the best interests of the Debtors, their Estates, and holders of Claims, and are hereby approved as an essential part of the Plan. Except as otherwise expressly provided in the Plan or in this Order, subject to the occurrence of the Effective Date, such releases, injunctions, and exculpations shall be, and they hereby are, effective and binding.

(b) Applications by Professionals. Notwithstanding anything to the contrary contained in the Plan, none of the releases provided therein or in this Order shall prejudice or otherwise affect the right of any party in interest to object to (i) any applications for compensation filed by Professionals or (ii) any request seeking compensation under Bankruptcy Code section 503.

(c) Preservation of Causes of Action; Defenses. Except as otherwise provided in the Plan, in accordance with Bankruptcy Code section 1123(b), the Distribution Agent shall retain and may enforce any Avoidance Action (whether or not such actions were commenced on or prior to the date hereof), or rights to payment of claims, that belong to or could have been raised by or on behalf of the Debtors or the Estates; and the Distribution Agent shall retain and may assert and enforce any and all defenses and counterclaims to all Claims asserted against the Debtors or the Estates, including, but not limited to, rights to setoff, recoupment or rights under Bankruptcy Code section 502(d).

(d) Satisfaction of Claims and Equity Interests. The treatment accorded to Claims and Equity Interests pursuant to the Plan shall be in full satisfaction, settlement, release of and in exchange for such Claims and Equity Interests.

6. Appointment of Distribution Agent; Transfers

The appointment of Marianne O'Toole as the Distribution Agent under the Plan is hereby approved. The terms and conditions of the Distribution Agent's employment are to be set forth in an agreement to be executed by the Committee and the Distribution Agent and shall be subject to the terms of the Plan and this Order in all respects. [ECF Doc. No. 705]

7. Dissolution of the Committee

On the Effective Date, the Committee shall be dissolved and the members thereof shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from and in connection with the Chapter 11 Cases, and the retention or employment of the Committee's attorneys, accountants and other agents shall terminate; provided, however, that immediately prior to the dissolution of the Committee, any and all analyses or work product prepared by and/or information obtained by the Committee or its attorneys, accountants and other agents related to the Avoidance Actions shall be transferred to the Distribution Agent and shall be deemed an asset of the Debtors for purposes of the Plan;

provided, further, however, the Committee shall continue to exist after such date solely with respect to all applications filed pursuant to Bankruptcy Code sections 330 and 331 seeking payment of fees and expenses incurred by any professional.

8. Resolution of Disputed Claims

Unless otherwise ordered by this Court after notice and a hearing, the Distribution Agent shall have the right to the exclusion of all others to make and file objections to Claims, and shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable. Objections to Claims shall be filed with the Court and served upon each affected creditor within ninety (90) days after the Effective Date; provided, however, that such deadline may be extended by the Court upon motion of the Distribution Agent. All objections shall be litigated to a Final Order except to the extent the Distribution Agent elects to withdraw any such objection or the Distribution Agent and the claimant elect to compromise, settle or otherwise resolve any such objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim without approval of this Court.

9. General Authorizations

The Debtors and the Committee (prior to the Effective Date) and the Distribution Agent (on and after the Effective Date) are hereby authorized and empowered pursuant to Bankruptcy Code section 1142(b) to issue, execute, deliver, file and record any documents, Court papers and pleadings, and to take any and all actions that are necessary or desirable to implement, effectuate or consummate any and all of the transactions contemplated by the Plan, whether or not specifically referred to in the Plan or related documents, and without further application to this Court.

10. Exemption From Transfer Taxes

Pursuant to Bankruptcy Code section 1146(c), the assignment or surrender of any lease or sublease, or the delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale or assignments executed in connection with any disposition of assets contemplated by the Plan (including transfers of assets held by the Distribution Agent), shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar tax.

11. Conflicts

To the extent this Order or the Plan is inconsistent with the Disclosure Statement, any other agreement entered into between the Debtors and any third party, (i) the Plan shall control the Disclosure Statement and any such agreements, and (ii) the Confirmation Order shall control the Plan.

12. Plan and Confirmation Order Binding

Pursuant to Bankruptcy Code section 1141, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, and except as expressly provided in the Plan or this Order, the provisions of the Plan and this Order shall be binding upon (a) the Debtors, (b) the

Distribution Agent, (c) all holders of Claims against or Equity Interests in the Debtors, whether or not impaired under the Plan and whether or not, if impaired, such holders have accepted the Plan, (d) each Person or entity acquiring property under the Plan, (e) any other party in interest, (f) any Person or entity making an appearance in these Chapter 11 Cases, and (g) each of the respective heirs, successors, assigns, trustees, executors, administrators, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, or guardians of any of the foregoing.

13. Supremacy of Confirmation Order

This Order shall supersede any orders of the Court issued in the Chapter 11 Cases prior to the Confirmation Date to the extent that those prior orders may be inconsistent with this Order.

14. Separate Orders

This Order shall be deemed to be a separate Order of this Court with respect to the Debtors for all purposes. The Clerk of the Court is directed to file and docket this Order in the Chapter 11 Cases.

15. Plan Provisions to Be Given Effect

The terms and provisions of the Plan are incorporated by reference into and are an integral part of this Order. Each term and provision of the Plan is valid, binding and enforceable as though fully set forth herein. The provisions of the Plan and this Order, including the findings of fact and conclusions of law set forth herein, are non-several and mutually dependent. The failure specifically to include or reference any particular provision of the Plan in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be confirmed in its entirety.

16. Plan Classification Controlling

The classification of Claims for purposes of the distributions to be made under the Plan is governed solely by the terms of the Plan. The classifications set forth on the ballots tendered to or returned by the holders of Claims in connection with voting on the Plan (a) were set forth thereon solely for purposes of voting on the acceptance or rejection of the Plan, (b) do not necessarily represent and in no event shall be deemed to modify or otherwise affect the actual classification of such Claims under the terms of the Plan for distribution purposes, and (c) may not be relied upon by any creditor as actually representing the actual classification of such Claims under the terms of the Plan for distribution purposes.

17. Compromise of Controversies

Pursuant to Bankruptcy Rule 9019, and in consideration for the classification, distribution and other benefits provided under the Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved pursuant to the Plan. The entry of this Order shall constitute the Court's approval of each of the foregoing compromises or settlements and all other compromises and settlements provided for in the Plan, and the Court's findings shall constitute its determination that such compromises and settlements

are in the best interests of the Debtors, the Distribution Agent, the Estates, creditors, and other parties in interest, and are fair, equitable, and within the range of reasonableness.

18. The Record

The record of the Confirmation Hearing is closed. The findings of fact and conclusions of law of this Court set forth herein and at the Confirmation Hearing shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, and the findings of fact and conclusions of the Court at the Confirmation Hearing are incorporated herein by reference.

19. Pre-Confirmation Date Professional Fees and Expenses

Except as otherwise provided by the Court and subject to the terms and conditions set forth in the Wind Down Stipulation and the Cash Collateral Order, each professional person or firm retained with approval by order of the Court or requesting compensation in these Chapter 11 Cases pursuant to Bankruptcy Code sections 330 or 503(b), other than professionals that the Debtors is authorized to pay in the ordinary course of business, shall be required to file an application for an allowance of final compensation and reimbursement of expenses in these Chapter 11 Cases incurred through the Confirmation Date on or before a date that is sixty (60) days after the Effective Date. Objections to any such application shall be filed on or before ten (10) days prior to a hearing on any such application. Prior to the Effective Date, the Debtors shall pay the fees of such professionals. After the Effective Date, the Distribution Agent shall pay the fees of such professionals.

20. Post-Confirmation Date Fees and Expenses.

(a) Fees and Expenses of Professionals After the Effective Date. After the Effective Date, the Distribution Agent shall, in the ordinary course of business and without the necessity for any approval by the Court, pay the reasonable fees and expenses, incurred after the Effective Date, of the professional persons employed by the Distribution Agent in connection with the implementation and consummation of the Plan, the Claims reconciliation process and any other matters as to which such professionals may be engaged. The fees and expenses of such professionals shall be paid within ten (10) Business Days after submission of a detailed invoice therefor. If the Distribution Agent disputes the reasonableness of any such invoice, the Distribution Agent shall timely pay the undisputed portion of such invoice, and the Distribution Agent or the affected professional may submit such dispute to the Court for a determination of the reasonableness of such portion of the disputed invoice.

(b) Fees and Expenses of Distribution Agent. The fees and expenses of the Distribution Agent shall be paid from the Debtors' Wind Down Account in respect of the Distribution Agent's costs and expenses related to the prosecution of objections to General Unsecured Claims and the Avoidance Actions, and in all other cases from the Debtors' Wind Down Account in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pursuant to the terms of the Plan.

21. Retention of Jurisdiction

This Court shall retain jurisdiction in accordance with the terms of Section 12.1 of the Plan, the other provisions of this Order, and Bankruptcy Code section 1142. Until the Chapter 11 Cases of one of the Debtors is closed, any party in interest may commence a proceeding in this Court in respect of any matter as to which jurisdiction has been retained with respect to such Debtors.

22. Notice of Entry of Confirmation Order and the Occurrence of Effective Date

In accordance with Bankruptcy Rules 2002(f) and 3020(c), the Debtors, no later than twenty (20) days after the Effective Date, shall give notice of the entry of the Confirmation Order and the occurrence of the Effective Date, in substantially the form of Exhibit B annexed hereto (the "Effective Date Notice"), which is hereby approved, by first class mail postage prepaid, by hand or by overnight courier service to all the entities, subject to the provisions in paragraph 28 below, that were sent the Solicitation Packages as set forth in Paragraph B of this Order. Mailing of the Notice of Confirmation in the time and manner set forth in this paragraph is adequate and satisfies the requirements of Bankruptcy Rules 2002(f) and 3020(c), and no further notice is necessary.

23. Case Closure Objection

This Confirmation Order shall constitute a final decree and Order closing each of the Chapter 11 cases except for the case of AGT Wind Down Acquisition LLC, Case No. 09-12889 (REG) (the "Lead Case") pursuant to Bankruptcy Code section 350(a) ; provided however, that if any party in interest files an objection to closure of Chapter 11 Cases (a "Case Closure Objection") and serves such objection on: (a) counsel to the Debtors, Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036, (Attn: Shmuel Vasser or Davin J. Hall); (b) counsel to the Official Committee of Unsecured Creditors, SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753 (Attn: Ronald J. Friedman or Katina Brountzas); and (c) the United States Trustee for Region 2, Southern District of New York, 33 Whitehall Street, 21<sup>st</sup> Floor, New York, New York 10004 (Attn: Susan D. Golden)(the "Notice Parties"), together with proof of service thereof, so as to be received no later than 4:00 p.m. (prevailing Eastern time) on the date that is seven (7) days after service of the Effective Date Notice (the "Case Closure Objection Deadline"), then the Committee shall schedule a hearing before this Court regarding such Case Closure Objection. If no Case Closure Objections are received prior to the Case Closure Objection Deadline, each Chapter 11 Case, except for the Lead Case, shall be deemed closed (such cases, the "Closed Cases"), as of the Effective Date.

All U.S. Trustee Fees due and owing for each Closed Case shall be paid on or before fourteen (14) days after the passage of the Case Closure Objection Deadline, if no Case Closure Objection is received with respect to such Closed Case. If a Case Closure Objection is received, all U.S. Trustee Fees due and owing for such the applicable Debtor shall be paid upon the entry of an order of this Court closing such Debtor's case, within the timeframe prescribed by such order

24. Permitted Additional Plan Modifications.

After the entry of the Confirmation Order, the Debtors, the Committee, or the Distribution Agent, as the case may be, may, upon order of the Court, amend or modify the Plan, in accordance with Bankruptcy Code section 1127(b) or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan. A holder of an Allowed Claim that is deemed to have accepted the Plan shall be deemed to have accepted the Plan as modified if the proposed modification does not materially and adversely change the treatment of the Claim of such holder.

25. Returned Mail

Notwithstanding anything to the contrary herein, no notice or service of any kind will be required to be mailed or made upon any person to whom the Debtors mailed a Solicitation Package, but received such mailing returned by the United States Postal Service marked “undeliverable as addressed,” “moved – left no forwarding address” or “forwarding order expired,” or similar reason, unless the Debtors or the Committee has been informed in writing by such person of that person’s new address.

26. Authorization to Close

This Court directs that Federal Rule of Bankruptcy Rule 3020(e) shall not apply to this Order and authorizes the Debtors to consummate the Plan immediately after entry of this Order.

Dated: New York, New York  
July 15, 2010

**S/ ROBERT E. GERBER**  
HONORABLE ROBERT E. GERBER  
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**In re:**

**AGT WIND DOWN ACQUISITION LLC, *et al.*,**  
  
**Debtors.**

-----X

**Chapter 11**

**Case No. 09-12889 (REG)**

**(Jointly Administered)**

**FIRST MODIFIED JOINT PLAN OF  
LIQUIDATION OF AGT WIND DOWN ACQUISITION  
LLC, *et al.* UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**SILVERMANACAMPORA LLP**

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Dated: March 17, 2010

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
**In re:**

**Chapter 11**

**AGT WIND DOWN ACQUISITION LLC, et al.,**

**Case No. 09-12889 (REG)**

**Debtors.<sup>1</sup>**

**(Jointly Administered)**

-----X

**JOINT PLAN OF LIQUIDATION OF  
AGT WIND DOWN ACQUISITION LLC, et al.  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

This Joint Plan of Liquidation is proposed and filed by AGT Wind Down Acquisition LLC and its affiliated debtors and the Official Committee of Unsecured Creditors appointed in the Debtors' Chapter 11 Cases, pursuant to chapter 11 of the Bankruptcy Code.

**ARTICLE I**

**DEFINITIONS**

For purposes of the Plan, the following terms shall have the meanings set forth below. Terms used in this Plan that are defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning set forth in the Bankruptcy Code or the Bankruptcy Rules unless defined in this Plan. The meaning of the defined terms shall be equally applicable to the singular and plural forms of the terms defined, unless a different meaning is clearly required by and explained in the text.

1.01 "Administrative Expense" shall mean any cost or expense of administration of the Chapter 11 Cases entitled to priority in accordance with the provisions of Bankruptcy Code sections 503(b) and 507(a)(1), including, without limitation: (i) Fee Claims; (ii) amounts payable under 28 U.S.C. §1930; and (iii) any actual, necessary costs and expenses of preserving the Debtors' Estates and of operating the Debtors' business (but only to the extent they are due or payable on or before the Effective Date).

1.02 "Affiliate" shall have the meaning set forth in Bankruptcy Code section 101(2).

1.03 "AG Parties" shall mean collectively AG Super Fund, L.P., AG Princess, L.P., Nutmeg Partners, L.P., AG MM, L.P. and AG CNG Fund, L.P.

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<sup>1</sup> The Debtors in these cases are: AGT Acquisition Wind Down LLC, Sports & Fitness Ventures LLC, AGT Services Wind Down LLC, CFI Wind Down, LLC, AGT Atlanta Wind Down LLC, CFI Georgia Wind Down, LLC, CFI Atlanta Wind Down, LLC, AGT Crunch Chicago LLC, Crunch CFI GW, LLC, AGT Los Angeles Wind Down LLC, AGT Union Street LLC, AGT Miami Wind Down LLC, AGT New York Wind Down LLC, Fort Greene Sports Club, LLC, Hauppauge Sports Club, LLC, CFI New York Wind Down, LLC, Park Slope Sports Club, LLC, 113 4th Sports Club, LLC, AGT San Francisco Wind Down LLC, CFI San Francisco Wind Down, LLC, AGT Washington D.C. Wind Down LLC, and The Silver Springs Sports Club, L.L.C.

1.04 “Allowed” shall mean a Claim, other than an Administrative Expense, or Interest in the Debtors, which is: (i) set forth in a proof of Claim timely and properly filed in the Chapter 11 Cases on or before the date fixed by the Bankruptcy Court (or by applicable rule or statute) as the last day for filing such proof of Claim, or late filed with leave of the Bankruptcy Court after notice and opportunity for hearing given to counsel to the Debtors and the Committee, and as to which no objection to the allowance thereof is filed; or (ii) determined to be allowed by a Final Order of the Bankruptcy Court; provided, further, that for the avoidance of doubt, an Allowed Claim shall not include a Disputed Claim or a Disallowed Claim.

1.05 “Allowed Administrative Expense” shall mean all or that portion of any Administrative Expense which has been Allowed by a Final Order of the Bankruptcy Court.

1.06 “Allowed General Unsecured Claim” shall mean any Allowed Claim that is not an Allowed Administrative Expense, Allowed Fee Claim, Allowed Secured Claim, Allowed Priority Tax Claim, Allowed Priority (Non-Tax) Claim, or Allowed Interest.

1.07 “Allowed Interest” shall mean any equity interest which: (i) is listed in the Debtors’ Schedules, as amended, filed in the Chapter 11 Cases as of the Effective Date, and not listed in the Schedules as disputed, contingent, unliquidated or unknown and as to which no objection to the allowance thereof is filed; (ii) is listed in the Debtors’ list of equity security holders pursuant to Bankruptcy Rule 1007; (iii) is set forth in a proof of interest timely and properly filed in the Chapter 11 Cases on or before the date fixed by the Court (or by applicable rule or statute) as the last day for filing such proof, or late filed with leave of the Bankruptcy Court after notice and opportunity for hearing given to counsel for the Debtors and the Committee, and as to which no objection to the allowance thereof is filed; or (iv) is determined to be allowed by Final Order of the Bankruptcy Court.

1.08 “Allowed Priority Claim” shall mean any Allowed Claim, or portion thereof, entitled to priority under Bankruptcy Code sections 507(a)(3) through (a)(6).

1.09 “Allowed Secured Claim” shall mean that portion of an Allowed Claim which is secured by a valid perfected lien on property of the Debtors, to the extent of the value of the interest of the holder of such Allowed Secured Claim in the property of the Debtors as determined by the Bankruptcy Court pursuant to Bankruptcy Code section 506(a), together with interest, fees, costs and charges as may be allowed by the Bankruptcy Court under Bankruptcy Code section 506(b).

1.10 “Allowed Other Secured Claim” shall mean an Allowed Secured Claim other than the CH Fitness Claim.

1.11 “Allowed Priority Tax Claim” shall mean any Allowed Claim or portion thereof entitled to priority under Bankruptcy Code section 507(a)(8).

1.12 “Approved Expenses” shall mean the expenses relating to the Wind Down and liquidation of the Post Effective Date Debtor by the Distribution Agent pursuant to the Budget.

1.13 “Avoidance Actions” shall mean, subject to the terms of and limitations contained in this Plan, the Sale Order, the Sale Agreement and the DIP Order, any and all claims, suits and causes of action now owned, belonging to, or hereinafter acquired by the Debtors, the Post Confirmation Debtors, the Post Effective Date Debtor, or their Estates, or the Debtors’ creditors, whether arising under any agreement or contract or under the Bankruptcy Code or other federal or state law, including without limitation, claims identified in the Release Exclusion Schedule and Claims against the persons and entities on the Release Exclusion Schedule.

1.14 “Bankruptcy Code” shall mean title 11 of the United States Code, as amended and as applicable to the Debtors’ Chapter 11 Cases.

1.15 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Southern District of New York in which the Debtors’ Chapter 11 Cases are pending, and the United States District Court for the Southern District of New York to the extent that in respect of the Chapter 11 Cases the District Court may have withdrawn reference, shall have determined to exercise original jurisdiction, or shall have sole authority to enter a final order or judgment.

1.16 “Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure.

1.17 “Budget” shall mean the budget containing the necessary Wind Down expenses of the Post Effective Date Debtor.

1.18 “Business Day” shall mean any day other than a Saturday, Sunday or legal holiday as defined in Bankruptcy Rule 9006(a).

1.19 “Carve-Out Funds” shall mean the \$150,000.00 provided for in the Sale Order to be used to pay for the expenses of the Wind Down.

1.20 “Cash” shall mean cash and cash equivalents, and other readily marketable securities or instruments, including, but not limited to, bank deposits, checks and other similar items.

1.21 “Chapter 11” shall mean chapter 11 of the Bankruptcy Code.

1.22 “Chapter 11 Cases” shall mean the Debtors’ chapter 11 Cases filed in the Bankruptcy Court.

1.23 “CH Fitness” shall mean CH Fitness Investors, LLC.

1.24 “CH Fitness Claim” shall mean the Allowed Secured Claim of CH Fitness, comprising a valid, first-priority lien undersecured deficiency claim in the amount of \$21,617,696, on substantially all of the Debtors’ assets (including certain claims against third parties). On the Effective Date, pursuant to Bankruptcy Rule 9019, the CH Fitness Claim and the liens securing the CH Fitness Claim shall be deemed released as against the Debtors’ Estates.

1.25 “Claim” shall mean a claim against the Debtors, as defined in Bankruptcy Code section 101(5).

1.26 “Claimant” shall mean the holder of a Claim.

1.27 “Class” shall mean any class into which Allowed Claims and Allowed Interests are classified pursuant to Article II of the Plan.

1.28 “Commencement Date” shall mean May 6, 2009.

1.29 “Committee” shall mean the Official Committee of Unsecured Creditors appointed by the U.S. Trustee on May 12, 2009, as such committee’s membership may be modified from time to time.

1.30 “Confirmation Date” shall mean the date the Confirmation Order is entered by the Clerk of the Bankruptcy Court.

1.31 “Confirmation Hearing” shall mean the hearing held by the Bankruptcy Court to consider confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.32 “Confirmation Order” shall mean a Final Order of the Bankruptcy Court, in form and substance reasonably satisfactory to the Debtors, the Committee, and CH Fitness, confirming the Plan and approving the transactions contemplated in the Plan in accordance with the Bankruptcy Code.

1.33 “Creditor” shall have the meaning set forth in Bankruptcy Code section 101(10).

1.34 “Debtor” shall mean one of the Debtors.

1.35 “Debtors” shall mean, collectively, AGT Acquisition Wind Down LLC, Sports & Fitness Ventures LLC, AGT Services Wind Down LLC, CFI Wind Down, LLC, AGT Atlanta Wind Down LLC, CFI Georgia Wind Down, LLC, CFI Atlanta Wind Down, LLC, AGT Crunch Chicago LLC, Crunch CFI GW, LLC, AGT Los Angeles Wind Down LLC, AGT Union Street LLC, AGT Miami Wind Down LLC, AGT New York Wind Down LLC, Fort Greene Sports Club, LLC, Hauppauge Sports Club, LLC, CFI New York Wind Down, LLC, Park Slope Sports Club, LLC, 113 4th Sports Club, LLC, AGT San Francisco Wind Down LLC, CFI San Francisco Wind Down, LLC, AGT Washington D.C. Wind Down LLC, and The Silver Springs Sports Club, L.L.C.

1.36 “DIP Order” shall mean the Bankruptcy Court’s Final Order, dated June 9, 2009, authorizing the Debtors to obtain post-petition secured financing and to use cash collateral and providing related relief.

1.37 “Disallowed Claim” shall mean any Claim or portion of a Claim which has been disallowed by a Final Order of the Bankruptcy Court.

1.38 “Disputed Claim” shall mean any Claim, proof of which was timely and properly filed, and (a) which has been or hereafter is listed on the Schedules as unliquidated, disputed, or contingent, and which has not been resolved by written agreement of the parties or by an order of the Bankruptcy Court, (b) which is subject to an objection under Bankruptcy Code section 502(d) or where the holder of such Claim is subject to an Avoidance Action brought by the Debtors, the Committee, or the Distribution Agent, or (c) 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 the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order. In addition to the foregoing, prior to (x) the filing of an objection to a Claim or (y) the expiration of the time within which to object to such Claim set forth in the Plan or otherwise established by order of the Bankruptcy Court, for purposes of the Plan, a Claim shall be considered a Disputed Claim if, in the case of clause (x) or (y), (i) the amount of the Claim specified in the proof of Claim exceeds the amount of the Claim scheduled by the Debtors as other than disputed, contingent or unliquidated, or (ii) the Claim is not listed on the Schedules.

1.39 “Disputed Claims Reserves” shall collectively mean the Disputed Priority Claims Reserve and the Disputed Unsecured Claims Reserve established and held by the Distribution Agent to make Pro Rata Distributions to holders of Disputed Claims and Undetermined Claims in the event they become Allowed Claims.

1.40 “Disputed General Unsecured Claims Reserve” shall have the meaning ascribed to such term in Section 6.10.

1.41 “Disputed Priority Claims Reserve” shall have the meaning ascribed to such term in Section 6.11.

1.42 “Distribute” or “Distribution” shall mean a payment by the Distribution Agent under the terms of the Plan.

1.43 “Distributable Cash” shall mean the Cash held by the Distribution Agent, including the Carve-Out Funds and the proceeds of Avoidance Actions. The defined term Distributable Cash does not include the proceeds of the sale of assets prior to the Confirmation Date subject to the liens held by CH Fitness in connection with the CH Fitness Claim.

1.44 “Distribution Agent” shall mean Marianne O’Toole or such other person as provided in the Distribution Agent Agreement.

1.45 “Distribution Account” shall mean the account established by the Distribution Agent to hold the Cash necessary to make Distributions under the Plan.

1.46 “Distribution Agent Agreement” shall mean the agreement between the Debtors and the Distribution Agent which defines the powers, duties and compensation of the Distribution Agent.

1.47 “Distribution Date” shall mean any date, subsequent to the Effective Date, on which a Distribution under the Plan is to be made to the holders of Allowed Claims.

1.48 “Effective Date” shall mean the date when conditions precedent to the substantial consummation of the Plan are met as set forth in section 13.01 of this Plan.

1.49 “Estates” shall mean the Debtors’ estates created on the Commencement Date under Bankruptcy Code section 541.

1.50 “Estimation Order” means an order of the Bankruptcy Court estimating for voting and/or distribution purposes, under Bankruptcy Code section 502(c), the allowed amount of any Claim, including Administrative Expense Claims, Priority Tax Claims, Priority (Non-Tax) Claims and secured Claims. The defined term Estimation Order includes the Confirmation Order if the Confirmation Order grants the same relief that would have been granted in a separate Estimation Order.

1.51 “Fee Claims” shall mean claims by professionals retained by the Debtors and the Committee during the Chapter 11 Cases for the payment of fees and the reimbursement of expenses incurred prior to the Confirmation Date.

1.52 “Final Order” shall mean: (i) an order or a judgment of the Bankruptcy Court; or (ii) a stipulation or other agreement entered into which is “so ordered” by the Bankruptcy Court, the operation or effect of which has not been reversed, stayed, modified or amended and as to which (x) any appeal that has been taken has been finally determined or dismissed or (y) the time to appeal or seek reconsideration has expired by reason of statute or otherwise and as to which no appeal or petition for review, certiorari or reconsideration has been taken or is pending (or if such appeal or petition has been granted, it has been finally decided), as a result of which such order, judgment, stipulation or agreement shall have become final in accordance with applicable law.

1.53 “General Unsecured Claim” means a Claim that is not an Administrative Expense, a Priority (Non-Tax) Claim, a Priority Tax Claim, a Fee Claim, a Secured Claim, or an Interest.

1.54 “Inter-Company Claims” shall mean Claims which a Debtor holds against another Debtor.

1.55 “Interest” shall mean any rights of a shareholder, person that has contributed equity, or holder of a membership interest in respect of an equity interest in one or more of the Debtors.

1.56 “Lien” shall have the meaning set forth in Bankruptcy Code section 101(37).

1.57 “Objections Bar Date” shall mean the deadline for the Post Effective Date Debtor to file objections to Claims, which deadline shall be the first business day that is at least ninety (90) days after the Effective Date of the Plan (except as may be extended by notice of presentment of motion by the Committee or the Distribution Agent).

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

1.59 “Plan” shall mean this Joint Chapter 11 Plan of Liquidation as it may be amended or modified.

1.60 “Post Confirmation Debtors” shall mean the Debtors after the Confirmation Date.

1.61 “Post Effective Date Debtor” shall mean AGT Wind Down Acquisition LLC after the Effective Date.

1.62 “Priority (Non-Tax) Claims” shall mean any Claim that is entitled to priority status in accordance with Bankruptcy Code section 507(a) other than Priority Tax Claims and Administrative Expenses.

1.63 “Priority Tax Claims” shall mean any Claim for taxes entitled to priority status in accordance with Bankruptcy Code section 502(i) or section 507(a)(8), but specifically excludes any penalty assessed with respect to such taxes.

1.64 “Pro Rata Share” shall mean the proportion that the Allowed Claim bears to the sum of all Allowed Claims, Disputed Claims and Undetermined Claims of that particular Class.

1.65 “Released Exclusion Schedule” shall mean the schedule attached to the Disclosure Statement setting forth the claims to be excluded from the definition of Released Parties and the persons and entities to be excluded from the definition of Released Parties.

1.66 “Released Parties” shall have the meaning set forth in Section 13.03; provided however, that any person or entity on the Release Exclusion Schedule shall not be a Released Party.

1.67 “Sale Order” shall mean the Bankruptcy Court’s Order, dated August 17, 2009, authorizing and approving the sale of certain of the Debtors’ assets to CH Fitness and the assumption and assignment of certain executory contracts and unexpired leases.

1.68 “Sale Agreement” shall mean the Asset Purchase Agreement, dated as of May 5, 2009, by and between the Debtors and CH Fitness, as amended or modified.

1.69 “SilvermanAcampora” shall mean SilvermanAcampora LLP, counsel to the Committee and proposed counsel to the Distribution Agent.

1.70 “Schedules” shall mean the schedules of assets and liabilities, lists and statement of financial affairs and executory contracts filed with the Bankruptcy Court by the Debtors, as they may be amended pursuant to the Bankruptcy Rules.

1.71 “Statutory Fees” shall mean all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest payable under 31 U.S.C. § 3717.

1.72 “Unclaimed Property” shall mean any Cash (together with any interest earned thereon) unclaimed on the later of the 180th day following the Effective Date. Unclaimed Property shall include checks (and the funds represented thereby): (i) which have been returned as undeliverable without a proper forwarding address; (ii) which have not been paid; or (iii) which were not mailed or delivered because of the absence of a proper address for the Claimant.

1.73 “Undetermined Claim” shall mean any Claim that is: (i) a Disputed Claim; or (ii) an unliquidated or contingent Claim.

1.74 “Unsecured Creditor” shall mean the holder of an Unsecured Claim.

1.75 “Wind Down” shall mean the work necessary to administer the Plan, liquidate the Debtors’ remaining assets, collect or recover the Debtors’ assets and claims against third parties, prosecute claims and Avoidance Actions and pay the expenses and costs set forth in the Wind Down Budget.

1.76 “Wind Down Account” shall mean the account to be utilized by the Distribution Agent following the Effective Date of the Plan in order to fund the Approved Expenses of the Post Effective Date Debtor relating to the Wind Down, including without limitation the compensation and expenses payable to the Distribution Agent and its professionals, and the fees and charges payable under 28 U.S.C. §1930.

## **ARTICLE II**

### **CLASSIFICATION OF CLAIMS AND INTERESTS**

2.01 General Rules of Classification. A Claim or Interest is classified in a particular Class for voting and distribution purposes only to the extent the Claim or Interest qualifies within the description of that Class, and is classified in other Classes to the extent the Claim or Interest qualifies within the description of such Classes.

2.02 Administrative Claims, Priority Tax Claims and Statutory Fees. Administrative Expenses, Priority Tax Claims and Statutory Fees have not been classified and are excluded from the Classes of Claims in accordance with Bankruptcy Code section 1123(a)(1).

2.03 Satisfaction of Claims and Interests. The treatment to be provided for Allowed Claims and Interests under this Plan and the consideration provided under this Plan shall be in full satisfaction, settlement, release and discharge of all Claims and Interests against the Debtors and their property.

2.04 Bar Dates for Claims. The Bar Dates for filing Claims in the Debtors are set forth in Orders of the Bankruptcy Court respecting the same.

2.05 Bar Date for Fee Claims. The Confirmation Order or the order scheduling the Confirmation Hearing shall provide a deadline for the filing of requests for payment of Fee Claims incurred prior to the Confirmation Date. Any Person that fails to file an application for the payment of professional fees and expenses on or before the time and date established in the Confirmation Order or the order scheduling the Confirmation Hearing shall be forever barred from seeking payment or reimbursement from the Debtors, their Estates or the Post Confirmation Debtors, or the Post Effective Date Debtor.

2.06 Acceptance of Classification. Any holder of a Claim or Interest who fails to object in writing to the classification of Claims and Interests provided in the Plan, and who has not filed such objection with the Bankruptcy Court and served such objection upon the Debtors and the Committee, at least ten (10) days prior to the Confirmation Hearing shall be deemed to have accepted the classification set forth in the Plan.

2.07 Classification. For purposes of the Plan, all Allowed Claims and Interests shall be placed in the following Classes:

2.07.1 Class 1 (Allowed Priority (Non-Tax) Claims)

2.07.2 Class 2A (Allowed CH Fitness Claim)

2.07.3 Class 2B (Allowed Other Secured Claims)

2.07.4 Class 3 Claims (Allowed General Unsecured Claims)

2.07.5 Class 4 Interests (Allowed Interests)

### **ARTICLE III**

#### **SUBSTANTIVE CONSOLIDATION OF THE DEBTORS**

3.01 Substantive Consolidation of the Debtors. This Plan provides for substantive consolidation of the Debtors' Estates in all respects, including for purposes of voting, confirmation, and making distributions to the holders of Allowed Claims under the Plan. On the Effective Date: (i) all guarantees by any Debtor of the payment, performance or collection by another Debtor with respect to Claims against such second Debtor, and all Claims based on such guarantees, shall be deemed eliminated, cancelled, released and of no further force and effect; (ii) any obligation of any Debtor and all guarantees by another Debtor with respect to Claims of the first Debtor shall be treated as a single obligation; (iii) each Claim against any Debtor shall be deemed to be against the consolidated Debtors and shall be deemed a single Claim against, and a single obligation of, the consolidated Debtors; (iv) all Debtor Inter-Company Claims shall be deemed eliminated as a result of the substantive consolidation of the Debtors, and therefore holders thereof shall not be entitled to vote on the Plan, or receive any Distributions or other allocations of value under the Plan; and (v) the Distribution Agent shall promptly move to close each of the Debtors' cases other than that of AGT Wind Down Acquisition LLC.

3.02 As a result of the substantive consolidation of the Debtors, after the Effective Date, the Post Confirmation Debtors, which shall have been consolidated into the Post Effective Date Debtor, shall be considered a single entity for the purpose of paying fees under 28 U.S.C. § 1930 on the Distributions under the Plan and disbursements in and outside of the ordinary course of business,

until the entry of a Final Order closing, dismissing, or converting the bankruptcy case of AGT Wind Down Acquisition LLC.

3.03 Dissolution. Without limitation to the foregoing, upon the occurrence of the Effective Date, each Post Confirmation Debtor other than the Post Effective Date Debtor shall be deemed automatically dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of each Debtor, including without any requirement of further action by the stockholders, members, or directors (or other governing body) of the Debtors; provided, however, that each Debtor may file with the office of the Secretary of State or other appropriate office for the state of its organization a certificate of cancellation or dissolution, or, alternatively, it may be merged with and into another Debtor and so file an appropriate certificate of merger.

## ARTICLE IV

### TREATMENT OF CLASSES

4.01 Administrative Expenses. Administrative Expenses are not impaired. All Allowed Administrative Expenses shall be paid in full within thirty (30) days after the Effective Date, or at such other date and upon such other terms as may be agreed to by the holder and the Debtors. In the event of any subsequent conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, all payments on account of any Allowed Administrative Expenses shall be deemed to have been made in the ordinary course of the Debtors' business and shall not be deemed to be avoidable transfers under Bankruptcy Code section 547. Holders of Allowed Administrative Expenses shall not be entitled to vote on the Plan.

4.02 Priority Tax Claims. Priority Tax Claims are not impaired. All Allowed Priority Tax Claims shall be paid in full, in Cash, after the payment of the Allowed Administrative Expenses as soon as practicable after the Effective Date, but in no event later than thirty (30) days after the Effective Date. Holders of Priority Tax Claims shall not be entitled to vote on the Plan.

4.03 Statutory Fees. The Debtors shall pay all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717, on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtors' businesses, until the entry of a Final Order or decree concluding the Debtors' Chapter 11 Cases. The Applicants expect that the Debtors will owe no more than \$11,700 in Statutory Fees as of the Effective Date.

4.04 Class 1 Allowed Priority (Non-Tax) Claims. Class 1 Claims are not impaired. Allowed Priority (Non-Tax) Claims shall be paid in full, in Cash, after the payment of Allowed Administration Claims and Allowed Priority Tax Claims as soon as practicable after the Effective Date, but in no event later than thirty (30) days after the Effective Date. In accordance with Bankruptcy Code section 1126(f), holders of Class 1 Claims shall not be entitled to vote on the Plan and shall be deemed to have accepted the Plan.

4.05 Class 2A Allowed CH Fitness Claim. The Class 2 Claim shall be the Allowed CH Fitness Claim held by CH Fitness and is impaired and entitled to vote. The Allowed Amount of such claim is \$21,617,696. Pursuant to Bankruptcy Rule 9019, the Sale Order, the Sale Agreement, and this Plan, on the Effective Date, in consideration of (i) CH Fitness waiving its Allowed Claim, receiving no additional distribution on account of its allowed claim, funding or maintaining \$150,000 in cash Carve Out Funds with the Debtors to fund the Distribution Agent, paying Fee Claims, and voting in favor of the Plan, (ii) CH Fitness will receive a comprehensive release as set forth below

and receive a distribution of all Cash remaining in the Estates other than what is necessary to provide the Carve Out Funds and pay Fee Claims.

4.06 Class 2B Allowed Other Secured Claims. Class 2B is comprised of Allowed Other Secured Claims against the Debtors. Class 2B is unimpaired under the Plan and is not entitled to vote. Each holder of an Allowed Other Secured Claim will receive from the Distribution Agent treatment as necessary to satisfy section 1124 of the Bankruptcy Code.

4.07 Class 3 General Unsecured Claims. Class 3 Claims are comprised of the Allowed Claims of General Unsecured Creditors. Class 3 is impaired and entitled to vote. Each holder of an Allowed General Unsecured Claim shall receive on the Distribution Date its Pro Rata Share of the Distributable Cash in the Distribution Account, after payment of Administrative Claims, Allowed Priority Tax Claims and Allowed Priority (Non-Tax) Claims.

4.08 Class 4 Interests. Class 4 Interests are impaired. Class 4 Interests shall receive no Cash or other property under the Plan. Class 4 Interests shall be cancelled as of the Effective Date. Class 4 Interest holders are not entitled to vote and shall be deemed to have rejected the Plan.

## **ARTICLE V**

### **CLAIMS AND INTERESTS IMPAIRED UNDER THE PLAN**

5.01 Claims in Class 2A and Class 3 are impaired under the Plan and are entitled to vote to accept or reject the Plan. Classes 1 and 2B are not impaired and shall be deemed to have accepted the Plan; Class 4 shall receive no Distributions under the Plan and is deemed to reject the Plan. Classes 1, 2B, and 4 are not entitled to vote on the Plan.

5.02 A Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (2/3) in amount and more than one-half (1/2) in number of the holders of Claims in such Class that are entitled and actually vote on the Plan, pursuant to Bankruptcy Code section 1126(c).

5.03 The Plan shall be confirmed as to Class 4 in accordance with Bankruptcy Code section 1129(b).

## **ARTICLE VI**

### **PROVISIONS GOVERNING DISTRIBUTIONS**

6.01 On the Effective Date, or as soon thereafter as is reasonably practical, after funding the Wind Down Account, the Post Effective Date Debtor shall make, or establish adequate reserves for, the Distributions required to be made under the Plan to holders of Allowed Claims. The Post Effective Date Debtor shall make the Distributions on account of Allowed Claims from the Distribution Account and the Disputed Claims Reserves in accordance with the provisions of this Plan.

6.02 The Distribution Account shall be a segregated, interest-bearing account of the Post Effective Date Debtor under the control of the Distribution Agent. The Debtors shall deposit the Carve-Out Funds, in excess of the Disputed Claims Reserves and the amounts required to fund the other payments required under the Plan, into the Distribution Account.

6.03 CH Fitness shall receive all Cash held by the Debtors on the Effective Date, less the Carve-Out Funds and the Cash necessary to pay the Allowed Fee Claims.

6.04 Investments by the Distribution Agent. All Cash held by the Post Effective Date Debtor shall be invested in accordance with Bankruptcy Code section 345, or as otherwise permitted by a Final Order of the Bankruptcy Court during the Chapter 11 Cases and as deemed appropriate by the Distribution Agent. The earnings on such investments shall be retained for the benefit of the Post Confirmation Debtors and deposited into the Wind Down Account.

6.05 Delivery of Distributions. Subject to Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions of Distributable Cash to the holders of Allowed Claims shall be made by Post Effective Date Debtor at (a) the address of each holder as set forth in the Schedules, unless superseded by the address set forth on proofs of Claim filed by such holder, or (b) the last known address of such holder if no proof of Claim is filed or if the Debtors or the Distribution Agent have been notified in writing of a change of address. If any Distribution is returned as undeliverable, the Distribution Agent may, in its discretion, make such efforts to determine the current address of the holder of the Claim with respect to which the Distribution was made as the Distribution Agent deems appropriate, but no Distribution to any holder shall be made unless and until the Distribution Agent has determined the then-current address of the holder of such Allowed Claims, at which time the Distribution to such holder shall be made to the holder without interest. Amounts in respect of any undeliverable Distributions made by the Distribution Agent shall be returned to, and held in trust by, the Distribution Agent, until the Distributions are claimed or are deemed to be Unclaimed Property upon the expiration of three (3) months from the return of the undeliverable Distribution. The Distribution Agent shall have the discretion to determine how to make Distributions in the most efficient and cost-effective manner possible; provided, however, that its discretion may not be exercised in a manner inconsistent with any express requirements of the Plan or the Distribution Agent Agreement.

6.06 Record Date for Distributions. Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to the date of the entry of the Confirmation Order will be treated as the holders of those Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to the transfer may not have expired by the date of the entry of the Confirmation Order. The Post Confirmation Debtors or the Post Effective Date Debtor shall have no obligation to recognize any transfer of any Claim occurring after the date of the entry of the Confirmation Order. In making any Distribution with respect to any Claim, the Post Effective Date Debtor shall be entitled instead to recognize and deal with, for all purposes hereunder, only the Person that is listed on the proof of Claim filed with respect thereto or on the Schedules as the holder thereof as of the close of business on the date of the entry of the Confirmation Order and upon such other evidence or record of transfer or assignment that are known to the Post Confirmation Debtors or the Post Effective Date Debtor as of the date of the entry of the Confirmation Order.

6.07 Distributions to Holders of Claims – Generally.

(a) Distributions on Account of Allowed Claims Only. Except as otherwise provided in this Plan, Disputed Claims and Interests shall not be entitled to any Distribution until such Disputed Claim or Interest becomes an Allowed Claim or Interest. No Distributions shall be made to holders of Disallowed Claims.

(b) Method of Cash Distributions. Any payment of Distributable Cash to be made pursuant to the Plan will be in U.S. dollars and may be made by draft, check, wire transfer, or as otherwise required or provided in any relevant agreement or applicable law.

(c) Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day may be made, without interest, on the next Business Day.

(d) No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall receive in respect of such Claim any Distribution (of a value set forth herein or in the Disclosure Statement) in excess of the Allowed amount of such Claim.

(e) Interest on Claims. Except as specifically provided for in the Plan or the Confirmation Order, interest shall not accrue on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Commencement Date on any Claim. Interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Commencement Date to the date a final Distribution is made thereon if and after that Disputed Claim becomes an Allowed Claim. Except as expressly provided herein or in a Final Order of the Bankruptcy Court, no prepetition Claim shall be Allowed to the extent that it is for postpetition interest or other similar charges.

(f) Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed Claim who is to receive any Distribution, the Post Effective Date Debtor may, in lieu of making such Distribution to such Person, make such Distribution into an escrow account or hold such Distribution in reserve until the disposition thereof shall be determined by Bankruptcy Court order or by written agreement among the interested parties to such dispute.

(g) Withholding Taxes. Any federal or state withholding taxes or other amounts required to be withheld under any applicable law shall be deducted and withheld from any Distributions hereunder. All Persons holding Claims shall be required to provide any information necessary to effect the withholding of such taxes. The Post Effective Date Debtor may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the necessary information to comply with any withholding requirements of any governmental unit. Any property so withheld will then be paid by the Post Effective Date Debtor to the appropriate authority. If the holder of an Allowed Claim fails to provide the information necessary to comply with any withholding requirements of any governmental unit within six (6) months from the date of first notification to the holder of the need for such information or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as Unclaimed Property herein or the amount required to be withheld may be so withheld and turned over to the applicable authority.

(h) Time Bar to Cash Payments by Check. Checks issued by the Post Effective Date Debtor on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to this Section may be made directly to the Distribution Agent by the holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check must be made in writing on or before the later of the first anniversary of the Effective Date or the six (6) month anniversary of the date on which the Distribution was made. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall be deemed Unclaimed Property in accordance with Bankruptcy Code section 347(b) and be distributed as provided herein.

(i) No Payments of Fractional Dollars. Notwithstanding any other provision of the Plan to the contrary, no payment of fractional dollars shall be made pursuant to the Plan. Whenever any payment of a fraction of a dollar under the Plan would otherwise be required, the actual Distribution made shall reflect a rounding down of such fraction to the nearest whole dollar.

(j) Setoff and Recoupment. The Post Effective Date Debtor may, but shall not be required to, setoff against, or recoup from, any Claim and the Distributions to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtors or the Estates may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Estates, the Post Confirmation Debtors, or the Post Effective Date Debtor of any right of setoff, recoupment claims, rights or Avoidance Actions that the Debtors, the Estates, or any of their successors may possess against such holder.

6.08 Unclaimed Property.

(a) Escrow of Unclaimed Property. Subject to Article XII hereof, the Post Effective Date Debtor shall hold all Unclaimed Property (and all interest, dividends, and other distributions thereon), for the benefit of the holders of Claims entitled thereto under the terms of the Plan.

(b) Distribution of Unclaimed Property. At the end of one (1) year following the relevant Distribution date of particular Cash or other property to be distributed under the Plan, the holders of Allowed Claims entitled to Unclaimed Property held pursuant to this Section shall be deemed to have forfeited such property, and (a) all right, title and interest in and to such property shall immediately and irrevocably revert in the Post Effective Date Debtor, for deposit in (1) the Distribution Account, in the case of Unclaimed Property related to Allowed General Unsecured Claims, or (2) the Wind Down Account, in the case of all other Unclaimed Property, (b) such holders shall cease to be entitled thereto and (iii) any such Unclaimed Property that is Cash (including Cash interest, maturities, dividends and the like) shall be property of the Post Confirmation Debtors, free of any restrictions thereon other than any restriction imposed under the Plan.

6.09 At the end of one hundred twenty (120) days following the Distribution Date, all unclaimed Distributions together with the interest thereon, shall be deposited into the Wind Down Account or the Distribution Account for distribution in accordance with the Plan.

6.10 Disputed General Unsecured Claims Reserve. The Distribution Agent shall use the funds in the Distribution Account to make Distribution to holders of Allowed General Unsecured Claims. Until the Chapter 11 Cases are closed, the Distribution Agent shall file quarterly reports setting forth (a) the status of Distributions to holders of General Unsecured Claims and (b) the status of the Avoidance Actions. In addition, the Distribution Agent shall maintain an accurate register of the General Unsecured Claims.

(a) The Post Effective Date Debtor shall set aside and reserve, from the funds in the Distribution Account, for the benefit of each holder of a Disputed General Unsecured Claim, an amount equal to the Distributions to which the holder of such Disputed Claim would be entitled if such Disputed Claim were an Allowed Claim, in an amount equal to (a) the amount of such Claim as estimated by the Bankruptcy Court pursuant to an Estimation Order or (b) if no Estimation Order has been entered with respect to such Claim, the greater of (1) the amount listed

in the Schedules and (2) the amount set forth in a proof of claim or application for payment filed with the Bankruptcy Court or pursuant to an order of the Bankruptcy Court entered in the Chapter 11 Cases. Such reserved amounts, collectively, shall constitute the “Disputed General Unsecured Claims Reserve” and the difference between (y) the amount so reserved for each such Claim and (z) the amount of federal, state and local taxes paid by the Post Confirmation Debtors with respect to such Claim shall constitute the maximum Distribution amount to which the holder of such Claim may ultimately become entitled from the Claims Distribution Fund. The balance of the funds in the Claims Distribution Fund shall be deemed to be “Distributable Cash.”

(b) Distributions to Holders of Allowed General Unsecured Claims.

(i) Initial Distributions to Holders of Allowed General Unsecured Claims. As soon as reasonably practicable after the initial deadline for objecting to Claims, the Post Confirmation Debtors shall distribute to each holder of an Allowed General Unsecured Claim such holder’s Pro-Rata Share of Distributable Cash.

(ii) Distributions on Disputed General Unsecured Claims. No Distributions shall be made from the Distribution Account with respect to a Disputed General Unsecured Claim until the resolution of such dispute by agreement with the Post Confirmation Debtors or Final Order. On or as soon as reasonably practicable after the first Business Day of the next calendar quarter after a Disputed General Unsecured Claim becomes an Allowed Claim, the Post Confirmation Debtors shall distribute to the holder thereof Cash, from the applicable Disputed Claims Reserve, in an amount equal to the aggregate amount of Cash that would have been distributed to such holder in respect of such Claim had such Claim been an Allowed General Unsecured Claim, in the amount in which it is ultimately allowed.

(iii) Treatment of Excess Cash in Disputed Claims Reserve. To the extent a Disputed Claim becomes a Disallowed Claim or is reclassified, any Cash previously reserved for such portion of such Disputed General Unsecured Claim shall be deposited into the Distribution Account.

(iv) Periodic Distributions to Holders of General Unsecured Claims. After the initial Distribution Date, additional Cash shall be deposited in the Distribution Account from: (A) the Avoidance Action recoveries; (B) amounts previously reserved for certain Disputed Claims and not paid in connection with the resolution of such Claims; and (C) certain Unclaimed Property. On each subsequent Distribution Date, the Post Confirmation Debtors shall distribute to each holder of an Allowed General Unsecured Claim each such holder’s Pro Rata Share of the Distributable Cash remaining on such date.

6.11 Reserve Account for Other Disputed Claims. On the Effective Date or as soon thereafter as is reasonably practicable, after deposit of the Carve-Out Funds into the Wind Down Account, the Post Confirmation Debtors or the Distribution Agent shall establish the Disputed Claims Reserves for Disputed Claims, including disputed Administrative Expense Claims, disputed Priority (Non-Tax) Claims, disputed Tax Claims, disputed secured claims and disputed General Unsecured Claims. The Post Confirmation Debtors or the Distribution Agent shall reserve in Cash or other property, for distribution on account of each Disputed Administrative Expense, Priority Tax, Priority (Non-Tax Claims) and Disputed secured claim (a) the amount of such Claim as estimated by the Bankruptcy Court pursuant to an Estimation Order or (b) if no Estimation Order has been entered with respect to such Claim, the greater of (1) the amount listed in the Debtors’ Schedules filed in the Bankruptcy Court and (2) the amount set forth in a proof of claim or application or payment filed with the Bankruptcy Court. Such reserved amounts, collectively, shall constitute the “Disputed

Priority Claims Reserve” and the difference between (y) the amount so reserved for each such Claim and (z) the amount of federal, state and local taxes paid by the Distribution Agent with respect to such Claim shall constitute the maximum Distribution amount to which the holder of such Claim may ultimately become entitled to. After making all Distributions to holders of Allowed Claims (other than Allowed General Unsecured Claims) required to be made under the Plan and funding the Wind Down Account, and the Disputed Priority Claims Reserve, the Distribution Agent shall establish a separate reserve for Disputed General Unsecured Claims, which Disputed Claims Reserve shall be administered by the Distribution Agent in accordance with Article X of the Plan. For the avoidance of doubt, the Distribution Agent shall not be required to reserve for any Disputed Claims (other than any disputed Fee Claims) where the holder of such Claim has not filed a proof of claim or proof of administrative expense request.

6.12 Maintenance of Disputed Claims Reserves. To the extent that the property placed in a Disputed Claims Reserve consists of Cash, that Cash shall be deposited in an interest-bearing account. The property in each Disputed Claims Reserve shall be held in trust for the benefit of the holders of Claims in the relevant Classes that are ultimately Allowed. Each Disputed Claims Reserve shall be closed and extinguished by the Distribution Agent when all Distributions and other dispositions of Cash or other property required to be made hereunder from such reserves will have been made in accordance with the terms of the Plan. Upon closure of a Disputed Claims Reserve, all Cash (including any investment yield on the Cash) or other property held in that Disputed Claims Reserve shall revert in and become the property of the Post Effective Date Debtor pursuant to this paragraph shall be (a) used to fund the Wind Down Account as and to the extent set forth herein, and (b) thereafter transferred to the Distribution Account to be distributed to the holders of Allowed General Unsecured Claims in accordance with the terms of the Plan.

## **ARTICLE VII**

### **MEANS OF EXECUTION OF THE PLAN**

7.01 As of the Effective Date, pursuant to provisions of Bankruptcy Code sections 1141(b) and (c), all property and assets of the Debtors, including the Avoidance Actions, shall be transferred to and shall vest in the Post Effective Date Debtor free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in this Plan and the Confirmation Order.

7.02 On the Effective Date, the Distribution Agent shall be appointed and shall succeed to all the powers and rights that would be held by the Debtors’ officers, directors and shareholders. The Distribution Agent and its professionals shall be paid fees and expenses incurred in connection with their services rendered after the Effective Date without further order of the Bankruptcy Court.

7.03 Within two (2) business days following entry of the Confirmation Order, the Debtors or CH Fitness shall transfer or leave the Carve-Out Funds into the Wind Down Account.

7.04 All property, Cash and the proceeds of the Wind Down, including recoveries or settlements on account of the Avoidance Actions, shall be transferred to the Distribution Agent to be deposited into the Distribution Fund for payments to be made in accordance with the Plan.

## ARTICLE VIII

### IMPLEMENTATION OF THE PLAN

8.01 Revesting of Assets and Appointment of Distribution Agent. On the Effective Date, pursuant to provisions of Bankruptcy Code sections 1141(b) and (c), all property and assets of the Debtors, including the Avoidance Actions, shall be transferred to and shall vest in the Post Effective Date Debtor free and clear of all Liens, Claims and Interests, except as otherwise expressly provided in the Plan and the Confirmation Order. The Distribution Agent shall be appointed and shall succeed to all the powers and rights that would be held by the Debtors' officers, directors and shareholders. The Distribution Agent shall make the Distributions on account of Allowed Claims from the Distribution Account and the Disputed Claims Reserve in accordance with the provisions of the Plan. Except as provided in the Plan and the Sale Order, the Plan preserves all of the Debtors' rights in respect of all Avoidance Actions and causes of action, transfers the Debtors' rights in respect of such Avoidance Actions and causes of action to the Post Confirmation Debtors, the Post Effective Date, and the Distribution Agent, and empowers the such parties on behalf of the Plan's beneficiaries to investigate, prosecute, collect, and/or settle the such Avoidance Actions and causes of action as deemed appropriate.

8.02 Settlement of Claims.

(a) Pursuant to Bankruptcy Rule 9019, the Sale Order, and the Sale Agreement, on the Effective Date, in consideration of (i) CH Fitness waiving its Allowed Claim other than for Cash held in the Estates on the Effective Date other than Carve Out Funds, receiving no further distribution on account of its allowed claim, funding or maintaining \$150,000 in cash with the Debtors to fund the Distribution Agent, paying Fee Claims, and voting in favor of the Plan, (ii) CH Fitness will receive a comprehensive release as set forth below.

(b) In addition, in consideration for the classification, distribution, resolution of intercompany claims, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan. All Plan distributions made to creditors holding Allowed Claims in any class are intended to be and shall be final.

8.03 Substantive Consolidation and Dissolution. The Plan provides for the substantive consolidation and dissolution of the Post Confirmation Debtors as set forth in Article III hereof.

8.04 Dissolution of Creditors' Committee. Upon the Effective Date, the Committee will cease to exist, except for the purposes of seeking Fee Claims and reimbursement of the reasonable expenses of the members of the Committee and for the purposes set forth in Article XIV of the Plan.

8.05 Transfer of Cash to Fund the Plan. The Post Effective Date Debtor shall establish and maintain the Wind Down Account, Distribution Account and such other accounts as are deemed necessary to satisfy the requirements of this Plan. The funds in the Wind Down Account shall be used to pay the Approved Expenses of the Debtors' Estates in accordance with the Budget, including the fees and expenses of the Distribution Agent and her professionals. Until a final decree is entered, the Distribution Agent shall timely pay Post Confirmation Date quarterly fees for one consolidated debtor to the U.S. Trustee from Cash in the Wind Down Account.

8.06 Dissolution of Debtors. The Plan provides for the dissolution of the Post Confirmation Date Debtors as set forth in Article III hereof. In addition, upon final administration of the bankruptcy case of the Post Effective Date Debtor, the Distribution Agent shall dissolve the Post Effective Date Debtor.

8.07 Winding Up Affairs. Following the Effective Date, the Distribution Agent shall take the actions necessary to accomplish the Wind Down of the Estates and pay the expenses of the Post Effective Date Debtor in accordance with the Budget. On and after the Effective Date, the Distribution Agent may, in the name of the Post Effective Date Debtor, take such actions without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, other than any restrictions expressly imposed in this Plan or the Confirmation Order.

## **ARTICLE IX**

### **EXECUTORY CONTRACTS AND LEASES**

9.01 Any executory contract or unexpired lease of the Debtors which has not been assumed or rejected by Final Order of the Bankruptcy Court, or which is not the subject of a pending motion to assume on the Confirmation Date, shall be deemed rejected by the Debtors on the Effective Date.

9.02 Any entity with a Claim that arises from the rejection of an executory contract or unexpired lease must file its Claim within thirty (30) days after the earlier of the date of the order rejecting the executory contract or unexpired lease and the Confirmation Date, and shall have the same rights as a Class 3 Claimant to the extent such Claim becomes an Allowed Claim of General Unsecured Claim. Nothing in this Plan or the Confirmation Order shall be deemed to modify the Prepetition Bar Date Order or the Administrative Expense Bar Date Order

## **ARTICLE X**

### **PROCEDURE FOR RESOLVING DISPUTED CLAIMS**

10.01 No Distribution Pending Allowance. Notwithstanding any other provision of the Plan, no Cash or other property shall be distributed under the Plan on account of any Disputed Claim, unless and until such Claim becomes an Allowed Claim. No Claim (other than a Fee Claim) shall be an Allowed Claim if the holder of such Claim has failed to timely file a proof of claim or proof of administrative claim, as applicable

10.02 Resolution of Disputed Claims. Unless otherwise ordered by the Bankruptcy Court after notice and a hearing, the Distribution Agent shall have the exclusive right to make and file objections to Claims and shall serve a copy of each objection upon the holder of the Claim to which the objection is made as soon as practicable, but in no event later than the Objections Bar Date. From and after the Confirmation Date, all objections shall be litigated to a Final Order except to the extent the Distribution Agent elects to withdraw any claim objection or the Distribution Agent and the claimant elect to compromise, settle or otherwise resolve any claim objection, in which event they may settle, compromise or otherwise resolve any Disputed Claim without approval of the Bankruptcy Court. A Disputed Claim as to which no objection is filed by the Objections Bar Date shall become an Allowed Claim.

10.03 Allowance of Disputed Claims. If, on or after the Effective Date, any Disputed Claim becomes an Allowed Claim, the Distribution Agent shall, on the fifteenth (15<sup>th</sup>) Business Day of the first month following the month in which the Claim becomes an Allowed Claim, distribute from the Disputed Claims Reserves to the holder of such Allowed Claim Cash in an aggregate amount sufficient to pay to each holder of a Disputed Claim its Pro Rata Share amount that such holder would have been entitled to receive under the Plan if such Claim had been an Allowed Claim on the Effective Date.

10.04 Closing of the Disputed Claims Reserves Fund. After the last Disputed Claim is resolved, whether by Final Order of the Bankruptcy Court or by stipulation between the Distribution Agent and the holder of such Disputed Claim, the Post Effective Date Debtor shall: (i) pay all Approved Expenses; (ii) distribute all remaining Cash to holders of Allowed Claims; and (iii) close the account holding the Disputed Claims Reserves.

## **ARTICLE XI**

### **DUTIES AND RIGHTS OF DISTRIBUTION AGENT**

11.01 Nomination of Distribution Agent. Marianne O'Toole shall be the Distribution Agent. The Distribution Agent's appointment shall be effective upon the Confirmation Date. In general, the Distribution Agent shall act for the Post Effective Date Debtor in a fiduciary capacity as applicable to a board of directors, subject to the provisions of the Plan and the Distribution Agent Agreement. In the event that the appointment of a successor Distribution Agent becomes necessary, a successor Distribution Agent shall be appointed by SilvermanAcampora, and the U.S. Trustee shall be notified in writing of the identity and address of the new Distribution Agent. The Distribution Agent's compensation shall be fixed in an agreement to be entered into between the Distribution Agent and the Committee. The Distribution Agent shall obtain and maintain a surety bond in an amount equal to at least one hundred ten (110%) percent of the funds held by the Distribution Agent. The surety bond shall insure the Distribution Agent's performance under the Plan. The U.S. Trustee shall receive notification of the renewal or termination of the Distribution Agent's surety bond.

#### 11.02 Duties and Rights of Distribution Agent.

(a) The Distribution Agent shall cause the Post Effective Date Debtor to open and maintain, in accordance with the Plan, the Wind Down Account, the Distribution Account and the Disputed Claims Reserves, into which all Cash shall be deposited in accordance with this Plan. Pursuant to the Plan, the Post Effective Date Debtor shall distribute the consideration payable to the holders of Allowed Claims on the dates set forth in the Plan and, to the extent that no specific date has been set forth in the Plan, Distributions shall be made at such times as the Distribution Agent deems appropriate in its sole discretion.

(b) The duties and powers of the Distribution Agent will include the following:

(i) To maintain accounts, make Distributions and take other actions consistent with this Plan, including the establishment, adjustment and maintenance of Disputed Claims Reserves, in the name of the Post Effective Debtor or the Distribution Agent, even in the event of the dissolution of the Debtors.

(ii) To collect and liquidate all assets of the Debtors' Estates pursuant to the Plan and to Wind Down the affairs of the Debtors.

(iii) To pay from the Wind Down Account, the Distribution Agent's compensation and the fees and expenses incurred by the Distribution Agent on or after the Effective Date for its professionals, disbursements and expenses incident to the Wind Down of the affairs of the Debtors and implementation of this Plan without Bankruptcy Court approval.

(iv) To pay any fees and charges properly assessed against the Debtors' Estates under 28 U.S.C. § 1930 and to file quarterly reports after the Confirmation Date.

(v) To pay the costs of holding and liquidating any non-Cash property, including but not limited to taxes, insurance proceeds, rent, wages and professionals' fees from the Wind Down Account, and shall pay Allowed Administrative Expenses, Allowed Priority (Non-Tax) Claims and Allowed Priority Tax Claims from available Cash.

(vi) To take all other actions consistent with the provisions of this Plan which the Distribution Agent deems reasonably necessary with respect to administering this Plan.

(vii) To make all Distributions to holders of Allowed Claims provided for or contemplated by this Plan.

(viii) To invest Cash in accordance with Bankruptcy Code section 345 or as otherwise permitted by a Final Order of the Court.

(ix) To enter into any agreement or execute any document required by or consistent with the Plan.

(x) To abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of her choice, any asset that is of no material benefit to the Estates.

(xi) To purchase and carry all insurance policies and pay all insurance premiums and costs necessary or advisable; to cancel/reduce all insurance and recover any cash surrender value or pre-paid premiums on any insurance policies.

(xii) To implement and/or enforce all provisions of this Plan.

(xiii) To administer the Wind Down of the Debtors including but not limited to, causing the dissolution of the Debtors and closing of the Chapter 11 Cases.

(xiv) To cause to be prepared and filed all appropriate federal, state and local tax returns.

(xv) To object to allowance of Claims pursuant to the terms of the Plan.

(xvi) To investigate, analyze, prosecute and otherwise administer the Avoidance Actions.

(xvii) To compromise and settle Claims, and Avoidance Actions with approval of the Bankruptcy Court or as otherwise set forth in the Confirmation Order.

(xviii) To retain and employ such professionals, agents, consultants and advisors as necessary to perform her duties under the Plan.

(xix) To exercise such other powers as may be vested in the Plan, the Confirmation Order or further order of the Bankruptcy Court.

11.03 No Agency Relationship, Indemnification and Insurance. The Distribution Agent shall not be deemed to be the agent for any of Claim holders in connection with the funds held or Distributed pursuant to this Plan. The Distribution Agent shall not be liable for any mistake of fact or law or error of judgment or any act or omission of any kind unless it constitutes gross negligence or willful misconduct or breach of fiduciary duty on the part of the Distribution Agent. The Distribution Agent shall be indemnified and held harmless, including the cost of defending such claims and the attorneys' fees in seeking indemnification, by the Post Effective Date Debtor against any and all claims arising out of its duties under this Plan, except to the extent her actions constitute gross negligence or willful misconduct or breach of fiduciary duty. The Distribution Agent may obtain, at the expense of the Estates, commercially reasonable liability or other appropriate insurance with respect to the Estate's indemnification of the Distribution Agent. The Distribution Agent may conclusively rely, and shall be fully protected personally in acting upon the advice of her professionals and any statement, instrument, opinion, report, notice, request, consent, order, or other instrument or document which she believes to be genuine. The Distribution Agent may rely upon information previously generated by the Debtors and such information provided to them by former employees and professionals of the Debtors.

## ARTICLE XII

### RETENTION OF JURISDICTION

12.01 The Bankruptcy Court shall retain jurisdiction herein pursuant to chapter 11 of the Bankruptcy Code and for the purposes set forth in Bankruptcy Code section 1127(b), including, inter alia, with respect to the following matters;

- (a) to enable the Distribution Agent to prosecute the Avoidance Actions;
- (b) to hear and determine all Avoidance Actions and any disputes concerning the classification, allowance or disallowance of any Claim;
- (c) to resolve any disputes concerning any funds held in the Disputed Claims Reserves;
- (d) to hear and determine all disputed issues relating to a security or ownership interest in any property of the Debtors' Estates or in any proceeds thereof;
- (e) to hear and determine all Claims arising out of any agreement entered into by the Debtors after the Commencement Date;
- (f) to recover all assets and property of the Debtors wherever located;
- (g) to alter, modify and amend the Plan pursuant to Bankruptcy Code section 1127 or to remedy any defect, cure any omissions, or reconcile any inconsistency in the Plan or Confirmation Order as may be necessary to carry out the purpose and intent of the Plan and to extent authorized by the Bankruptcy Code or Bankruptcy Rules;

(h) to hear and determine such other matters as may be provided for in the Confirmation Order and for the purposes set forth in Bankruptcy Code sections 1127(b) and 1142 or in Rules 1019 and 3020(d) of the Bankruptcy Rules;

(i) to hear and determine all applications for compensation of professionals for services rendered and expenses incurred through the Confirmation Date and thereafter to hear and determine any objections to compensation of professionals;

(j) to hear and determine any and all pending applications, adversary proceedings, contested matters and litigated matters;

(k) to enter orders that are necessary or appropriate to carry out the provisions of the Plan, including orders interpreting the provisions of the Plan;

(l) to enter a Final Order or decree concluding the Debtors' Chapter 11 Cases; and

(m) to determine such other matters as may be provided for in the Confirmation Order or, as may be authorized under the provisions of the Bankruptcy Code.

### **ARTICLE XIII**

#### **EFFECT OF CONFIRMATION**

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

(a) the Bankruptcy Court shall have entered the Confirmation Order confirming the Plan, in form and substance reasonably satisfactory to the Debtors, the Committee, and CH Fitness;

(b) the Distribution Agent shall have received the Carve-Out Funds and Cash to pay the Fee Claims in accordance with the Plan;

(c) the Bankruptcy Court shall have approved the Distribution Agreement; and

(d) the Debtors' Estates shall have sufficient Cash to pay or reserve for Allowed Administrative Expenses, Allowed Priority (Non-Tax) Claims, and Allowed Priority Tax Claims.

13.02 Discharge of Claims and Termination of Interests. Pursuant to Bankruptcy Code section 1141(d)(3), Confirmation will not discharge Claims against the Debtors; provided, however, that no holder of a Claim against any Debtor may, on account of such Claim, seek or receive any payment or other Distribution from, or seek recourse against, any Debtor, the Post Confirmation Debtors, or the Post Effective Date Debtors or each of their respective successors or their respective property, except as expressly provided herein. Accordingly, except as otherwise provided herein, the Confirmation Order shall provide, among other things, that from and after the Confirmation Date, all Persons who have held, hold, or may hold Claims against or Interests in the Debtors are (a) permanently enjoined from taking the following actions against the Estate(s) of the Debtors or the Released Parties (as defined below), or any of their property on account of such Claims or Interests and (b) preliminarily enjoined from taking any of the following actions against any of the Released Parties, or their property on account of such Claims or Interest: (1) commencing or continuing, in any manner or in any place, any action or other proceeding; (2) enforcing, attaching, collecting, or

*recovering in any manner any judgment, award, decree, or order; (3) creating, perfecting, or enforcing any lien or encumbrance; and (4) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, however, that nothing contained herein shall preclude such Persons from exercising their rights pursuant to and consistent with the terms of the Plan. By accepting Distributions pursuant to the Plan, each Holder of an Allowed Claim or an Allowed Interest shall be deemed to have specifically consent to the injunctions set forth in this Article XIII.*

13.03 Release by the Debtors. Pursuant to Bankruptcy Code section 1123(b), and except as otherwise specifically provided in the Plan, upon the Effective Date, each of the Debtors shall release unconditionally, and hereby is deemed to forever release unconditionally: (i) the Committee, solely in their respective capacities as members or representatives of the Committee, each member of the Committee; (ii) the Distribution Agent; (iii) CH Fitness; (iv) AG Parties; (v) Angelo Gordon & Co., L.P.; and (vi) each of their respective affiliates, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing or of the Debtors (but in respect of the Debtors' officers and directors, only those officers or directors as of the Petition Date) (collectively, the "Released Parties"), solely in their respective capacities as such, from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever (other than the right to enforce the performance of their respective obligations, if any, to the Debtors or the Post Confirmation Debtors or the Post Effective Date Debtor under the Plan, and the contracts, instruments, releases and other agreements delivered under the Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan or the Disclosure Statement, other than Claims or liabilities arising out of or relating to any act or omission that constitutes a failure to perform the duty to act in good faith and where such failure to perform constitutes willful misconduct, gross negligence or fraud; provided however, that the foregoing provision shall not affect the liability of the attorney of the Applicants to the extent that such a provision contravenes Rule 1.8(h)(1) of the New York Rules of Professional Conduct or similar ethical rules of another jurisdiction which are binding on such attorney.

13.04 Persons or Entities Not Released by the Debtors. Except for those persons or entities explicitly released in section 13.03 above, the Debtors, in accordance with any reservation of rights in any order of the Court in the Debtors' Chapter 11 Cases, are not releasing any person or entity and their respective affiliates, assigns, agents, directors, officers, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing or of the Debtors from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan or the Disclosure Statement, other than Claims or liabilities arising out of or relating to any act or omission that constitutes a failure to perform the duty to act in good faith and where such failure to perform constitutes willful misconduct, gross negligence or fraud.

13.05 Injunction Related to Releases. The Confirmation Order will permanently enjoin the commencement or prosecution by any entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities released pursuant to the Plan.

13.06 Exculpation and Limitation of Liability. Except as otherwise specifically provided in the Plan, to the maximum extent permitted by the Bankruptcy Code and applicable law, none of

Released Parties, nor any of their respective members, officers, directors, shareholders, employees, advisors, attorneys or agents acting in such capacity on or after the Petition Date, shall have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or an Interest, or (with respect to such Claims or Interests) any of their respective agents, affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Debtors' Chapter 11 Cases, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the Plan, except for their willful misconduct or gross negligence (the "Precluded Claims"), and in all respects shall be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

13.07 Release by Holders of Claims. *Except as otherwise specifically provided in the Plan, on the Effective Date, each Person (excluding any of the Debtors) that votes to accept the Plan shall release unconditionally, and hereby is deemed to forever release unconditionally the Released Parties and each of their respective agents, advisors, accountants, investment bankers, consultants, attorneys and other representatives of any of the foregoing or of the Debtors, solely in their respective capacities as such, from any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities whatsoever (other than the right to enforce the performance of their respective obligations, if any, to the Debtors or the Post Confirmation Debtors or the Post Effective Date Debtor under the Plan and the contracts, instruments, releases and other agreements delivered under the Plan), 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 in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan or the Disclosure Statement other than Claims or liabilities arising out of or relating to any act or omission that constitutes a failure to perform the duty to act in good faith and where such failure to perform constitutes a willful misconduct, gross negligence, or fraud; provided, that this Section 13.07 shall not release any Person from any Claim or cause of action existing as of the Effective Date, based on (x) the environmental laws of the United States or any domestic state, city or municipality or (y) any criminal laws of the United States or any domestic state, city or municipality.*

13.08 Injunction. *Except as otherwise provided in the Plan, the Confirmation Order shall provide, among other things, that from and after the Confirmation Date all Persons who have held, hold or may hold Claims against or Interests in the Debtors are (a) permanently enjoined from taking any of the following actions against the Released Parties, or any of their property on account of any such Claims, Interests or Precluded Claims and (b) permanently enjoined from taking any of the following actions against any of the Released Parties or their property on account of such Claims, Interests or Precluded Claims: (1) commencing or continuing, in any manner or in any place, any action or other proceeding; (2) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (3) creating, perfecting or enforcing any lien or encumbrance; (4) asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtors; and (5) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan. By accepting Distributions pursuant to the Plan, each Holder of an Allowed Claim receiving any Distribution pursuant to the Plan will be deemed to have specifically consented to the injunctions set forth in this Article XIII.*

13.09 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Cases under Bankruptcy Code section 105 or 362, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until all property of the Estate of the Post Effective Date Debtor has been distributed, the Post Effective Date Debtor has been dissolved, the Distribution Agreement has terminated and the Bankruptcy Court has entered an order closing the

Chapter 11 Cases; *provided, however*, that any injunction that by its terms is permanent or otherwise is intended to survive the Effective Date and Distributions hereunder (whether by law or pursuant to order of the Court) shall be continued without modification, notwithstanding anything to the contrary in the Plan.

13.10 Nothing in the Plan shall (i) be construed to exculpate any Person or entity from fraud, gross negligence, willful misconduct, malpractice, criminal conduct, ultra vires acts, misuse of confidential information which causes damages, (ii) limit the liability of the professionals of the Debtors, the Committee, the Post Confirmation Debtors, or the Post Effective Date Debtor to their respective clients pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct.

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

#### **ARTICLE XIV**

##### **MISCELLANEOUS PROVISIONS**

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

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

(a) If to the Debtors:

Dechert LLP  
1095 Avenue of the Americas  
New York, New York 10036  
Attention: Shmuel Vasser  
Shmuel.Vasser@dechert.com

(b) If to the Committee:

SilvermanAcampora LLP  
100 Jericho Quadrangle - Suite 300  
Jericho, New York 11753  
Attention: Ronald J. Friedman

[rfriedman@silvermanacampora.com](mailto:rfriedman@silvermanacampora.com)

(c) If to CH Fitness:

Akin Gump Strauss Hauer Feld LLP  
One Bryant Park  
New York, New York 10036

Attention: Philip C. Dublin  
pdublin@akingump.com

- (d) If to the Distribution Agent:  
Marianne O'Toole  
20 Valley Road, Suite One  
Katonah, New York 10536  
motoole@otoolegroup.com

with a copy to:

SilvermanAcampora LLP  
100 Jericho Quadrangle  
Suite 300  
Jericho, New York 11753  
Attention: Ronald J. Friedman  
rfriedman@Silvermanacampora.com

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

14.03 Change of Address. Any of the parties identified in section 15.02 of the Plan may change the address at which it is to receive notices under the Plan by sending written notice pursuant to the provisions of this Article to the Committee and the Distribution Agent.

14.04 Modification of the Plan. The Debtors reserve the right, in accordance with the Bankruptcy Code, and subject to the Committee's reasonable consent, to amend or modify the Plan prior to the Confirmation Date or as soon as practicable thereafter. After the Confirmation Date, the Post Confirmation Debtors and the Committee may, upon order of the Court and after giving notice to the U.S. Trustee, in accordance with Bankruptcy Code section 1127(b), remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

14.05 Reservation of Rights. Nothing contained herein shall prohibit the Post Confirmation Debtors, the Post Effective Date Debtor, or the Distribution Agent from prosecuting or defending any of the rights of the Debtors' Estates, including without limitation, the Avoidance Actions.

14.06 Payment Dates. If payments or Distributions are due to be made under the Plan on a day other than a Business Day, such payment or Distribution shall instead be made, without interest, on the first (1<sup>st</sup>) Business Day immediately following the due date. Payment shall be considered timely upon issuance of the check representing the payment, not the day it is received.

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

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

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

14.10 Withholding Taxes. The Post Confirmation Debtors or the Post Effective Date Debtor shall be entitled to deduct any federal or state withholding taxes from any payments made in respect of Allowed Claims.

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

Dated: March 17, 2010

AGT WIND DOWN ACQUISITION, LLC  
and its affiliated Debtors

By: /s/ Andrew P. Hines  
Andrew P. Hines  
Chief Restructuring Officer

OFFICIAL COMMITTEE OF UNSECURED CREDITORS

By: /s/ David M. Susswein  
David M. Susswein  
Chairman

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(516) 479-6300  
Ronald J. Friedman  
Adam L. Rosen  
Katina Broutzas

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 11

AGT WIND DOWN ACQUISITION LLC, et al.,  
  
Debtors.

Case No. 09-12889 (REG)  
  
(Jointly Administered)

-----X

**NOTICE OF: (I) ENTRY OF ORDER CONFIRMING  
TRUSTEE'S FIRST MODIFIED PLAN OF LIQUIDATION OF  
AGT WIND DOWN ACQUISITION LLC ET AL., DATED MARCH 17, 2010,  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE;  
AND (II) OCCURRENCE OF EFFECTIVE DATE UNDER PLAN**

**PLEASE TAKE NOTICE THAT:**

1. On July \_\_, 2010, the United States Bankruptcy Court for the Southern District of New York entered an order (the "Confirmation Order") confirming the First Modified Plan of Liquidation of AGT Wind Down Acquisition LLC, et al., dated March 17, 2010 (the "Plan"). To request a copy of the Plan, please contact Katina Brountzas at Silverman Acampora LLP, 516-479-6300.

2. As of \_\_, 2010, all the conditions to consummation of the Plan set forth in section \_\_ of the Plan were either satisfied or waived. Accordingly, on \_\_, 2010, the Effective Date occurred with respect to the Plan.

Dated: Jericho, New York  
\_\_\_\_\_, 2010

**SILVERMAN ACAMPORA LLP**  
Attorneys for the Official Committee of  
Unsecured Creditors of AGT Wind Down  
Acquisition LLC, et al.

By: \_\_\_\_\_  
Ronald J. Friedman  
A Member of the Firm  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300