THIS IS NOT A SOLICITATION OF VOTES ON THE PLAN. VOTES MAY NOT BE SOLICITED UNTIL THE BANKRUPTCY COURT HAS APPROVED A DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	Chapter 11
SGR WINDDOWN, INC., *et al.*[1]	Case No. 19-11973 (MFW)
Debtors.	(Jointly Administered)

DISCLOSURE STATEMENT FOR THE PLAN OF REORGANIZATION FOR SGR WINDDOWN, INC. AND AFFILIATED DEBTORS DATED FEBRUARY 24, 2020

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-and-

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number or Canadian Revenue Agency, as applicable are (1) SGR Winddown, Inc. (4356), (2) SGR Winddown International, LLC (1254) and (3) SGR Canada Winddown Legacy Ltd. (4480). The location of the Debtors' corporate headquarters is 4712 Admiralty Way #552, Marina Del Rey, Ca 90292.

DISCLAIMERS

This Disclosure Statement provides information regarding the Plan of Reorganization of SGR Winddown, Inc. and affiliated debtors (as defined herein, the "Debtors"). The information contained in this Disclosure Statement is included for purposes of soliciting acceptances to, and confirmation of, the Plan and may not be relied on for any other purpose. Approval of this Disclosure Statement does not constitute a determination or recommendation by the Bankruptcy Court as to the fairness or the merits of the Plan.

This Disclosure Statement contains summaries of certain provisions of the Plan, certain statutory provisions, certain documents relating to the Plan, and certain financial information. Although the Debtors believe that these summaries are fair and accurate and provide adequate information with respect to the documents summarized, such summaries are qualified to the extent that they do not set forth the entire text of, or are inconsistent with, such documents.

Although the Debtors have made every effort to be accurate, the financial information contained herein has not been the subject of an audit or other review by an accounting firm. In the event of any conflict, inconsistency, or discrepancy between the terms and provisions in the Plan, this Disclosure Statement, the exhibits annexed to this Disclosure Statement, or the financial information incorporated herein or therein by reference, the Plan shall govern for all purposes. All holders of claims should read this Disclosure Statement and the Plan in their entirety before voting on the Plan.

The statements and financial information contained herein have been made as of the date hereof unless otherwise specified. Holders of claims and equity interests reviewing this Disclosure Statement should not infer at the time of such review that there have been no changes in the facts set forth herein. Although the Debtors have made an effort to disclose where changes in present circumstances could reasonably be expected to affect materially the recovery under the Plan, this Disclosure Statement is qualified to the extent certain events do occur.

This Disclosure Statement has been prepared in accordance with Bankruptcy Code Section 1125 and not necessarily in accordance with Federal or State securities laws or other non-bankruptcy law. This Disclosure Statement has not been approved or disapproved by the Securities and Exchange Commission (the "SEC") or any Federal, State, local or foreign regulatory agency, nor has the SEC or any other such agency passed upon the accuracy or adequacy of the statements contained in this Disclosure Statement. Persons or entities holding or trading in, or otherwise purchasing, selling, or transferring, securities of or claims against the Debtors should evaluate this Disclosure Statement and the Plan in light of the purpose for which they were prepared.

The Debtors make statements in this Disclosure Statement that are considered forward-looking statements under the Federal securities laws. Statements concerning these and other matters are not guarantees of the Debtors' future performance. Such forward-looking statements represent the Debtors' estimates and assumptions only as of the date

such statements were made and involve known and unknown risks, uncertainties, and other unknown factors that could impact the Debtors' restructuring plans or cause the actual results of the Debtors' business to be materially different from the historical results or from any future results expressed or implied by such forward-looking statements. In addition to statements that explicitly describe such risks and uncertainties, readers are urged to consider statements labeled with the terms "believes," "belief," "expects," "intends," "anticipates," "plans," or similar terms to be uncertain and forward-looking. There can be no assurance that the restructuring transaction described herein will be consummated. Creditors and other interested parties should see the section of this Disclosure Statement entitled "Risk Factors" for a discussion of certain factors that may affect the future financial performance of the Reorganized Debtor.

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ARTICLE I.
INTRODUCTION

The Debtors hereby submit this disclosure statement (the "Disclosure Statement") pursuant to sections 1125 and 1126(b) of Title 11 of the Bankruptcy Code, in connection with the solicitation of votes on the Plan of Reorganization of SGR Winddown, Inc., dated February 24, 2020 (as amended, supplemented or otherwise modified from time to time pursuant to its terms, the "Plan"). A copy of the Plan is attached hereto as Exhibit A. Capitalized terms used herein that are not specifically defined, have the meaning assigned to them in the Plan.

The purpose of this Disclosure Statement is to enable Creditors whose Claims are Impaired under the Plan and who are entitled to vote to make an informed decision in exercising their right to accept or reject the Plan. This Disclosure Statement sets forth certain information regarding the Debtors' prepetition operating and financial history, their reasons for seeking protection under the Bankruptcy Code and the anticipated organization, operations, and financing of the Debtors upon their successful emergence from bankruptcy protection. This Disclosure Statement also describes certain terms and provisions of the Plan, certain effects of confirmation of the Plan, certain risk factors associated with the Plan, the business of the Debtors or Reorganized Debtor, and the securities that may be issued under the Plan, including the issuance of New Equity to Goldman Sachs and the manner in which distributions will be made under the Plan. In addition, this Disclosure Statement discusses the confirmation process and the voting procedures that holders of Claims entitled to vote under the Plan must follow for their votes to be counted.

1.01 Overview of the Plan

(a) General Structure of the Plan

The Plan provides for the reorganization of the Debtors by retiring, cancelling, extinguishing, and/or discharging the Debtors' existing Equity Interests and issuing New Equity in the Reorganized Debtor to Goldman Sachs. In exchange and as part of a broader settlement (as discussed below, the "Goldman Sachs Settlement"), Goldman Sachs has agreed to the payment of Allowed Administrative and Priority Claims, and to provide certain consideration to fund a reserve (the "Distribution Reserve") for the benefit of Allowed General Unsecured Claims. To fund the Chapter 11 Cases, Goldman Sachs has agreed to the Debtors' use of cash collateral, consistent with an Approved Budget.

THE DEBTORS BELIEVE THAT THE PLAN IS FAIR AND EQUITABLE, WILL MAXIMIZE THE VALUE TO THE ESTATES, IS IN THE BEST INTERESTS OF THE DEBTORS' ESTATES AND THEIR STAKEHOLDERS, AND WILL ENABLE THE DEBTORS TO SUCCESSFULLY REORGANIZE AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11.

FOR THESE REASONS, THE DEBTORS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN.

1.02 Material Terms of the Plan

The following is an overview of certain material terms of the Plan:

(a) The Debtors will be reorganized pursuant to the Plan and continue in operation following the Effective Date. On the Effective Date, shares of New Equity of the Reorganized Debtor shall be issued to Goldman Sachs.

(b) Allowed Administrative Claims (including Ordinary Course Liabilities) and Priority Claims will be paid in full, consistent with an Approved Budget. Allowed Administrative Claims will be paid following expiration of an applicable bar date, and Allowed Priority Claims will be paid upon the earlier of the Effective Date and allowance. Any amounts remaining from the budgeted amounts for Administrative Claims and Priority Claims (including Claims or amounts relating to DIP Expenses and a Substantial Contribution Claim asserted by Candy Cube) (defined as the "Claim Residuals"), will be paid as follows: (i) the first $150,000 of the Claim Residuals arising from the DIP Expenses and/or Substantial Contribution Claim will be paid to Class 5 General Unsecured Creditors, and (ii) any remaining balances for any Claim Residuals will be split evenly between General Unsecured Creditors and Goldman Sachs.

(c) Allowed Class 5 General Unsecured Creditors will receive their Pro Rata share of $100,000 in cash, plus (i) participation in the Claim Residuals, discussed above, plus (ii) the following amounts:

(i) *Non-Cash Assets*. 50% of all Cash proceeds received by the Reorganized Debtor on account of certain illiquid assets, including Preserved Causes of Action and Judgments.

(ii) *Purchaser Membership Interest*. As discussed further herein, as part of the Debtors' recent sale, the Debtors received a membership interest in the purchaser (as defined below, the "Purchaser Membership Interest"). Under the Purchaser's applicable organization documents, the Purchaser has the right to repurchase the Purchaser Membership Interest for fair market value. With respect to the Purchaser Membership Interest Consideration, the Reorganized Debtor will fund to the Distribution Reserve for the benefit of Allowed General Unsecured Claims as follows, until the aggregate amount received by Class 5 General Unsecured Claims equals the total Allowed amount of such Claims:

1) For amounts received within six (6) months after the Effective Date, 100% of all amounts that are in excess of $12,000,000 minus the Cash amounts received by Goldman Sachs under the Plan, minus any amounts that Goldman Sachs funds or pays to support the Reorganized Debtor's operations after the Effective Date.

2) For amounts received more than six (6) months after the Effective Date, 25% of all amounts that are in excess of the sum of $5,000,000 and any amounts that Goldman Sachs funds or pays to support the Reorganized Debtor's operations

after the Effective Date; provided, however, that in the event the total Cash or fair market value of other consideration paid or payable to Goldman Sachs equals or exceeds $7,000,000, plus any amounts that Goldman Sachs funds or pays to support the Reorganized Debtor's operations after the Effective Date, then foregoing amount shall be 100% of all excess Purchaser Membership Interest Consideration.

(d) The minimum recovery guaranteed for Class 5 General Unsecured Claims is $100,000. As discussed further below, the Debtors estimate that recoveries for Class 5 will range between $100,000 and $750,000.

1.03 Summary of Treatment of Claims and Equity Interests Under the Plan

The table below summarizes the classification and treatment of the Claims and Equity Interests under the Plan.

THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS, REFERENCE SHOULD BE MADE TO THE ENTIRE PLAN.

Class	Claim or Equity Interest	Summary of Treatment	Estimated Aggregate Amount of Claims[2]	Projected Recovery Under Plan[3]
1	Serene Facility Claims	Unimpaired; Deemed to Accept Plan	$0.0	100%
2	Goldman Sachs Facility Claims	Impaired; Entitled to Vote on Plan	$12,000,000	8.3%-12.5%
3	Other Secured Claims	Unimpaired; Deemed to Accept Plan	$51,610	100%
4	Other Priority Claims	Unimpaired; Deemed to Accept Plan	$0.0	100%
5	General Unsecured Claims	Impaired; Entitled to Vote on Plan	$21,707,667[4]	0.5% - 3.5%
6	Intercompany Claims	Impaired; Deemed to Reject Plan	$2,734,166.61	0%
7	Equity Interests	Impaired; Deemed to Reject Plan	N/A	0%

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

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[2] Estimated aggregate amounts of claims in each class as well as projected recoveries for each class are based solely on the Debtors' understanding of the universe of the claims in each Class. However, the Debtors have not completed a thorough review of Claims filed in these cases and projected recoveries could vary significantly based upon the final results of such review. Nothing herein shall be construed to be an admission by the Debtors as to the extent, priority or validity of any Claim.

[3] As discussed herein, recoveries for Class 2 Goldman Sachs Facility Claims and Class 5 General Unsecured Claims include, among other things, portions of Claim Residuals and certain Non-Cash Assets. Based on the circumstances of these cases, the Debtors cannot estimate with any degree of confidence what the ultimate values of the Claim Residuals and Non-Cash Assets will be. In order to provide a range of potential outcomes and for illustrative purposes only, the Debtors are assuming recovery projections on account of Claim Residuals and Non-Cash Assets at the low end to be $0 and at the high end to be $1.15 million.

[4] This figure represents the Debtors' current estimates for Allowed General Unsecured Claims.

1.04 Plan Voting Instructions and Procedures

(a) Voting Rights

Under the Bankruptcy Code, only Classes of Claims that are "Impaired" and that are not deemed as a matter of law to have rejected a plan of reorganization under Bankruptcy Code section 1126 are entitled to vote to accept or reject the Plan. Any Class that is "Unimpaired" is not entitled to vote to accept or reject a plan of reorganization and is conclusively presumed to have accepted the Plan. As set forth in Bankruptcy Code section 1124, a Class is "Impaired" if the legal, equitable, or contractual rights attaching to the claims or equity interests of that Class are modified or altered.

Pursuant to the Plan, Claims in Class 1 (Serene Facility Claims), Class 3 (Other Secured Claims), and Class 4 (Other Priority Claims), are Unimpaired by the Plan, and such holders are deemed to have accepted the Plan and are therefore not entitled to vote on the Plan.

Pursuant to the Plan, Claims in Class 2 (Goldman Sachs Facility Claims) and Class 5 (General Unsecured Claims) are Impaired by, and entitled to receive a distribution under the Plan, and only the holders of Claims in these Classes are entitled to vote to accept or reject the Plan. Whether a holder of a Claim in these Classes may vote to accept or reject the Plan will also depend on whether the holder held such Claim as of the Voting Record Date.

Pursuant to the Plan, Claims and Interests in Class 6 (Intercompany Claims) and Class 7 (Equity Interests) will not receive any distribution and are deemed to have rejected the Plan and are therefore not entitled to vote on the Plan.

(b) Solicitation Materials

BMC Group has agreed to serve as the voting agent (the "Voting Agent"), to process and tabulate Ballots for each Class entitled to vote on the Plan and to generally oversee the voting process. The following materials shall constitute the solicitation package (the "Solicitation Package"):

(i) This Disclosure Statement, including the Plan and all other Exhibits annexed thereto;

(ii) The Bankruptcy Court order approving this Disclosure Statement, subject to final approval in connection with the Confirmation Hearing (the "Disclosure Statement Order");

(iii) The notice of, among other things, (i) the date, time, and place of the hearing to consider Confirmation of the Plan and related matters and (ii) the deadline for filing objections to Confirmation of the Plan (the "Confirmation Hearing Notice");

(iv) One or more Ballots, as applicable, to be used in voting to accept or to reject the Plan and applicable instructions with respect thereto (the "Voting Instructions");

(v) A pre-addressed return envelope; and

(vi) Such other materials as the Bankruptcy Court may direct or approve.

The Debtors, through the Voting Agent, will distribute the Solicitation Package in accordance with the Disclosure Statement Order.

If you are the holder of a Claim and believe that you are entitled to vote on the Plan, but you did not receive a Ballot or your Ballot is damaged or illegible, or if you have any questions concerning voting procedures, you should contact the Voting Agent by writing to the addresses set forth below, in subsection (c).

THE DEBTORS AND THE REORGANIZED DEBTOR, AS AND IF APPLICABLE, EACH RESERVE THE RIGHT THROUGH THE CLAIM OBJECTION PROCESS, TO OBJECT TO OR SEEK TO DISALLOW ANY CLAIM OR EQUITY INTEREST FOR DISTRIBUTION PURPOSES.

(c) Voting Instructions

All votes to accept or reject the Plan must be cast by using the Ballots enclosed with the Solicitation Packages. No votes other than ones using such Ballots will be counted, except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed the Voting Record Date for the determination of the holders of Claims who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) vote to accept or reject the Plan. The Voting Record Date and all of the Debtors' solicitation and voting procedures shall apply to all of the Debtors' Creditors and other parties in interest.

After carefully reviewing the Plan, this Disclosure Statement, and the detailed instructions accompanying your Ballot, you are asked to indicate your acceptance or rejection of the Plan by voting in favor of or against the Plan on the accompanying Ballot.

The deadline to vote on the Plan is [_____] at 4:00 p.m. (Eastern Time) (the "Voting Deadline"). For your vote to be counted, your Ballot must be properly completed in accordance with the Voting Instructions on the Ballot, and received no later than the Voting Deadline at the address set forth below:

If by Hand Delivery or Overnight Mail
Sugarfina Ballot Processing
c/o BMC Group
3732 W. 120th Street
Hawthorne, CA 90250

If by First Class Mail
Sugarfina Ballot Processing
c/o BMC Group
PO Box 90100
Los Angeles, CA 90009

Alternatively, Ballots may be submitted through the Notice and Claims Agent's online electronic Ballot submission portal at https://ballots.bmcgroup.com/sugarfina

Only the Holders of Claims in Class 2 and 5 as of the Voting Record Date are entitled to vote to accept or reject the Plan, and they may do so by completing the appropriate Ballots and returning them in the envelope provided by the Voting Agent so as to be actually received by the Voting Agent by the Voting Deadline or by voting on the Voting Agent's website by the Voting Deadline. Each holder of a Claim must vote its entire Claim within a particular Class either to accept or reject the Plan and may not split such votes. If multiple Ballots are received from the same holder with respect to the same Claim prior to the Voting Deadline, the last timely received, properly executed Ballot will be deemed to reflect that voter's intent and will supersede and revoke any prior Ballot. The Ballots will clearly indicate the appropriate return address. It is important to follow the specific instructions provided on each Ballot.

Unless otherwise provided in the Voting Instructions accompanying the Ballots or otherwise ordered by the Bankruptcy Court, the following Ballots will not be counted in determining whether the Plan has been accepted or rejected:

- Any Ballot received after the Voting Deadline, except if the Debtors have granted an extension of the Voting Deadline with respect to such Ballot, or by order of the Bankruptcy Court;
- any Ballot not marked to accept or reject the Plan, or marked both to accept and reject the Plan, or marked to partially reject and partially accept the Plan;
- Any Ballot containing a vote that the Bankruptcy Court determines was not solicited or procured in good faith or in accordance with the applicable provisions of the Bankruptcy Code;
- Any Ballot that is illegible or contains insufficient information to permit the identification of the Claim;
- Any Ballot cast by a Person or entity that does not hold an Allowed Claim in a voting Class; and
- Any unsigned Ballot or Ballot without an original signature (or in the case of electronic balloting, a proper and verified electronic signature).

Any party who has previously submitted to the Voting Agent prior to the Voting Deadline a properly completed Ballot may revoke such Ballot and change its vote by submitting to the Voting Agent prior to the Voting Deadline a subsequent properly completed Ballot for acceptance or rejection of the Plan. In the case where more than one timely, properly completed Ballot is received, only the Ballot that bears the latest date will be counted for purposes of determining whether the requisite acceptances have been received. Any party who has delivered a properly completed Ballot for the acceptance or rejection of the Plan that wishes to withdraw such acceptance or rejection rather than changing its vote may withdraw such acceptance or rejection by delivering a written notice of withdrawal to the Voting Agent at any time prior to the Voting Deadline. To be valid, a notice of withdrawal must: (i) contain the description of the Claims to which it relates and, in the case of Claims, the aggregate principal amount represented by such Claims; (ii) be signed by the withdrawing party in substantially the same manner as the Ballot being withdrawn; (iii) contain a certification that the withdrawing party owns the Claims and possesses the right to withdraw the vote sought to be withdrawn; and (iv) be actually received by the Voting Agent prior to the Voting Deadline.

The Debtors, in their sole discretion, subject to contrary order of the Court, may waive any defect in any Ballot at any time, either before or after the close of voting, and without notice. Except as otherwise provided herein, the Debtors may, in their sole discretion, reject such defective Ballot as invalid and, therefore, not count it in connection with confirmation of the Plan.

ALL BALLOTS ARE ACCOMPANIED BY VOTING INSTRUCTIONS. IT IS IMPORTANT THAT THE HOLDER OF A CLAIM IN THE CLASSES ENTITLED TO VOTE FOLLOW THE SPECIFIC INSTRUCTIONS PROVIDED WITH EACH BALLOT.

If you have any questions about (a) the procedure for voting your Claim, (b) the Solicitation Package that you have received, or (c) the amount of your Claim, if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact counsel for the Debtors in writing, or (b) visiting the Debtors' restructuring website at: https://bmcgroup.com/restructuring/Docket.aspx?ClientID=447. Such documents will be provided free of charge. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee via PACER at: http://www.deb.uscourts.gov.

The Voting Agent will process and tabulate Ballots for the Classes entitled to vote to accept or reject the Plan and will file a voting report (the "Voting Report") as soon as reasonably practicable following the Voting Deadline. The Voting Report will, among other things, describe every Ballot that does not conform to the Voting Instructions or that contains any form of irregularity, including, but not limited to, those Ballots that are late, illegible (in whole or in material part), unidentifiable, lacking signatures, lacking necessary information, or damaged.

THE DEBTORS URGE HOLDERS OF CLAIMS WHO ARE ENTITLED TO VOTE TO TIMELY RETURN THEIR BALLOTS AND TO VOTE TO ACCEPT THE PLAN BY THE VOTING DEADLINE.

1.05 Confirmation Hearing and Deadline for Objections to Confirmation

Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Bankruptcy Code section 1128(b) provides that any party in interest may object to Confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on [_____] at [_____] (Eastern Time), before the Honorable Mary J. Walrath, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801. The Confirmation Hearing Notice, which sets forth the time and date of the Confirmation Hearing, has been included along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to Confirmation of the Plan must be filed and served on the Debtors and certain other entities, all in accordance with the Confirmation Hearing Notice by no later than [_____] at 5:00 p.m. (Eastern Time). Unless objections to Confirmation of the Plan are

timely served and filed in compliance with the Disclosure Statement Order, which is attached to this Disclosure Statement, they may not be considered by the Bankruptcy Court.

ARTICLE II.
GENERAL INFORMATION ABOUT THE DEBTORS

2.01 Background

The Debtors operated a luxury confectionary brand disrupting the multi-billion dollar confectionary industry. Founded in 2012 by Josh Resnick and Rosie O'Neill who, on their third date after attending a screening of Willy Wonka and The Chocolate Factory, asked "why should kids have all the fun?" With distinct, iconic packaging designs (including Candy Cubes™, Candy Bento Boxes®, and Candy Walls™) and a strong social media and branding presence, the Debtors carved out a new category in gifting and self-treat with a strong and loyal following across key demographics, including millennial professionals.

The Debtors operated an "omnichannel" business, involving design, assembly, marketing, and sale of confectionary items through a retail fleet of "Candy Boutiques", including "shop in shops" within Nordstrom's department stores, a wholesale channel, e- commerce, international franchise, and a corporate/custom channel. In 2018, the Debtors generated more than $47 million in net sales.

2.02 Events Leading to the Filing of the Bankruptcy Cases

The Debtors enjoyed significant growth from their inception. From their founding in 2012 through 2017, the Debtors opened approximately 39 stores in 15 states and 1 Canadian province, with revenues nearly doubling year over year. By 2017, revenues topped $39,000,000. But, as with many high-growth, early stage companies, the Debtors were unable to turn a profit. In 2016, the Debtors incurred EBITDA losses of $4,828,574, which increased to EBTIDA losses of $7,340,000 in 2017, and to EBITDA losses of $17,913,000 in 2018. As a result of this performance, the Debtors were forced to finance their operations and growth largely with the proceeds from the sale of equity.

From early 2018 through mid-2019, the Debtors pursued a series of fundraising transactions. These efforts were robust, led in part by Michel Dyens & Company, an investment advisor based in New York and Paris. Michel Dyens' charge was broad and open-ended, allowing them to solicit interest from a wide spectrum of potential investors for any type of equity- based transaction, whether of a strategic or investment-related nature, without restriction on transaction-related metrics, size, or price. Michel Dyens conducted a robust six (6) month marketing process, canvassing the market and contacting nearly one hundred seventy (170) potential strategic and financial buyers or investors that Michel Dyens or the Debtors thought might be interested in their businesses. These contacted parties included those who previously participated or expressed interest in the process that resulted in the Debtors' last successful equity fundraising, a process that, itself, involved a separate investment banker representing Sugarfina. Of those parties, forty-two (42) parties signed non-disclosure agreements and gained access to diligence materials, and six (6) parties submitted Indications of Interest, Term Sheets, or Non-Binding Offers. The Debtors and their advisors engaged with each of these interested

parties to understand the proposed terms and negotiate regarding a favorable transaction. To finance operations through this period and in anticipation of ultimately closing on an equity transaction, the Debtors incurred more than $26.0 million in secured debt (described in detail below).

Ultimately, however, the Debtors' efforts to close an equity transaction were unsuccessful. With no reasonable options to address their needs out of court and with a declining cash position, on July 8, 2019, the Debtors' Board of Directors formed a special committee of independent directors in order to prepare the Debtors for a potential bankruptcy proceeding. Working with the Debtors' investment bankers and advisors, the Debtors contacted more than thirty-three (33) parties regarding interest in a potential transaction to be consummated through a bankruptcy proceeding. Of these parties, the Debtors received indications of interest or proposals from two parties—Candy Cube Holdings, LLC ("Candy Cube") and Sugarfina Acquisition Corp. ("Bristol")—for stalking horse bids to purchase the Debtors' assets. The Debtors also received a proposal from SFCC Loan Investors, LLC, d/b/a Serene Capital ("Serene"), as the Debtors' existing first-lien lender, to provide debtor in possession financing. The Debtors and their advisors engaged with each of these parties, and ultimately determined, in the reasonable exercise of their business judgment, to pursue the Candy Cube proposal combined with the Serene financing.

2.03 The Debtors' Obligations as of the Petition Date.

(a) Secured Debt

As of the Petition Date, the Debtors' books and records showed outstanding funded debt in the aggregate principal amount of $26.65 million, summarized as follows:

- $5.0 million of senior secured debt with Serene;
- $10.0 million of secured second lien debt with Goldman Sachs;
- $8.0 million of secured third lien subordinated debt with Josh Resnick;
- $2.15 million of secured fourth lien subordinated debt under 2019 Convertible Promissory Notes issued to miscellaneous investors; and
- $2.1 million of unsecured debt under Convertible Promissory Notes issued to miscellaneous investors.

Serene Facility. On September 28, 2018, the Debtors entered into a $4.4 million Loan and Security Agreement with Avidbank, which was subsequently assigned to Serene and, on August 16, 2019, amended and restated (as amended and restated, the "SFCC Facility"). The SFCC Facility was secured by a senior lien on substantially all of the Debtors' assets. As of the Petition Date, $5.0 million remained outstanding under the SFCC Facility, plus accrued and unpaid interest, fees and expenses. The SFCC Facility was repaid during these cases from sale proceeds (discussed below).

Goldman Sachs Facility. On November 28, 2018, Debtor SGR Winddown, Inc. (f/k/a Sugarfina, Inc.) ("SGRI") entered into a Note Purchase Agreement with Goldman Sachs (the "Goldman Sachs Facility") for a principal amount of $10.0 million, secured by substantially all of the assets of the Debtors and subject to a Lien Subordination Agreement with Serene. The

Goldman Sachs Facility accrues interest at an escalating rate, starting at LIBO + 9.50% and increasing to LIBO + 11.50% after May 31, 2019. As of the Petition Date, $10,964,547.95 was outstanding (including accrued interest) under the Goldman Sachs Facility.

Founder Loan. Pursuant to a Secured Subordinated Promissory Note and Security Agreement dated July 23, 2018, Josh Resnick provided to the Debtors funding up to $8.0 million (the "Founder Loan"). Mr. Resnick has filed a proof of claim on account of the Founder Loan (and other asserted liabilities) and asserts that the Founder Loan is secured by substantially all of the assets of SGRI, subject to subordination agreements with respect to the SFCC Facility and the Goldman Sachs Facility. Such claim further asserts that the Founder Loan accrues interest at 8.5% per annum, and that as of the Petition Date, $8,723,431.51 was outstanding (including accrued interest) under the Founder Loan. All parties' rights are reserved with regard to the Founder Loan.

2019 Convertible Notes. Pursuant to a Note Purchase Agreement, dated as of June 12, 2019 and amended and restated as of June 24, 2019 (the "2019 Convertible Notes"), the Debtors issued Convertible Promissory Notes totaling approximately $2.15 million to various investors. The 2019 Convertible Notes accrue interest at a rate of 8.0% per annum. As of the Petition Date, the aggregate amounts outstanding under the 2019 Convertible Notes was $2,645,019.17. All parties' rights are reserved with regard to the 2019 Convertible Notes.

AFCO Insurance Facility. On August 7, 2019, the Debtors entered into a Premium Finance Agreement with AFCO Acceptance Corporation (the "AFCO Facility"), for a principal amount of $235,169.06, in order to finance payments owed under the Debtors' Directors' & Officers Insurance coverage. The AFCO Facility accrues interest at a rate of 5.770% per annum, and matures on July 30, 2020. It is secured by the proceeds of the Debtors' Directors & Officers' Insurance coverage.

(b) Unsecured Debt

Convertible Notes. In October 2018, SGRI issued Unsecured Convertible Promissory Notes (the "Convertible Notes") to four (4) investors. The Convertible Notes are subject to subordination agreements with respect to the SFCC Facility and Goldman Sachs Facility. They accrue interest at a rate of 6.0% per annum. As of the Petition Date, the aggregate amounts outstanding under the Convertible Notes (including accrued interest) totaled $2,207,013.74.

Other Material Unsecured Debt. The Debtors owed material amounts, on an unsecured basis, to vendors critical to their production process, including candy and packaging suppliers. These vendors provided supplies and other items to the Debtors on an order-by-order basis, without long term contractual agreements. In addition, through these Cases the Debtors incurred unsecured obligations arising from the rejection of unexpired leases of real property and executory contracts. A bar date with respect to general unsecured claims has expired in these Cases, but the Debtors have not yet completed a thorough review of filed claims. Subject to that review, the Debtors believe that general unsecured claims (excluding the Convertible Notes) in these Cases total approximately $8,132,202.26.

(c) Equity Interests

SGRI is privately owned, with eight classes of stock. The preferred stock is separated into seven classes – Series A, AA, A-1, B, BB, B-2, and BB-2 (collectively, the "Preferred Stock"). Each class of Preferred Stock has a 1.0x liquidation preference. Series A, AA, A-1, B-2, and BB-2 Preferred Stock each accrues dividends at 6.0% per annum, and Series B and BB Preferred Stock accrue dividends at 7.0% per annum. Series AA, BB, and BB-2 Preferred Stock is *pari passu* with respect to each other in priority, but senior with respect to Series A, A-1, B, and B-2 Preferred Stock (which are classes are each *pari passu* among themselves). The Preferred Stock's liquidation preferences have priority over SGRI's common stock. As of the Petition Date, the number of shares outstanding totaled 23,390,962 shares.

ARTICLE III.
THE DEBTORS' BANKRUPTCY CASES

3.01 Commencement of the Debtors' Cases

The Debtors commenced these Cases on September 6, 2019 (the "Petition Date"), and have been operating as debtors in possession since then.

3.02 Debtor-in-Possession Financing

In order to fund their operations through these Cases, on the Petition Date the Debtors filed and sought approval of their *Motion Of Debtors Pursuant To Sections 105, 361, 362,363, 364, And 507 Of The Bankruptcy Code, Bankruptcy Rule 4001, And Local Rule 4001-2, For Interim And Final Orders (I) Authorizing Debtors To Obtain Postpetition Financing And Use Cash Collateral; (II) Granting Liens And Super-Priority Claims And Adequate Protection; (III) Scheduling A Final Hearing; (IV) Modifying The Automatic Stay; And (V) Granting Related Relief* [Dkt. No. 21] (the "DIP Motion"). As set forth in the DIP Motion, through their proposed facility (the "DIP Facility") the Debtors sought to borrow up to $4.0 million (inclusive of the "roll-up" referenced below) from SFCC and Candy Cube, subject to a series of milestones oriented around a sale process. The DIP Facility accrued interest at a rate of 8.0% per annum, and matured within six (6) months of the Petition Date. The Bankruptcy Court entered orders approving the DIP Facility on an interim basis on September 11, 2019 [Dkt. No. 71] and on a final basis on October 8, 2019 [Dkt. No. 227] (the "DIP Order"). As approved by the Bankruptcy Court, the DIP Facility provided for the following, among other things:[5]

- "Roll-up" into the DIP Facility of $600,000 in amounts advanced by SFCC as part of the SFCC Facility;
- Reimbursement by the Debtors of fees and costs incurred by Candy Cube in its capacity as a lender, up to $75,000 (the "CC DIP Fee Cap"), subject to review and

[5] The DIP Facility initially anticipated payment of a "Repayment Premium." The final order approving the DIP Facility, however, did not provide for any such premium.

potential objection by the Debtors, the Creditors' Committee, the U.S. Trustee, SFCC, and Goldman Sachs;

- A "Success Fee" owed under the DIP Facility[6] would be paid from, and serve as a credit against, amounts otherwise owed by the Debtors under the Goldman Sachs Facility.

3.03 The Sale Support Agreement and the Candy Cube Stalking Horse Bid

Immediately following the Petition Date, the Debtors filed a motion [Dkt. No. 62] requesting authority from the Bankruptcy Court to approve bid procedures in order to pursue the orderly sale and liquidation of their operating assets (the "Bid Procedures Motion"). Through the Bid Procedures Motion, the Debtors also sought approval of a "Stalking Horse" bid from Candy Cube (the "Candy Cube SH Bid"). Among other things, the Candy Cube SH Bid and the Bid Procedures Motion provided for the following:

- A purchase price of $13.0 million, subject to adjustments for inventory values and levels at the time of closing, plus a 20.0% equity stake in Candy Cube as the purchaser;

- A "break up" or termination fee equal to $500,000, plus reasonable and documented expenses incurred by Candy Cube in connection with the negotiation, execution, and preparation for the Candy Cube SH Bid (which fee was estimated to total $1.0 million); and

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[6] Section 2.6(c) of the DIP Facility defined the Success Fee as follows:

Upon the occurrence of the Maturity Date, a success fee equal to seven percent (7%) of the greater of (i) the aggregate amount of cash proceeds in excess of two million dollars ($2,000,000) that Goldman actually receives on account of obligations arising under the Goldman NPA (without considering any Financing Proceeds (as defined in the Equity Commitment Term Sheet that is attached as an exhibit to the Sale Support Agreement dated as of September 6, 2019 among SFCC, Goldman, and Candy Cube)), to the extent such proceeds result from the consummation of a Bankruptcy Sale, and (ii) if Candy Cube is the successful purchaser of the Debtors' assets, the sum of (x) the amount of any indebtedness assigned by Goldman to Candy Cube that is used by Candy Cube to credit bid, plus (y) the amount of cash proceeds in excess of two million dollars ($2,000,000) that Goldman actually receives on account of obligations arising under the Goldman NPA (without considering any Financing Proceeds (as defined in the Equity Commitment Term Sheet that is attached as an exhibit to the Sale Support Agreement dated as of September 6, 2019 among SFCC, Goldman, and Candy Cube)) (the "Success Fee"), to be paid by Debtors out of distributions that would have otherwise been payable to Goldman. Borrower hereby acknowledges and agrees that if the Obligations (other than inchoate indemnity obligations) are paid in full or this Agreement is terminated, the obligation to pay the Success Fee hereunder shall survive and continue, and the Success Fee shall be due upon the Maturity Date. If this Agreement is terminated prior to payment of the Success Fee, Lender shall continue to have such right in perpetuity, until paid.

- Candy Cube's right and ability to credit bid towards the purchase price the amount of the obligations under the Goldman Sachs Facility that was assigned to Candy Cube (the "Credit Bid Rights")[7].

In order to pursue their proposed sale, the Debtors requested consent and support from SFCC and Goldman Sachs, as the first- and second-lien lenders in these Cases. In connection with that request, Goldman Sachs, SFCC, and Candy Cube collectively negotiated the terms of a Sale Support Agreement (the "SSA"), dated as of September 6, 2019, a copy of which was filed with the Bankruptcy Court as Docket No. 103. The Debtors were not a party to the SSA or any of the corresponding discussions. As ultimately filed, the SSA provided for Goldman Sachs' and SFCC's exclusive support for the DIP Financing and the Candy Cube SH Bid. By its terms, the SSA terminated automatically upon termination of the asset purchase agreement underlying the Candy Cube SH Bid.

3.04 Termination of the Candy Cube SH Bid and Conclusion of the Sale

The Creditors' Committee and the U.S. Trustee, among others, objected to the Bid Procedures Motion and the Candy Cube SH Bid, as proposed. Among other things, they raised concerns regarding (1) the amount of the "break up" fee to be awarded to Candy Cube, and (2) the value destructive lock-up nature of the SSA, and (3) Candy Cube's proposed ability to credit bid debt that could be assigned by Goldman Sachs. After reviewing those objections and following discussions with the Creditors' Committee and the parties to the SSA, the Debtors determined that it was no longer in the best interests of their Estates to pursue approval of the Candy Cube SH Bid as initially proposed. Instead, the Debtors solicited interest in a set of terms for a stalking horse bid that they believed would be approved by the Bankruptcy Court and in the best interests of the Estates. Candy Cube refused to agree to the new proposed terms, but Bristol did. Therefore, on October 2, 2019, the Debtors filed their *Reply In Support Of Debtors' Motion*

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[7] See Bid Proc. Mot., Ex. A (Proposed Bid Procedures Order) at ¶ 15, granting Candy Cube the following credit bid right:

> [Candy Cube may credit bid] the amount of the obligations under the Goldman Prepetition Loan Agreement (the "Second Lien Loan") that Goldman (the "Second Lien Lender") has assigned to the Stalking Horse Bidder at any time (which includes (a) $2,000,000 (subject to reduction dollar-for-dollar to the extent the Buyer is required to increase the cash portion of its Purchase Price (as defined in the Asset Purchase Agreement) so that the Debtors receive cash under the Asset Purchase Agreement that is sufficient to repay the obligations under the SFCC Prepetition Loan Agreement (as defined in the order approving the DIP Credit Agreement (the "First Lien Loan") and the DIP Credit Facility in cash at Closing (as defined in the Asset Purchase Agreement)) and (b) additional amounts that may be assigned by the Second Lien Lender at the Auction as agreed to between the Buyer and the Second Lien Lender), 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 Bid.

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 Executory Contracts And Unexpired Leases; And (C) Granting Related Relief [Dkt. No. 190], withdrawing support for the Candy Cube SH Bid and requesting instead that the Court approve the Bid Procedures Motion with a new stalking horse bid from Bristol (the "Bristol SH Bid"). Following a hearing, on October 15, 2019, the Bankruptcy Court entered an order (the "Bid Procedures Order") approving the Bid Procedures Motion and the Bristol SH Bid.

Candy Cube subsequently submitted an overbid, which the Debtors determined to be a "Qualified Bid" for purposes of the Bid Procedures Order. Accordingly, on October 22, 2019, the Debtors held an auction. At the conclusion of the auction, the Debtors determined the winning bid was submitted by Bristol with a cash purchase price of $14,125,000, inclusive of Bristol's approved break-up fee of $500,000. On October 28, 2019, the Bankruptcy Court entered its *Order (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 Executory Contracts And Unexpired Leases, And (C) Granting Related Relief* [Dkt. No. 318] (the "Sale Order"), approving and authorizing the sale of substantially all of the Debtors' assets to Bristol. The Debtors and Bristol consummated the sale on October 31, 2019, whereupon Bristol changed its name or otherwise converted to Sugarfina USA LLC (the "Purchaser").

Pursuant to the Sale Order, the Debtors received cash equal to $13,625,000, plus a 20.0% minority membership interest in the Purchaser itself (the "Purchaser Membership Interest"). The Purchaser Membership Interest is subject to the following restrictions and rights, among other things:

- The Debtors are not entitled to a vote for Managers on the Purchaser's Board or for the Purchaser's officers, and the Debtors' vote is not required to effectuate major corporate decisions like a dissolution.
- The Debtors and the Purchaser have entered into a transition services agreement pursuant to which the Debtors have agreed to provide certain services to the Purchaser (including with respect to pursuing and recovering on claims and causes of action acquired by the Purchaser and managing customer and vendor relationships).
- Subject to certain limited exceptions, the Debtors may not transfer the Purchaser Membership Interest to a third party who is not already a Member of the Purchaser, without the permission of the Purchaser's Board. A transfer to a chapter 7 trustee or receiver is considered an "Involuntary Transfer," triggering a right of other Purchaser Members to purchase or redeem the Purchaser Membership Interest.
- From and after April 30, 2021, the majority Member of the Purchaser has the right to redeem or purchase the Purchaser Membership Interest, for a fair market value to be determined either through mutual agreement or appraisal.

3.05 Candy Cube's DIP Expense and Substantial Contribution Claims

Candy Cube has asserted two claims or rights to payment for reimbursement of fees and costs in connection with its role as a lender under the DIP Facility and as the Debtors' initial stalking horse. As discussed below, each of these claims are disputed and contested.

(a) DIP Expense Claim

Under the DIP Facility and the *Order Approving Stipulation In Furtherance Of: 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* [Dkt. No. 316], Candy Cube is entitled to reimbursement of reasonable fees and expenses that it incurred in its capacity as a lender under the DIP Facility (but not as a potential purchaser), up to a cap of $175,000.[8] The DIP Order required, however, that before such fees and expenses are paid, Candy Cube must provide the Debtors, the U.S. Trustee, Goldman Sachs, SFCC, and the Creditors' Committee with summary invoices supporting the compensability of such amounts and an opportunity to object to reasonableness. Upon objection by any party, the disputed amounts may be paid only upon resolution of the dispute or order by the Bankruptcy Court.

On October 29, 2019, Candy Cube submitted summary invoices with respect to a request for reimbursement of expenses relating to the DIP Facility totaling $173,904.18 (the "DIP Expense Claim"). The Creditors' Committee, the Debtors and Candy Cube have been involved in discussions in an attempt to resolve potential objections to the reasonableness of the DIP Expense Claim. The deadline to file objections to the DIP Expense Claim has not yet passed, such that the DIP Expense Claim has not yet been paid. As discussed below, the Plan anticipates that the allowed portion of the DIP Expense Claim will be paid to Candy Cube, and any residual will be shared between Goldman Sachs and Class 5 General Unsecured Claims.

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[8] Specifically, paragraph 8 of the DIP Order provides as follows:

> To the extent provided in and as limited by the DIP Agreement, the Debtors shall pay all reasonable prepetition and postpetition out of pocket costs and expenses of SFCC and Candy Cube incurred in their respective capacity as Lender (and not potential purchaser) in connection with the Cases and any Successor Case(s), including, without limitation, in connection with (a) the preparation, negotiation, execution and delivery of the DIP Documents, the Interim Order, and this Final Order, and the funding of all DIP Loans under the DIP Credit Facility, (b) the administration of the DIP Credit Facility and any amendment or waiver of any provision of the DIP Documents, the Interim Order and this Final Order, (c) the administration of the Cases and any Successor Case(s), and (d) the enforcement or protection of the Lender's rights and remedies under the DIP Documents, the Interim Order, and this Final Order; provided, however, that Candy Cube's fees and costs in its capacity as Lender shall be limited to $75,000 [which cap was subsequently increased to $175,000].

(b) Substantial Contribution Claim

Section 503(b)(3)(D) provides that an administrative expense may be allowed for the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by—(D) a creditor…in making a substantial contribution in a case under chapter 9 or 11 of this title." 11 U.S.C. § 503(b)(3)(D). In the Third Circuit, expenses incurred "from activities the applicant has pursued in protecting his or her own interests" do not give rise to a substantial contribution claim. *Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 944 (3d Cir. 1994). "Creditors are presumed to be acting in their own interests until they satisfy the court that their efforts have transcended self-protection." *Id.* Through its *Response Of Candy Cube Holdings, LLC Regarding: Order (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* [Dkt. No. 293], Candy Cube indicated it would assert a "substantial contribution" claim under section 503(b)(3)(D) (the "Candy Cube Substantial Contribution Claim"). Among other things, Candy Cube argued that it provided a substantial contribution to the Debtors' Cases because it negotiated with the Debtors' lenders in order to secure consent to the DIP Facility and the Candy Cube SH Bid (ultimately resulting in the SSA), and because the Candy Cube SH Bid may have pushed Bristol to increase the amounts it was willing to pay for the Debtors' assets.[9] Without deciding the merits of the Candy Cube Substantial Contribution Claim, the Court's Sale Order required the Debtors to segregate $500,000 from the sale proceeds for the potential payment of the Candy Cube Substantial Contribution Claim. While the Creditors' Committee, the Debtors and Candy Cube have been discussing potential resolutions, it is unclear whether a settlement will be reached. Failing a settlement, Candy Cube is expected to file a motion seeking payment of the Candy Cube Substantial Contribution Claim.

The Candy Cube Substantial Contribution Claim is contested, and it is unclear whether Candy Cube can ultimately carry its burden under Third Circuit requirements to establish allowance of the Claim—particularly because Candy Cube took affirmative steps to interfere with the Debtors' ability to consummate a sale to any other third party through, among other things, using its position as a DIP Facility lender to call an event of default and potentially force a foreclosure of the Debtors' assets before a sale could be consummated. As discussed below, the Plan anticipates that the allowed portion of the Candy Cube Substantial Contribution Claims will be paid to Candy Cube, and any residual will be shared between Goldman Sachs and Class 5 General Unsecured Claims.

3.06 Schedules, Statements of Financial Affairs and Claims Bar Dates

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[9] The Debtors are summarizing, as they understand them, the basic arguments in the Candy Cube Substantial Contribution Claim, but as of yet, no motion has been filed seeking approval of said Claim. The Debtors and Creditors' Committee reserve all rights with respect to any such motion Candy Cube elects to file.

On October 11, 2019, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs [Dkt. Nos. 249 through 254] (collectively and as amended, the "Schedules and Statements"). The Debtors amended their Schedules and Statements on December 20, 2019 [Dkt. Nos. 423 through 426]. In addition, on October 8, 2019, the Bankruptcy Court entered an order [Dkt. No. 228] setting November 8, 2019 as the deadline for creditors to file proofs of claim, and March 4, 2020 as the deadline for governmental units to file proofs of claim. A deadline has not been scheduled with respect to administrative expenses. The table below summarizes the Claims set forth either in the Schedules and Statements or in received proofs of claim.[10]

	Secured	Priority	General Unsecured
Statements and Schedules	$31,685,231.11	$842,221.96	$12,167,179.48
Received Proofs of Claim	$9,032,139.40	$432,243.75	$9,842,904.86
TOTALS:	$40,717,370.51	$1,274,465.71	$22,010,084.34

3.07 Additional Motions

On or since the Petition Date, the Debtors filed a number of motions and applications to retain professionals, to streamline the administration of the Cases, and to obtain other relief in the best interest of the Debtors, including the following:

- Debtors' Motion For Entry Of Interim And Final Orders (I) Authorizing Payment Of Certain Prepetition Employee Claims, Including Wages And Salaries, (II) Authorizing Payment Of Certain Employee Benefits And Confirming Right To Continue Employee Benefits On a Postpetition Basis, (III) Authorizing Payment Of Reimbursement To Employees For Prepetition Expenses, (IV) Authorizing Payment Of Withholding And Payroll-Related Taxes, (V) Authorizing Payment Of Prepetition Claims Owing To Administrators And Third Party Providers, And (VI) Allowing Banks To Honor Prepetition Checks And Fund Transfers For Authorized Payments [Dkt. No. 5]. The Bankruptcy Court entered a final order approving the foregoing Motion on September 30, 2019 [Dkt. No. 169].

- Debtors' Motion For Interim And Final Orders Authorizing: (I) Maintenance Of Existing Bank Accounts, (II) Continued Use Of Existing Cash Management System, And (III) Continued Use Of Business Forms Pursuant To 11 U.S.C. §§ 105, 345, 363, 364, 503, 1107 And 1108 Of The Bankruptcy Code [Dkt. No. 6]. The Bankruptcy

[10] The Debtors have not completed a thorough review of proofs of claim in these cases. As such, the table below reflects proofs of claim, as they were filed and without regard to potential objections or whether they are duplicative of amounts set forth in the Statements and Schedules.

Court entered a final order approving the foregoing Motion on September 24, 2019 [Dkt. No. 142].

- Debtors' Motion For An Interim And Final Order Authorizing Debtors To Honor And Continue Certain Customer Programs And Customer Obligations In The Ordinary Course Of Business And Granting Related Relief [Dkt. No. 10]. The Bankruptcy Court entered a final order approving the foregoing Motion on September 9, 2019 [Dkt. No. 47].

- Debtors' Motion For Entry Of Interim And Final Orders Authorizing Debtors To Pay Pre-Petition Amounts To Certain Critical Vendors [Dkt. No. 11]. The Bankruptcy Court entered a final order approving the foregoing Motion on September 24, 2019 [Dkt. No. 145].

- Debtors' Motion For Entry Of An Order (I) Authorizing Debtors To (A) Reject Certain Unexpired Leases Of Nonresidential Real Property Nunc Pro Tunc To The Petition Date And (B) Abandon Certain Personal Property In Connection Therewith And (II) Granting Related Relief And (III) For Entry Of An Order Establishing Procedures For The Rejection Of Executory Contracts And Unexpired Leases [Dkt. No. 24]. The Bankruptcy Court entered a final order approving the foregoing Motion on October 3, 2019 [Dkt. No. 199].

- Debtors' Omnibus Motion For Entry Of An Order Authorizing Debtors To (A) Reject Certain Unexpired Leases Of Nonresidential Real Property As Of The Vacate Date And (B) Abandon Certain Personal Property In Connection Therewith [Dkt. No. 123]. The Bankruptcy Court entered a final order approving the foregoing Motion on October 16, 2019 [Dkt. No. 269].

ARTICLE IV.
SUMMARY OF THE CHAPTER 11 PLAN

This section provides a summary of the structure and means for implementation of the Plan and the classification and treatment of Claims and Equity Interests under the Plan and is qualified in its entirety by reference to the Plan (as well as the Exhibits thereto and definitions therein).

The statements contained in this Disclosure Statement do not purport to be precise or complete statements of all the terms and provisions of the Plan or documents referred to therein, and reference is made to the Plan and to such documents for the full and complete statement of such terms and provisions.

The Plan itself and the documents referred to therein control the actual treatment of Claims against and Equity Interests in the Debtors under the Plan and will, upon the occurrence of the Effective Date, be binding upon all holders of Claims against and Equity Interests in the Debtors, the Debtors' Estates, the Reorganized Debtor, all parties receiving property under the Plan, and other parties in interest. In the event of any conflict, inconsistency, or discrepancy between this Disclosure Statement and the Plan, the Plan Supplement, and/or any other operative

document, the terms of the Plan, Plan Supplement, and/or such other operative document, as applicable, shall govern and control; provided that, in any event, the terms of the Plan shall govern and control over all other related documents.

4.01 Treatment of Unclassified Claims

In accordance with Bankruptcy Code section 1123(a)(1), Administrative Claims (including Professional Compensation Claims and Ordinary Course Liabilities) and Priority Tax Claims have not been classified and the respective treatment of such unclassified Claims is set forth in Article III of the Plan.

(a) DIP Claims

Candy Cube DIP Expense Claim. As discussed above in section 3.05(b), the Debtors have reserved $175,000 for the DIP Expense Claim, but the amount and extent of that Claim is disputed. On the Effective Date or as soon as reasonably practicable thereafter, Candy Cube will receive the amount of such DIP Expense Claim that is Allowed (either by the Bankruptcy Court or by stipulation). Any remaining portion of the reserve (the "DIP Expense Residual") will be distributed as set forth in Section 4.01(i), below.

(b) Candy Cube Substantial Contribution Claim

As discussed above in section 3.05(b), the Debtors have reserved $500,000 for the Candy Cube Substantial Contribution Claim, but the amount and extent of that Claim is disputed. Upon the Effective Date or as soon as reasonably practicable thereafter, Candy Cube will receive cash equal to the Allowed portion of the Candy Cube Substantial Contribution Claim, and any remaining portion of the reserve (the "Substantial Contribution Residual") will be distributed as set forth in Section (i), below.

(c) Administrative Claims

General: Except with regards to the Ordinary Course Liabilities, unless otherwise agreed to by the parties, each holder of an Allowed Administrative Claim shall receive Cash equal to the unpaid portion of such Allowed Administrative Claim within ten (10) days after the later of (a) the Effective Date, (b) the Allowance Date, or (c) such other date as is mutually agreed upon by the Reorganized Debtor and the holder of such Claim.

Payment of Statutory Fees: All fees payable pursuant to 28 U.S.C. § 1930 shall be paid in Cash no later than the Effective Date. Post-petition U.S. Trustee fees shall be paid and post-confirmation reports shall be filed as required by 28 U.S.C. § 1930 until the Cases are closed, converted or dismissed. After confirmation, the Reorganized Debtor will pay post-confirmation quarterly fees to the U.S. Trustee until a final decree is entered or the case is converted or dismissed as provided in 28 U.S.C. § 1930(a)(6).

(d) Administrative and Priority Claim Reserve

Upon the Effective Date, the Debtors shall reserve cash, in an amount to be set forth in an Approved Budget, for payment of all Administrative Claims other than the Candy Cube

Substantial Contribution Claim (which shall be separately reserved), Priority Tax Claims, Ordinary Course Liability Claims, and Other Priority Claims (the "Administrative and Priority Claim Reserve") and shall be administered and otherwise maintained by the Reorganized Debtor. Any amounts remaining in the Administrative and Priority Claim Reserve following payment or resolution of all Claims referenced in this Section (the "Administrative and Priority Claim Residual") shall be distributed as set forth in Section 3.09 of the Plan and as discussed in Section (i), below.

(e) General Bar Date for Administrative Claims

Except as otherwise provided in the Plan, requests for payment of Administrative Claims must be included within an application (setting forth the amount of, and basis for, such Administrative Claims, together with documentary evidence) and Filed and served on respective counsel for the Debtors, Goldman Sachs, and the Reorganized Debtor, no later than the Administrative Claim Bar Date or by such earlier deadline governing a particular Administrative Claim contained in an order of the Bankruptcy Court entered before the Effective Date. The Debtors will serve all holders of Claims or Equity Interests with a notice of the Administrative Claim Bar Date upon confirmation of the Plan. Holders of Administrative Claims that are required to File a request for payment of such Claims and that do not File such requests by the applicable bar date shall be forever barred from asserting such Claims against the Debtors or any of their property, absent order of the Bankruptcy Court to the contrary.

(f) Professional Compensation

Professionals: All professionals or other entities requesting compensation or reimbursement of expenses pursuant to sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code for services rendered before the Effective Date (excluding, without limitation, any compensation or commission requested by any professional or any other entity for making a substantial contribution in the Chapter 11 Case, which requests must be filed by the Administrative Claims Bar Date) shall File and serve on the Reorganized Debtor, the U.S. Trustee and the Post-Confirmation Service List an application for final allowance of compensation and reimbursement of expenses no later than forty-five (45) days after the Effective Date. Objections to applications of professionals for compensation or reimbursement of expenses must be filed and served on the Reorganized Debtor, the U.S. Trustee and the Post-Confirmation Service List and the professionals to whose application the objections are addressed no later than twenty-one (21) days after the date the application is filed, or the Bankruptcy Court may enter an order authorizing the fees without a hearing.

Any professional fees and reimbursements or expenses incurred by the Reorganized Debtor subsequent to the Effective Date may be paid by the Reorganized Debtor without application to the Bankruptcy Court.

Any fees or expenses of any professional retained by the Debtors that exceed the budgeted amounts set forth in the Approved Budget shall be waived and not be Allowed as an Administrative Claim.

(g) Priority Tax Claims

Pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, unless otherwise agreed by the holder of a Priority Tax Claim and the Debtors, each holder of an Allowed Priority Tax Claim shall receive, in full satisfaction of its Allowed Priority Tax Claim that is due and payable on or before the Effective Date, on account of and in full and complete settlement and release of such Claim, (i) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; provided, however, that all Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid from the Administrative and Priority Claim Reserve as they become due; provided, further, that, in the event an Allowed Priority Tax Claim is also a Secured Tax Claim, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full.

Notwithstanding anything contained in the Plan to the contrary, any Claim on account of any penalty arising with respect to or in connection with an Allowed Priority Tax Claim that does not compensate the Holder for actual pecuniary loss shall be treated as a General Unsecured Claim, and the Holder (other than as the Holder of a General Unsecured Claim) may not assess or attempt to collect such penalty from the Debtors, the Reorganized Debtor, or their respective property.

(h) Ordinary Course Liabilities

All Ordinary Course Liabilities are deemed to be Allowed Claims to the extent set forth in the Approved Budget. Holders of Administrative Claims on account of Ordinary Course Liabilities are not required to file or serve any request for payment of the Ordinary Course Liability. The Debtors shall continue to pay each Ordinary Course Liability accrued prior to the Effective Date, pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability, and the Approved Budget. To the extent that a holder of an Administrative Claim, on account of Ordinary Course Liability which accrued prior to the Effective Date, did not submit an invoice for the Ordinary Course Liability to the Debtors prior to the Effective Date, the holder must submit the invoice to the Reorganized Debtor in the ordinary course of business pursuant to the terms and conditions of the particular transaction giving rise to the Ordinary Course Liability. The Reorganized Debtor shall remit payment on the Ordinary Course Liability within fifteen (15) days of receipt of the invoice. The Reorganized Debtor shall pay each Ordinary Course Liability accrued after the Effective Date, pursuant to the payment terms and conditions of the particular transaction giving rise to the Ordinary Course Liability.

(i) Distribution of DIP and Administrative Claims Residuals

On the Effective Date or as soon as reasonably practicable thereafter, the DIP Expense Residual and the Substantial Contribution Residual (collectively, the "Claim Residuals"), will each be combined and distributed as follows: (i) the first $150,000 will be contributed to the Distribution Reserve for the benefit of Allowed General Unsecured Creditors; and (ii) any amounts remaining after payment of the foregoing will be distributed 50% to Goldman Sachs and 50% to the Distribution Reserve for the benefit of Allowed General Unsecured Creditors. In addition, the Administrative and Priority Claim Residual will be allocated 50% to Goldman Sachs and 50% to the Distribution Reserve.

4.02 Classification and Treatment of Claims and Equity Interests

Pursuant to Bankruptcy Code section 1122, set forth below is a designation of Classes or Claims and Equity Interests. A Claim or Equity Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim or Equity Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim is an Allowed Claim in that Class and such Claim has not been paid, released, or otherwise settled prior to the Effective Date.

(a) Class 1: Serene Facility Claims

On the Effective Date or as soon as soon as reasonably practicable thereafter, on account of and in full and complete settlement, release and discharge of, and in exchange for, the Serene Facility Claims, each holder of the Serene Facility Claims will receive payment in full on account of such Claims, in cash. Class 1 is Unimpaired and therefore holders of Class 1 Claims are conclusively presumed to have accepted the Plan.

(b) Class 2: Goldman Sachs Secured Facility Claims

In full and final satisfaction of the Goldman Sachs Secured Facility Claims, Goldman Sachs shall receive a portion of the Claim Residuals (as set forth in Section 4.01(i)), plus each of the following on the Effective Date or as soon thereafter as reasonably practicable: (1) the Goldman Sachs Cash Consideration, (2) its portion of the Administrative and Priority Claim Residual, as set forth in Section 4.01(i), above, and (3) the New Equity. Class 2 is Impaired and therefore Goldman Sachs is entitled to vote on the Plan.

(c) Class 3: Other Secured Claims

Each holder of an Allowed Other Secured Claim against the Debtors shall receive, on the Effective Date, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Other Secured Claim, either Cash equal to the full unpaid amount of such Allowed Other Secured Claim, or such other treatment as the Debtors and the holder of such Allowed Other Secured Claim shall have agreed. Class 3 is Unimpaired and therefore holders of Class 3 Claims are conclusively presumed to have accepted the Plan.

(d) Class 4: Other Priority Claims

Each holder of an Allowed Other Priority Claim against the Debtors shall receive, on the Effective Date, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Other Priority Claim, either Cash equal to the full unpaid amount of such Allowed Other Priority Claim, or such other treatment as the Debtors and the holder of such Allowed Other Priority Claim shall have agreed. Class 4 is Unimpaired and therefore holders of Class 4 Claims are conclusively presumed to have accepted the Plan.

(e) Class 5: General Unsecured Claims

Each Holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, and release of, and in exchange for, such General Unsecured Claim, its Pro Rata Share of the Distribution Assets, up to the Allowed amount of said Holder's General Unsecured Claim; provided, however, that pursuant to the Goldman Sachs Settlement, on the Effective Date the Goldman Sachs Facility Deficiency Claims will be subordinated to all other Allowed General Unsecured Claims and, unless until all other Allowed General Unsecured Claims are paid in full, any Goldman Sachs Facility Claims shall not receive a distribution or be used in the calculation of the Pro Rata Share paid to other General Unsecured Creditors.

(f) Class 6: Intercompany Claims

Pursuant to the Goldman Sachs Settlement, Intercompany Claims shall be cancelled and no distribution shall be made on account of such Claims. Class 6 is deemed to reject the Plan.

(g) Class 7: Equity Interests

No distributions will be made to holders of Allowed Equity Interests. On the Effective Date, all Allowed Equity Interests shall be deemed automatically cancelled, released, and extinguished without further action by the Debtors or the Reorganized Debtor, and the obligation of the Debtors and the Reorganized Debtor thereunder shall be discharged. Class 7 is deemed to reject the Plan.

4.03 Acceptance or Rejection of the Plan

(a) Impaired Classes (Classes 2 and 5) Entitled to Vote

Holders of Claims in Classes 2 and 5 are impaired and each Class is entitled to vote as a Class to accept or reject the Plan. Accordingly, only the Holders of Claims in Classes 2 and 5 shall be solicited with respect to the Plan.

In accordance with Bankruptcy Code section 1126(c), and except as provided in Bankruptcy Code section 1126(e), an impaired Class of Claims shall have accepted the Plan if the Plan is accepted by the holders of at least two-thirds (⅔) in dollar amount and more than one-half (½) in number of the Allowed Claims in such Class that have timely and properly voted to accept or reject the Plan.

(b) Presumed Acceptances by Classes 1, 3, and 4

Classes 1, 3, and 4 are unimpaired under the Plan. Under Bankruptcy Code section 1126(f), holders of such unimpaired Claims are conclusively presumed to have accepted the Plan, and the votes of such unimpaired Claim Holders shall not be solicited.

(c) Deemed Rejection by Classes 6 and 7

Classes 6 and 7 are impaired under the Plan and are deemed to reject the Plan. Therefore, Interest Holders in Classes 6 and 7 are not entitled to vote to accept or reject the Plan.

4.04 Means for Implementation of the Plan

(a) Continued Corporate Existence

On the Effective Date or as soon as reasonably practicable thereafter, Debtors SGR Winddown International, LLC and SGR Canada Winddown Legacy, Ltd. will each be deemed dissolved and no longer in existence, and the Organizational Documents for SGR Winddown, Inc. shall be amended consistent with the Restated Organizational Documents. The Restated Organizational Documents shall be filed with the Plan Supplement. The Reorganized Debtor will continue to exist after the Effective Date as a corporate entity, with all of the powers of a corporation under applicable law in the jurisdiction in which the Debtors is incorporated.

(b) Board of Directors

Goldman Sachs, as the owner of the New Equity, may nominate and elect new member(s) for the board of directors of the Reorganized Debtor in accordance with the Restated Organizational Documents. The identity of such new member(s) shall be disclosed in the Plan Supplement prior to the Plan Supplement Deadline.

(c) Equity

Cancellation of Equity Interests. On the Effective Date, all existing Equity Interests of Debtors shall be retired, cancelled, extinguished and/or discharged in accordance with the terms of the Plan. Except as otherwise provided in the Plan or the Plan Supplement, on the Effective Date: (1) the obligations of the Debtors under any certificate, share, note, bond, indenture, purchase right, option, warrant, or other instrument or document, directly or indirectly, evidencing or creating any indebtedness or obligation of or ownership interest in the Debtors giving rise to any Claim or Equity Interest shall be cancelled as to the Debtors and the Reorganized Debtor shall not have any continuing obligations thereunder, and (2) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificate or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, purchase rights, options, warrants or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be released and discharged.

Issuance of New Equity. On the Effective Date, the New Equity of the Reorganized Debtor shall be issued. The New Equity shall be free and clear of all Liens, Claims, Interests,

and encumbrances of any kind, except as otherwise provided in the Plan. All the shares of the New Equity issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assignable. On the Effective Date, none of the New Equity will be listed on a national securities exchange. The Reorganized Debtor may take all necessary actions, if applicable, after the Effective Date to suspend any requirement to (i) be a reporting company under the Securities Exchange Act, and (ii) file reports with the Securities and Exchange Commission or any other entity or party.

(d) Goldman Sachs Settlement

The Plan constitutes a good faith compromise and settlement of claims and controversies by and between the Debtors, the Creditors' Committee, and Goldman Sachs (the "Goldman Sachs Settlement"), resolved pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, relating to (i) the Debtors' enterprise valuation and/or the amount and extent of distributable value available for creditors, (ii) the amount and allowance of Claims relating to the Goldman Sachs Facility, (iii) amounts that should be distributed to or otherwise made available to Class 2 Goldman Sachs Facility Claims and Class 5 General Unsecured Claims, and (iv) any potential claims or Causes of Action relating to any of the foregoing Claims or Classes.

(i) Valuation.

Pursuant to section 1129(b) of the Bankruptcy Code, a Plan may be confirmed without the consent of all Classes if, among other things, the Plan is "fair and equitable" and does not "unfairly discriminate" with respect to any dissenting class. In determining whether a Plan satisfies these requirements, courts are typically required to make determinations regarding valuation of the value of any secured collateral.[11] Litigation regarding valuation is often expensive and not in the best interests of creditors; as a result, courts have approved plans that are instead based on a settlement as to the issue of valuation.[12] In this case, there are numerous illiquid assets remaining in the Estates, including the Purchaser Membership Interest, Judgments that the Debtors have against third parties, and potential tax benefits in the form of net operating

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[11] *See, e.g., Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988) (noting the absolute priority rule "provides that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property [under a reorganization] plan"); *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 441-42 (1999) ("As to a dissenting class of impaired unsecured creditors, such a plan may be found to be 'fair and equitable' only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if 'the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property,' § 1129(b)(2)(B)(ii). That latter condition is the core of what is known as the 'absolute priority rule.'").

[12] *See, e.g., In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (determining whether a settlement should be approved by considering "(1) the probability of success in ligation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.")

losses (the "NOLs"). The Debtors believe that each of these assets are subject to Goldman Sachs' perfected liens and that it is highly likely the assets when combined with remaining distributable Cash held by the Debtors would be less than the total amounts owed to Goldman Sachs.[13] The Debtors also believe that litigation with Goldman Sachs or others regarding the valuation of these illiquid assets would be costly and, under the circumstances, imprudent. As such, the Plan reflects a settlement with Goldman Sachs as to the total value of the Debtors' assets and Goldman Sachs' liens.

(ii) Allowance of Goldman Sachs Claims and Resulting Distributable Amounts.

All or substantially all of the Debtors' assets, including Cash and Non-Cash Assets, are subject to Goldman Sachs' liens. As such, without Goldman Sachs' agreement or a successful challenge to Goldman Sachs' liens, the Debtors would likely not have funds available to pay for administrative expenses (i.e., the Debtors would even lack the funds to pursue confirmation of a plan) or to return anything to unsecured creditors. Challenging Goldman Sachs' liens would require expensive and lengthy litigation, likely centering on equitable subordination. Under section 510(c)(1) of the Bankruptcy Code, a Bankruptcy Court may subordinate a creditor's liens and security interests to more junior creditors upon a determination that the creditor acted inequitably.[14] Courts consider three factors in making this determination: (1) the claimant must have engaged in some type of inequitable conduct; (2) the misconduct must have resulted in injury to the creditors of the bankrupt or conferred an unfair advantage onto the claimant; and (3) the equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Code.[15] Unless a creditor is deemed to be a fiduciary or insider, establishing inequitable conduct will require evidence of "egregious conduct."[16] The Debtors have considered

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[13] As discussed in section 3.04, the Purchaser Membership Interest does not entitle the Debtors to vote for Managers on the Purchaser's Board or for the Purchaser's officers and, subject to certain limited exceptions, may not be transferred without the consent of the Purchaser's Board. From and after April 30, 2021, the Purchaser may redeem the Purchaser Membership Interest for a price equal to the fair market value of such interest at the time of redemption, as determined by a third party appraisal (which is difficult to estimate currently because the value will depend on Purchaser's future operating results, among other things). Under these circumstances, the Debtors believe that any current valuation of the Purchaser Membership Interest would be heavily discounted. Moreover, under applicable law, the ability to use NOLs is subject to certain limitations and NOLs are not transferable (other than in connection with a sale of the loss corporation, which may trigger additional limitations on their use). As a result, any valuation of the Debtors' NOLs would be difficult and speculative.

[14] *See In re Burden*, 917 F.2d 115, 117 (3d Cir. 1990) ("In the exercise of its equitable jurisdiction the bankruptcy court has the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate.").

[15] *In re Mobile Steel Co.*, 563 F.2d 692, 701 (5th Cir. 1977).

[16] *In re Mid-American Waste Systems, Inc.*, 284 B.R. 53, 70 (Bankr. D. Del. 2002).

equitable subordination claims in these Cases, and believe it would be difficult to establish that Goldman Sachs should be treated as an insider or acted inequitably.

As part of the Goldman Sachs Settlement and as a settlement in part to any equitable subordination claims, Goldman Sachs has agreed and consented to (1) the use of its collateral for payment of administrative expenses that are consistent with the Approved Budget, (2) distributions contemplated hereunder for Class 5 General Unsecured Creditors, and (3) subordination of the Goldman Sachs Deficiency Claim, in order to avoid dilution of the amounts that are available for Class 5 General Unsecured Claims.

Under Bankruptcy Rule 9019, a bankruptcy court can approve a compromise or settlement if it is in the best interests of the debtor's estate. In evaluating a settlement, the bankruptcy court must exercise its discretion and make an independent determination that the settlement is fair and equitable.[17] To evaluate whether a settlement is fair and equitable, courts in the Third Circuit have considered the following factors: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.[18] The Debtors believe that the Goldman Sachs Settlement more than satisfies these requirements. As discussed above, obtaining a better result through litigation with Goldman Sachs would require either that the Debtors successfully subordinate Goldman Sachs' liens, or that they establish a valuation for distributable value that exceeds the amount of Goldman Sachs' claims. Litigation involving either of these issues would be costly, time consuming, and complex, requiring significant discovery and development of contested factual issues. And since administrative expenses (including attorneys' fees) would require Goldman Sachs' consent to be paid if the litigation is not successful, it is unlikely that the Debtors could even locate sophisticated counsel to pursue these claims to their conclusion. Moreover, as discussed above, the Debtors have assessed the merits of these claims and do not believe that they have a high probability of success. In light of the foregoing, the Debtors believe that the Goldman Sachs Settlement is fair and equitable and should be approved as part of confirmation.

(e) Waiver of Subordination Payment Rights

Many of the Debtors' other junior creditors (including Resnick and the Convertible Noteholders) executed subordination and intercreditor agreements with Goldman Sachs (collectively, the "Subordination Agreements"). Among other things, the Subordination Agreements required that any amounts paid to or received by the creditors at issue must be provided to Goldman Sachs instead (the "Subordination Payment Rights"). As part of the Plan, Goldman Sachs has agreed not to enforce the Subordination Payment Rights with respect to any Claims that are voted in favor of confirmation of the Plan and that do not opt out of any releases provided under the Plan, such that Goldman Sachs' recovery on account of the Goldman Sachs Secured Facility Claims will be the sole recovery available to Goldman Sachs, and any

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[17] *In re Nutraquest, Inc.*, 434 F.3d 639 (3d Cir. 2005).

[18] *See, e.g.*, *Martin*, 91 F.3d at 393.

distributions to the creditors who previously executed the Subordination Agreements will not go to Goldman Sachs.[19]

(f) Distribution Reserve

On the Effective Date, the Debtors shall establish an interest-bearing, segregated bank account with a banking institution approved by the U.S. Trustee (the "Distribution Reserve"). The Reorganized Debtor shall remit proceeds of the Distribution Assets to the Distribution Reserve, and shall use such Reserve for purposes of making distributions to Allowed General Unsecured Claims consistent with the terms of the Plan.

The Distribution Reserve will receive each of the following (the "Distribution Assets"): (a) $100,000 in Cash; (b) the first $150,000 of the DIP Expenses Residual and the Substantial Contribution Residual (collectively, the "Claim Residuals") and 50% of the remaining portion; (c) 50% of Administrative and Priority Claim Residual; and (c) a portion of certain Non-Cash Assets as follows (provided that the aggregate amount of such payments will not exceed the aggregate amount of Allowed Class 5 General Unsecured Claims):

Non-Cash Assets. 50% of all Cash proceeds received by the Reorganized Debtor on account of certain illiquid assets, including Preserved Causes of Action and Judgments.

Purchaser Membership Interest. As discussed further herein, as part of the Debtors' recent sale, the Debtors received a membership interest in the purchaser (as defined below, the "Purchaser Membership Interest"). Under the Purchaser's applicable organization documents, the Purchaser has the right to repurchase the Purchaser Membership Interest for fair market value. With respect to Purchaser Membership Interest Consideration, the Reorganized Debtor will fund to the Distribution Reserve for the benefit of Allowed General Unsecured Claims as follows:

a) For amounts received within six (6) months after the Effective Date, 100% of all amounts that are in excess of $12,000,000 minus the Cash amounts received by Goldman Sachs under the Plan, minus any amounts that Goldman Sachs funds or pays to support the Reorganized Debtor's operations after the Effective Date.

b) For amounts received more than six (6) months after the Effective Date, 25% of all amounts that are in excess of the sum of $5,000,000 and any amounts that Goldman Sachs funds or pays to support the Reorganized Debtor's operations after the Effective Date; provided, however, that in the event the total Cash or fair market value of other consideration paid or payable to Goldman Sachs equals or exceeds $7,000,000, plus any amounts that Goldman Sachs funds or pays to support the

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[19] The Subordination Agreements also provided for Goldman Sachs' right and authority to vote on behalf of the subordinated claims with respect to a plan. The Debtors understand that Goldman Sachs continues to reserve those rights and intends to exercise them in connection with confirmation of the Plan, if necessary.

Reorganized Debtor's operations after the Effective Date, then foregoing amount shall be 100% of all excess Purchaser Membership Interest Consideration.

(g) Causes of Action

Unless any Causes of Action are or were expressly waived, relinquished, transferred, sold, assigned, released, compromised, or settled in the Plan or prior to the Effective Date, (i) all Released Causes of Action shall be deemed waived, discharged, forgiven, and forever compromised, (ii) the Preserved Causes of Action shall be vested in and retained by the Reorganized Debtor. Following the Effective Date, except as otherwise expressly provided herein, the Reorganized Debtor may assert, compromise or dispose of the Preserved Causes of Action without further notice to Creditors or Interest Holders or authorization of the Bankruptcy Court.

(h) Release of Liens

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Liens against the property of any Estate will be fully released, and all of the right, title and interest of any holder of such Liens, including any rights to any collateral thereunder, shall attach to and be enforceable solely against any net proceeds of sales of such assets. For the avoidance of doubt, all mortgages, deeds of trust, Liens, pledges or other security interests against any property of the Estates shall be fully released on the Effective Date without any further action of any party, including, but not limited to, further order of the Bankruptcy Court or filing updated schedules or statements typically filed pursuant to the Uniform Commercial Code.

(i) Vesting and Sale or Other Disposition of Assets; Representative of the Estates

Except as otherwise provided in this Plan, on the Effective Date, all property of the Debtors' Estates, shall vest in the Reorganized Debtor, in each case, free and clear of all Claims, liens, charges, other encumbrances, Interests or other interests. On and after the Effective Date, the Reorganized Debtor may use, acquire and dispose of property and compromise or settle any claims without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules, other than those restrictions imposed by the Plan or the Confirmation Order. The Reorganized Debtor, on and after the Effective Date, may conduct any sales or liquidations of assets on any terms it deems appropriate, without further order of the Bankruptcy Court, except as otherwise provided in the Plan or the Confirmation Order.

(j) Records

For a period of twelve (12) months following the Effective Date (the "Retention Period"), the Reorganized Debtor shall preserve and maintain its documents and records in the ordinary course of business and according to practices and terms that it deems reasonable and appropriate. Following the Retention Period, the Reorganized Debtor may, from time to time upon ten (10) days' notice to the Document Destruction Notice Parties, and without approval of the Bankruptcy Court, destroy any documents and records of the Debtors. The notice shall provide a reasonable description of the documents and records proposed to be destroyed. In the event a

Document Destruction Notice Party objects to the destruction, it shall provide the Reorganized Debtor with a written agreement and assurance, each of which is reasonably acceptable to the Reorganized Debtor, providing for the reimbursement and payment of all costs and expenses associated with the continued maintenance of such documents and records by the Reorganized Debtor. Such costs and expenses shall include, but not be limited to, payroll related expenses, third party fees and expenses, storage device costs, copying fees, the fees and expenses of counsel to address any subpoenas or document production demands, and, if such extended maintenance precludes entry of the final decree discussed in Section 5.15, of the Plan, any fees (including U.S. Trustee fees) associated with such delay.

(k) Insurance Policies

All Insurance Policies shall remain in full force and effect according to their terms and the coverage obligations of the insurers and third party administrators under such Insurance Policies shall continue following the Effective Date (including any obligations to pay, defend and process insured claims).

(l) Dissolution of Creditors' Committee

Following the Effective Date, the Creditors' Committee shall continue in existence and have standing and capacity to (i) prepare and prosecute applications for the payment of fees and reimbursement of expenses incurred by the Creditors' Committee or its respective Professionals, and (ii) pursue or otherwise address liquidation of the Candy Cube Liquidated DIP Expenses and the Candy Cube Liquidated Substantial Contribution Claim, to the extent such Expenses or Claim are not liquidated through a Final Order upon the Effective Date. Following the completion of the foregoing, the Creditors' Committee shall be dissolved and the members of the Creditors' Committee shall be released and discharged from any further authority, duties, responsibilities, and obligations related to, or arising from, the Cases.

4.05 Treatment of Executory Contracts and Unexpired Leases

(a) Assumption of Executory Contract(s)

On the Effective Date, all Executory Contracts identified on the Schedule of Assumed Contracts and Unexpired Leases, to be filed with the Plan Supplement, shall be deemed assumed by the Reorganized Debtor. The Debtors may amend the Schedule of Assumed Contracts and Unexpired Leases at any time prior to the Effective Date. Entry of the Confirmation Order shall constitute approval of the assumption of such Executory Contracts under sections 365 and 1123 of the Bankruptcy Code.

(b) Rejection of Executory Contracts and Unexpired Leases

Except for any Executory Contracts or Unexpired Leases of the Debtors: (i) that previously were assumed or rejected by an order of the Bankruptcy Court, pursuant to section 365 of the Bankruptcy Code; (ii) as to which a motion for approval of the assumption or rejection of such contract or lease has been filed and served prior to, and remains pending as of, Confirmation; (iii) that were previously assumed and assigned to the Purchaser; or (iv) that are listed on the Schedule of Assumed Contracts and Unexpired Leases, each Executory Contract

and Unexpired Lease entered into by the Debtors prior to the Petition Date that has not previously expired or terminated pursuant to its own terms shall be deemed rejected pursuant to section 365 of the Bankruptcy Code as of the Effective Date. The Confirmation Order shall constitute an order of the Bankruptcy Court approving such rejection, pursuant to section 365 of the Bankruptcy Code, as of the Effective Date. Nothing in the Plan is intended to affect the validity of contracts and leases entered into by the Debtors on or after the Petition Date, or the rights of the Debtors thereunder, which shall remain in full force and effect after the Effective Date in accordance with their terms. The Insurance Policies shall not be considered Executory Contracts for purposes of subsection (a), above. As discussed in section 5.12 of the Plan, the Insurance Policies shall remain in full force and effect following the Effective Date.

(c) Bar Date for Rejection Damages

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan or otherwise gives rise to a Claim by the other party or parties to such contract or lease, such Claim shall be forever barred and shall not be enforceable against the Debtors, Estates, the Trusts, or the Reorganized Debtor, unless a Proof of Claim is filed with the Bankruptcy Court by no later than 30 days after the Effective Date.

(d) Pre-Existing Obligations to the Debtors Under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of pre-existing obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. Notwithstanding any applicable non-bankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnifications or continued maintenance obligations on goods or services previously purchased by the contracting Debtors from counterparties to rejected Executory Contracts or Unexpired Leases.

4.06 Provisions Governing Resolution Of Claims And Distributions Of Property Under The Plan

(a) Claim Objections

(i) Right to Object

Notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, except insofar as a Claim is Allowed under the Plan on and after the Effective Date, the Reorganized Debtor will have the authority, but not the obligation, to do any of the following with respect to any Claims or Interests: (1) file, withdraw or litigate to judgment objections to and requests for estimation of Claims; (2) settle or compromise any Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; and (3) administer and adjust the Claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court. The Reorganized Debtor shall succeed to any pending objections to Claims filed by the Debtors prior to the Effective Date, and shall have and retain any and all rights and defenses the Debtors had immediately prior to the Effective Date with respect to any Disputed Claim.

(ii) Objection Procedures

Objections to Claims must be filed with the Bankruptcy Court, and a copy of the objection must be served on the subject Creditor before the expiration of the Claim Objection Deadline; otherwise such Claims shall be deemed Allowed in accordance with section 502 of the Bankruptcy Code. The objection shall notify the Creditor of the deadline for responding to such objection. Pursuant to section 502(c) of the Bankruptcy Code, the Reorganized Debtor may request estimation or liquidation of any Disputed Claim that is contingent or unliquidated or any Disputed Claim arising from a right to an equitable remedy or breach of performance.

(b) Distribution Provisions

(i) The Reorganized Debtor shall be responsible for making distributions required to be made under the Plan.

(ii) No Liability. The Reorganized Debtor shall only be required to act and make distributions in accordance with the terms of the Plan. Except on account of gross negligence, fraud, illegality or willful misconduct, the Reorganized Debtor shall have no (i) liability to any party for actions taken in accordance with the Plan or in reasonable reliance upon information provided to it in accordance with the Plan, or (ii) obligation or liability for distributions under the Plan to any party who does not hold a Claim against the Debtors as of the Distribution Record Date or any other date on which a distribution is made or who does not otherwise comply with the terms of the Plan.

(iii) Distributions on Account of Disputed Claims. Except as otherwise provided in a Final Order or as agreed by the relevant parties, distributions on account of Disputed Claims, if any, that become Allowed, shall be made by the Reorganized Debtor at such periodic intervals as the Reorganized Debtor determines to be reasonably prudent.

(iv) No Distributions Pending Allowance. Notwithstanding anything herein to the contrary: (a) no distribution shall be made with respect to any Disputed Claim until such Claim becomes an Allowed Claim (as applicable), and (b) unless agreed otherwise by the Reorganized Debtor, no distribution shall be made to any Person that holds both an Allowed Claim and a Disputed Claim until such Person's Disputed Claims have been resolved by settlement or Final Order.

(v) Reserves. On and after the Effective Date, the Reorganized Debtor shall maintain in reserve such Cash from the applicable distributable assets as the Reorganized Debtor deems reasonably necessary to satisfy Disputed Claims relating to the Class at issue.

(vi) Distributions in Cash. Any required Cash payments to the Holders of Allowed Claims or Interests shall be made by the Reorganized Debtor: (a) in U.S. dollars by check, draft or warrant, drawn on a domestic bank, or by wire transfer from a domestic bank, and (b) by first-class mail (or by other equivalent or superior means as determined by the Reorganized Debtor).

(vii) Timing of Distributions. Except as specifically set forth in the Plan, the Reorganized Debtor may determine, in its discretion, the appropriate timing, amount, and cadence for distributions.

(viii) Unclaimed Distributions. Any entity which fails to claim any Cash within 90 days from the date upon which a distribution is first made to such entity shall forfeit all rights to any distribution under the Plan, and the Reorganized Debtor shall be authorized to cancel any distribution that is not timely claimed. Pursuant to section 347(b) of the Bankruptcy Code, upon forfeiture, such Cash (including interest thereon, if any) shall revert to the source of such distribution (i.e., the Reorganized Debtor or the Distribution Reserve) free of any restrictions under the Plan, the Bankruptcy Code or the Bankruptcy Rules. Upon forfeiture, the claim of any Creditor or Interest Holder with respect to such funds shall be irrevocably waived and forever barred against the Reorganized Debtor, notwithstanding any federal or state escheat laws to the contrary, and such Creditor or Interest Holder shall have no claim whatsoever against the any of the foregoing or to any Holder of a Claim to whom distributions are made.

(ix) Delivery of Distributions and Undeliverable Distributions to Holders of Claims

1) Address for Delivery of Distributions. Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be made to Holders of record as of the Distribution Record Date by the Reorganized Debtor, as set forth on the latest date of the following documents: (a) to the address of payment set forth on any of the Proofs of Claim Filed by such Holder or other representative identified therein (or at the last known addresses of such Holder if no Proof of Claim is Filed; (b) at the addresses set forth in any written notices of address changes delivered to the Debtors after the date of any related Proof of Claim and prior to the Effective Date; and (c) at the addresses reflected in the Schedules if no Proof of Claim has been Filed and the Debtors have not received a written notice of a change of address prior to the Effective Date.

2) Undeliverable Distributions. The Reorganized Debtor shall make one attempt to make the distributions contemplated in the Plan in accordance with the procedures set forth herein. The Reorganized Debtor in its sole discretion may, but shall have no obligation to, attempt to locate Holders of undeliverable distributions. Any distributions returned to the Reorganized Debtor as undeliverable or otherwise shall remain in the possession of the Reorganized Debtor, until such time as a distribution becomes deliverable, and no further distributions shall be made to such Holder unless such Holder notifies the Reorganized Debtor of its then current address. Any Holder of an Allowed Claim or Interest entitled to a

distribution of property under the Plan that does not assert a claim pursuant to the Plan for an undeliverable distribution, or notify the Reorganized Debtor of such Holder's then current address, within 30 days of such distribution shall have its claim for such undeliverable distribution irrevocably waived and shall be forever barred from asserting any such claim against the Debtors or their respective property, and such distribution shall be deemed unclaimed property under Section 7.02(h), above.

(x) Distribution Record Date. As of 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date, the transfer registers for Claims shall be closed. The Reorganized Debtor shall have no obligation to recognize the transfer or sale of any Claim that occurs after such time on the Distribution Record Date and shall be entitled for all purposes herein to recognize and make distributions only to those Holders who are Holders of Claims as of 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date. Except as otherwise provided in a Final Order of the Bankruptcy Court, the transferees of Claims that are transferred pursuant to Bankruptcy Rule 3001 on or prior to 5:00 p.m. (prevailing Eastern time) on the Distribution Record Date shall be treated as the Holders of such Claims for all purposes, notwithstanding that any period provided by Bankruptcy Rule 3001 for objecting to such transfer has not expired by the Distribution Record Date.

(xi) Defenses and Setoff. Nothing contained in the Plan shall constitute a waiver or release by the Reorganized Debtor of any right rights in respect of legal and equitable objections, defenses, setoffs, or recoupment. To the extent permitted by applicable law, the Reorganized Debtor may, but shall not be required to, set off or recoup against any Claim and the payments or other distributions to be made under the Plan in respect of such Claim, claims of any nature whatsoever that arose before the Petition Date that the Estates, or the Reorganized Debtor may have against the Holder of such Claim or Interest.

(xii) De Minimis Distributions. If any interim distribution under the Plan to the Holder of an Allowed Claim would be less than $20.00, the Reorganized Debtor may withhold such distribution until a final distribution is made to such Holder. If any final distribution under the Plan to the Holder of an Allowed Claim would be less than $20.00, the Reorganized Debtor may cancel such distribution. Any unclaimed distributions pursuant to this Section shall be treated as unclaimed property under Section 7.02(h) of the Plan.

4.07 Injunctions, Releases, and Discharge

(a) Discharge and Release

The Plan contains a discharge and release of the Debtors as follows:

To the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code, except as otherwise expressly provided by the Plan or the Confirmation Order, all distributions under the Plan will be in exchange for, and in complete satisfaction, settlement, discharge, and release of, all Claims and causes of action, whether known or unknown, including any interest accrued on such Claims from and after the Petition Date, against, liabilities of, Liens on, obligations of, rights against, and Equity Interests in, the Debtors or any of their assets or properties, and regardless of whether any property will have been distributed or retained pursuant to the Plan on account of such Claims or Equity Interests. Except as otherwise expressly provided by the Plan or the Confirmation Order, upon the Effective Date, the Debtors and their Estates will be deemed discharged and released under and to the fullest extent provided under section 1141(d)(1)(A) and other applicable provisions of the Bankruptcy Code from any and all Claims and Equity Interests of any kind or nature whatsoever, including, but not limited to, demands and liabilities that arose before the Confirmation Date, and all debts of the kind specified in section 502(g), 502(h), or 502(i) of the Bankruptcy Code. The Confirmation Order shall be a judicial determination of the discharge of all Claims against, and Equity Interests in, the Debtors, subject to the occurrence of the Effective Date.

As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties in facilitating the administration of the Cases and other actions contemplated by the Plan and the other contracts, instruments, releases, agreements or documents executed and delivered in connection with the Plan, the Released Parties are deemed forever released and discharged by the Debtors and Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors or the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, fixed or contingent, matured or unmatured, existing or hereinafter arising, in law, equity or otherwise, that the Debtors, the Estates or their Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest or other entity, based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtors, the Cases, the Plan, the Disclosure Statement, or related agreements, instruments or other documents, including any rights or remedies under section 506 of the Bankruptcy Code, other than Claims or liabilities to the extent arising out of or relating to any act or omission of a Released Party that constitutes gross negligence, actual fraud or willful misconduct, as determined by a Final Order.

(b) Release by Third Parties

The Plan contains a release of third parties as follows:

To the extent allowed by applicable law, on, and as of, the Effective Date and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Released

Parties shall be forever released from any and all claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, and liabilities throughout the world under any law or court ruling through the Effective Date (including all claims based on or arising out of facts or circumstances that existed as of or prior to the Effective Date, including claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise) which the Debtors, their Estates, the Reorganized Debtor, Creditors or other persons receiving or who are entitled to receive distributions under the Plan may have against any of them in any way related to the Cases, the Debtors (or their predecessors), or any of their operations or businesses; provided however that the foregoing release is granted only by the (a) Creditors who are unimpaired, (b) Creditors who returned a Ballot and did not check the opt-out box on the Ballot, and (c) Creditors or potential Creditors (including those who were listed on the Schedules of Assets and Liabilities) who were sent a solicitation package but did not vote and did not return a Ballot with the opt-out box checked; provided further, however that the release provided in this Section shall not apply to any Creditor in category (c) above if the solicitation package was returned to the Debtors as undelivered, and that such Creditor did not otherwise file a Ballot; and provided further, however, that the release provided in this Section shall not extend to any claims by any Governmental Unit with respect to criminal liability under applicable law, willful misconduct or bad faith under applicable law, or ultra vires acts under applicable law.

(c) Exculpation and Limitation of Liability

The Plan contains an exculpation in favor of the Debtors and their representatives and professionals with respect to post-petition and pre-Effective Date acts as follows:

The Exculpated Parties will neither have nor incur any liability to any entity for any claims or causes of action arising on or after the Petition Date and prior to or on the Effective Date for any act taken or omitted to be taken in connection with, or related to (i) the Cases, (ii) formulating, negotiating, preparing, disseminating, implementing, administering, confirming or effecting the consummation of the Plan, the Disclosure Statement, or any other contract, instrument, release or other agreement or document created or entered into in connection with the Plan, (iii) any other postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, or (iv) the approval of the Disclosure Statement or confirmation or consummation of the Plan; provided, however, that the foregoing provisions will have no effect on the liability of any entity that results from any such act or omission that is determined in a Final Order of the Bankruptcy Court or other court of competent jurisdiction to have constituted gross negligence or willful misconduct; provided, further, that the Exculpated Parties will each be entitled to rely upon the advice of counsel concerning their duties pursuant to, or in connection with, the above referenced documents, actions or inactions

The Exculpated Parties have, and upon Confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

(d) Injunctions

The Plan contains injunctions as follows:

FROM AND AFTER THE EFFECTIVE DATE, ALL ENTITIES ARE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER, ANY CAUSE OF ACTION RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN OR THE CONFIRMATION ORDER.

FROM AND AFTER THE EFFECTIVE DATE, TO THE EXTENT OF THE RELEASES AND EXCULPATION GRANTED IN SECTIONS 8.01 THROUGH 8.04 OF THE PLAN (INCLUSIVE), THE APPLICABLE RELEASING PARTIES SHALL BE PERMANENTLY ENJOINED FROM COMMENCING OR CONTINUING IN ANY MANNER AGAINST THE RELEASED PARTIES AND THE EXCULPATED PARTIES AND THEIR ASSETS AND PROPERTIES, AS THE CASE MAY BE, ANY SUIT, ACTION OR OTHER PROCEEDING, ON ACCOUNT OF OR RESPECTING ANY CLAIM, DEMAND, LIABILITY, OBLIGATION, DEBT, RIGHT, CAUSE OF ACTION, INTEREST OR REMEDY RELEASED OR TO BE RELEASED PURSUANT TO THE PLAN.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE PLAN SUPPLEMENT, RELATED DOCUMENTS, OR FOR OBLIGATIONS ISSUED PURSUANT TO THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS OR INTERESTS THAT HAVE BEEN RELEASED PURSUANT TO THE PLAN OR THAT ARE SUBJECT TO THE EXCULPATORY PROVISIONS OF SECTION 8.04, ARE PERMANENTLY ENJOINED, FROM AND AFTER THE EFFECTIVE DATE, FROM TAKING ANY OF THE FOLLOWING ACTIONS: (I) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (II) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (III) CREATING, PERFECTING OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST SUCH ENTITIES OR THE PROPERTY OR ESTATE OF SUCH ENTITIES ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS; (IV) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS OR INTERESTS RELEASED, OR SETTLED PURSUANT TO THE PLAN; AND (V) ACTING OR PROCEEDING IN ANY MANNER, IN ANY PLACE WHATSOEVER, THAT DOES NOT CONFORM WITH THE PROVISIONS OF THE PLAN TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW.

THE RIGHTS AFFORDED IN THE PLAN AND THE TREATMENT OF ALL CLAIMS AND INTERESTS HEREIN SHALL BE IN EXCHANGE FOR AND IN COMPLETE SATISFACTION OF ALL CLAIMS AND INTERESTS OF ANY NATURE WHATSOEVER, INCLUDING ANY INTEREST ACCRUED ON CLAIMS FROM AND AFTER THE PETITION DATE, AGAINST THE DEBTORS OR ANY OF THEIR ASSETS,

PROPERTY OR ESTATES. ON THE EFFECTIVE DATE, ALL SUCH CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND ALL SUCH CLAIMS AND INTERESTS SHALL BE DEEMED SURRENDERED AND EXTINGUISHED.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR HEREIN OR IN OBLIGATIONS ISSUED PURSUANT HERETO FROM AND AFTER THE EFFECTIVE DATE, ALL CLAIMS AGAINST THE DEBTORS SHALL BE FULLY RELEASED, AND ALL INTERESTS SHALL BE DEEMED SURRENDERED OR EXTINGUISHED, AS THE CASE MAY BE, AND THE DEBTORS' LIABILITY WITH RESPECT THERETO SHALL BE EXTINGUISHED COMPLETELY, INCLUDING ANY LIABILITY OF THE KIND SPECIFIED UNDER SECTION 502(G) OF THE BANKRUPTCY CODE.

ALL ENTITIES SHALL BE PRECLUDED FROM ASSERTING AGAINST THE DEBTORS, THE DEBTORS' ESTATES, EACH OF THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, AND EACH OF THEIR ASSETS AND PROPERTIES, ANY OTHER CLAIMS OR INTERESTS BASED UPON ANY DOCUMENTS, INSTRUMENTS OR ANY ACT OR OMISSION, TRANSACTION OR OTHER ACTIVITY OF ANY KIND OR NATURE THAT OCCURRED BEFORE THE EFFECTIVE DATE.

UNLESS AGREED IN WRITING OTHERWISE BY THE REORGANIZED DEBTOR, LITIGATION AND/OR ANY CONTINUATION OF THE INSURED CAUSES OF ACTION (TO THE EXTENT NOT RELEASED OR DISCHARGED HEREUNDER), SHALL BE ENJOINED FOR A PERIOD OF TWELVE (12) MONTHS FOLLOWING THE EFFECTIVE DATE.

4.08 Conditions to Confirmation and Effectiveness

(a) Conditions to Confirmation

The following are the conditions to confirmation of the Plan:

1) The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors, Goldman Sachs, and the Creditors' Committee, approving the Disclosure Statement with respect to the Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code.

2) The Plan, the Confirmation Order, and documents in the Plan Supplement shall be in form and substance reasonably acceptable to the Debtors, Goldman Sachs, and the Creditors' Committee.

(b) Conditions to Effectiveness

The Plan will not be effective unless each of the following are either satisfied or waived by the Debtors with the consent of the Creditors' Committee and Goldman Sachs:

1) All of the schedules, documents, supplements and exhibits to the Plan shall have been filed in form and substance reasonably acceptable to the Debtors, Goldman Sachs, and the Creditors' Committee.

2) The Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Debtors, Goldman Sachs, and the Creditors' Committee, confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

3) All authorizations, consents and regulatory approvals required, if any, in connection with the Plan's effectiveness shall have been obtained.

4) No order of a court shall have been entered and remain in effect restraining the Debtors from consummating the Plan and the transactions contemplated therein, and the Confirmation Order shall be in full force and effect.

5) The Restated Organizational Documents shall have been filed with the applicable governmental authorities.

6) All actions, documents, certificates and agreements necessary to implement the Plan shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable Governmental Units in accordance with applicable laws, and are in form and substance, acceptable to the Debtors.

7) The Administrative Bar Date shall have occurred and the total amount of Filed Administrative Claims is consistent with the Approved Budget.

8) The Governmental Unit Bar Date shall have occurred and the total amount of Filed Priority Tax Claims is consistent with the Approved Budget.

9) The Debtors shall have filed a notice of the Effective Date with the Bankruptcy Court.

4.09 Modification, Revocation or Withdrawal of the Plan

(a) Modification and Amendments of the Plan

Except as otherwise specifically provided in the Plan, the Debtors reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and Bankruptcy Rules and, as appropriate, not re-solicit votes on such modified Plan. Subject to certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors expressly reserve their rights to alter, amend or modify materially the Plan with respect to any or all Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend or modify the Plan or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of

the Plan; provided, however, that any alterations, amendments or modifications to the Plan, the Disclosure Statement and Confirmation Order must be consistent in all respects with the Settlements. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with this Article of the Plan and with the consent of the Creditors' Committee and Goldman Sachs. In addition, prior to the Effective Date, the Debtors may make appropriate technical adjustments and modifications to the Plan, without further order or approval of the Bankruptcy Court; provided, however, that such technical adjustments and modifications do not adversely affect in a material way the treatment of Holders of Allowed Claims or Interests.

(b) Revocation or Withdrawal of the Plan

The Debtors reserve the right to revoke or withdraw the Plan before the Effective Date. If the Debtors revoke or withdraw the Plan, or if the Confirmation Date or the Effective Date does not occur, then: (i) the Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of any Executory Contracts or Unexpired Leases effected by the Plan, and any document or agreement executed pursuant to the Plan shall be deemed null and void; and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims or Interests or Claims by any Debtor against any other entity; (b) prejudice in any manner the rights of such Debtor, the Creditors' Committee, the Holder of any Claim or Interest or any other entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by such Debtor, the Creditors' Committee or any other entity.

4.10 Jurisdiction

(a) Bankruptcy Court Jurisdiction

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, the Bankruptcy Court shall retain and have exclusive jurisdiction over the Chapter 11 Case to the maximum extent as is legally permissible, including, without limitation, for the following purposes:

1) To allow, disallow, determine, liquidate, classify or establish the priority or secured or unsecured status of or estimate any Claim or Equity Interest, including, without limitation, the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;

2) To ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

3) To determine any and all applications or motions pending before the Bankruptcy Court on the Effective Date of the Plan, including without limitation any motions for the rejection, assumption or assumption and assignment of any Executory Contract;

4) To consider and approve any modification of the Plan, remedy any defect or omission, or reconcile any inconsistency in the Plan, or any order of the Bankruptcy Court, including the Confirmation Order;

5) To determine all controversies, suits and disputes that may arise in connection with the interpretation, enforcement or consummation of the Plan or any Plan Documents or any entity's obligations in connection with the Plan or any Plan Documents, or to defend any of the rights, benefits, Estate property transferred, created, or otherwise provided or confirmed by the Plan or the Confirmation Order or to recover damages or other relief for violations thereof;

6) To consider and act on the compromise and settlement of any claim or cause of action by or against the Debtors the Estates, or the Reorganized Debtor;

7) To decide or resolve any and all applications, motions, adversary proceedings, contested or litigated matters, and any other matters, or grant or deny any applications involving the Debtors, or the Estates that may be pending on the Effective Date or that may be brought by the Debtors, the Reorganized Debtor, or any other related proceedings by the Reorganized Debtor, and to enter and enforce any default judgment on any of the foregoing;

8) To decide or resolve any and all applications for compensation;

9) To issue orders in aid of execution and implementation of the Plan or any Plan Documents to the extent authorized by section 1142 of the Bankruptcy Code or provided by the terms of the Plan;

10) To decide issues concerning the federal or state tax liability of the Debtors which may arise in connection with the confirmation or consummation of the Plan or any Plan Documents;

11) To interpret and enforce any orders entered by the Bankruptcy Court in the Cases; and

12) To enter an order closing these Cases when all matters contemplating the use of such retained jurisdiction have been resolved and satisfied.

(b) Limitation on Jurisdiction

In no event shall the provisions of the Plan be deemed to confer in the Bankruptcy Court jurisdiction greater than that established by the provisions of 28 U.S.C. §§ 157 and 1334, as well as the applicable circumstances that continue jurisdiction for defense and enforcement of the Plan and Plan Documents. For the avoidance of doubt, however, such jurisdiction shall be deemed, by the entry of the Confirmation Order, to:

1) Permit entry of a final judgment by the Bankruptcy Court in any core proceeding referenced in 28 U.S.C. § 157(b) and to hear and resolve such proceedings in accordance with 28 U.S.C. § 157(c) and any and all related proceedings,

including, without limitation, (i) all proceedings concerning disputes with, or Causes of Action or Claims against, any Person that the Debtors, the Estates, or the Reorganized Debtor or any of their successors or assigns, may have, and (ii) any and all Causes of Action or other Claims against any Person for harm to or with respect to (x) any Estate Property, including conversion of Estate Property, or (y) any Estate Property liened or transferred by the Debtors to any other Person;

2) Include jurisdiction over the recovery of any Estate Property (or property transferred by the Debtors with Bankruptcy Court approval) from any Person wrongly asserting ownership, possession or control of the same, whether pursuant to sections 542, 543, 549, 550 of the Bankruptcy Code or otherwise, as well as to punish any violation of the automatic stay under section 362 of the Bankruptcy Code or any other legal rights of the Debtors or the Estates under or related to the Bankruptcy Code; and

3) Permit the taking of any default judgment against any Person who has submitted himself or herself to the jurisdiction of the Bankruptcy Court.

ARTICLE V.
RISK FACTORS

5.01 Risks Related to Bankruptcy

(a) Parties May Object to the Plan's Classification of Claims and Equity Interests

Bankruptcy Code Section 1122 provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims or Equity Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

(b) The Debtors May Not Be Able to Obtain Confirmation of the Plan

With regard to any proposed plan of reorganization, the Debtors may not receive the requisite acceptances to confirm a plan. In the event that votes from Claims in Classes 2 and 5 are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek confirmation of the Plan by the Bankruptcy Court. Even if the requisite acceptances of a proposed plan are received, the Bankruptcy Court might not confirm the Plan as proposed if the Bankruptcy Court finds that any of the statutory requirements for confirmation under Bankruptcy Code section 1129 have not been met.

If the Plan is not confirmed by the Bankruptcy Court, it is unclear what, if any, distributions holders of Claims or Interests ultimately would receive on account of their Claims or Interests. There also can be no assurance that the Debtors will be able to successfully develop,

prosecute, confirm and consummate an alternative plan of reorganization that is acceptable to the Bankruptcy Court and the Debtors' creditors and other parties in interest. Additionally, it is possible that third parties may seek and obtain approval to terminate or shorten the exclusive periods under section 1121 of the Bankruptcy Code during which only the Debtors may propose and solicit votes on a plan of reorganization.

In addition, if the Plan is not confirmed, the settlements embodied in the Plan among the Debtors, the Creditors' Committee and Goldman Sachs may not be approved or consummated. As a result, there may be litigation among such parties in connection with any other plan or plans of reorganization that may be filed in the Cases. This litigation may include, among other things, disputes related to the value of the Debtors' estates, the amount and extent of Goldman Sachs' Claims, and the appropriate amount of distributions to junior creditors in these Cases. Moreover, without the Goldman Sachs Settlement, the Estates may lack the resources necessary to pursue an alternative plan or to otherwise continue administering these Cases in chapter 11.

(c) The Conditions Precedent to the Effective Date of the Plan May Not Occur

As more fully set forth in the Plan, the Effective Date is subject to certain conditions precedent, including the conditions that the Allowed amount of Administrative Expenses are consistent with the Approved Budget. If such conditions precedent are not met or waived, the Effective Date will not occur.

(d) Allowed Claims and/or Projected Distribution Assets May Be Underestimated

The projected distributions set forth in this Disclosure Statement for Class 5 General Unsecured Claims are based upon both the liquidated amount of the Distribution Assets and the Allowed amounts of General Unsecured Claims. The actual amount of such Allowed Claims and the liquidated Distribution Assets could be materially different than is currently estimated, either of which will impact the distributions to be made to holders of Claims.

ARTICLE VI.
CONFIRMATION OF THE PLAN

6.01 The Confirmation Hearing

Bankruptcy Code section 1128(a) requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation of the Plan. Bankruptcy Code Section 1128(b) provides that any party in interest may object to Confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing to commence on [_____] at [_____] (Eastern Time), before the Honorable Mary J. Walrath, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Wilmington, Delaware 19801. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

Objections to Confirmation of the Plan must be filed and served by no later [_____] at [_____] (Eastern Time). Unless objections to Confirmation of the Plan are timely served and

filed in compliance with the Disclosure Statement Order, they may not be considered by the Bankruptcy Court.

6.02 Requirements for Confirmation of the Plan

Among the requirements for the Confirmation of the Plan is that the Plan (i) is accepted by all Impaired Classes of Claims or Equity Interests, or, if rejected by an Impaired Class of Claims or Equity Interests, that the Plan "does not discriminate unfairly" and is "fair and equitable" as to such Impaired Class of Claims or Equity Interests; (ii) is feasible; and (iii) is in the "best interests" of Holders of Claims or Equity Interests.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of Bankruptcy Code section 1129. The Debtors believe that: (i) the Plan satisfies or will satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (ii) the Debtors have complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith. Specifically, in addition to other applicable requirements, the Debtors believe that the Plan satisfies or will satisfy the following applicable Confirmation requirements of Bankruptcy Code section 1129:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors, as plan proponents, have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Cases, or in connection with the Plan and incident to the Cases, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each holder of a Claim in an Impaired Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Equity Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtors were liquidated on the Effective Date of the Plan under chapter 7 of the Bankruptcy Code.
- Each Class of Claims that is entitled to vote on the Plan will have accepted the Plan.
- Except to the extent a different treatment is agreed to, the Plan provides that all Administrative Claims and Allowed Priority Tax Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.

- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors or any successors thereto.

- All accrued and unpaid fees of the type described in 28 U.S.C. § 1930, including the fees of the U.S. Trustee, will be paid as of the Effective Date.

6.03 Best Interests of Creditors / Liquidation Analysis

Often called the "best interests of creditors" test, Bankruptcy Code section 1129(a)(7) requires that a Bankruptcy Court find, as a condition to confirmation of a chapter 11 plan, that the plan provides, with respect to each impaired class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value that is not less than the amount that such holder would receive or retain if the debtor liquidated under chapter 7 on the Effective Date. To make these findings, the Bankruptcy Court must: (a) estimate the cash liquidation proceeds that a chapter 7 trustee would generate if the Cases were converted to a chapter 7 case on the Effective Date and the assets of the Debtors' Estates were liquidated; (b) determine the liquidation distribution that each non-accepting holder of a Claim or an Equity Interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (c) compare the holder's liquidation distribution to the distribution under the Plan that the holder would receive if the Plan were confirmed and consummated.

As further support, the Debtors have attached hereto as Exhibit B a liquidation analysis. Based on the foregoing and the liquidation analysis, the Debtors believe that holders of Claims will receive greater value as of the Effective Date under the Plan than such holders would receive in a chapter 7 liquidation.

6.04 Feasibility

Bankruptcy Code Section 1129(a)(11) requires that confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtors, or any successor to the Debtors (unless such liquidation or reorganization is proposed in the plan). To determine whether the Plan meets this feasibility requirement, the Debtors have analyzed the ability of the Reorganized Debtor to meet its obligations under the Plan. Further, as discussed in Section 6.04 of this Disclosure Statement and as set forth in the projected budget to be attached to the Plan Supplement, the Debtors believe that the Reorganized Debtor will be viable following the Effective Date, and that the Plan therefore meets the feasibility requirements of the Bankruptcy Code. The Debtors shall present further information and evidence regarding feasibility as may be necessary in connection with Confirmation of the Plan.

6.05 Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or interests that is impaired under a plan accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required.

A class is "impaired" unless a plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Bankruptcy Code Section 1126(c) defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of allowed claims in that class, counting only those claims that actually voted to accept or reject the plan. Thus, a Class of Impaired Claims will have voted to accept the Plan only if two-thirds in amount and a majority in number actually voting cast their Ballots in favor of acceptance.

6.06 Confirmation Without Acceptance by All Impaired Classes

Bankruptcy Code Section 1129(b) allows a Bankruptcy Court to confirm a plan even if all impaired classes have not accepted it, provided that the plan has been accepted by at least one impaired class, determined without including the acceptance of the plan by any insider. Notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cramdown," so long as the plan does not "discriminate unfairly" (as discussed below) and is "fair and equitable" (as discussed below) with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

With respect to the Classes that are deemed to reject the Plan and any Classes that are entitled to vote but nevertheless vote to reject the Plan, the Debtors shall request Confirmation of the Plan under Bankruptcy Code section 1129(b). The Debtors reserve the right to alter, amend, modify, revoke, or withdraw the Plan, the Plan Supplement, or any schedule or exhibit, including to amend or modify it to satisfy the requirements of Bankruptcy Code section 1129(b), if necessary.

(a) No Unfair Discrimination

The "unfair discrimination" test applies to classes of claims or interests that reject or are deemed to have rejected a plan and that are of equal priority with another class of claims or interests that is receiving different treatment under such plan. The test does not require that the treatment of such classes of claims or interests be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. The Debtors submit that the Plan is structured such that it does not "discriminate unfairly" against any rejecting Class.

(b) Fair and Equitable Test

The "fair and equitable" test applies to classes that reject or are deemed to have rejected a plan and are of different priority and status vis-à-vis another class (e.g., secured versus unsecured

claims, or unsecured claims versus equity interests), and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class, including interest. As to the rejecting class, the test sets different standards depending upon the type of claims or interests in such rejecting class. The Debtors submit that if the Debtors "cram down" the Plan pursuant to Bankruptcy Code section 1129(b), the Plan is structured such that the applicable "fair and equitable" standards are met.

ARTICLE VII.
TAX CONSEQUENCES OF THE PLAN

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. ALL HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

ARTICLE VIII.
CERTAIN SECURITIES LAW MATTERS

As provided in Section 12.02 of the Plan, the Debtors believe that the New Equity in the Reorganized Debtor and the offering and issuance thereof shall be exempt from Section 5 of the Securities Act of 1933, if applicable, and from any state or federal securities laws requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker or dealer in, a security, and shall otherwise enjoy all exemptions available for Distributions of securities under a plan of reorganization in accordance with all applicable law, including, without limitation, Bankruptcy Code section 1145. As set forth in Section 13.4 of the Plan, if the issuance of the New Equity does not qualify for an exemption under Bankruptcy Code section 1145, the New Equity shall be issued in a manner, which qualifies for any other available exemption from registration, whether as a private placement under Rule 506 of the Securities Act, Section 4(2) of the Securities Act, and/or the safe harbor provisions promulgated thereunder.

ARTICLE IX.
RECOMMENDATION

In the opinion of the Debtors, the Plan is superior and preferable to the alternatives described in this Disclosure Statement. Accordingly, the Debtors recommend that holders of Claims entitled to vote on the Plan vote to accept the Plan and support Confirmation of the Plan.

/s/ Lance Miller
Lance Miller, Chief Restructuring Officer
SGR Winddown, Inc., and its related debtor affiliates