

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IN RE: § § CASE NO. 21-60280
CARRY DAVIS MARKETING, INC., § §
DEBTOR. § § CHAPTER 11
542 East Hwy. 64 § §
Canton, Texas 75103 § §
EIN: xx-xxx8498 § §

**SECOND AMENDED PLAN OF REORGANIZATION PROPOSED BY
CARRY DAVIS MARKETING, INC.**

Corry Davis Marketing, Inc. ("Debtor"), files and proposes this Second Amended Plan of Reorganization.

ARTICLE I

DEFINITION OF TERMS

A term used in this Plan that is not defined below but is used in the Bankruptcy Code shall have the meaning ascribed to such term in the Bankruptcy Code. The following terms, when used in this Plan, shall have the meanings specified below unless the context otherwise requires:

1.01 Administration Creditor: Any Creditor entitled to payment of an Administration Expense.

1.02 Administration Expense: Any Claim constituting a cost or expense of administration of the bankruptcy proceeding allowed under section 503(b) of the Bankruptcy Code, including, without limitation, any actual and necessary costs and expenses of preserving the estate of Debtor, any actual and necessary costs and expenses

of operating the business of Debtor, any indebtedness or obligations incurred or assumed by the Debtor in connection with the conduct of Debtor's business or for the acquisition or lease of property or the rendition of services, any allowances of compensation and reimbursement of expenses to the extent allowed by Final Order under section 330 of the Bankruptcy Code, whether arising before or after the Confirmation Date, and any fees or charges assessed against the estate of Debtor under section 1930, chapter 123, title 28, United States Code.

1.03 Allowed Claim: A Claim or any portion thereof (a) that has been allowed by a Final Order, or (b) as to which no proof of claim has been timely filed with the Bankruptcy Court and the liquidated and non-contingent amount of which is included in the Schedules, other than a Claim scheduled at zero, in an unknown amount, or as disputed, and to which Debtor has not filed an objection within the time fixed by the Plan, or (c) as to which a proof of claim in a liquidated amount has been timely filed with the Bankruptcy Court and either no objection to its allowance has been filed within the time fixed by the Plan or any objection to its allowance has been settled or withdrawn, or has been denied by a Final Order, or (d) that is expressly allowed in a liquidated amount in this Plan.

1.04 Ballot Deadline: The date by which the ballot that accompanies this Plan must be received by counsel for the Debtor.

1.05 Bankruptcy Code: The Bankruptcy Reform Act of 1978 as amended, and as codified in title 11, United States Code, as applicable to the bankruptcy proceeding and as in effect as of the date hereof.

1.06 Bankruptcy Court: The United States Bankruptcy Court for the Eastern

District of Texas, Tyler Division, having jurisdiction over the bankruptcy case, or in the event such Court ceases to exercise jurisdiction over the bankruptcy case, such court or adjunct thereof that exercises jurisdiction over the bankruptcy case in place of the United States Bankruptcy Court for the Eastern District of Texas, Tyler Division.

1.07 Bar Date: The date set by the Bankruptcy Court by which proofs of claim must have been filed by creditors whose claims were designated as disputed, contingent, or unliquidated in order to have their claims treated under the Plan.

1.08 Claim: Any right to payment from Debtor set forth in a timely-filed proof of claim, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, known or unknown, including any right to an equitable remedy for breach of performance if such breach gives rise to a right to payment from Debtor, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

1.09 Confirmation Date: The date upon which the Confirmation Order is entered by the clerk of the Bankruptcy Court.

1.10 Confirmation Order: An order of the Bankruptcy Court confirming the Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

1.11 Consummation Date: The first business day that is 14 days from and after the Confirmation Date, or in the event a stay of the Confirmation Order is in effect on such date, the first business day from and after the date such stay expires, is vacated, reversed, or as soon thereafter as is practicable. This is the effective date of the Plan.

1.12 Creditor: Any entity holding a Claim against Debtor that arose or is deemed to have arisen on or before the Petition Date, including without limitation, a Claim against the estate of Debtor of a kind specified in sections 502(g), 502(h) or 502(l) of the Bankruptcy Code.

1.13 Debtor: Corry Davis Marketing, Inc.

1.14 Final Order: An order of the Bankruptcy Court as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtor or, in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired.

1.15 Petition Date: July 2, 2021.

1.16 Plan: The Plan of Reorganization Proposed by Corry Davis Marketing, Inc., either in its present form or as it may be amended, supplemented or otherwise modified from time to time, and exhibits and schedules to the foregoing as the same may be in effect at the time such reference becomes operative.

1.17 Proof of Claim: An instrument prepared and filed with the Bankruptcy Court in accordance with Rule 3003(c)(3) of the Bankruptcy Rules.

1.18 Schedules: The Schedules of Assets and Liabilities, Statement of Financial Affairs and Statement of Executory Contracts filed by the Debtor with the Bankruptcy Court as amended or supplemented on or before the Confirmation Date, listing the liabilities and assets of Debtor.

ARTICLE II

PROVISIONS FOR PAYMENT OF ALLOWED ADMINISTRATION EXPENSES

2.01 Ordinary Course Administration Expenses. Other than as provided below, Allowed Administration Expenses representing liabilities incurred in the ordinary course of business by the Debtor will be paid by the Debtor in accordance with the terms and conditions of the particular transactions and any agreements relating thereto.

2.02 Post-Petition Taxes. Post-petition taxes incurred prior to the Confirmation Date which are due and payable prior to the Confirmation Date, to the extent such have not been paid, will be paid in full, together with any interest and penalty, in cash, upon the Consummation Date.

2.03 Compensation of Professionals. The Debtor shall pay unpaid Administration Expenses of the type specified in Section 503(b)(2)-(4) of the Bankruptcy Code incurred prior to the Confirmation Date after the entry of a Final Order by the Bankruptcy Court allowing such expenses.

2.04 Subchapter V Trustee Fees. All fees required to be paid to the Subchapter V Trustee(s) appointed in this case will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any fees owed on or before the Effective Date of the Plan will be paid on the Effective Date or as soon thereafter as the

fees are approved by the Bankruptcy Court.

ARTICLE III

CLASSIFICATION OF CLAIMS

All Claims except Allowed Claims treated under Article II of this Plan are placed in the classes hereinafter set forth. A claim or interest is classified in a particular class only to the extent that the Claim or interest qualifies within the description of the class and is classified in a different class to the extent that the Claim or interest qualifies within the description of that class. A Proof of Claim which asserts a Claim which is properly includable in more than one class is in the class asserted only to the extent it qualifies within the description of such class and is in a different class to the extent it qualifies within a description of such different class.

3.01 The Plan classifies the Claims as follows:

- A. Class 1: LBC1 Trust Secured Claims
- B. Class 2: Van Zandt County Appraisal District Secured Claim
- C. Class 3: Tom Benton Jackson III Secured Claim
- D. Class 4: Kapitus, LLC Secured Claim
- E. Class 5: Priority Unsecured Claims
- F. Class 6: General Unsecured Claims
- G. Class 7: Interests

ARTICLE IV

PROVISIONS FOR TREATMENT OF CLAIMS

The classes of Claims against Debtor's estate shall be treated as provided herein.

4.01 Class 1 LBC1 Trust Secured Claims.

The claims of LBC1 Trust consist of two promissory notes, each of which is secured by a deed of trust lien on all real estate owned by Debtor as described in Debtor's Schedules that is inferior only to the claim dealt with in Class 2 below. Each claim is also secured by an assignment of rents and rights to payment included in the deeds of trust held by LBC1 Trust. The two notes are in the amounts of \$2,903,372.49 and \$92,466.67, respectively. The claims of LBC1 Trust shall be deemed to be fully-secured and the interest shall accrue on such claims post-confirmation at the rate of 3.75% per annum. LBC1 Trust shall retain its pre-petition liens and the terms and conditions of its security agreements shall remain in force and effect, except with respect to changes as provided by the Plan. The claims of LBC1 Trust will be paid post-confirmation in monthly payments of \$16,672.08 commencing 30 days from the Confirmation Date reflecting the combined amounts of the two notes described above bearing interest at 3.75% per annum amortized over the term of 22 years. In the event Debtor has not secured a sale of its real estate as described in its Schedules within 18 months of the Petition Date which shall pay all amounts due to LBC1 Trust as well as those due Van Zandt County Appraisal District, LBC1 Trust shall have the right (but not the obligation) to foreclose on its deed of trust liens without further order of the Court. This claim is impaired. Any attorney's fees allowed under 11 U.S.C. §506 will be added to the amount of the claim of LBC1 Trust.

4.02 Class 2 Van Zandt County Appraisal District Secured Claim.

The claim of Van Zandt County Appraisal District in the amount \$169,149.88 is secured by a tax lien on all real estate owned by Debtor as identified in Debtor's Schedules.

This claim shall be deemed to be fully-secured and the interest shall accrue 1% per month and at the rate of 12% per annum pursuant to 11 U.S.C. §§506(b), 511, and 1129. Van Zandt County Appraisal District shall retain its pre-petition lien, which is prior to all other liens. The claim of Van Zandt County Appraisal District shall be paid in monthly payments of no less than \$3,762.65 commencing 30 days following the Confirmation Date reflecting the amount of its claim bearing interest at 12% per annum amortized over the term of 5 years which commenced on the Petition Date so that this claim is paid in full by the fifth anniversary of the Petition Date. Debtor will make an initial payment from its accumulated reserves in an amount necessary to ensure that the claim can be amortized by the fifth anniversary of the Petition Date. In the event Debtor has not secured a sale of its real estate as described in its Schedules within 18 months of the Petition Date which shall pay all amounts due to Van Zandt County Appraisal District and LBC1 Trust, LBC1 Trust shall have the right (but not the obligation) to foreclose on its deed of trust liens without further order of the Court without prejudice to the priority of the lien of Van Zandt County Appraisal District. In addition, in the event Debtor has not secured a sale of its real estate within 18 months of the Petition Date which shall pay all amounts due to Van Zandt County Appraisal District, Van Zandt County Appraisal District shall have the right to foreclose on its tax liens without further order of the Court. Any reasonable fees, costs, or charges provided for under the State statute under which this claim arose which are allowed under 11 U.S.C. §506 shall be added to the amount of the claim of Van Zandt County Appraisal District. This claim is impaired.

4.03 Class 3 Tom Benton Jackson III Secured Claim.

The claim of Tom Benton Jackson III is a pre-petition judgment secured by a perfected judgment lien encumbering all of the real estate owned by Debtor described in Debtor's Schedules. It is inferior to those liens held by the holders of Class 1 and Class 2 Claims described above. Although no proof of claim was filed, Debtor does not dispute the claim and has calculated it to have been in the amount of \$60,000.00 in principal and accrued interest as of the Petition Date. Tom Benton Jackson III shall retain his pre-petition judgment lien. This claim shall be deemed to be fully-secured and the interest shall accrue at the rate of 5% per annum. This claim shall be paid upon the sale by Debtor of its real estate described in its Schedules to the extent the net proceeds thereof are sufficient to pay this claim. This claim is impaired.

4.04 Class 4 Kapitus, LLC Secured Claim.

A. The claim of Kapitus, LLC is allowed and unavoidable in the amount of \$50,018.90 and is enforceable against the assets of the Debtor. Kapitus, LLC holds a security interest in personal property more particularly described in that certain UCC-1 financing statement filed with the Texas Secretary of State on October 1, 2019 as filed number 190039779368, which affects accounts receivable. The accounts receivable which are rents from the real property are subject to a prior lien in favor of LBC1 Trust. Beginning 30 days after the Confirmation Date, Kapitus, LLC shall be paid in monthly payments of \$967.01 over a term of five years (i.e., 60 monthly payments), which is the amount necessary to amortize the claim of Kapitus, LLC described above at 6% per annum. In the event of a sale by Debtor of its real estate described in its Schedules whose net proceeds are greater than the amounts necessary to pay Class 1 Claims, Class 2 Claims, Class 3

Claims, and Administration Expenses, the balance of the Class 4 Claim shall be paid from such net proceeds to the extent the proceeds are sufficient to pay this claim. In the absence of a foreclosure of the lien by a secured creditor whose lien is prior to that of Kapitus, LLC or of a sale of the Debtor's real property, monthly payments to Kapitus, LLC shall continue as provided under this paragraph. This claim is impaired.

B. All payments by Debtor to Kapitus, LLC shall be remitted via ACH payment. The Debtor authorizes Kapitus, LLC to ACH debit from the account set forth on the voided check to be provided by Debtor at least five (5) business days in advance of the due date of the first payment due to Kapitus, LLC under the Plan. If Debtor changes the bank account from which such ACH debits are being remitted, it shall provide Kapitus, LLC, within five (5) business days of such change, the new bank account information and a written authorization to deduct payments via ACH from such account in accordance with the terms of the Plan and any order confirming the Plan. Debtor shall be charged and liable for a fee of \$75.00 for any rejected ACH debit incurred by Kapitus, LLC, and such fees shall be due and payable by Debtor as they accrue.

C. Except as otherwise expressly modified under the Plan or the Confirmation Order, the security interest and liens granted to Kapitus, LLC under that certain Security Agreement and Guaranty dated October 17, 2019 in connection with that certain Futures Receivables Factoring Agreement (ACH) dated October 17, 2019 and perfected pursuant to that certain UCC Financing Statement filed on October 21, 2019 are hereby preserved and shall survive the confirmation of the Plan to the same validity, extent, and priority as they existed as of the Petition Date, and Kapitus, LLC shall not be required to file, record,

or serve any financing statements, mortgages, notice, or other documents which may otherwise be required under federal or state law in any jurisdiction or to take any other action (including the taking of possession) to validate or perfect such security interest and liens. In the event of a sale by the Debtor of its real property or a foreclosure of the real property, Kapitus, LLC shall be entitled to recover from any remaining personal property that is the subject of its security interest; provided that, any accounts receivable which are rents of the real property are subject to a prior lien in favor of LBC1Trust to the extent such lien is not satisfied from the sale or the foreclosure of the real property.

4.05 Class 5 Priority Unsecured Claims.

The Internal Revenue Service holds a priority unsecured claim in the amount of \$1,335.15, and the Texas Comptroller of Public Accounts holds a priority unsecured claim in the amount of \$1,454.10. The Class 5 Priority Claims shall be paid in full 30 days following the Confirmation Date. Class 5 Priority Unsecured Claims are not impaired.

4.06 Class 6 General Unsecured Claims.

The holders of Allowed General Unsecured Claims shall be paid upon the sale of the real estate owned by Debtor as described in its Schedules, each holder receiving its pro rata part of the net proceeds after payment of Class 1 Claims, Class 2 Claims, Class 3 Claims, Administration Expenses, and Class 4 Claims. In the event the available net proceeds of the sale exceed the amount of the Allowed General Unsecured Claims, holders of Allowed General Unsecured Claims shall also be allowed to receive interest on the amounts of their claims at the Federal judgment rate in force on the Confirmation Date.

4.07 Class 7 Interests.

The holder of Interests in the Debtor will retain their Interests post-confirmation. In no event shall holders of Interests receive any distribution of profits or proceeds from the Debtor or from the sale of the real estate owned by Debtor as described in its Schedules until all Administrative Expenses and the claims of the Classes described above have been paid in full.

ARTICLE V

HISTORY OF THE DEBTOR'S BUSINESS OPERATIONS

5.01 The Debtor was incorporated in 1994. The real estate owned by it was acquired by it in 1994 . Debtor leases space to vendors and exhibitors at the First Monday Trade Days markets in Canton, Texas. It also leases space for short-term lodging during the markets and collects parking fees from attendees who park on its real estate. Operations of this business commenced in 1994 .

5.02 In 2012, Debtor borrowed \$3,500,000.00 from Citizens State Bank and subsequently borrowed an additional \$115,000.00 from that bank, both of which were secured by deed of trust liens on all of Debtor's real estate. While Debtor was able to make payments on that debt for a number of years, the advent of the COVID-19 pandemic in March of 2020 produced a severe downturn in its business which made it impossible to pay its debts, particularly the two notes referenced above, which had been assigned to LBC1 Trust. The shareholders of the Debtor installed Dale Murphy as President of the Debtor in January, 2021 with day-to-day management authority. When the deeds of trust were posted for a foreclosure sale in July, 2021, the Debtor sought protection under Chapter 11 of the Bankruptcy Code. The Debtor has continued to operate its business and has also

listed its real estate for sale.

ARTICLE VI

MEANS FOR IMPLEMENTATION OF PLAN

6.01 Debtor will continue to operate its business while it continues its efforts to sell its real estate for an amount sufficient to pay the claims treated under this Plan. Payments provided for by this Plan will be made until the earlier of the expiration of 18 months from the Petition Date or the closing of the sale of Debtor's real estate. If Debtor's real estate has not been sold by the expiration of 18 months from the Petition Date, LBC1 Trust shall have the right (but not the obligation) to foreclose on its deed of trust liens in accordance with the terms of said deeds of trust and Texas law. In the event Debtor's real estate has not been sold within 18 months from the Petition Date, and LBC1 Trust refrains from the foreclosure of its deed of trust liens for an additional period of time, Debtor will continue to operate its business while it continues its efforts for an amount sufficient to pay the claims treated under this Plan and will continue to make payments as provided for in this Plan so long as it continues to operate.

6.02 As of the date of the filing of the Second Amended Plan, Debtor and Northpark Storage, LLC have entered into a contract for the sale of Debtor's real estate and tangible personal property used in the operation of same for the amount of \$4,600,000.00, subject to a due diligence period of 60 days, a contingency for the acquisition of financing in the approximate amount of \$3,450,000.00, and approval of the proposed sale by the Bankruptcy Court. Debtor anticipates a motion for authority to sell its real estate to Northpark Storage, LLC, or its assignee, contemporaneously with the filing of this Plan.

The closing of such sale will provide sufficient funds to pay in full all expenses of sale, all administrative expenses incurred in connection with this case, and all Allowed Claims.

6.03 Debtor will keep its property insured as provided required by the deeds of trust held by LBC1 Trust and will maintain as well liability insurance to cover its business operations.

6.04 Debtor will not encumber or allow the encumbrance of any of its property other than by liens presently in place except in connection with the acquisition of new financing necessary for the implementation of the Plan. Debtor will pay all taxes which are assessed after the Confirmation Date in the ordinary course of its business and no later than the final due date for such taxes.

6.05 Until all Claims are paid, no officer, shareholder, or manager of Debtor, or any relative of such person who is employed by the Debtor, shall receive any increase in salary or wages or any bonus, loan, or other additional compensation which would tend to increase his or her present compensation level.

6.06 All or such portion of the net future earnings or other future income of the Debtor is submitted to the trustee appointed pursuant to 11 U.S.C. §1183 as is necessary for the execution of the Plan. In the event said trustee shall act as the disbursing agent under the Plan, the trustee will seek to be compensated for her services in that role in addition to compensation for her services pre-confirmation.

6.07 Projections with respect to the ability of the Debtor to make the payments provided for under this Plan are attached as Exhibit 2 and incorporated herein. Funds accumulated by Debtor during the pendency of the Case as shown by the monthly

operating reports filed herein will be sufficient to pay all administrative expenses, including fees charged and which may be charged by the Subchapter V Trustee, as well as the payments provided for Class 5 Priority Unsecured Claims in the Plan. Debtor projects that revenues realized in months in which its revenues exceed its expenses and Plan payments will be retained and will be sufficient to continue payments in those months in which its revenues for a particular month do not exceed its expenses and Plan payments for those months and will allow for the maintenance of a balance of funds which will provide for the ability to pay 2022 property taxes in the event the proposed sale does not close.

6.08 An analysis of the liquidation of Debtor's real estate if sold in the ordinary course of business versus its liquidation by foreclosure is attached as Exhibit 1 and incorporated herein.

ARTICLE VII

PROVISIONS GOVERNING DISTRIBUTIONS

7.01 Delivery of Distributions - Non-consensual Plan. In the event the Court confirms the Plan as a non-consensual plan, Debtor will submit net earnings and other income to the trustee each month for distribution to the holders of Allowed Claims as provided by the Plan.

7.02 Delivery of Distributions - Consensual Plan. In the event the Court confirms the Plan as a consensual plan, Debtor shall be responsible for making distributions provided for by the Plan. Whether the trustee or the Debtor is responsible for making distribution, distributions to holders of Allowed Claims shall be made at the addresses set forth on the Proofs of Claim filed by such holders or at the addresses

subsequently provided by holders of Allowed Claims. If any Creditor's distribution is returned as undeliverable, further distributions to such Creditor shall be deposited into an uncollected distribution account until the Debtor or the trustee is notified of such Creditor's then current address, at which time all missed distributions shall be made to such Creditor without interest. Checks issued with respect to Allowed Claims shall be null and void if not cashed within 90 days of the date of issuance thereof, at which time the distribution shall be deposited into an uncollected distribution account. Requests for reissuance of any check shall be made directly to the party issuing the check by the holder of the Allowed Claim with respect to which such check was originally issued. All Claims for undeliverable distributions shall be made on or before the third anniversary of the date of issuance of the check. After such date, funds deposited in an uncollected distribution account shall revert to the Debtor, and the Claim of any holder with respect to such property shall be discharged and forever barred. Interest earned on funds deposited in an uncollected distribution account shall be paid to the Debtor.

7.03 Disputed Claims. As to any Claim which has been disputed by the Debtor and which is the subject of litigation, either in the Bankruptcy Court or in another court, with regard to its allowance or a possible offset against it, payments otherwise due under the Plan on such claims shall be deposited into an interest-bearing escrow account pending the resolution of the dispute. If the resolution of the dispute shall result in an Allowed Claim to be paid to the Creditor, payment of the Claim shall begin within 30 days of a Final Order not subject to appeal or of a written settlement agreement signed by all parties finally resolving the Claim in full, unless payment of such claim is not to occur under the Plan until

the sale of Debtor's real property. Interest earned on funds deposited in the escrow account provided for by this paragraph shall be accrued for the benefit of the holder of the claim pending resolution of the dispute.

7.04 Claims with No Proof of Claim. Any Claims which Debtor listed as disputed, contingent, or unliquidated and which have not been the subject of proofs of claim filed timely by the Bar Date shall receive nothing under this Plan. Any claims which were not scheduled by Debtor, but which received timely notice of the commencement of this case and did not file proofs of claim by the Bar Date shall receive nothing under this Plan.

ARTICLE VIII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.01 Assumed If Not Rejected. Most of the leases to which Debtor is a party are month-to-month leases which Debtor is under no obligation to renew and which have no lease term beyond the particular month for which rental is paid. Debtor has leases which were in existence on the Petition Date which have terms of longer than one month and whose lease terms have not yet expired with the following persons: Susan Matassa, Pamela Rives, Linda Simpson, Verna Felan, Tim and Bev Miller, Silver Pearl, LLC, Wanda Mansker, Deborah Davis, and Debbie Sharp. Debtor assumes such existing leases upon the Confirmation Date. In the ordinary course of its business, Debtor has entered into certain leases since the Petition Date which have lease terms of longer than one month and whose lease terms have not yet expired. Since such leases are not prepetition leases, Debtor is not required to assume or reject them. Debtor does not believe it is a party to any executory contracts, but to the extent it may be, Debtor assumes such contracts upon the

Confirmation Date.

ARTICLE IX

DISCHARGE

9.01 Except as provided herein, upon the Consummation Date, Debtor shall be deemed discharged and released pursuant to section 1141(d) of the Bankruptcy Code from any and all Claims, including, but not limited to, demands and liabilities that arose before the Consummation Date, and all debts of the kind specified in section 501(g), 502(h), or 502(l) of the Bankruptcy Code, whether or not a Proof of Claim based upon such debt is filed or deemed filed under section 501 of the Bankruptcy Code; a Claim based upon such debt is allowed under section 502 of the Bankruptcy Code; or the holder of a Claim based upon such debt has accepted this Plan. The Confirmation Order shall be a judicial determination of discharge of all liabilities of the Debtor in accordance with the Plan. However, in the event the Plan is confirmed under 11 U.S.C. §1191(b), any discharge shall be governed by the provisions of 11 U.S.C. §1192.

9.02 On the Consummation Date, all property of the Debtor's bankruptcy estate, as defined in 11 U.S.C. § 541, shall vest in the Debtor, free and clear of all liens, claims and encumbrances, except as otherwise provided herein.

ARTICLE X

MISCELLANEOUS

10.01 Avoidance and Recovery Actions. From and after the Consummation Date, the Debtor is constituted as the representative of the estate to litigate any avoidance or recovery actions under sections 544, 545, 547, 548, 549, 550, 551, and 553 of the

Bankruptcy Code, or any other causes of action, or rights to payments of Claims that belong to the Chapter 11 estate, that may be pending on the Consummation Date or instituted after the Consummation Date.

10.02 Legal Actions. The Debtor shall continue to pursue and prosecute any litigation pending on the Petition Date described in its Statement of Financial Affairs. In addition, Debtor shall pursue claims for damages it alleges it has against Linda LeFevre, a former officer of the Debtor, arising out of her actions in securing a loan from Kapitus, LLC without the authorization required for such act under the governing documents of the Debtor. Nothing herein shall prevent Kapitus, LLC from pursuing a claim against Linda LeFevre in connection with the guaranty Linda LeFevre entered into in connection with the Kapitus facility (“the Guaranty”). Kapitus, LLC reserves all of its rights, remedies, claims, and causes of action arising out of or relating to the terms of the Guaranty, which shall not be limited or otherwise affected by this Plan or the Confirmation Order. In addition, claims with respect to non-payment of fees and rents by vendors, exhibitors, and other lessees which may have accrued prior to the Petition Date or during the pendency of the Case and which are described in attachments to Debtor’s monthly operating reports filed in this Case will be pursued by Debtor, including eviction suits. Debtor shall not pursue any avoidance actions under Chapter 5 of the Bankruptcy Code against any of its creditors; to the extent such claims exist, they are waived. Payment of legal fees and court costs incurred in connection with the pursuit of the legal actions described above will be able to be funded from income realized by the Debtor during the pendency of this case as shown in the monthly operating reports and from income realized by the Debtor going forward in excess

of amounts necessary to make payments required under the Plan, including administrative expenses, as indicated in Exhibit 2.

10.03 Claims Objections. The Debtor retains the right to object to any Proofs of Claim filed herein pursuant to applicable provisions of the Bankruptcy Code and the Bankruptcy Rules. Debtor shall file any objections to Proofs of Claim no later than forty-five (45) days following the Confirmation Date. Payment of legal fees and court costs incurred in connection with the pursuit of claims objections will be able to be funded from income realized by the Debtor during the pendency of this case as shown in the monthly operating reports and from income realized by the Debtor going forward in excess of amounts necessary to make payments required under the Plan, including administrative expenses.

10.04 Post-Confirmation Property Taxes. As to post-petition property taxes becoming due and payable after the Confirmation Date, the county or other governmental unit with jurisdiction over such property retains all liens against the Debtor's property. Such taxes owed to such county or governmental unit are an expense incurred in the ordinary course of business and such county or governmental unit is not required to file an administrative expense claim and request payments in order for such post-petition amounts to be allowed or to receive payment of those amounts. In the event of a default by Debtor in the payment of such amounts, such default shall be an event of default under the Plan, and such county or governmental unit is entitled to pursue its remedies afforded by Texas law without further order of the Bankruptcy Court and without following the procedures of Article XIII below as to such post-petition taxes.

ARTICLE XI

RETENTION OF JURISDICTION

11.01 Retention of Jurisdiction. The Bankruptcy Court shall retain and have exclusive jurisdiction over the Reorganization Case for the following purposes:

- A. To determine any and all objections to the allowance of Claims or Equity Interests;
- B. To determine any and all applications for allowance of compensation and reimbursement of expenses and any other fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or this Plan;
- C. To determine any applications pending on the Consummation Date for the rejection or assumption of executory contracts or unexpired leases or for the assumption and assignment, as the case may be, of executory contracts or unexpired leases to which Debtor are a party or with respect to which Debtor may be liable, and to hear and determine, and if need be, to liquidate, any and all Claims arising therefrom;
- D. To determine any and all applications, adversary proceedings, and contested or litigated matters that may be pending on the Consummation Date;
- E. To determine any adversary proceedings alleging a cause of action under sections 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code;
- F. To consider any modifications of this Plan, remedy any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including the Confirmation Order, to the extent authorized by the Bankruptcy Code;
- G. To determine all controversies, suits, and disputes that may arise in

connection with the interpretation, enforcement, or consummation of this Plan or any person's obligations thereunder;

H. To consider and act on the compromise and settlement of any Claim against or causes of action by or against Debtor's estate;

I. To issue such orders in aid of execution of this Plan to the extent authorized by section 1142 of the Bankruptcy Code; and

J. To determine such other matters as may be set forth in the Confirmation Order or which may arise in connection with this Plan or the Confirmation Order.

ARTICLE XII

MODIFICATION OF PLAN

12.01 Modifications of the Plan may be proposed in writing by the Debtor at any time before confirmation, provided that this Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, with the exception of subsection (a)(8) of section 1123.

12.02 If the Plan has been confirmed under 11 U.S.C. §1191(a), this Plan may be modified at any time after confirmation and before its substantial consummation by the Debtor, provided that the Plan, as modified, meets the requirements of sections 1122 and 1123 of the Bankruptcy Code, with the exception of subsection (a)(8) of section 1123, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as modified, under section 1191(a) of the Bankruptcy Code, and the circumstances warrant such modification.

12.03 If the Plan has been confirmed under 11 U.S.C. §1191(b), this Plan may be

modified at any time within 3 years, provided that the Plan, as modified, meets the requirements of section 1191(b) of the Bankruptcy Code, and the Bankruptcy Court, after notice and a hearing, confirms the Plan, as modified, under section 1191(b) of the Bankruptcy Code, and the circumstances warrant such modification.

12.04 If the Plan is confirmed under section 1191(a) of the Bankruptcy Code, a holder of a Claim which has accepted or rejected this Plan shall be deemed to have accepted or rejected, as the case may be, such Plan as modified, unless, within the time fixed by the Bankruptcy Court, such holder changes its previous acceptance or rejection.

ARTICLE XIII

EVENTS OF DEFAULT

In the event of a default under the provisions of the Plan (as opposed to a default under documentation executed in implementing the terms of the Plan, which documents shall provide independent bases for relief), any Creditor or party-in-interest desiring to assert such a default shall provide the Debtor with written notice of the alleged default. The Debtor shall have fourteen (14) days from the receipt of the written notice in which to cure the default. Such notice shall be delivered by certified mail, return receipt requested to the Debtor at its address appearing in the caption of the Plan as well as to Debtor's counsel, Michael E. Gazette, 100 E. Ferguson Street, Ste. 1000, Tyler, Texas 75702 and via email at megazette@suddenlinkmail.com. If the default is not cured, any Creditor or party-in-interest who has given such notice may enforce its remedies granted to it under the laws of the State of Texas or under the document creating the claim owed by Debtor and/or its security agreements and may seek such relief as may be appropriate from the Bankruptcy

Court. Notwithstanding the foregoing, Debtor's cure opportunities as to a specific Creditor shall be limited to three (3). Upon the occurrence of a fourth default as to a specific Creditor, such Creditor may exercise all remedies provided above without the requirement another notice and opportunity to cure.

Respectfully submitted,

CORRY DAVIS MARKETING, INC.

By: /s/ Dale Murphy
Its Authorized Officer

LAW OFFICES OF MICHAEL E. GAZETTE

By: /s/ Michael E. Gazette
Michael E. Gazette
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ATTORNEY FOR DEBTOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing First Amended Plan of Reorganization Proposed by Corry Davis Marketing, Inc., has been served by electronic service or U.S. Mail, postage prepaid, on February 21, 2022, to all parties on the attached matrix.

/s/ Michael E. Gazette
MICHAEL E. GAZETTE

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