

**EXHIBIT C**

**Comparison of**

**Debtors' Proposed Bidding Procedures Order**

**v.**

**Candy Cube's Proposed Bidding Procedures Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SUGARFINA INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

**Ref. Docket No. 62, 63, 66, 69, 108, 110,  
128, 129, 130, 162, 166, 181, 190, 191, 216,  
217**

**ORDER (A) APPROVING BIDDING PROCEDURES AND PROTECTIONS IN  
CONNECTION WITH A SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; (B)  
SCHEDULING AN AUCTION AND SALE HEARING; (C) APPROVING THE FORM  
AND MANNER OF NOTICE THEREOF; (D) APPROVING PROCEDURES FOR THE  
ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES; AND (E)  
GRANTING RELATED RELIEF**

Upon consideration of the *Debtors' Motion for Entry of an Order: (I)(A) Approving Bidding Procedures and Protections in Connection with a Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Scheduling an Auction and Sale Hearing; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (E) Granting Related Relief and (II)(A) Authorizing and Approving the Sale of Substantially All the Debtors' Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; (B) Authorizing and Approving the Assumption and Assignment of Certain Contracts and Leases; and (C) Granting Related Relief [Docket No. 62] (the "Sale Motion")<sup>2</sup>, the Declaration of Lance Miller in Support*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) Sugarfina, Inc., a Delaware corporation (4356), (2) Sugarfina International, LLC, a Delaware limited liability company (1254) and (3) Sugarfina (Canada), Ltd. (4480). The location of the Debtors' corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

<sup>2</sup> Except where otherwise indicated, capitalized terms used but not defined herein shall have the meanings ascribed to them in the Miller Declaration, the Sale Motion, the Bidding Procedures, or the Agreement (each as defined herein), as applicable. For purposes of this Order, the "Sale Motion" shall not refer to that portion of such motion seeking approval of the sale and related contract assumption and assignment, other than the procedures related thereto.

of *First Day Motions* [Docket No. 23] (the "Miller Declaration"), the *Reply in Support of Debtors' Motion for Entry of an Order: (I) (A) Approving Bidding Procedures and Protections in Connection with a Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Scheduling an Auction and Sale Hearing; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (E) Granting Related Relief and (II) (A) Authorizing and Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; (B) Authorizing and Approving the Assumption and Assignment of Certain Contracts and Leases; and (C) Granting Related Relief* [Docket No. 190] (the "Reply"), the *Declaration of Lance Miller in Support of First Day Motions* [Docket No. 23] (the "Miller Declaration") and the *Declaration of Adam Meislik in Support of Debtors' Motion for Entry of Interim and Final Orders Authorizing Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362 and 364 and Use of Cash Collateral* [Docket No. 22] (the "Meislik Declaration"), and collectively with the Sale Motion, the Reply and the Miller Declaration, the "Sale Pleadings") filed by the above-captioned debtors and debtors-in-possession (the "Debtors"); the Court having reviewed the Sale Pleadings and the record in the Debtors' chapter 11 cases (the "Chapter 11 Cases"); the Court having considered the statements of counsel to the Debtors, the Official Committee of Unsecured Creditors (the "Committee") and other parties in interest, the Court finds that establishing bidding and sale procedures in connection with a sale of the Acquired Assets (collectively, the "Bidding Procedures"), in accordance with the provisions contained herein (the "Bidding Procedures Order"), is in the best interests of the Debtors' estates.

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. Findings of Fact and Conclusion of Law. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Rule 9014 of the Bankruptcy Rules. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. Jurisdiction and Venue. The Court has jurisdiction over the Sale Motion and the transaction contemplated in the Agreement (as defined herein) pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. Basis for Relief. The statutory bases for the relief requested in the Sale Motion are (i) sections 105, 363, 365, and 503 of title 11 of the United States Code (the "Bankruptcy Code") and (ii) Rules 2002(a)(2), 6004, 6006, and 9014 of the Bankruptcy Rules and Rules 2002-1 and 6004-1 of the Local Rules for the United States Bankruptcy Court District of Delaware (the "Local Rules").

D. Notice. As evidenced by the certificates of service filed with the Court, proper, timely, adequate, and sufficient notice of, and a reasonable opportunity to object or otherwise to be heard regarding: the Sale Motion and the relief sought therein, and such notice complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and Local Rules, and no other or further notice is required except as set forth herein with respect to a hearing (the

“Sale Hearing”) before the Court to approve the transactions contemplated by that certain Asset Purchase Agreement by and among Sugarfina, Inc. and its subsidiaries and Sugarfina Acquisition Corp., dated October 5, 2019 as attached hereto **Exhibit 5** (the “Agreement”)

E. The Initial Asset Purchase Agreement. On or about September 6, 2019, the Debtors entered in asset purchase agreement (the “CCH APA”) with Candy Cube Holdings, LLC (“CCH”). The CCH APA was attached to the Sale Motion as Exhibit “C.” The CCH APA was subject to Bankruptcy Court approval.

F. Objections. The following parties filed objections (the “Objections”) to the Sale Motion: (1) the Committee; (2) The Office of the United States Trustee (the “UST”); (3) Domain Northside Retail Property Owner LP; (4) BP Prucenter Acquisition LLC; (5) Bristol Investment Fund, Ltd. (“Bristol”); (6) Federal Realty Investment Trust, The Forbes Company, LLC, The Macerich Company, and the Related Companies; and (7) The Taubman Landlords. Among other bases, certain of the Objections argued that the bid protections contained in the CCH APA were excessive and that the credit bidding rights afforded CCH would serve to “chill” the bidding for the Debtors' assets, and that “cause” existed to prevent CCH from exercising certain of its purported credit bid rights. CCH and GSSLG filed a response to the Reply, to which SFCC Loan Investors LLC (“SFCC”) joined, arguing in support of the rights of secured creditors to credit bid.

G. The Revised Bid Procedures and Stalking Horse Solicitation. Following the commencement of the Chapter 11 Cases, the Debtors continued to actively market their assets in conformance with and in furtherance of their fiduciary obligations in an attempt to seek higher and better offers than that contained in the CCH APA. In consultation with the Committee, the Debtors determined that proceeding with the CCH APA was no longer in the best interests of their estates. Rather, the Debtors, in consultation with the Committee, determined that

establishing bidding procedures, based on the facts of the Chapter 11 Cases, including that the Committee's and other parties' interests' rights to challenge (the "Challenge Rights", the Debtors' stipulations set forth in the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Authorizing the Debtors' Use of Cash Collateral* [Docket No. 227] (the "DIP Order") do not expire until on or about November 17, 2019, subject to the procedures set forth in this Bidding Procedures Order.

In addition, the Debtors, in consultation with the Committee, determined in their business judgment, seeking a stalking horse bidder in conjunction with the revised bid procedures was in the estates' best interests. In that regard, the Debtors solicited interest from all parties who had in connection with the current sales process executed non-disclosure agreements, either via a direct email and/or via a posting in the virtual data room (the "Stalking Horse Solicitation"). A copy of the Stalking Horse Solicitation is attached hereto as **Exhibit 6**. Prior to the hearing on this matter, the Debtors, in consultation with the Committee, selected Sugarfina Acquisition Corp. as their Stalking Horse Bidder and the Agreement as the Stalking Horse Bid.

The Debtors' proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all parties in interest with timely and proper notice of the sale of the Acquired Assets, the auction for the Acquired Assets (the "Auction"), and the Bidding Procedures to be employed in connection therewith.

H. Approval of the Bidding Procedures. The Debtors have demonstrated good and sufficient reasons for the Court to: (i) approve the Bidding Procedures; (ii) set the Auction and the Sale Hearing and approve the form and manner of notice of the Auction and the Sale

Hearing; (iii) approve the procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure costs; and (iv) grant the Termination Fee as provided in the Agreement and in this Bidding Procedures Order.

The entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, creditors, and all other parties in interest.

The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the value to be achieved for the Acquired Assets.

The Bidding Procedures and the Agreement were each negotiated in good faith and at arm's length by the Debtors and the Stalking Horse Bidder. The Agreement represents the highest or otherwise best offer that the Debtors have received to date to purchase the Assets. The selection of the Stalking Horse Bidder was fair and appropriate and is in the best interests of the Debtors' estates under the circumstances.

I. Termination Fee. The Debtors have proposed to pay the Termination Fee (in the amount of \$500,000) to the Stalking Horse Bidder. The Debtors have demonstrated a compelling business justification of the payment of the Termination Fee under the circumstances set forth in the Sale Pleadings and the Agreement. The Termination Fee (i) is payable as provided in section 5.5(a) of the Agreement, (ii) is of substantial benefit to the Debtors' estates, (iii) is reasonable and appropriate in light of the size and nature of the sale and the efforts that have been or will be expended by the Stalking Horse Bidder, notwithstanding that the proposed sale is subject to higher and better offers for the Acquired Assets, (iv) was negotiated by the parties at arm's length and in good faith, and (v) is necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Acquired Assets contemplated in the Agreement. The Stalking Horse Bidder is unwilling to commit to purchase the Acquired Assets under the terms of the Agreement without approval of the Termination Fee.

J. Local Rule. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

K. Executory Contracts and Unexpired Leases. The procedures for assumption and assignment of executory contracts and unexpired leases are fair, reasonable, and appropriate, and comply with the provisions of section 365 of the Bankruptcy Code.

L. CCH APA. The Debtors and the Committee, in the exercise of their fiduciary duties, have determined that it is not best to proceed with the CCH APA.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Sale Motion is GRANTED with respect to all issues other than the approval of the Sale, to the extent set forth herein.



2. Except as provided to the contrary herein, all objections to the Sale Motion or the relief provided herein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled and denied on the merits with prejudice.

3. ~~The CCH APA. The CCH APA is not in the best interests of the estates and is not approved. The entry of this Order shall constitute written notice of the termination of the CCH APA pursuant to Section 8.1 (h)(ii) thereof.~~ [Reserved.]

4. Approval of Bidding Procedures. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved in their entirety, are incorporated herein by reference, and shall govern the bids and proceedings related to the sale and the Auction, and the key dates for the sales process, attached hereto as **Exhibit 2** (the “Bidding Procedures Key Dates”), are hereby approved in their entirety and incorporated herein by reference.

5. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

6. Stalking Horse Bidder. Sugarfina Acquisition Corp. is approved as the Stalking Horse Bidder, in accordance with the terms of the Agreement.

7. Bid Deadline. October 18, 2019 at 12:00 p.m. (prevailing Eastern Time), is hereby set as the Bid Deadline, as further detailed in the Bidding Procedures.

8. Auction. If the Debtors receive one or more Qualified Bids (as defined in the Bidding Procedures) (other than the bid submitted by the Stalking Horse Bidder) by the Bid Deadline, the Auction shall take place on October 22, 2019 at 10:00 a.m. (prevailing Eastern time), at the offices of Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801-1494, or such other place as the Debtors shall notify all proposed attendees. The Auction shall be conducted in accordance with the Bidding Procedures.

9. Termination Fee. Sections 5.5(a), 8.1, and 8.2 of the Agreement are hereby approved in their entirety and binding upon the Debtors, their estates, and all parties in interest. In connection therewith, the Debtors' obligation to pay the Termination Fee, as provided in the Agreement, is hereby approved in its entirety and shall survive termination of the Agreement and shall be payable as provided in Sections 5.5(a) and 8.2 of the Agreement.

10. Payment of Termination Fee. If the Agreement is terminated such that the Stalking Horse Bidder is entitled to the Termination Fee as described in Section 5.5 of the Agreement, the Debtors shall pay a break-up fee to the Stalking Horse Bidder in an amount equal to \$500,000 (the "Break-Up Fee") inclusive of the actual, reasonable, and documented expenses of the Stalking Horse Bidder incurred in connection with the negotiation, execution, and preparation for the consummation of the transactions contemplated in the Agreement (the "Expense Reimbursement," and together with the Break-Up Fee, the "Termination Fee").

11. The Expense Reimbursement is payable on the first Business Day following termination of the Agreement by each Debtor from its bankruptcy estate (but paid only once) by wire transfer of immediately available funds to the account specified by the Stalking Horse Bidder to the Debtors in writing; provided, however, that if the Agreement is terminated as a result of the Debtors selecting a Successful Bidder that is not the Stalking Horse Bidder, then the Expense Reimbursement shall be payable on the earlier of (a) the first Business Day after the closing of the transaction with the Successful Bidder (or the Backup Bidder that becomes the Successful Bidder) and (b) October 31, 2019. The Break-Up Fee (less the amount of any Expense Reimbursement previously paid) is payable from the proceeds of any Alternative Transaction following termination of the Agreement by wire transfer of immediately available funds to the account specified by the Stalking Horse Bidder to the Debtors in writing, which wire

payment shall be made on the first Business Day following receipt of the initial proceeds from any such Alternative Transaction.

12. The obligation to pay the Termination Fee in full by wire transfer of immediately available funds when due shall not be discharged, modified, or otherwise affected by any chapter 11 plan in the Chapter 11 Cases or by any other order or action of the Court. The Termination Fee shall be an allowed super-priority administrative expense claim (senior to any other super-priority administrative expense claims except for administrative expense claims of the Lender (as defined in the DIP Order). under the DIP Credit Facility (as such term is defined in the DIP Order) pursuant to sections 363, 503(b), and 507(a)(2) of the Bankruptcy Code. The Termination Fee shall be payable on the first Business Day after the closing of the transaction with the Successful Bidder (or the Backup Bidder that becomes the Successful Bidder).

13. Professional Fees Included in Termination Fee. The Stalking Horse Bidder's professional advisors are not obligated to comply with any provisions of the Bankruptcy Code regarding Court approval of professional fees payable by the Debtors and included in the Termination Fee or otherwise; provided, however, that any disputes concerning the reasonableness of the documented expenses for which the Stalking Horse Bidder is entitled shall be resolved by the Court.

14. No Termination Fees for Other Bidders. Except for the Stalking Horse Bidder, no other entity (as defined in the Bankruptcy Code) submitting an offer or Bid for the Acquired Assets or a Qualified Bid shall be entitled to any expense reimbursement, or break-up, termination, or similar fees or payment; provided however, notwithstanding anything to the contrary in the Sale Pleadings, this Bidding Procedures Order, or the Bidding Procedures, the

Court has reserved the rights of CCH to assert a substantial contribution claim or whatever claim that it may assert to recover something.

15. Credit Bidding. For purposes of any bid by the Stalking Horse Bidder, including any Overbid, the Stalking Horse Bidder shall be entitled to credit bid up to the full amount of the Termination Fee. Any bidder, including the Stalking Horse Bidder shall have the right to credit bid the full amount of the portion of the DIP Credit Facility that it has funded, if any, and, notwithstanding anything in this Bidding Procedures Order or the Bidding Procedures to the contrary, (a) any credit bid or cash bid by the Stalking Horse Bidder shall be a Qualified Bid, and (b) the Stalking Horse Bidder shall be a Qualified Bidder. Other than as set forth in this paragraph or paragraph 16, no other credit bidding shall be allowed.

16. Credit Bidding under the SFCC Facility and the Goldman Sachs Facility. ~~Only SFCC and GSSLC, as~~The holders of allowed secured claims arising under the SFCC Facility and Goldman Sachs Facility (as each is defined in the Miller Declaration) (collectively, the “Secured Claims”) shall have the right to credit bid such Secured Claims pursuant to Bankruptcy Code section 363(k), unless and until, prior to the Auction, the Committee shall have filed ~~an objection to, or otherwise filed a standing motion with regard to, or commenced an action seeking to~~a challenge regarding the extent, validity or priority of any Secured Claim (the “Committee Challenge”). In the event of a Committee Challenge, ~~absent further order of the Court,~~reserves any determination as to the extent to which the holder of the challenged Secured Claim shall ~~not~~ be entitled to credit bid said challenged Secured Claim at the Auction

17. Sale Notice. The notice of the sale of the Debtors’ assets, substantially in the form attached hereto as **Exhibit 3** (the “Sale Notice”), is hereby approved in its entirety.

18. Service of the Sale Notice and Bidding Procedures Order. On or before two (2) business days after entry of this Bidding Procedures Order, the Debtors will cause the Sale Notice and this Bidding Procedures Order to be sent by electronic mail, if known, and first-class mail, postage prepaid, to the following: (a) all creditors or their counsel known to the Debtors to assert a lien (including any security interest), claim, right, interest, or encumbrance of record against all or any portion of the Acquired Assets; (b) the Office of the United States Trustee for the District of Delaware; (c) counsel to the Stalking Horse Bidder, Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, NY 10019 Attn: Adam Friedman, AFriedman@olshanlaw.com; and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington DE 19801 Attn: Kerri Mumford, mumford@lrclaw.com; (d) counsel to the Debtors' first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154, Attn: Vadim J. Rubinstein, vrubinstein@loeb.com; (e) counsel to the Debtors' second lien lender, Goldman Sachs Specialty Lending Group L.P., King & Spalding LLP, 1180 Peachtree Street, N.E., Atlanta, Georgia 30309, Attn: W. Austin Jowers, ajowers@kslaw.com; (f) counsel to the Committee, Bayard, P.A., 600 North King Street, Suite 400, Wilmington, DE 19801, Attn: Erin R. Fay, efay@bayardlaw.com; (g) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (h) all applicable federal, state, and local taxing and regulatory authorities of the Debtors or recording offices or any other governmental authorities that, as a result of the sale of the Acquired Assets, may have claims, contingent or otherwise, in connection with the Debtors' ownership of the Acquired Assets or have any known interest in the relief requested by the Sale Pleadings; (i) all counterparties to any executory contract or unexpired lease of the Debtors; and (j) all potential bidders previously identified or otherwise known to the Debtors.

19. Publication Notice. No later than five (5) business days after entry of the Bidding Procedures Order, the Debtors will cause substantially all of the information contained in the Sale Notice to be published once in a publication of national circulation.

20. Notice. Compliance with the foregoing provisions for the Sale Notice shall constitute sufficient notice of the Debtors' proposed sale of the Acquired Assets free and clear of liens, claims, interests, and encumbrances, pursuant to section 363(f) of the Bankruptcy Code and otherwise, and, except as set forth in this Bidding Procedures Order, no other or further notice of the sale shall be required to be provided by the Debtors.

21. Sale Objections. Any objections to the sale of the Acquired Assets and the sale contemplated in the Agreement, or the relief requested in the Sale Motion, must: (a) be in writing; (b) state the basis of such objection with specificity; (c) comply with the Bankruptcy Rules and the Local Rules; (d) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 on or before 4:00 p.m. (prevailing Eastern time), on October 21, 2019 at 4:00 p.m.(the "Sale Objection Deadline"); and (e) be served upon: (i) the Debtors, 1700 East Walnut Avenue, 5th Floor, El Segundo, California 90245, Attn: Lance Miller, lance.miller@sugarfina.com; (ii) counsel to the Debtors, Shulman Hodges & Bastian LLP, 100 Spectrum Center Drive, Suite 600, Irvine, California 92618, Attn: Alan J. Friedman, [afriedman@shblp.com](mailto:afriedman@shblp.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington Delaware 19806, Attn: Brya M. Kielson, Esquire, [bkielson@morrisjames.com](mailto:bkielson@morrisjames.com); ; (iii) counsel to the Stalking Horse Bidder, Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, NY 10019 Attn: Adam Friedman, [AFriedman@olshanlaw.com](mailto:AFriedman@olshanlaw.com); and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington DE 19801 Attn: Kerri Mumford, [mumford@lrclaw.com](mailto:mumford@lrclaw.com); (iv) the Office of the

United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: U.S. Trustee; (v) counsel to the Committee, Bayard, P.A., 600 North King Street, Suite 400, Wilmington, DE 19801, Attn: Erin R. Fay, efay@bayardlaw.com; (vi) counsel to the Debtors' first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154, Attn: Vadim J. Rubinstein, vrubinstein@loeb.com; and (vii) counsel to the Debtors' second lien lender, Goldman Sachs Specialty Lending Group L.P., King & Spalding LLP, 1180 Peachtree Street, N.E., Atlanta, Georgia 30309, Attn: W. Austin Jowers, ajowers@kslaw.com, in each case, so as to be received no later than 4:00 p.m. (prevailing Eastern time), on the Sale Objection Deadline.

22. Cure Notice. The notice, substantially in the form attached hereto as **Exhibit 4** (the "Cure Notice"), of potential assumption and assignment to either the Stalking Horse Bidder or other Successful Bidder (the "Proposed Assignee") of certain of the Debtors' executory contracts and unexpired leases to be listed in the Cure Notice (collectively, the "Scheduled Contracts"), is hereby approved in its entirety. The Cure Notice shall identify the Scheduled Contracts and provide the amounts, costs, or expenses that the Debtors believe must be paid or actions or obligations that must be performed or satisfied pursuant to the Bankruptcy Code to effectuate the assumption by the applicable Debtor and the assignment to the Proposed Assignee of the Scheduled Contracts (each a "Cure Cost" and, collectively, the "Cure Costs").

23. Service of the Cure Notice. On or October 9, 2019, or as soon thereafter as is reasonably practicable, the Debtors shall serve by first class mail or hand delivery (and electronic mail, if known) the Cure Notice on all non-Debtor parties to the Scheduled Contracts (each, a "Contract Counterparty") and their counsel if known.

24. Adequate Assurance of Future Performance. No later than October 11, 2019, the Stalking Horse Bidder shall provide the Debtors with information regarding adequate assurance of future performance for Contract Counterparties if the Stalking Horse Bidder is the assignee of the Scheduled Contracts, and, no later than the Bid Deadline, the Debtors shall receive information regarding adequate assurance of future performance from Qualified Bidders (other than the Stalking Horse Bidder) if such Qualified Bidder proposes to be assigned certain Scheduled Contracts (collectively, the “Adequate Assurance Information”). Upon receiving the Adequate Assurance Information, and no later than 5:00 p.m. (ET) on October 11, 2019 for the Stalking Horse Bidder and 5:00 p.m. (ET) October 18, 2019 for Qualified Bidders, the Debtors shall provide electronic copies of the Adequate Assurance Information to the contract counterparties (and to their counsel if known) listed as to be assigned by a Qualified Bidder’s Scheduled Contracts list.

25. Contract Objections. Any objection to any Cure Cost set forth on the Cure Notice or to the assumption and assignment to the Proposed Assignee by any Contract Counterparty, including with respect to adequate assurance of future performance of the Stalking Horse Bidder (collectively, a “Contract Objection”), must: (a) be in writing; (b) state the basis for such objection with specificity; (c) if it contests any Cure Cost set forth in the Cure Notice, state with specificity what amounts, costs, or expenses the Contract Counterparty believes must be paid or actions or obligations must be performed or satisfied pursuant to the Bankruptcy Code to effectuate the assumption by the applicable Debtor and the assignment to the Stalking Horse Bidder (in all cases with appropriate documentation in support thereof); (d) comply with the Bankruptcy Rules and the Local Rules; (e) be filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington,



Delaware 19801, by 4:00 p.m. (ET) on October 21, 2019 (the “Contract Objection Deadline”); and, (f) be served upon: (i) the Debtors, 1700 East Walnut Avenue, 5th Floor, El Segundo, California 90245, Attn: Lance Miller, [lance.miller@sugarfina.com](mailto:lance.miller@sugarfina.com); (ii) counsel to the Debtors, Shulman Hodges & Bastian LLP, 100 Spectrum Center Drive, Suite 600, Irvine, California 92618, Attn: Alan J. Friedman, [afriedman@shblp.com](mailto:afriedman@shblp.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington Delaware 19806, Attn: Brya M. Kielson, Esquire, [bkielson@morrisjames.com](mailto:bkielson@morrisjames.com); (iii) counsel to the Stalking Horse Bidder, Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, NY 10019 Attn: Adam Friedman, [AFriedman@olshanlaw.com](mailto:AFriedman@olshanlaw.com); and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington DE 19801 Attn: Kerri Mumford, [mumford@lrclaw.com](mailto:mumford@lrclaw.com); (iv) the Office of the United States Trustee, United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: U.S. Trustee; (v) counsel to the Committee, Bayard, P.A., 600 North King Street, Suite 400, Wilmington, DE 19801, Attn: Erin R. Fay, [efay@bayardlaw.com](mailto:efay@bayardlaw.com); (vi) counsel to the Debtors’ first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, 345 Park Avenue, New York, NY 10154, Attn: Vadim J. Rubinstein, [vrubinstein@loeb.com](mailto:vrubinstein@loeb.com); and (vii) counsel to the Debtors’ second lien lender, Goldman Sachs Specialty Lending Group L.P., King & Spalding LLP, 1180 Peachtree Street, N.E., Atlanta, Georgia 30309, Attn: W. Austin Jowers, [ajowers@kslaw.com](mailto:ajowers@kslaw.com).

26. If the Successful Bidder is not the Stalking Horse Bidder, then the deadline for a Contract Counterparty to object to the assumption and assignment (solely on the grounds of adequate assurance of future performance) shall be the Sale Hearing.

27. If an objection to the Cure Cost is timely asserted and the applicable parties are unable to consensually resolve the dispute, the amount to be paid under section 365 of the

Bankruptcy Code, if any, with respect to such objection will be determined at the Sale Hearing or at a hearing to be requested by the Debtors, the Proposed Assignee, or the applicable Contract Counterparty. At the Proposed Assignee's discretion, the hearing regarding the Cure Cost may be continued until after the Closing Date, in which case a reserve will be funded in a segregated account for such Cure Cost in an amount agreed to among the Debtors, the Proposed Assignees and the applicable Contract Counterparty or as determined by the Court, and any such amount shall be treated as an amount in the Reserve Account in accordance with the Agreement.

28. If no Contract Objection for a Scheduled Contract is timely asserted by the Contract Counterparty and received in accordance with the Bidding Procedures Order, then: (a) the Contract Counterparty will be deemed to have consented to the assumption and assignment of the Scheduled Contract; (b) the Contract Counterparty will be forever barred and estopped from asserting any objection to the propriety or effectiveness of the assumption and assignment of the Scheduled Contract against the Debtors, the Stalking Horse Bidder, a Successful Bidder, any assignee of the Scheduled Contract, or the property of any of them; (c) the Cure Cost set forth on the Cure Notice for such Scheduled Contract shall be controlling and the Contract Counterparty will be deemed to have consented thereto, notwithstanding anything to the contrary in the Scheduled Contract or otherwise; and (d) the Contract Counterparty will be forever barred and estopped from objecting to the Cure Cost or asserting any claims, other than the Cure Costs, against the Debtors, the Stalking Horse Bidder, a Successful Bidder, any assignee of the Scheduled Contract, or the property of any of them.

29. Notice. Compliance with the foregoing provisions for the Cure Notice shall constitute sufficient notice of the Debtors' potential assumption and assignment of the Scheduled Contracts to the Proposed Assignee, pursuant to section 365 of the Bankruptcy Code and

otherwise, and, except as set forth in this Bidding Procedures Order, no other or further notice of the sale shall be required to be provided by the Debtors.

30. Participation in the Bidding Process. All entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of the Court with respect to all matters related to the terms and conditions of the transfer of Acquired Assets, the Auction, and any transaction contemplated herein.

31. Sale Hearing. The Sale Hearing shall be held before the Court on October 24, 2019 at 10:30 a.m. (prevailing Eastern time). The Sale Hearing may be continued, from time to time, without further notice to creditors or other parties in interest other than by announcement of said continuance before the Court on the date scheduled for such hearing or in the hearing agenda for such hearing.

32. Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the entity with the second highest or otherwise best Qualified Bid at the Auction, as determined by the Debtors, in the exercise of their business judgment, will be designated as the Backup Bidder. The Backup Bidder shall be required to keep its Backup Bid open and irrevocable until the earlier of (i) 12:00 p.m. (prevailing Eastern time) on the first business day following the Backup Sale Hearing (defined below) (the “Outside Backup Date”), and (ii) the closing of the transaction with the Successful Bidder subject to the Stalking Horse Bidder’s rights under the Agreement. Following the Sale Hearing, if the Successful Bidder fails to consummate the Successful Bid, the Debtors shall proceed to consummate the Backup Bid with the Backup Bidder. A hearing to authorize a sale to the Backup Bidder will be held before the Court on no less than five (5) days’ notice, with objections

due at least one (1) day prior to such hearing (the "Backup Sale Hearing"). For the avoidance of doubt, the scope of such hearing shall be limited to issues relating to the identity of the Backup Bidder, such as adequate assurance and assignments of Contracts or Leases to the Backup Bidder.

33. Bidding Procedures Order Controls. To the extent that any chapter 11 plan confirmed in the Chapter 11 Cases or any order confirming any such plan or any other order in the Chapter 11 Cases (including any order entered after any conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code) alters, conflicts with, or derogates from the provisions of this Bidding Procedures Order, the provisions of this Bidding Procedures Order shall control. The Debtors' obligations under this Bidding Procedures Order, the provisions of this Bidding Procedures Order, and the portions of the Agreement pertaining to the Bidding Procedures shall survive conversion of any of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, confirmation of any chapter 11 plan in the Chapter 11 Cases, or discharge of claims thereunder and shall be binding upon the Debtors, a chapter 7 trustee, and the reorganized or reconstituted Debtors, as the case may, after the effective date of any confirmed chapter 11 plan in the Debtors' cases (including any order entered after any conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code).

34. Immediate Effectiveness of the Bidding Procedures Order. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, or 9014, or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry, and no automatic stay shall apply to this Bidding Procedures Order.

35. Calculation of Time. All time periods set forth in this Bidding Procedures Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

36. Authorization of Debtors. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Bidding Procedures Order in accordance with the Sale Pleadings, ~~including executing the Agreement (subject to the deletion of Section 8.1(f)(vi) thereof).~~ No further or additional order from the Court shall be required to give effect to the provisions set forth in this Bidding Procedures Order.

37. Inconsistencies. In the event there is any inconsistency between this Bidding Procedures Order and the Sale Pleadings, the Bidding Procedures, or the Agreement, this Bidding Procedures Order shall govern.

38. Jurisdiction. The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Bidding Procedures Order. All matters arising from or related to the implementation of this Bidding Procedures Order may be brought before the Court as a contested matter, without the necessity of commencing an adversary proceeding.

**Exhibit 1**  
**Bidding Procedures**

## **BIDDING PROCEDURES**<sup>1</sup>

By the Sale Motion dated September 10, 2019 and Reply dated October 2, 2019, Sugarfina, Inc., Sugarfina International, LLC, and Sugarfina (Canada), Ltd. (collectively, the “Debtors”) sought approval of, among other things, the procedures by which they will determine the highest or otherwise best price for the sale of substantially all of their assets (the “Acquired Assets”) described in the Asset Purchase Agreement dated as of October 5, 2019 (the “Agreement”), by and among Sugarfina Acquisition Corp., as purchaser (the “Stalking Horse Bidder”), and the Debtors, as sellers, a copy of which is attached as **Exhibit A** to the Sale Order.

On [], the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”) that, among other things, authorized the Debtors to determine the highest or otherwise best price for the Acquired Assets through the process and procedures set forth therein and herein (the “Bidding Procedures”).

As used herein, the term “Consultation Parties” shall mean (a) the Committee, (b) the first lien lender and DIP Lender, SFCC Loan Investors, LLC (“SFCC”), and (c) the second lien lender, Goldman Sachs Specialty Lending Group L.P. (“GSSLG”), together with each of their respective counsel and advisors. To the extent any such parties are actively bidding for the Debtors’ assets, they shall not be considered Consultation Parties.

Unless expressly indicated, the Bidding Procedures apply to all bidders.

### **Access to Diligence Materials**

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), an entity (as defined in the Bankruptcy Code) must submit to the Debtors an executed confidentiality agreement in the form and substance satisfactory to the Debtors.

An entity who qualifies for access to Diligence Materials shall be a “Preliminary Interested Bidder.” All requests for Diligence Materials must be directed to the Debtors.

For any Preliminary Interested Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold any Diligence Materials that the Debtors, in their sole and absolute discretion, determine are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Bidder.

The Debtors shall provide the Stalking Horse Bidder with access to all written Diligence Materials, management presentations, on-site inspections, and other information provided to any Preliminary Interested Bidder that were not previously made available to the Stalking Horse Bidder as soon as reasonably practicable and in no event later than one (1) business day after the date the Debtors made such information available to any Preliminary Interested Bidder; provided, however, that this requirement shall be deemed satisfied by the Debtors if such information is posted to the data room established by the Debtors. Neither the Debtors nor any of their representatives will be obligated to furnish any information relating to the Acquired Assets to any

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the Bidding Procedures Order or the Agreement, as applicable.

entity other than to the Stalking Horse Bidder and Preliminary Interested Bidders. The Debtors make no representations or warranty as to the information to be provided through this due diligence process or otherwise, except to the extent set forth in the Agreement or in any other definitive agreement the Debtors execute with a Successful Bidder (as defined herein).

### **Bid Qualification Process**

To be eligible to participate in the Auction (as defined herein), each offer, solicitation, or proposal (each, a “Bid”), and each entity submitting such a Bid (each, a “Bidder”), must be determined by the Debtors (in consultation with the Consultation Parties) to satisfy each of the following conditions (other than the Bid of the Stalking Horse Bidder):

- (a) Form: The Bid must: (i) be in writing; (ii) disclose the identity of each entity that will be bidding for the assets or otherwise participating in connection with such Bid (provided, however, that if the entity that is the Bidder is a special purpose vehicle or other entity without existing operations (as determined by the Debtors), the Bid must disclose the identity or identities of each ultimate owner or participant in the entity that is the Bidder); (iii) be in the form of a duly authorized, executed, and non-contingent purchase agreement, together with all schedules, exhibits, and related documents thereto; and (iv) include clearly marked versions of the Bid against the Agreement and the proposed Sale Order showing all changes requested by the Bidder.
- (b) Good Faith Deposit: The Bid must be accompanied by a cash deposit in an amount equal to \$500,000 to an interest-bearing segregated account to be identified and established by the Debtors (the “Good Faith Deposit”).
- (c) Assets: The Bid must clearly identify which assets the Bidder intends to purchase and which liabilities and obligations the Bidder agrees to assume or pay.
- (d) Same or Better Terms: The Bid must be on terms and conditions that are substantially the same as or better than, not more burdensome in any material way than, and no more conditional than the terms of the Agreement, as determined by the Debtors in consultation with the Consultation Parties. The Bid may not contain additional termination rights, covenants, financing or due diligence contingencies, or closing conditions, other than as may be included in the Agreement (it being agreed and understood that such Bid shall modify the Agreement as needed to comply in all respects with the Bidding Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder, such as the Termination Fee).
- (e) Corporate Authority: The Bid must include written evidence reasonably acceptable to the Debtors, in consultation with the Consultation Parties, demonstrating that the Bidder has full power and authority (including full corporate or other organizational power and authority) to consummate the proposed transaction contemplated by the Bid.



(f) Proof of Financial Ability to Perform: To the extent that the Bid is not accompanied by evidence of the Bidder's capacity to consummate the transaction contemplated by the Bid with unrestricted and fully available cash, the Bid must include written evidence of a firm, irrevocable commitment for financing or other evidence of ability to consummate the proposed transaction, documented to the satisfaction of the Debtors, in consultation with the Consultation Parties, by the submission of recent financial documentation (audited, if available), that will allow the Debtors (in consultation with the Consultation Parties) to make a reasonable determination as to the financial and other capabilities of the Bidder to consummate the transaction contemplated by the Bid, including providing adequate assurance of future performance under all contracts and leases proposed to be assumed and assigned in the transaction contemplated by the Bid.

(g) Contingencies: The Bid may not be conditioned on obtaining financing, obtaining any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy in all material respects of specified representations and warranties at the Closing.

(h) Irrevocable: The Bid must be irrevocable through the Auction; provided, however, that if such Bid is accepted as the Successful Bid or a Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.

(i) Bid Deadline. Regardless of when an entity qualifies as a Preliminary Interested Bidder, the following entities must receive a Bid in writing, transmitted via email (in .pdf or similar format) so as to be received no later than 5:00 p.m. (prevailing Eastern time), on or before October 18, 2019 (the "Bid Deadline"): (i) the Debtors, Attn: Lance Miller, lance.miller@sugarfina.com; (ii) counsel to the Debtors, Shulman Hodges & Bastian LLP, Attn: Alan J. Friedman, [afriedman@shbllp.com](mailto:afriedman@shbllp.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington Delaware 19806, Attn: Brya M. Kielson, Esquire, bkielson@morrisjames.com; (iii) restructuring advisors to the Debtors, Force 10 Partners, LLC, Attn: Adam Meislik, ameislik@force10partners.com; (iv) counsel to the Debtors' first lien lender, SFCC Loan Investors, LLC, Loeb & Loeb LLP, Attn: Lance Jurich, [ljurich@loeb.com](mailto:ljurich@loeb.com); (v) counsel to the Debtors' second lien lender, Goldman Sachs Specialty Lending Group L.P., King & Spalding LLP, Attn: W. Austin Jowers, [ajowers@kslaw.com](mailto:ajowers@kslaw.com); (vi) counsel to the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, Olshan Frome Wolosky LLP, 1325 Avenue of the Americas, New York, NY 10019 Attn: Adam Friedman, [AFriedman@olshanlaw.com](mailto:AFriedman@olshanlaw.com); and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington DE 19801 Attn: Kerri Mumford, [mumford@lrclaw.com](mailto:mumford@lrclaw.com); and (vii) counsel to the Committee, Bayard, P.A., 600 North King Street, Suite 400, Wilmington, DE 19801, Attn: Erin R. Fay, [efay@bayardlaw.com](mailto:efay@bayardlaw.com).

(j) Amount of Bid. Each Bid must clearly show the amount of the purchase price. In addition, a Bid (either standing alone or in combination with other Bids) must include a cash or credit bid (in accordance with the Bidding Procedures

Order) purchase price that is in an amount equal to at least \$14,625,000, which consists of (i) the cash consideration set forth in the Agreement in the amount of \$14,000,000, plus (ii) the amount of the Termination Fee plus (iv) \$125,000. The value of any noncash consideration shall be determined by the Debtors in their reasonable business judgment (in consultation with the Consultation Parties).

(k) Transition Services Agreement. Each Bid shall be accompanied by an affirmative statement that the Bidder agrees to enter into a transition services agreement with the Debtors that is at least as favorable to the Debtors as the Transition Services Agreement that the Stalking Horse Bidder has negotiated with the Debtors, which shall be filed not later than October 11, 2019.

(l) Adequate Assurance of Future Performance. Each Bid shall be accompanied by sufficient information concerning the Bidder's ability to provide adequate assurance of future performance with respect to the executory contracts and unexpired leases to be assumed by the Debtors and assigned to the Bidder (the "Adequate Assurance Information"). By submitting a Bid, each Bidder agrees that the Debtors may disseminate their Adequate Assurance Information to Contract Counterparties if the Debtors determine such bid to be a Qualified Bid. Specifically, the Adequate Assurance Information must include, to the extent currently available, the following:

- (i) the specific name of the proposed assignee/tenant, if not the prospective purchaser, and the proposed name under which the assignee intends to operate the store if not a current trade-name of the Debtors;
- (ii) the potential assignee's intended use for the space if different from the present retail operation;
- (iii) audited financial statements and annual reports for the proposed assignee for the past three (3) years, including all supplements or amendments thereto;
- (iv) cash flow projections for the proposed assignee, the proposed assignee's most recent business plan, all cash flow projections for the lease(s) subject to the assignment request, and any financial projections, calculations and/or pro-formas prepared in contemplation of purchasing the lease(s);
- (v) all documents and other evidence of the potential assignee's retail experience and experience operating stores in a shopping center;
- (vi) a contact person for the proposed assignee that Landlords may directly contact in connection with the adequate assurance of future performance;

- Solely in the event that the prospective bidder is a newly formed entity (a “Newco”), written evidence of adequate assurance of future performance should also include when such Newco was formed, how it will be financed, together with evidence of any financial commitments, and identify what credit enhancements, if any, will be available to guarantee the obligations under the leases.

(m) Affirmative Statement. Each Bid shall be accompanied by an affirmative statement that: (i) all Bidders submitting such Bid have acted in good faith consistent with section 363(m) of the Bankruptcy Code; (ii) all Bidders submitting such Bid have and will continue to comply with the Bidding Procedures; and (iii) the Bid does not entitle such Bidder (other than the Stalking Horse Bidder) to, and such Bidder disclaims any right to, any expense reimbursement or break-up, termination, or similar fee or payment, and (iv) all Bidders submitting such Bid waive any substantial contribution (administrative expense) claims under section 503(b) of the Bankruptcy Code related to the bidding for the Debtors’ assets or otherwise participating the Auction (other the potential claim permitted by CCH pursuant to the Bidding Procedures Order)..

(n) Covenant Against Anti-Competitive Behavior. Each Bid shall be accompanied by a written covenant by the Bidder agreeing not to, without permission from the Debtors, affirmatively contact any of the Debtors’ employees, contractors, vendors, or material customers from the date of such Bid until the Auction. If the Bidder defaults with respect to the foregoing covenant, the Bid may be deemed by the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, to not be a Qualified Bid.

The Debtors, in consultation with the Consultation Parties, will review each Bid received from a Bidder to determine, in consultation with the Consultation Parties, whether it meets the requirements set forth herein and in the Bidding Procedures Order. A Bid received from a Bidder before the Bid Deadline that meets the above requirements shall constitute a “Qualified Bid,” and such Bidder shall constitute a “Qualified Bidder.” The Debtors shall inform Bidders whether or not their Bids have been designated as Qualified Bids by the Debtors and the Consultation Parties no later than twenty-four (24) hours after such Bids are received. Notwithstanding anything herein to the contrary, (a) the Agreement submitted by the Stalking Horse Bidder shall be deemed a Qualified Bid, and (b) the Stalking Horse Bidder is a Qualified Bidder.

All entities that participate in the bidding process or the Auction (as defined herein) shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of the Court with respect to all matters related to the terms and conditions of the transfer of the Debtors’ assets, the Auction, and any transaction contemplated by the Bidding Procedures Order.

## Auction

If one or more Qualified Bids (other than the Agreement submitted by the Stalking Horse Bidder) is received by the Bid Deadline, the Debtors will conduct an auction (the "Auction") to determine the highest or otherwise best Qualified Bid. If no Qualified Bid (other than the Agreement) is received by the Bid Deadline, no Auction shall be conducted and the Agreement shall be deemed to be the Successful Bid, and the Stalking Horse Bidder shall be deemed to be the Successful Bidder. Only Qualified Bidders may participate in the Auction. Prior to the Auction, the Debtors shall provide copies of all Qualified Bids to all Qualified Bidders, including the Stalking Horse Bidder.

The Auction shall take place on October 22, 2019 at 10:00 a.m. (prevailing Eastern time), at the offices of Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801-1494, or such other place and time as the Debtors shall notify all Qualified Bidders, including the Stalking Horse Bidder, counsel to the Stalking Horse Bidder, and other invitees in accordance with the Bidding Procedures Order.

(a) The Debtors Shall Conduct the Auction. The Debtors shall direct and preside over the Auction in consultation with the Consultation Parties. Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or sale of the Debtors' assets.

Only the Debtors, the Consultation Parties, the Stalking Horse Bidder, and any other Qualified Bidder, in each case, along with their representatives, shall attend the Auction in person, and only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction. Any creditor may attend the Auction provided they contact Debtors' counsel in advance. The Debtors reserve the right to seek to prevent any creditor from attending the Auction.

Prior to the Auction, the Debtors will share with all Qualified Bidders, including the Stalking Horse Bidder, the highest or otherwise best Qualified Bid received by the Bid Deadline (the "Baseline Bid"). Qualified Bidders will be permitted to revise, increase, and/or enhance their Qualified Bids at the Auction in a manner that would make their Qualified Bids higher or otherwise better than the Baseline Bid (as determined by the Debtors in consultation with the Consultation Parties). All Qualified Bidders will have the right to make additional modifications to their Qualified Bid or Agreement, consistent with the Bidding Procedures, as applicable, at the Auction.

(b) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Debtors' announcement of the Baseline Bid that satisfies each of the following:

(i) Minimum Overbid Increment. Any Overbid after the Baseline Bid shall be made in increments valued at not less than \$125,000. Additional consideration in excess of the amount set forth in the Baseline Bid may

include cash and/or noncash consideration. The value of any noncash consideration shall be determined by the Debtors in their reasonable business judgment (in consultation with the Consultation Parties).

(ii) Credit Bid Rights. For purposes of any bid by the Stalking Horse Bidder, including any Overbid, the Stalking Horse Bidder shall be entitled to credit bid up to the full amount of the Termination Fee. Other credit bid rights are as set forth in paragraphs 15 and 16 of the Bidding Procedures Order.

(iii) Remaining Terms Are the Same as for Qualified Bids. Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth herein; provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtors accept a higher Overbid.

(c) Successful Bidder. The Auction shall continue until the Debtors determine in their reasonable business judgment (in consultation with the Consultation Parties) that there is a highest or otherwise best Qualified Bid at the Auction (a "Successful Bid," and each Bidder submitting such Successful Bid, a "Successful Bidder"). The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity, as determined by the Debtors in consultation with the Consultation Parties, to submit an Overbid at the Auction to the then-existing Overbids and the Successful Bidder has submitted fully executed sale and transaction documents memorializing the terms of the Successful Bid.

(d) Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the entity with the second highest or otherwise best Qualified Bid at the Auction, as determined by the Debtors, in the exercise of their business judgment, will be designated as the backup bidder (the "Backup Bidder"). The Backup Bidder shall be required to keep its initial Bid (or, if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "Backup Bid") open and irrevocable until the earlier of (i) 12:00 p.m. (prevailing Eastern time) on the first business day following the Backup Sale Hearing (defined below) (the "Outside Backup Date"), and (ii) the closing of the transaction with the Successful Bidder subject to the Stalking Horse Bidder's rights under the Agreement. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved transaction), the Debtors shall proceed to consummate the Backup Bid with the Backup Bidder. A hearing to authorize a sale to the Backup Bidder will be held before the Court on no less than five (5) days' notice, with objections due at least one (1) day prior to such hearing (the "Backup Sale Hearing"). For the avoidance of doubt, the scope of such hearing shall be limited to issues relating to the identity of the Backup Bidder, such as adequate assurance and assignments of Contracts or Leases to the Backup Bidder.

(e) Closing the Auction. Within twenty-four (24) hours following the

conclusion of the Auction, the Debtors shall file a notice on the Court's docket identifying (with specificity) the Successful Bidder for the Acquired Assets and any applicable Backup Bidder. The Debtors shall not consider any Bids submitted after the conclusion of the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

### **Sale Hearing**

The Court has scheduled a hearing on October 24, 2019 at 10:30 a.m. (prevailing Eastern time), at which the Debtors will seek approval of the transactions contemplated by the agreement with the Successful Bidder (the "Sale Hearing").

### **Return of Good Faith Deposit**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing segregated accounts by the Debtors but shall not become property of the Debtors' estates absent further order of the Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. If the Successful Bidder timely closes the transaction contemplated by the Successful Bid, its Good Faith Deposit shall be credited towards its purchase price. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder within twenty-four (24) hours after the closing of the transaction with the Successful Bidder. If the Backup Bidder is approved at Backup Sale Hearing, its Good Faith Deposit shall be credited towards its purchase price. The return of the Good Faith Deposit of the Successful Bidder or the Back-Up Bidder who fails to close the transaction shall be determined by the terms of the applicable agreement.

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**Exhibit 2**

**Bidding Procedures Key Dates**

**BIDDING PROCEDURES KEY DATES**

<b>EVENT</b>	<b>DATE</b>
Hearing on the Sale Motion for Bidding Procedures	October 7, 2019 at 10:30 a.m. (prevailing Eastern time)
Service of Bidding Procedures Order, Sale Notice, and Cure Notice	October 9, 2019
Bid Deadline	October 18, 2019 at 12:00 p.m. (prevailing Eastern time)
Deadline for: (1) Sale Objections; (2) Cure Cost; (3) Assumption /Assignment; and (4) Adequate Assurances related solely to the Stalking Horse Bidder	October 21, 2019 at 4:00 p.m. (prevailing Eastern time) (served so as to be received on the same day)
Auction	October 22, 2019 at 10:00 a.m. (prevailing Eastern time)
Deadline for Adequate Assurances Objections in the event Stalking Horse Bidder is not the Successful Bidder	At the Sale Hearing on October 24, 2019 at 10:30 a.m. (prevailing Eastern time)
Sale Hearing	October 24, 2019 at 10:30 a.m. (prevailing Eastern time)



**Exhibit 3**

**Sale Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SUGARFINA INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

**NOTICE OF SALE OF CERTAIN ASSETS AT AUCTION**

PLEASE TAKE NOTICE THAT:

1. The above-captioned debtors (the “Debtors”) have entered into an Agreement (the “Agreement”) with Sugarfina Acquisition Corp. (the “Stalking Horse Bidder”) for the sale of substantially all of the Debtors’ assets subject to a competitive bidding process. The *Order (A) Approving Bidding Procedures and Protections in Connection with a Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Scheduling an Auction and Sale Hearing; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (E) Granting Related Relief* entered by the United States Bankruptcy Court for the District of Delaware (the “Court”) on [October \_\_], 2019, sets forth procedures for the competitive bidding and sale process contemplated in the Agreement (the “Bidding Procedures Order”).<sup>2</sup>

2. Copies of (i) the motion seeking approval of the sale [Docket No. 62] and the reply in support thereof (collectively, the “Sale Motion”), (ii) the Agreement, (iii) the Bidding Procedures Order and the Bidding Procedures, and (iv) the proposed Sale Order can be obtained by contacting the Debtors’ counsel at Shulman Hodges & Bastian LLP, 100 Spectrum Center Drive, Suite 600, Irvine, California 92618, Attn: Alan J. Friedman; [afriedman@shblp.com](mailto:afriedman@shblp.com) or Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington Delaware 19806, Attn: Brya M. Kielson, Esquire, [bkielson@morrisjames.com](mailto:bkielson@morrisjames.com).

3. All interested parties are invited to make an offer to purchase the Debtors’ assets in accordance with the terms and conditions approved by the Court in the Bidding Procedures Order (the “Bidding Procedures”) by 12:00 p.m. (prevailing Eastern time), on October 18, 2019. Pursuant to the Bidding Procedures, the Debtors may conduct an Auction for the Acquired Assets (the “Auction”) beginning at 10:00 a.m. (prevailing Eastern time) on October 22, 2019 at Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801-1494 or such other place as the Debtors notify all proposed attendees. You can contact the Debtors’ counsel, Shulman Hodges & Bastian LLP, 100 Spectrum Center Drive, Suite 600, Irvine, California

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) Sugarfina, Inc., a Delaware corporation (4356), (2) Sugarfina International, LLC, a Delaware limited liability company (1254) and (3) Sugarfina (Canada), Ltd. (4480). The location of the Debtors' corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Bidding Procedures Order or the Agreement, as applicable.

92618, Attn: Alan J. Friedman; afriedman@shbllp.com, for further information regarding the Debtors' assets and/or making a bid.

4. Participation at the Auction is subject to the Bidding Procedures and the Bidding Procedures Order.

5. A hearing to approve the sale of the Acquired Assets to the highest and best bidder will be held on October 24, 2019 at 10:30 a.m. (prevailing Eastern time), at the Court. The hearing on the sale may be adjourned without notice other than an adjournment in open court.

6. Objections, if any, to the proposed sale must be filed and served in accordance with the Bidding Procedures Order, and **actually received** no later than **4:00 p.m.** (prevailing Eastern time), on October 21, 2019.

7. The failure of any entity to file an objection on or before October 21, 2019, shall be deemed a consent to the sale of the Acquired Assets to the Stalking Horse Bidder or other Successful Bidder and the other relief requested in the Sale Motion, and be a bar to the assertion of any objection to the Sale Motion, the sale of the Debtors' assets, and the Debtors' consummation and performance of the Agreement or other agreement with a different Successful Bidder (including in any such case, without limitation, the transfer of the Acquired Assets free and clear of all liens, claims, encumbrances, and interests).

8. This notice is qualified in its entirety by the Bidding Procedures Order.

Dated: \_\_\_\_\_, 2019

**MORRIS JAMES LLP**

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**Exhibit 4**  
**Cure Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SUGARFINA INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11973 (MFW)

(Jointly Administered)

**AMENDED NOTICE OF ASSUMPTION AND CURE COST WITH RESPECT TO  
EXECUTORY CONTRACTS OR UNEXPIRED LEASES POTENTIALLY TO BE  
ASSUMED AND ASSIGNED IN CONNECTION WITH SALE OF DEBTORS' ASSETS**

**PLEASE TAKE NOTICE THAT THIS AMENDED NOTICE OF ASSUMPTION AND CURE COST WITH RESPECT TO EXECUTORY CONTRACTS OR UNEXPIRED LEASES POTENTIALLY TO BE ASSUMED AND ASSIGNED IN CONNECTION WITH SALE OF DEBTORS' ASSETS (THE "AMENDED NOTICE OF ASSUMPTION AND ASSIGNMENT") AMENDS THE NOTICE OF ASSUMPTION AND ASSIGNMENT PREVIOUSLY SENT TO YOU. CHANGES ARE HIGHLIGHTED IN BOLD.**

**YOU ARE RECEIVING THIS AMENDED NOTICE OF ASSUMPTION AND ASSIGNMENT BECAUSE YOU MAY BE A COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE OF THE DEBTORS. PLEASE READ THIS NOTICE CAREFULLY AS YOUR RIGHTS MAY BE AFFECTED BY THE TRANSACTIONS DESCRIBED HEREIN**

PLEASE TAKE NOTICE THAT:

1. The above-captioned debtors (the "Debtors") have entered into an Agreement (the "Agreement") with Sugarfina Acquisition Corp. (the "Stalking Horse Bidder") for the sale of substantially all of the Debtors' assets subject to a competitive bidding process. The *Order (A) Approving Bidding Procedures and Protections in Connection with a Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Encumbrances, and Interests; (B) Scheduling an Auction and Sale Hearing; (C) Approving the Form and Manner of Notice Thereof; (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases; and (E) Granting Related Relief* entered by the United States Bankruptcy Court for the District of

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) Sugarfina, Inc., a Delaware corporation (4356), (2) Sugarfina International, LLC, a Delaware limited liability company (1254) and (3) Sugarfina (Canada), Ltd. (4480). The location of the Debtors' corporate headquarters is 1700 E. Walnut Ave., 5th Floor, El Segundo, California 90245.

Delaware (the “Court”) on [October \_\_], 2019, sets forth procedures for the competitive bidding and sale process contemplated in the Agreement (the “Bidding Procedures Order”).<sup>2</sup>

2. The Debtors hereby provide notice that they may assume and assign the prepetition executory contracts or unexpired leases listed on **Exhibit A** hereto (the “Scheduled Contracts”) to the Stalking Horse Bidder or other Successful Bidder, as the case may be. The inclusion of any executory contract or unexpired lease on **Exhibit A** does not require or guarantee that such executory contract or unexpired lease will be assumed or assigned, or that such contract is executory or such lease is unexpired, and all rights of the Debtors and the Stalking Horse Bidder with respect thereto are reserved.

3. Pursuant to the terms of the Agreement (or any asset purchase agreement that the Debtors may enter into with a Successful Bidder), the Debtors may seek to assume and assign one or more of the Scheduled Contracts to the Stalking Horse Bidder or other Successful Bidder, as the case may be, subject to approval at the hearing to be held at **10:30 a.m. (prevailing Eastern time), on October 24, 2019** (the “Sale Hearing”), before the Court. Set forth on **Exhibit A** are any and all amounts, costs, or expenses that the Debtors believe must be paid or actions or obligations that must be performed or satisfied pursuant to the Bankruptcy Code to effectuate the assumption by the applicable Debtor, and the assignment to the Stalking Horse Bidder or other Successful Bidder, of the Scheduled Contracts (the “Cure Cost”) as part of any assumption and assignment.

4. No later than October 11, 2019, the Stalking Horse Bidder shall provide the Debtors with information regarding adequate assurance of future performance for Contract Counterparties if the Stalking Horse Bidder is the assignee of the Scheduled Contracts, and, no later than the Bid Deadline, the Debtors shall receive information regarding adequate assurance of future performance from Qualified Bidders (other than the Stalking Horse Bidder) if such Qualified Bidder proposes to be assigned certain Scheduled Contracts (collectively, the “Adequate Assurance Information”). Upon receiving the Adequate Assurance Information, and no later than 5:00 p.m. (ET) on October 11, 2019 for the Stalking Horse Bidder and 5:00 p.m. (ET) October 18, 2019 for Qualified Bidders, the Debtors shall provide electronic copies of the Adequate Assurance Information to the contract counterparties listed as to be assigned by a Qualified Bidder’s Scheduled Contracts list.

5. Objections, if any, to the assumption and assignment of a Scheduled Contract, the proposed Cure Cost, and/or the Adequate Assurance Information with respect to the Stalking Horse Bidder must be filed and served in accordance with the Bidding Procedures Order, and **actually received no later than 4:00 p.m. on October 21, 2019 (prevailing Eastern time). If the Stalking Horse Bidder is not the Successful Bidder objections with respect to the Adequate Assurance Information of the Successful Bidder may be filed and served in accordance with the Bidding Procedures Order or raised at the hearing on October 24, 2019 at 10:30 a.m. (prevailing Eastern time).**

6. If an objection to the Cure Cost is timely filed and received and the applicable entities are unable to consensually resolve the dispute, the amount to be paid under section 365 of

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Bidding Procedures Order or the Agreement, as applicable.

the Bankruptcy Code, if any, with respect to such objection will be determined at a hearing to be requested by the Debtors, the Stalking Horse Bidder, or a Successful Bidder. At the Stalking Horse Bidder's or a Successful Bidder's discretion, the hearing regarding the Cure Cost may be continued until after the Closing Date.

7. If no Contract Objection for a Scheduled Contract is timely filed by any non-Debtor party to a Scheduled Contract and received in accordance with the Bidding Procedures Order, then: (a) such non-Debtor party will be deemed to have consented to the assumption and assignment of the Scheduled Contract; (b) such non-Debtor party will be forever barred and estopped from asserting any objection to the propriety or effectiveness of the assumption and assignment of the Scheduled Contract against the Debtors, the Stalking Horse Bidder, a Successful Bidder, any assignee of the Scheduled Contract, or the property of any of them; (c) the Cure Cost set forth on the Cure Notice for such Scheduled Contract shall be controlling and such non-Debtor party will be deemed to have consented thereto, notwithstanding anything to the contrary in the Scheduled Contract or otherwise; and (d) such non-Debtor party will be forever barred and estopped from objecting to the Cure Cost or asserting any claims, other than the Cure Costs, against the Debtors, the Stalking Horse Bidder, a Successful Bidder, any assignee of the Scheduled Contract, or the property of any of them.

8. In accordance with section 365 of the Bankruptcy Code, there is adequate assurance that the Cure Cost set forth on the Cure Notice will be paid in accordance with the terms of the Sale Order. If necessary, the Debtors will adduce facts at the hearing on any objection demonstrating the financial wherewithal of the Stalking Horse Bidder or a Successful Bidder and its willingness and ability to perform under the Scheduled Contracts to be assumed and assigned to it.

9. The Agreement (which is subject to further approval of the Court) provides that no later than three (3) days prior to the Closing Date, the Stalking Horse Bidder or other Successful Bidder shall deliver written notice to the Debtors, designating each contract or lease on **Exhibit A** as "assumed," "rejected," or "retained." Each contract or lease to be assumed by the Debtors and assigned to the Stalking Horse Bidder or other Successful Bidder will be so designated as "assumed" and is referred to herein as an "Assumed Contract"; each contract or lease to be rejected by the Debtors will be so designated as "rejected" and is referred to herein as a "Rejected Contract"; and each Contract or Lease that may become designated as "assumed" or "rejected" will be so designated as "Retained" and is referred to herein as a "Retained Contract." Prior to the Closing Date, the Debtors shall file a notice with the Court setting forth the Assumed Contracts, the Rejected Contracts, and the Retained Contracts. The order approving the sale shall provide that (a) Assumed Contracts or Retained Contracts that are later designated as Assumed Contracts are assumed by the Debtors and assigned to the Stalking Horse Bidder or a Successful Bidder effective upon the Debtors filing a notice with the Court and the counterparty being paid any Cure Costs (each, an "Assumption and Assignment Notice") and (b) the Rejected Contracts or Retained Contracts that are later designated as Rejected Contracts are rejected by the Debtors effective upon the Debtors filing a notice with the Court (each, a "Rejection Notice").

10. The Agreement (which is subject to further approval of the Court) provides that at Closing, a reserve account will be funded by the Stalking Horse Bidder or a Successful Bidder as the case may be in the aggregate amount of the Cure Costs for Retained Contracts (the "Reserve



Account”). Establishment of the reserve account shall be the sole responsibility of the Stalking Horse Bidder or Successful Bidder, and shall not be a liability in any manner asserted against the Debtors. Between the Closing Date and the date that is ninety (90) days after Closing (the “Retained Contracts Period”), the Stalking Horse Bidder or other Successful Bidder who closes the sale with the Debtors may designate any Retained Contract as an Assumed Contract or a Rejected Contract. Any Retained Contract that is not designated as an Assumed Contract with the timely filing of an Assumption and Assignment Notice and is not designated as a Rejected Contract with the timely filing of a Rejection Notice on or before the expiration of the Retained Contracts Period shall automatically become a Rejected Contract immediately after the expiration of the Retained Contracts Period.

11. The Agreement (which is subject to further approval of the Court) provides that the Stalking Horse Bidder or other Successful Bidder shall retain the right to use all assets at any leased real property by the Debtors that is subject to a Retained Contract and to receive all the proceeds from any sale or use of goods and services at the leased real property during the Retained Contracts Period.

12. This notice is qualified in its entirety by the Bidding Procedures Order.

Dated: \_\_\_\_\_, 2019

**MORRIS JAMES LLP**

*/s/ Brya M. Keilson*

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