

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:	)	
	)	
VASARI, LLC.	)	Case No. 17-44346-MXM-11
	)	
Debtor.	)	(Chapter 11)
	)	
	)	
	)	

**SECOND AMENDED DISCLOSURE STATEMENT FOR CHAPTER 11  
PLAN OF REORGANIZATION FOR VASARI, LLC**

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Dated: Fort Worth, Texas

May 16, 2018

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### **IMPORTANT NOTICE**

THIS DISCLOSURE STATEMENT AND ITS RELATED DOCUMENTS ARE THE ONLY DOCUMENTS AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES TO ACCEPT THE CHAPTER 11 PLAN OF REORGANIZATION FOR VASARI, LLC (THE “**PLAN**”). NO REPRESENTATIONS HAVE BEEN AUTHORIZED BY THE BANKRUPTCY COURT CONCERNING THE DEBTOR, ITS BUSINESS OPERATIONS OR THE VALUE OF ITS ASSETS, EXCEPT AS EXPLICITLY SET FORTH IN THIS DISCLOSURE STATEMENT.

THE DEBTOR URGES YOU TO READ THIS DISCLOSURE STATEMENT CAREFULLY FOR A DISCUSSION OF VOTING INSTRUCTIONS, RECOVERY INFORMATION, CLASSIFICATION OF CLAIMS, THE HISTORY OF THE DEBTOR AND THE REORGANIZATION CASE, THE DEBTOR’S BUSINESS, PROPERTIES AND RESULTS OF OPERATIONS, HISTORICAL AND PROJECTED FINANCIAL RESULTS AND A SUMMARY AND ANALYSIS OF THE PLAN.

ALL CAPITALIZED TERMS IN THIS DISCLOSURE STATEMENT NOT OTHERWISE DEFINED HEREIN HAVE THE MEANINGS GIVEN TO THEM IN THE PLAN, A COPY OF WHICH IS ATTACHED TO THIS DISCLOSURE STATEMENT AS **EXHIBIT A**.

INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION OR AMENDMENT. THE DEBTOR RESERVES THE RIGHT TO FILE AN AMENDED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN. TO THE EXTENT APPLICABLE, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE AN OFFER TO SELL, OR THE SOLICITATION OF AN OFFER TO BUY, NOR WILL THERE BE ANY DISTRIBUTION OF ANY SECURITIES DESCRIBED HEREIN UNTIL THE EFFECTIVE DATE OF THE PLAN.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(c) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE. THE PLAN AND THIS DISCLOSURE STATEMENT WERE NOT REQUIRED TO BE PREPARED IN ACCORDANCE WITH APPLICABLE NONBANKRUPTCY LAW. DISSEMINATION OF THIS DISCLOSURE STATEMENT IS CONTROLLED BY BANKRUPTCY RULE 3017.

THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE PARTIES IN INTEREST IN THIS CASE WITH “ADEQUATE INFORMATION” (AS DEFINED IN SECTION 1125 OF THE BANKRUPTCY CODE) SO THAT THOSE CREDITORS WHO ARE ENTITLED TO VOTE WITH RESPECT TO THE PLAN CAN MAKE AN INFORMED JUDGMENT REGARDING SUCH VOTE ON THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS ONLY A SUMMARY OF THE PLAN. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN; RATHER THIS DISCLOSURE STATEMENT IS INTENDED ONLY TO AID AND SUPPLEMENT SUCH REVIEW. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE

PLAN, THE PLAN SUPPLEMENT (WHICH WILL BE FILED NO LATER THAN 10 CALENDAR DAYS PRIOR TO THE VOTING DEADLINE (DEFINED BELOW)), AND THE EXHIBITS ATTACHED THERETO AND THE AGREEMENTS AND DOCUMENTS DESCRIBED THEREIN. IF THERE IS A CONFLICT BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE PROVISIONS OF THE PLAN WILL GOVERN. YOU ARE ENCOURAGED TO REVIEW THE FULL TEXT OF THE PLAN AND PLAN SUPPLEMENT AND TO READ CAREFULLY THE ENTIRE DISCLOSURE STATEMENT, INCLUDING ALL EXHIBITS, BEFORE DECIDING HOW TO VOTE WITH RESPECT TO THE PLAN.

THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS **4:00 P.M. (PREVAILING CENTRAL TIME) ON JUNE 12, 2018**, UNLESS EXTENDED BY THE DEBTOR (THE “**VOTING DEADLINE**”). TO BE COUNTED, BALLOTS MUST BE RECEIVED BY DEBTOR’S CLAIMS AND NOTICING AGENT, DONLIN, RECANO & COMPANY, ON OR BEFORE THE VOTING DEADLINE.

THE EFFECTIVENESS OF THE PLAN IS SUBJECT TO MATERIAL CONDITIONS PRECEDENT. THERE IS NO ASSURANCE THAT THESE CONDITIONS WILL BE SATISFIED OR WAIVED.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AGAINST, AND HOLDERS OF INTERESTS IN, THE DEBTOR (INCLUDING, WITHOUT LIMITATION, THOSE HOLDERS OF CLAIMS OR INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

EXCEPT AS OTHERWISE SET FORTH HEREIN, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE BY THE DEBTOR AS OF THE DATE HEREOF, AND THE DELIVERY OF THIS DISCLOSURE STATEMENT WILL NOT, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME SUBSEQUENT TO THE DATE HEREOF OR CREATE ANY DUTY TO UPDATE SUCH INFORMATION.

NO PERSON HAS BEEN AUTHORIZED BY THE DEBTOR IN CONNECTION WITH THE PLAN OR THE SOLICITATION TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATION OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT, THE PLAN AND THE EXHIBITS, NOTICES AND SCHEDULES ATTACHED TO OR INCORPORATED BY REFERENCE OR REFERRED TO IN THIS DISCLOSURE STATEMENT AND/OR THE PLAN, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATION MAY NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE DEBTOR.

IT IS THE DEBTOR’S POSITION THAT THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, AND NOTHING STATED HEREIN SHALL BE

DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR HOLDERS OF CLAIMS OR INTERESTS.

UNLESS OTHERWISE NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL OR TAX ADVICE. EACH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL AND TAX ADVISOR(S) WITH RESPECT TO ANY SUCH MATTERS CONCERNING THIS DISCLOSURE STATEMENT, THE SOLICITATION OF VOTES TO ACCEPT THE PLAN, THE PLAN, THE PLAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

**FORWARD-LOOKING STATEMENTS:**

THIS DISCLOSURE STATEMENT CONTAINS FORWARD-LOOKING STATEMENTS BASED PRIMARILY ON THE CURRENT EXPECTATIONS OF THE DEBTOR AND PROJECTIONS ABOUT FUTURE EVENTS AND FINANCIAL TRENDS AFFECTING THE FINANCIAL CONDITION OF THE DEBTOR'S AND THE REORGANIZED DEBTOR'S BUSINESS. IN PARTICULAR, STATEMENTS USING WORDS SUCH AS "BELIEVE," "MAY," "ESTIMATE," "CONTINUE," "ANTICIPATE," "INTEND," "EXPECT" AND SIMILAR EXPRESSIONS IDENTIFY THESE FORWARD-LOOKING STATEMENTS. THESE FORWARD-LOOKING STATEMENTS ARE SUBJECT TO A NUMBER OF RISKS, UNCERTAINTIES AND ASSUMPTIONS, INCLUDING THOSE DESCRIBED BELOW UNDER ARTICLE XI. IN LIGHT OF THESE RISKS AND UNCERTAINTIES, THE FORWARD-LOOKING EVENTS AND CIRCUMSTANCES DISCUSSED IN THE DISCLOSURE STATEMENT MAY NOT OCCUR, AND ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THE FORWARD-LOOKING STATEMENTS. CONSEQUENTLY, THE PROJECTED FINANCIAL INFORMATION AND OTHER FORWARD-LOOKING STATEMENTS CONTAINED HEREIN SHOULD NOT BE REGARDED AS REPRESENTATIONS BY ANY OF THE DEBTOR, THE REORGANIZED DEBTOR, THEIR ADVISORS OR ANY OTHER PERSON THAT THE PROJECTED FINANCIAL CONDITIONS OR RESULTS OF OPERATIONS CAN OR WILL BE ACHIEVED. EXCEPT AS OTHERWISE REQUIRED BY LAW, NEITHER THE DEBTOR NOR THE REORGANIZED DEBTOR UNDERTAKES ANY OBLIGATION TO UPDATE OR REVISE PUBLICLY ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE FOLLOWING APPROVAL OF THIS DISCLOSURE STATEMENT BY THE BANKRUPTCY COURT.

**THE DEBTOR AND THE CONSENT PARTIES, SUPPORT CONFIRMATION OF THE PLAN, AND URGE ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED TO ACCEPT THE PLAN.**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b>ARTICLE I. INTRODUCTION.....</b>	<b>1</b>
1.1 General.....	1
1.2 The Confirmation Hearing.....	2
1.3 Classification of Claims and Interests.....	3
1.4 Voting; Holders of Claims Entitled to Vote .....	3
1.5 Important Matters.....	5
<b>ARTICLE II. SUMMARY OF PLAN AND CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS THEREUNDER.....</b>	<b>5</b>
2.1 General.....	5
2.2 Summary of Treatment of Claims and Interests Under the Plan .....	6
2.3 Timing of Distributions to Holders of General Unsecured Claims .....	8
<b>ARTICLE III. BUSINESS DESCRIPTION; HISTORICAL INFORMATION.....</b>	<b>9</b>
3.1 The Debtor’s Business .....	9
3.2 The Debtor’s Prepetition Organizational Structure .....	9
3.3 Debtor’s Prepetition Capital Structure.....	9
3.3.1 The Cadence Prepetition Loans .....	9
3.3.2 The Sponsor Affiliate Claims .....	10
3.4 The Debtor’s Prepetition Franchise Agreements.....	10
<b>ARTICLE IV. EVENTS LEADING TO CHAPTER 11 FILING.....</b>	<b>11</b>
4.1 Declining Restaurant Sales and the Debtor’s Market Position.....	11
4.2 The Oklahoma Location Expansion.....	11
4.3 Rise in Cost of Goods Sold.....	12
4.4 Debtor’s Restructuring Efforts.....	12

4.5	The Debtor’s Prepetition Restructuring Negotiations and Available Alternatives .....	12
<b>ARTICLE V. REASONS FOR THE SOLICITATION; RECOMMENDATION .....</b>		<b>14</b>
<b>ARTICLE VI. THE PLAN.....</b>		<b>15</b>
6.1	Overview of Chapter 11 .....	15
6.2	Overview of the Plan .....	15
6.2.1	Cadence DIP Claim.....	17
6.2.2	Bar Date for Administrative Expense Claims.....	17
6.2.3	Fee Claims .....	18
6.2.4	U.S. Trustee Fees .....	18
6.2.5	Priority Tax Claims.....	18
<b>Classification and Treatment of Claims and Interests .....</b>		<b>18</b>
6.2.6	Cadence Prepetition Claims – Class 1 .....	18
6.2.7	Priority Non-Tax Claims – Class 2.....	21
6.2.8	General Unsecured Claims – Class 3.....	22
Class 3 General Unsecured Claims are Impaired under the Plan .....		22
6.2.9	DQ’s Claim – Class 4 .....	22
6.2.10	Sponsor Affiliate Claims – Class 5.....	22
6.2.11	Interests Holders – Class 6.....	22
6.3	Acceptance or Rejection of the Plan; Effect of Rejection by One or More Classes of Claims or Interests .....	23
6.3.1	Class Acceptance Requirement.....	23
6.3.2	Confirmation .....	23
6.3.3	Elimination of Vacant Classes .....	23
6.3.4	Voting Classes; Deemed Acceptance by Non-Voting Classes .....	23
6.4	Summary of Capital Structure of Reorganized Debtor.....	23

6.4.1	Emergence Capital Structure .....	23
6.5	Means for Implementation.....	24
6.5.1	Plan Funding and Operation the Businesses .....	24
6.5.2	Continued Corporate Existence .....	25
6.5.3	Vesting of Assets in the Reorganized Debtor .....	25
6.5.4	Documents .....	26
6.5.5	Post-Effective Date Franchise Agreements .....	26
6.5.6	Guaranty of Franchise Agreement .....	26
6.5.7	Cancellation of Existing Interests and Agreements .....	26
6.5.8	Authorization, Issuance and Delivery of New Member Interests.....	27
6.6	Treatment of Executory Contracts and Unexpired Leases .....	27
6.6.1	General Assumption of Executory Contracts and Unexpired Leases .....	27
6.6.2	Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.....	27
6.6.3	Claims for Damages.....	28
6.7	Effect of Plan Confirmation.....	29
6.7.1	Binding Effect.....	29
6.7.2	Discharge of Claims Against and Interests in the Debtor.....	29
6.7.3	Term of Pre-Confirmation Injunctions or Stays .....	29
6.7.4	Injunction .....	29
6.7.5	Releases.....	30
6.7.6	Exculpation and Limitation of Liability .....	32
6.7.7	Injunction Related to Releases and Exculpation.....	32
6.7.8	Retention of Causes of Action/Reservation of Rights .....	32
6.7.9	Indemnification Obligations .....	33

**ARTICLE VII. CONFIRMATION OF THE PLAN OF REORGANIZATION ..... 33**

7.1	Confirmation Hearing .....	33
7.2	Confirmation .....	34
7.2.1	Confirmation Requirements.....	34
7.2.2	Valuation of the Debtor .....	37
7.2.3	Best Interests Test .....	38
7.3	Standards Applicable to Releases .....	40
7.4	Classification of Claims and Interests.....	42
7.5	Consummation .....	42
7.6	Exemption from Certain Transfer Taxes .....	42
7.7	Termination of Professionals .....	42
7.8	Amendments .....	42
7.9	Revocation or Withdrawal of the Plan.....	42
7.10	Post-Confirmation Jurisdiction of the Bankruptcy Court .....	43

**ARTICLE VIII. ALTERNATIVES TO CONFIRMATION AND  
CONSUMMATION OF THE PLAN..... 44**

8.1	Liquidation Under Chapter 7 of the Bankruptcy Code .....	44
8.2	Alternative Plan(s) of Reorganization .....	45
8.3	Dismissal of the Reorganization Case .....	45

**ARTICLE IX. SUMMARY OF VOTING PROCEDURES ..... 46**

**ARTICLE X. DESCRIPTION AND HISTORY OF REORGANIZATION CASE..... 46**

10.1	General Case Background.....	46
10.2	Retention of Professionals .....	47
10.3	Employment Obligations .....	47
10.4	Cash Management System.....	47
10.5	Utilities.....	47



10.6	Plan Term Sheet Motion .....	47
10.7	The DIP Facilities .....	48
10.8	Schedules and Statements .....	48
10.9	Formation of Committee and Retention of Committee Counsel .....	48
10.10	Plan Exclusivity .....	48
<b>ARTICLE XI. CERTAIN RISK FACTORS TO BE CONSIDERED.....</b>		<b>48</b>
11.1	Certain Bankruptcy Considerations .....	48
11.1.1	General.....	48
11.1.2	Failure to Receive Requisite Acceptances .....	49
11.1.3	Failure to Secure Confirmation of the Plan .....	49
11.1.4	Failure to Consummate the Plan .....	49
11.1.5	Objections to Treatment of Claims .....	50
11.1.6	Objections to Classification of Claims .....	50
11.1.7	The Debtor May Object to the Amount or Classification of Your Claim.....	50
11.1.8	The Debtor May Adjourn Certain Deadlines.....	50
11.2	Risks Relating to the Capital Structure of the Reorganized Debtor .....	50
11.2.1	Variances from Financial Projections.....	50
11.2.2	Leverage.....	51
11.2.3	Ability to Service Debt .....	51
11.2.4	Obligations Under Certain Financing Agreements.....	51
11.2.5	Risks Relating to Tax and Accounting Consequences of the Plan .....	52
11.3	Risks Associated with the Company’s Businesses .....	52
11.3.1	The Debtor’s Reorganization Case May Negatively Impact the Company’s Future Operations .....	52

<b>ARTICLE XII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN.....</b>	<b>52</b>
12.1 Introduction.....	52
12.2 Federal Income Tax Consequences to the Debtor .....	53
12.3 Federal Income Tax Consequences to Holders of Certain Claims .....	53
<b>ARTICLE XIII. PROCEDURES FOR DISTRIBUTIONS UNDER THE PLAN .....</b>	<b>54</b>
13.1 Distributions.....	54
13.2 No Postpetition Interest on Claims .....	54
13.3 Date of Distributions.....	54
13.4 Distribution Record Date .....	54
13.5 Delivery of Distribution.....	54
13.6 Unclaimed Property .....	55
13.7 Satisfaction of Claims .....	55
13.8 Manner of Payment Under Plan.....	55
13.9 De Minimis Cash Distributions .....	55
13.10 No Distribution in Excess of Amount of Allowed Claim.....	55
13.11 Setoffs and Recoupments.....	55
13.12 Withholding and Reporting Requirements .....	56
<b>ARTICLE XIV. PROCEDURES FOR RESOLVING CLAIMS.....</b>	<b>56</b>
14.1 Objections to Claims.....	56
14.2 Amendment to Claims .....	57
14.3 Disputed Claims.....	57
14.4 Estimation of Claims.....	57
14.5 Expenses Incurred On or After the Effective Date .....	57

## ARTICLE I. INTRODUCTION

1.1 General. Vasari, LLC as debtor and debtor in possession (the “**Debtor**”), in Chapter 11 case pending before the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “**Bankruptcy Court**”), transmits this disclosure statement (as may be amended, supplemented or otherwise modified from time to time, the “**Disclosure Statement**”), pursuant to section 1125 of title 11 of the United States Code (the “**Bankruptcy Code**”), in connection with the Debtor’s solicitation of votes to confirm the Second Amended Plan of Reorganization for Vasari, LLC dated as of May 16, 2018 (the “**Plan**”). On the Effective Date, the Plan and all other agreements entered into or instruments issued in connection with the Plan, shall become effective and binding in accordance with their respective terms and conditions upon the parties thereto and shall be deemed to become effective simultaneously.

The purpose of this Disclosure Statement is to set forth information: (i) regarding the history of the Debtor and their business; (ii) describing the Reorganization Case; (iii) concerning the Plan; (iv) advising the holders of Claims and Interests of their rights under the Plan; and (v) assisting the holders of Claims entitled to vote on the Plan in making an informed judgment regarding whether they should vote to accept or reject the Plan.

On May 16, 2018, after notice and a hearing, the Bankruptcy Court entered an order (the “**Disclosure Statement Order**”), which, among other things: (i) approved this Disclosure Statement as containing “adequate information” to enable a hypothetical, reasonable investor typical of holders of Claims against or Interests in the Debtor to make an informed judgment as to whether to accept or reject the Plan; and (ii) authorized the Debtor to use this Disclosure Statement in connection with the solicitation of votes to accept or reject the Plan. The Disclosure Statement Order establishes June 12, 2018 at 4:00 p.m. (prevailing Central Time) as the voting deadline for the return of Ballots accepting or rejecting the Plan (the “**Voting Deadline**”). APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.

The Disclosure Statement Order sets forth in detail the deadlines, procedures and instructions for voting to accept or reject the Plan, and for filing objections to confirmation of the Plan, the record date for voting purposes and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Each holder of a Claim entitled to vote on the Plan should read this Disclosure Statement and the Exhibits hereto, including the Plan and the Disclosure Statement Order, as well as the instructions accompanying the Ballot in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes. No solicitation of votes may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, holders of Claims entitled to vote should not rely on any information relating to the Debtor and its business other than the information contained in this Disclosure Statement, the Plan and all Exhibits hereto and thereto.

**THE DEBTOR RECOMMENDS THAT HOLDERS OF CLAIMS IN CLASSES 1, 3, 4, AND 5 VOTE TO ACCEPT THE PLAN.**

Additional copies of this Disclosure Statement (including Exhibits) are available upon request to the Debtor's counsel, Husch Blackwell LLP ("**HB**"), at the following address:

**Husch Blackwell LLP**  
2001 Ross Avenue  
Suite 2000  
Dallas, TX 75201  
Attn: Vickie Driver

They may also be obtained by contacting HB via telephone at (214) 999-6100 or via email at [Vickie.Driver@huschblackwell.com](mailto:Vickie.Driver@huschblackwell.com).

A Ballot for voting to accept or reject the Plan is enclosed with this Disclosure Statement for the holders of Claims that are entitled to vote to accept or reject the Plan. If you are a holder of a Claim entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the procedures for voting on the Plan, please contact HB at the address above.

1.2 The Confirmation Hearing. In accordance with the Disclosure Statement Order and section 1128 of the Bankruptcy Code, a hearing will be held before the Honorable Mark X. Mullin, United States Bankruptcy Judge for the Northern District of Texas, United States Bankruptcy Court, Fort Worth, Texas on **June 15, 2018 at 9:00 a.m. (prevailing Central Time)**, to consider confirmation of the Plan. The Debtor will request confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code, and has reserved the right to modify the Plan to the extent, if any, that confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, subject to the terms of the Plan and the consent of the Consent Parties. Objections, if any, to confirmation of the Plan must be served and filed so that they are received on or before **June 12, 2018 at 4:00 p.m. (prevailing Central Time)**, in the manner set forth in the Disclosure Statement Order. The hearing on confirmation of the Plan may be adjourned from time to time without further notice except for the announcement of the adjourned date and time at the hearing on confirmation or any adjournment thereof or an appropriate filing with the Bankruptcy Court.

At the Confirmation Hearing, the Bankruptcy Court will, among other things:

- determine whether sufficient majorities in number and amount from each Class entitled to vote have delivered properly executed votes accepting the Plan to approve the Plan;
- hear and determine objections, if any, to the Plan and to confirmation of the Plan that have not been previously disposed of;
- determine whether the Plan meets the confirmation requirements of the Bankruptcy Code; and
- determine whether to confirm the Plan.

1.3 Classification of Claims and Interests. The following table designates the Classes of Claims against and Interests in the Debtor, and specifies which Classes are: (a) impaired or unimpaired by the Plan, (b) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (c) deemed to accept or reject the Plan.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitlement to Vote</b>
Class 1	Cadence Prepetition Claims	Impaired	Yes
Class 2	Priority Non-Tax Claims	Unimpaired	No (Deemed to Accept)
Class 3	General Unsecured Claims	Impaired	Yes
Class 4	DQ Claims	Impaired	Yes
Class 5	Sponsor Affiliate Claims	Impaired	Yes
Class 6	Interest Holders	Impaired	No (Deemed to Reject)

1.4 Voting: Holders of Claims Entitled to Vote. Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are “impaired” and that are not deemed to have rejected a Chapter 11 plan are entitled to vote to accept or reject such proposed plan. Generally, a claim or interest is “impaired” under a plan if the holder’s legal, equitable or contractual rights are altered under such plan. Classes of claims or equity interests under a Chapter 11 plan in which the holders of claims or equity interests are unimpaired are deemed to have accepted such plan and are not entitled to vote to accept or reject the proposed plan. In addition, classes of claims or equity interests in which the holders of claims or equity interests will not receive or retain any property on account of their claims or equity interests are deemed to have rejected the Chapter 11 plan and are not entitled to vote to accept or reject such plan.

Under the Plan:

- Claims in Classes 1, 3, 4, and 5 are impaired, will receive a distribution on account of such Claims to the extent provided in the Plan and are entitled to vote to accept or reject the Plan;
- Claims in Class 2 are unimpaired and, as a result, holders of such Claims are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan; and
- Interests in Class 6 are impaired and the holders of such Interests will not receive any distribution on account of such Interests. As a result, the holders of Interests in that Class are deemed to have rejected the Plan and are not entitled to vote to accept or reject the Plan.

The Bankruptcy Code defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the claims that cast ballots for acceptance or rejection of the Chapter 11 plan. **Your vote on the Plan is important.** The Bankruptcy Code requires as a condition to confirmation of a Chapter 11 plan that each class that is impaired and entitled to vote under a plan vote to accept such plan, unless the requirements of section 1129(b) of the Bankruptcy Code are satisfied.

If a Class of Claims entitled to vote on the Plan rejects the Plan, the Debtor reserves the right to amend the Plan and/or to request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to such Class. Section 1129(b) of the Bankruptcy Code permits the confirmation of a Chapter 11 plan notwithstanding the non-acceptance of such plan by one or more impaired classes of claims or equity interests, so long as at least one impaired class of claims or interests votes to accept such plan (excluding any votes of insiders). Under that section, a Chapter 11 plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and equitable” with respect to each non-accepting class.

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. This Disclosure Statement, the Exhibits attached hereto, the Plan and the related documents are the only materials the Debtor is providing to creditors for their use in determining whether to vote to accept or reject the Plan, and it is the Debtor’s position that such materials may not be relied upon or used for any purpose other than to vote to accept or reject the Plan.

Please complete and sign your Ballot(s) and return such Ballot to the Debtor’s claims and noticing agent, Donlin, Recano & Company, at the address below:

Donlin, Recano & Company, Inc.  
Re: Vasari, LLC  
P.O. Box 192016  
Blythebourne Station  
Brooklyn, New York 11219

TO BE COUNTED, YOUR ORIGINAL BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE ACTUALLY RECEIVED BY THE DEBTOR NO LATER THAN **4:00 P.M., PREVAILING CENTRAL TIME, ON JUNE 12, 2018**, UNLESS EXTENDED BY THE DEBTOR. YOUR BALLOT MAY BE SENT VIA MAIL, OVERNIGHT COURIER OR MESSENGER. FAXED COPIES AND VOTES SENT ON OTHER FORMS WILL NOT BE ACCEPTED EXCEPT IN THE DEBTOR’S SOLE DISCRETION. ALL BALLOTS MUST BE SIGNED.

The Ballots have been specifically designed for the purpose of soliciting votes on the Plan from the Classes entitled to vote thereon. Accordingly, in voting on the Plan, please use only the Ballots sent to you with this Disclosure Statement or otherwise provided by the Debtor or their counsel.

The Debtor has fixed **5:00 p.m. (prevailing Eastern time) on May 16, 2018** (the “**Voting Record Date**”) as the time and date for the determination of the Persons who are entitled to receive a copy of this Disclosure Statement and all of the related materials and to vote whether to accept or reject the Plan. Accordingly, only holders of Claims of record as of the Voting Record Date that are entitled to vote on the Plan will receive a Ballot and may vote on the Plan.

All properly completed Ballots received prior to the Voting Deadline will be counted for purposes of determining whether a voting Class of impaired Claims has accepted the Plan. **Under the Bankruptcy Code, for the Plan to be “accepted,” a specified majority vote is required for each Class of impaired Claims entitled to vote on the Plan. If no votes are received with respect to any Class of impaired Claims entitled to vote on the Plan, such Class shall be deemed to have accepted the Plan. If any impaired Class fails to have any Allowed Claims or Claims temporarily Allowed by the Court as of the date of the Confirmation Hearing, such Class or Classes will be deemed eliminated from the Plan for all purposes.** Debtor or its counsel will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Classes entitled to vote at least three days before the Confirmation Hearing.

1.5 Important Matters. This Disclosure Statement contains projected financial information and certain other forward-looking statements, all of which are based on various estimates and assumptions and will not be updated to reflect events occurring after the date hereof. Such information and statements are subject to inherent uncertainties and to a wide variety of significant business, economic and competitive risks, including, among others, those described herein. Consequently, actual events, circumstances, effects and results may vary significantly from those included in or contemplated by such projected financial information and such other forward-looking statements. The projected financial information contained herein and in the exhibits annexed hereto, therefore, is not necessarily indicative of the future financial condition or results of operations of the Debtor, which in each case may vary significantly from those set forth in such projected financial information. Consequently, the projected financial information and other forward-looking statements contained herein should not be regarded as representations by the Debtor, the Reorganized Debtor, its advisors, or any other Person that the projected financial conditions or results of operations can or will be achieved.

## **ARTICLE II.**

### **SUMMARY OF PLAN AND CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS THEREUNDER**

2.1 General. The overall purpose of the Plan is to provide for the restructuring of the Debtor’s liabilities in a manner designed to maximize recovery to stakeholders and to enhance the financial viability of the Reorganized Debtor. Generally, the Plan provides for:

- (a) payment of all Allowed Secured Claims in full over time;
- (b) payment in Cash of the Effective Date, or as soon as reasonably practicable thereafter, of all Allowed Unsecured Claims, but excluding the unsecured prepetition claims of DQ that have not been paid as of the Effective Date;

(c) in lieu of payment in Cash, payment by participation in new member interests issued to the holders of certain Allowed Unsecured Claims constituting Sponsor Affiliate Claims; and

(d) no class of Interests will receive or retain any property under the Plan on account of such Interests.

2.2 Summary of Treatment of Claims and Interests Under the Plan. The following table classifies Claims against, and Interests in, the Debtor into separate Classes and summarizes the treatment of each Class under the Plan. The table also identifies which Classes are entitled to vote on the Plan based on the provisions of the Bankruptcy Code. Finally, the table indicates the estimated recovery for each Class. The summaries in this table are qualified in their entirety by the description and the treatment of such Claims and Interests in the Plan. **As described in Article XI below, the Debtor's businesses are subject to a number of risks. The recoveries and estimates described in the table represent the Debtor's best estimates given the information available on the date of this Disclosure Statement. All statements relating to the aggregate amount of Claims and Interests in each Class are only estimates based on information known to the Debtor as of the date hereof, and the final amounts of Allowed Claims in any particular Class may vary significantly from these estimates.**

In accordance with section 1123(a)(1) of the Bankruptcy Code, Cadence DIP Claim, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims have not been classified. Except as specifically noted therein, the Plan does not provide for payment of postpetition interest on any Allowed Claims.



### Important Note on Estimates

The estimates in the tables and summaries in this Disclosure Statement may differ from actual distributions because of variations in the asserted or estimated amounts of Allowed Claims, the existence of Disputed Claims and other factors. Statements regarding projected amounts of Claims or distributions (or the value of such distributions) are estimates by the Debtor based on current information and are not representations as to the accuracy of these amounts. Except as otherwise indicated, these statements are made as of the date of this Disclosure Statement, and the delivery of this Disclosure Statement will not, under any circumstances, imply that the information contained in this Disclosure Statement is correct at any other time. Any estimates of Claims or Interests in this Disclosure Statement may vary from the final amounts of Claims or Interests allowed by the Bankruptcy Court.

<b>Class</b>	<b>Description</b>	<b>Treatment</b>	<b>Entitled to Vote</b>	<b>Estimated Amount of Claims in Class</b>	<b>Estimated Recovery</b>
N/A (unclassified)	Cadence DIP Claim	See section 6.2.1 herein.	N/A	\$0. <sup>1</sup>	100%
N/A (unclassified)	Administrative Expense Claims	See section 6.2.2 herein.	N/A	\$0 – Debtor is paying administrative expenses in the ordinary course.	100%
N/A (unclassified)	Fee Claims	See section 6.2.3 herein.	N/A	\$365,000. <sup>2</sup>	100%

<sup>1</sup> Any unpaid balance on the Cadence DIP Claim will be rolled into the New Revolver.

<sup>2</sup> Debtor's Counsel will apply \$25,000 retainer held.

<b>Class</b>	<b>Description</b>	<b>Treatment</b>	<b>Entitled to Vote</b>	<b>Estimated Amount of Claims in Class</b>	<b>Estimated Recovery</b>
N/A (unclassified)	U.S. Trustee Fees	See section 6.2.4 herein.	N/A	\$110,000– Estimated for the quarter ending June 30, 2018.	100%
N/A (unclassified)	Priority Tax Claims	See section 6.2.5 herein.	N/A	\$120,000.00	100%
Class 1	Cadence Prepetition Claims	See section 6.2.6 herein.	Yes	\$11,011,966.10	100%
Class 2	Priority Non-Tax Claims	See section 6.2.7 herein.	No (Deemed to Accept)	\$0.	100%
Class 3	General Unsecured Claims	See section 6.2.8 herein.	Yes	\$5.5 – \$6.3 million <sup>3</sup> (est.)	2.38– 2.72%
Class 4	DQ Claims	See section 6.2.9 herein.	Yes	\$609,770.57	100%
Class 5	Sponsor Affiliate Claims	See section 6.2.10 herein.	Yes	\$1,600,000 plus pre-petition interest in the amount of \$27,162	In kind <sup>4</sup>
Class 6	Interests Holders	See section 6.2.11 herein.	No (Deemed to Reject)	Unknown.	- 0 -

**2.3 Timing of Distributions to Holders of General Unsecured Claims.** Holders of General Unsecured Claims should expect to receive payment on unpaid Allowed General Unsecured Claims that arose and were payable prior to October 30, 2017 on the Effective Date or as soon as reasonably practicable thereafter. The Debtor cannot predict with certainty when the Effective Date will take place, though they are currently projecting an approximate Effective Date of July 2, 2018 for the purposes of the Financial Projections.

If the Debtor or Reorganized Debtor disputes the validity of a particular Claim asserted against them, then such Claim will not be considered an “Allowed Claim,” and payment on such claim will be delayed pending the resolution of the dispute. In such a case, the Reorganized Debtor will have one hundred and eighty (180) days following the Effective Date to file an

<sup>3</sup> This amount reflects all filed claims and contract rejection damages. The Debtor believes that approximately \$5.5 million in unsecured claims exist in Class 3, while the Committee believes, based upon calculations of its financial advisor, that approximately \$6.3 million in unsecured claims exist in Class 3. The Debtor intends to clarify the total amount of claims in Class 3 before or at the Confirmation Hearing.

<sup>4</sup> All amounts owed on account of the Sponsor Affiliate Claims are being exchanged for new equity value in the Reorganized Debtor.

objection to a Disputed Claim (which time period can be later extended by the Bankruptcy Court for cause). Payment on such Disputed Claims will not be made until the Bankruptcy Court can resolve the dispute, or such dispute is resolved consensually among the parties.

### **ARTICLE III. BUSINESS DESCRIPTION; HISTORICAL INFORMATION**

3.1 The Debtor's Business. The Debtor operates as franchisee of DQ, a leading quick service, family-oriented restaurant chain. Prior to the Petition Date, the Debtor operated 70 stores across three states. Immediately prior to the Petition Date or shortly thereafter, the Debtor closed certain stores such that to date, they operate 48 stores. The Debtor is headquartered in Dallas, Texas.

The Debtor prides itself for having a strong reputation for offering customers a family-oriented quick dining experience at value prices that emphasize comfort food and dessert items made from DQ's own signature premium ice cream and soft serve frozen treats. Meal offerings include handhelds (sandwiches, burgers, and melts), baskets, and salads; however, the main focus of the menu is centered on premium ice cream soft serve and frozen treat products.

3.2 The Debtor's Prepetition Organizational Structure. The chart attached hereto as **Exhibit B** depicts the Debtor's prepetition organizational structure. In March 2012, the Debtor's predecessors-in-interest filed a prior Chapter 11 case resulting in the sale of certain DQ branch restaurant franchises being sold to Debtor on June 28, 2012. At the time of the sale, the Debtor was owned and operated by other owners and individuals unrelated to the ownership of Debtor on the Petition Date. On December 5, 2013, EMP Vasari LP and Vasari Co-Invest LP, entities controlled by affiliates of Eagle Merchant Partners, invested \$13.925 million and \$3 million, respectively, in EMP Vasari Holding LLC. Also on December 5, 2013, EMP Vasari Holding LLC used the proceeds from these investments to acquire Vasari, LLC from its previous owners. In May of 2014, Vasari's new CEO invested \$100,000 into EMP Vasari LP, which in turn invested \$100,000 into EMP Vasari Holding LLC. Between December 2014 and January 2015, certain existing investors invested a total of \$3,852,162.00 in preferred units of EMP Vasari Holding LLC.

3.3 Debtor's Prepetition Capital Structure. As of the Petition Date, the Debtor has outstanding debt consisting principally of loans with Cadence Bank, N.A., as agent and lender ("**Cadence**").

3.3.1 The Cadence Prepetition Loans. The Cadence Prepetition Claims shall be deemed Allowed Claims in the amount not less than \$11,011,966.10 as of April 23, 2018, as follows: \$10,969,120.10 in principal, \$41,264.72 in accrued and unpaid interest, and \$1,581.25 in fees. The amount of the Allowed Cadence Claim is comprised of the following amounts due and owing under each of the loans as of April 23, 2018: (i) under the Term Loan,<sup>5</sup> \$6,441,928.34 in principal amount outstanding, plus \$23,762.67 in accrued and unpaid interest;

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<sup>5</sup> Capitalized terms used in section and not otherwise defined in the Plan shall have the meanings assigned such terms in the Cadence Prepetition Loan Documents. See Declaration of Daniel Holland [Dkt. 203].

(ii) under the Development Loan, \$3,400,000.00 in principal amount outstanding, plus \$13,635.90 in accrued and unpaid interest; (iii) under the Revolving Loan, \$940,000.00 in principal amount outstanding, plus \$3,866.15 in accrued and unpaid interest, and \$1,581.25 in fees; and (iv) the Cadence Purchasing Card Obligations, in the total principal amount of \$187,191.76, plus any and all other obligations of the Debtor pursuant to the Cadence Prepetition Loan Documents, including but not limited to interest and fees accruing after April 23, 2018 and any and all accrued and accruing legal fees and disbursements any and all accrued and accruing legal fees and disbursements (the “**Allowed Cadence Claim**”). The Allowed Cadence Claim shall not be subject to any avoidance, reductions, setoff, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under any applicable law or regulation by any person or entity. The Allowed Cadence Claim is guaranteed by virtue of the valid, binding, and irrevocable guaranties of payment (the “**Guaranties**”) executed by each of Vasari Management, LLC, EMP Vasari Holding LLC and Vasari Corsicana, LLC (collectively, the “**Guarantors**”) and are secured by first priority liens and security interests (the “**Pre-Petition Liens**”) in and on substantially all of the Debtor’s assets by virtue of (i) that certain Security Agreement executed by the Debtor dated as of December 5, 2013, (ii) Blanket UCC Financing Statement filed on December 9, 2013 as File No. 20134976115 with the Secretary of State of Delaware against the Debtor, (iii) that certain Account Control Agreement dated as of April 15, 2015 granting Cadence a security interest perfected by control in a restricted bank account, and (iv) certain mortgages, deeds of trust, and collateral assignments of leases encumbering the Debtor’s leased restaurant locations (collectively, the “**Debtor Security Documents**”). The Pre-Petition Obligations are further secured by all of EMP Vasari Holding LLC’s right, title and interest as sole member of the Debtor by virtue of that certain Pledge Agreement dated as of December 5, 2013 and that certain UCC Financing Statement filed on December 10, 2013 as Instrument No. 0602013-10655 with the Georgia Secretary of State against EMP Vasari Holding LLC (collectively, the “**EMP Security Documents**”, and together with the Pre-Petition Credit Agreement, the Guaranties, the Debtor Security Documents, and any and all documents, instruments, and agreements executed contemporaneously with and/or related to each of the foregoing, together with any renewals, modifications and/or extensions thereof effective as of the Petition Date, the “**Pre-Petition Loan Documents**”).

The Debtor and its counsel have reviewed the Pre-petition Loan Documents and conclude that the same is valid and enforceable and create a senior, valid, perfected and enforceable security interest and lien in substantially all of the Debtor’s assets which is not avoidable.

**3.3.2 The Sponsor Affiliate Claims.** On various dates, the equity holders of the Debtor (or their affiliated Persons) lent \$1,600,000 to the Debtor. As of the Petition Date, there has been no repayment of the loans. The loan of the funds by the equity holders is noted in the Debtor’s books and records, and/or memorialized by promissory notes and loan agreements. The Subordinated Promissory Note in the amount of \$750,000, executed by the Debtor in favor of Edward S. Croft, carried interest at the rate of 6.0% per annum.

**3.4 The Debtor’s Prepetition Franchise Agreements.** The Debtor has operated multiple DQ restaurants pursuant to individualized franchise agreements with DQ (“**DQ**”). Such franchise agreements were in force as of the Petition Date.

## **ARTICLE IV. EVENTS LEADING TO CHAPTER 11 FILING**

Over the course of the last few years, a series of factors have contributed to the Debtor's need to file this Chapter 11 case, including, most notably, declining restaurant sales, particularly in certain of the Debtor's locations. These events placed significant strain on the Debtor's business and liquidity, and ultimately led to the filing of this Chapter 11 case.

4.1 Declining Restaurant Sales and the Debtor's Market Position. "Dairy Queen" is an old, iconic and ubiquitous American brand. Over many years, its concept and operations have morphed from purveyor of frozen treats to a full menu QSR with an emphasis on frozen treats and a niche market in youth sports, activities, parties and events. The brand, while well managed, is mature. The stability of maturity means that the brand is not challenged, but also that break out or rapid improvements in same store sales are challenging.

While there is no doubt that slack service, dirty restrooms or any food or sanitation issues can quickly undermine customers' return to a location or to the brand itself, and while marketing, couponing and advertising can drive sales gains (sometimes at significant cost to margins), the critical factors driving some store sales are the location's demographics, competition and local economic conditions. The Debtor's restaurants are competently managed and staffed to DQ standards, although cash flow issues have prevented the Debtor from completing modernizations and upgrades to physical plant on an aggressive schedule. The Debtor's marketing, couponing and advertising are driven by franchisee associations' standards in local areas and are not easily enhanced.

After consideration of these variables, the Debtor's overall declining and insufficient sales are attributable to:

- Ill-chosen market demographics in certain locations, particularly more recently opened stores in Oklahoma which also carry high rents associated with sale/leaseback new construction; and,
- Economic and, in particular, wage weakness or stagnation in the Debtor's Texas and other oil patch markets.

As a result of the latter, the DQ price point for lunch at \$5-\$6 has become too pricey for many customers when convenience stores offer adequate lunches at a \$3 price point.

All this said, a store level analysis of EBITDA generated by each of the Debtor's locations leads to a mathematically inescapable conclusion:

- The Debtor makes money at many locations and loses money at others; and
- Were the Debtor to close its unprofitable locations, its overall financial results would improve dramatically.

4.2 The Oklahoma Location Expansion. As referenced above, the Debtor was also impacted negatively by an expansion of its operations in Oklahoma. Prior to the Oklahoma

expansion, the Debtor operated 74 stores in Texas. In 2015, the Debtor opened five restaurants in new construction, sale and lease back transactions and expanded its geographic footprint into Oklahoma with the opening of two restaurants. The negative impact of the economic downturn in the oil patch was thus magnified with the increased number of stores. As locations were determined not to be economically viable, the Debtor has closed locations strategically.

4.3 Rise in Cost of Goods Sold. The combination of higher costs and discounted prices to the consumer have resulted in increases in the percentage of Cost of Goods Sold, from 28.7% in 2016 to 30.0% in 2017.

4.4 Debtor's Restructuring Efforts. The Debtor has engaged in significant cost-cutting and overhead reduction programs to mitigate the effects of decreased revenue on its business. However, with the continued effects of the poor economy in the oil patch and general softness in the quick service restaurant market, overall profitability and liquidity continues to suffer. In the first three quarters of 2017, the Debtor generated approximately \$39.5 million in revenue and EBITDA of approximately \$1.8 million. Throughout the local economic recession and leading to the Petition Date, the Debtor's management has focused on introducing new and strategic initiatives to combat the fall in consumer spending and improve guest traffic. In addition, the Debtor's equity holder (or Persons affiliated with such equity holder) wrote loans to the Debtor (the Owner Claims) to support the Debtor's internal restructuring initiatives and to meet liquidity needs. These loans and advances have not been repaid.

4.5 The Debtor's Prepetition Restructuring Negotiations and Available Alternatives. The events leading up to the bankruptcy made it increasingly difficult for the Debtor to service its debt obligations. Ultimately, the Debtor's management determined that it could not meet its liquidity needs going forward. Faced with severe liquidity shortfalls, the Debtor consulted with its advisors to determine the best strategy to preserve value for the benefit of the Debtor's creditor constituencies. To that end, after careful review, the Debtor, in consultation with its advisors, determined that a Chapter 11 filing, combined with an expedited operational restructuring, was the best and most efficient way to maximize a return for the Debtor, its Estate, and all parties-in-interest. Over the past six months, the Debtor and its advisors have explored alternatives, including restructuring and complete liquidation. The restructure efforts were fruitful, and the Debtor entered into a Restructuring Support Agreement ("**RSA**") with key creditor constituencies, namely Cadence and DQ. The RSA was preceded by a term sheet attached thereto as an Exhibit (the "**Plan Term Sheet**"), see Debtor's Motion to Approve Restructuring Signed Agreement filed November 24, 2017 (Docket No. 156) and approved by the Bankruptcy Court after notice of hearing on December 15, 2017 (Docket No. 225). As a part of the Plan Term Sheet, the Debtor secured debtor-in-possession financing to fund the Chapter 11 case and the restructure coupled with an agreement for a longer term post-Effective Date assumption of franchise agreements with DQ. Since the bankruptcy filing, the terms of the Plan Term Sheet have changed due to the operating deficiencies of the Debtor that were unanticipated at the time of filing. The Plan Term Sheet, which forms the basis for the Plan, provides a return to unsecured creditors, a result not obtainable in any other alternative to the filing of this Chapter 11 case. The Debtor believes the RSA and the Plan represent the best option to maximize value for the Estate, exit Chapter 11 as expeditiously as possible, and provide the reorganized enterprise with the capital needed to implement its post-reorganization business plan.

The Debtor's focus in these restructuring negotiations and ultimate agreement to the RSA and Plan Term Sheet, as altered due to Debtor's post-petition operating deficiencies, was driven by a straightforward analysis of alternatives. In particular:

- The Sponsor was unwilling to make further investments in the Debtor nor was the Debtor in a position to obtain more credit or service additional debt, thereby foreclosing any business plan to improve top line sales or bottom line results by new capital or operational expenditures;
- The Debtor was unable to identify any competitive QSR brand which might offer top line advantages and the Debtor, in any event, did not have sufficient capital to de-image and rebrand all or any of its locations;
- The highest, best and only economically viable use of the Debtor's leased locations, leasehold improvements and tangible assets is the operation of Dairy Queen restaurants and the liquidation value of its leases, leasehold improvements and tangible assets is minimal and grossly insufficient to pay even a fraction of the Cadence Prepetition Claim, much less any priority or general unsecured creditor;
- The Debtor's enterprise value consists of its franchise agreements and good will. The former are not freely assignable except to qualified purchasers with the consent of DQ;
- Dairy Queen locations, like essentially all QSR businesses, are valued and sold by multiples of past EBITDA, moderately adjusted for projected and potential future improvements or revenue declines and significantly adjusted by pending and mandatory obligations for deferred maintenance or modernizations required by DQ under the franchise agreements;
- As demonstrated by the liquidation analysis attached hereto as **Exhibit D**, the enterprise value of the Debtor's business in both realistic and optimistic circumstances is less than the Cadence's Prepetition Claim, and sale of the Debtor's business is not a liable alternative;
- While the Debtor has no doubt that other Dairy Queen franchisees would acquire the Debtor's most profitable locations at a fair price, and that such franchisees might even pay a multiple of EBITDA, modestly enhanced by their ability to operate additional locations with only incremental increases in corporate overhead, the aggregate value of the "valuable" location subset is also less than the Cadence Prepetition Claim and the value of the "not valuable" location subset is very low.

In light of the above, and pursuant to Section 506(a) of the Bankruptcy Code, the Committee believes that Cadence's Prepetition Claim must be bifurcated into (i) a secured claim equal to the value of the collateral and (ii) an unsecured claim for the deficiency. Any unsecured deficiency claim would dilute, and be provided with the same treatment as, the class of General Unsecured Creditors. The Committee has requested that the Court value Cadence's collateral/secured claim, and such valuation will take place at the confirmation hearing. There is a risk that if the Cadence Prepetition Claim is bifurcated as set forth above, Cadence may reject the Plan, which could render the Plan unconfirmable and potentially result in a conversion of this case

to a liquidation under chapter 7, unless an alternative plan could be constructed and confirmed. As things presently stand, based on the Debtor's own calculations, the Committee believes that the Debtor is worth less as a going concern than the Cadence debt, under all scenarios.

Despite the Committee's belief above, the Debtor believes that the Plan now presented as required by the RSA and Plan Term Sheet, as altered due to Debtor's post-petition operating deficiencies, is the superior and only alternative to bring any value to junior and general creditors.

## **ARTICLE V. REASONS FOR THE SOLICITATION; RECOMMENDATION**

Chapter 11 of the Bankruptcy Code provides that unless the terms of section 1129(b) of the Bankruptcy Code are satisfied, for the Bankruptcy Court to confirm the Plan, the holders of Claims in each Class of impaired Claims entitled to vote on the Plan must accept the Plan by the requisite majorities set forth in the Bankruptcy Code. An impaired Class of Claims shall have accepted the Plan if (a) the holders of at least two-thirds (2/3) in amount of the Claims in such Class actually voting on the Plan have voted to accept it, and (b) more than one-half (1/2) in number of the holders of Claims in such Class actually voting on the Plan have voted to accept it (such votes, the "**Requisite Acceptances**").

In light of the significant benefits to be attained by the Debtor and its creditors if the transactions contemplated by the Plan are consummated, the Debtor recommends that all holders of Claims entitled to vote to accept the Plan do so. The Debtor reached this decision after considering available alternatives to the Plan and their likely effect on the Debtor's business operations, creditors, and shareholders. These alternatives included alternative restructuring options under Chapter 11 of the Bankruptcy Code, and liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. The Debtor determined, after consulting with its legal and financial advisors, that the Plan, if consummated, will maximize the value of the Estate for all stakeholders, as compared to any other Chapter 11 reorganization strategy or a liquidation under Chapter 7. For all of these reasons, the Debtor supports the Plan and urges the holders of Claims entitled to vote on the Plan to accept and support it.

The Official Committee was appointed on November 9, 2017. As such, the Official Committee did not participate in the Chapter 11 Case until after many of the most significant proceedings had already occurred, including the entry of an order granting the Debtor's Motion for Debtor in Possession Financing. However, upon its formation, the Official Committee will analyze this Disclosure Statement, the Plan of Reorganization, and will conduct diligence on the Debtor's business plan and financial projections.

The Debtor will make every reasonable effort to reach an agreement with the Official Committee to support the Plan. Any such agreement reached by the parties is subject in all respects to the Bankruptcy Court's approval at the confirmation hearing.



## **ARTICLE VI. THE PLAN**

6.1 Overview of Chapter 11. Chapter 11 is the principal business reorganization Chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to restructure its business for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation of a debtor, another goal of Chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the bankruptcy filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a Chapter 11 plan is the principal objective of a Chapter 11 reorganization case. A Chapter 11 plan sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a Chapter 11 plan by the bankruptcy court makes that plan binding upon the debtor, any person acquiring property under the plan and any creditor or equity interest holder of the debtor. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes them for the obligations specified under the confirmed plan.

In general, a Chapter 11 plan of reorganization: (a) divides claims and equity interests into separate classes, (b) specifies the property, if any, that each class is to receive under the plan, and (c) contains other provisions necessary to the restructuring of the debtor that are required or permitted by the Bankruptcy Code.

Pursuant to section 1125 of the Bankruptcy Code, acceptance or rejection of a Chapter 11 plan may not be solicited after the commencement of a Chapter 11 case until such time as the court has approved the disclosure statement as containing adequate information. Pursuant to section 1125(a) of the Bankruptcy Code, "adequate information" is information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding the Chapter 11 plan. To satisfy the applicable disclosure requirements, the Debtor submits this Disclosure Statement to holders of Claims that are impaired and not deemed to have rejected the Plan.

6.2 Overview of the Plan. **THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN AND THE EXHIBITS AND SCHEDULES THERETO.**

The Plan classifies Claims and Interests separately in accordance with the Bankruptcy Code and provides different treatment for different Classes of Claims and Interests. Claims and Interests shall be included in a particular Class only to the extent such Claims or Interests qualify

for inclusion within such Class. The Plan separates the various Claims and Interests (other than those that do not need to be classified) into six (6) separate Classes. These Classes take into account the differing nature and priority of Claims against, and Interests in, the Debtor. Unless otherwise indicated, the characteristics and amounts of the Claims or Interests in the following Classes are based on the books and records of the Debtor. This section summarizes the treatment of each of the Classes of Claims and Interests under the Plan and describes other provisions of the Plan. Only holders of Allowed Claims — Claims that are not in dispute, contingent, or unliquidated in amount and are not subject to an objection or an estimation request — are entitled to receive distributions under the Plan. For a more detailed description of the definition of “Allowed,” see Article I of the Plan. Until a Disputed Claim becomes Allowed, no Distributions of Cash, New Member Interests or otherwise will be made.

The Plan is intended to enable the Debtor to continue present operations without the likelihood of a subsequent liquidation or the need for further financial reorganization. The Debtor believes that it will be able to perform its obligations under the Plan. The Debtor also believes that the Plan permits fair and equitable recoveries.

The Confirmation Date will be the date that the Confirmation Order is entered by the Clerk of the Bankruptcy Court. The Effective Date will be the first Business Day on or after the Confirmation Date on which all of the conditions to the Effective Date specified in Section 10.1 of the Plan have been satisfied or waived, including the consummation of the transactions contemplated by the Plan. Resolution of any challenges to the Plan may take time and, therefore, the actual Effective Date cannot be predicted with certainty.

Other than as specifically provided in the Plan, the treatment under the Plan of each Claim and Interest will be in full satisfaction, settlement, release and discharge of all Claims or Interests. The Debtor will make all payments and other distributions to be made under the Plan unless otherwise specified.

### **Unclassified Claims**

All Claims and Interests, except the Cadence DIP Claim, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims, are placed in the Classes set forth in Article II above and are treated under Article IV below. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Cadence DIP Claim, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims have not been classified, and the holders thereof are not entitled to vote on the Plan on account of such Claims. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes.

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation and distribution under the Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. However, a Claim or Interest is placed in a particular Class for the purpose of receiving Plan Distributions only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest and has not been paid, released or otherwise settled prior to the Effective Date.

6.2.1 Cadence DIP Claim. The Cadence DIP Claim shall be deemed to be an Allowed Claim under the Plan without the need to file a proof of such Claim with the Bankruptcy Court and without further order of the Bankruptcy Court. On the Confirmation Date, the Cadence DIP Claim shall not be subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether contractual, equitable or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under any applicable law or regulation by any person or entity. The Cadence DIP Claim shall be satisfied in full on or before July 2, 2018 in accordance with the terms and conditions of the DIP Facility Agreement. All net proceeds generated during the Reorganization Case and paid to Cadence from any Dark Store Sales shall be applied to reduce the total Cadence DIP Claim.

6.2.2 Bar Date for Administrative Expense Claims. Each holder of an Administrative Expense Claim, other than the holder(s) of: (i) the Cadence DIP Claim; (ii) a Fee Claim; (iii) a 503(b)(9) Claim; (iv) an Administrative Expense Claim that has been Allowed on or before the Effective Date; (v) an Administrative Expense Claim for an expense or liability incurred and payable in the ordinary course of business by the Debtor (including, but not limited to, payments due to DQ pursuant to the existing franchise agreements related to retained stores); (vi) an Administrative Expense Claim on account of fees and expenses incurred on or after the Petition Date by ordinary course professionals retained by the Debtor pursuant to an order of the Bankruptcy Court; (vii) an Administrative Expense Claim arising, in the ordinary course of business, out of the employment of the Debtor of an individual from and after the Petition Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses; or (viii) a claim for adequate protection arising under the Final DIP Order, must file with the Bankruptcy Court and serve on the Debtor or Reorganized Debtor (as the case may be) and the Office of the U.S. Trustee, proof of such Administrative Expense Claim within ten (10) days after the Effective Date (the “**Administrative Bar Date**”). Such proof of Administrative Expense Claim must include at a minimum: (i) the name of the applicable Debtor that is purported to be liable for the Administrative Expense Claim and if the Administrative Expense Claim is asserted against more than one Debtor, the exact amount asserted to be owed by each such Debtor; (ii) the name of the holder of the Administrative Expense Claim; (iii) the asserted amount of the Administrative Expense Claim; (iv) the basis of the Administrative Expense Claim; and (v) supporting documentation for the Administrative Expense Claim. FAILURE TO FILE AND SERVE SUCH PROOF OF ADMINISTRATIVE EXPENSE CLAIM TIMELY AND PROPERLY SHALL RESULT IN SUCH CLAIM BEING FOREVER BARRED AND DISCHARGED.

Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment, on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is ten (10) business days after the date an Administrative Expense Claim becomes an Allowed Claim, the holder of such Allowed Administrative Expense Claim shall receive from the Reorganized Debtor Cash in an amount equal to such Allowed Claim; *provided, however*, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor, as debtor in possession, shall be paid by the Debtor or the Reorganized Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any orders or agreements governing, instruments evidencing, or other documents

relating to, such liabilities. If such payment results in the incurrence of penalties or interest, such penalties and interest shall be paid in full.

**6.2.3 Fee Claims.** Any Professional Person seeking allowance of a Fee Claim shall file, with the Bankruptcy Court, its final application for allowance of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date and in connection with the preparation and prosecution of such final application no later than ten (10) calendar days after the Effective Date. Objections to such Fee Claims, if any, must be filed and served pursuant to the procedures set forth in the Confirmation Order no later than ten (10) calendar days after the filing of the Fee Claim objected to or such other date as established by the Bankruptcy Court.

All Professional Persons seeking allowance by the Bankruptcy Court of a Fee Claim shall be paid in full in Cash in such amounts as are approved by the Bankruptcy Court: (i) upon the later of (x) the Effective Date, and (y) fourteen (14) calendar days after the date upon which the order relating to the allowance of any such Fee Claim is entered, or (ii) upon such other terms as have been or may be mutually agreed upon between the holder of such Fee Claim and the Reorganized Debtor. On the Effective Date, to the extent known, the Reorganized Debtor shall reserve and hold in a segregated account Cash in an amount equal to all accrued but unpaid Fee Claims as of the Effective Date, which Cash shall be disbursed solely to the holders of Allowed Fee Claims with the remainder to be reserved until all Fee Claims have been either Allowed and paid in full or Disallowed by Final Order, at which time any remaining Cash in the segregated account shall become the sole and exclusive property of the Reorganized Debtor.

**6.2.4 U.S. Trustee Fees.** The Debtor or the Reorganized Debtor, as applicable, shall pay all outstanding U.S. Trustee Fees of the Debtor on an ongoing basis on the date such U.S. Trustee Fees become due, until such time as a final decree is entered closing the Reorganization Case, the Reorganization Case is converted or dismissed, or the Bankruptcy Court orders otherwise.

**6.2.5 Priority Tax Claims.** Except to the extent that a holder of an Allowed Priority Tax Claim agrees to different treatment, each holder of an Allowed Priority Tax Claim shall receive, in the Debtor's or the Reorganized Debtor's discretion, either: (a) on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date a Priority Tax Claim becomes an Allowed Claim, Cash in an amount equal to such Claim; or (b) deferred Cash payments following the Effective Date, over a period ending not later than five (5) years after the Petition Date, in an aggregate amount equal to the Allowed amount of such Priority Tax Claim (with any interest to which the holder of such Priority Tax Claim may be entitled calculated in accordance with section 511 of the Bankruptcy Code); *provided, however*, that all Allowed Priority Tax Claims that are not due and payable on or before the Petition Date shall be paid in the ordinary course of the Debtor's business as they become due.

### **Classification and Treatment of Claims and Interests**

**6.2.6 Cadence Prepetition Claims – Class 1.** Except to the extent that Cadence shall have agreed in writing to a different treatment, the Class 1 Allowed Claim shall receive, in

full satisfaction of such Claim, on or as soon as reasonably practicable after the Effective Date, (i) the New Cadence Notes and (ii) Cash in full and final payment of the Cadence Purchasing Card Obligations. Note A shall (i) accrue interest at a variable rate per annum calculated as the London Interbank Offered Rate plus 4.50%, (ii) be payable monthly on an interest-only basis, and (iii) become due and payable in full on the Maturity Date unless accelerated prior thereto as a result of any default or event of default thereunder. Note B shall (i) accrue interest at a fixed rate per annum equal to 8.00% on a non-compounding basis, (ii) not contain scheduled principal or interest payments, and (iii) become due and payable in full on the Maturity Date unless accelerated prior thereto as a result of any default or event of default thereunder. Note B shall further provide that, so long as not accelerated as a result of an event of default, upon a sale of all or substantially all assets of the Debtor or a refinancing of all obligations owed to Cadence that occurs after June 30, 2019 (a “Payoff Date”), Note B shall be repaid according to the following matrix:

<b><u>Consolidated EBITDA</u></b> (as of Payoff Date on a trailing twelve (12) month basis)	<b><u>Note B Repayment Amount</u></b>
Greater than or equal to \$2,300,000.00	\$1,969,120.00 plus all accrued interest as of Payoff Date (the “Full Note B Amount”)
Less than \$2,300,000.00 and greater than or equal to \$2,000,000.00	The greater of:  (a) net proceeds from any sale in excess of the amount required for full repayment of all other obligations owed to Cadence, up to the Full Note B Amount  And  (b) The full principal amount of Note B (accrued interest waived).
Less than \$2,000,000.00 and greater than or equal to \$1,800,000.00	The greater of:  (a) net proceeds from any sale in excess of the amount required for full repayment of all other obligations owed to Cadence, up to the Full Note B Amount  And  (b) Principal in the amount of \$969,120.00 (accrued interest waived).
Less than \$1,800,000.00	Net proceeds, if any, from any sale in excess of the amount required for full

	repayment all other obligations owed to Cadence, up to the Full Note B Amount.
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In addition, during the term of the New Cadence Notes, the Reorganized Debtor shall make additional principal payments from remaining New Excess Cash Flow as provided by the Allocations After Payment of the New Revolver, which shall be applied to the outstanding principal balance of Note A.

The New Cadence Notes shall be subject the following financial covenants:

- (a) The Debtor shall not permit the Consolidated Fixed Charge Coverage Ratio for the Third Quarter 2018 and Fourth Quarter 2018 to be less than 1.10 to 1.00. For the First Quarter 2019 and Second Quarter 2019, the Debtor shall not permit the Consolidated Fixed Charge Coverage Ratio to be less than 1.15 to 1.00. Following the Second Quarter 2019 and any Fiscal Quarter of the Loan Parties thereafter, the Debtor shall not permit the Consolidated Fixed Charge Coverage Ratio to be less than 1.20 to 1.00. The Consolidated Fixed Charge Coverage Ratio shall be tested quarterly on a trailing twelve (12) month period.
- “Consolidated Fixed Charge Coverage Ratio” shall mean, as of any date of determination, the ratio of (a) the sum of Consolidated EBITDAR for the applicable period minus cash federal, state, local and foreign income taxes (and franchise tax in the nature of income tax) paid by Loan Parties for such period to (b) Debt Service for such period plus Operating Lease and Rental Expense.
- (b) The Debtor shall not permit Total Receipts (as provided in the Business Plan) for each Fiscal Quarter to be less than the amount provided below for the end of the applicable Fiscal Quarter:

Fiscal Quarter ending:	9/30/18	12/30/18	3/31/19	6/30/19	9/29/19	12/29/19	3/29/20
Minimum Total Receipts:	\$8,350,000	\$7,100,000	\$7,250,000	\$8,650,000	\$8,450,000	\$7,150,000	\$7,350,000

Fiscal Quarter ending:	6/28/20	9/27/20	12/27/20	3/28/21	6/27/21	9/26/21	12/26/21
Minimum Total Receipts:	\$8,750,000	\$8,550,000	\$7,250,000	\$7,450,000	\$8,850,000	\$8,600,000	\$7,300,000

- (c) The Debtor shall not permit Consolidated EBITDA for each Fiscal Quarter to be less than the cumulative amount provided below for the end of the applicable Fiscal Quarter which shall be measured as stated below:

Fiscal Quarter ending:	9/30/18	12/30/18	3/31/19	6/30/19	9/29/19	12/29/19	3/29/20
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<b>Minimum Consolidated EBITDA:</b>	\$515,000	\$645,000	\$1,000,000	\$1,725,000	\$1,800,000	\$1,800,000	\$1,850,000
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<b>Fiscal Quarter ending:</b>	<b>6/28/20</b>	<b>9/27/20</b>	<b>12/27/20</b>	<b>3/28/21</b>	<b>6/27/21</b>	<b>9/26/21</b>	<b>12/26/21</b>
<b>Minimum Consolidated EBITDA:</b>	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000

- Consolidated EBITDA shall be measured for the Fiscal Quarter ending September 30, 2018 by using the EBITDA for the quarter ending on that date.
- Consolidated EBITDA shall be measured on 12/30/18 by adding EBITDA for the Fiscal Quarters ending December 30, 2018 and September 30, 2018.
- Consolidated EBITDA shall be measured on 3/31/19 by adding EBITDA for the Fiscal Quarters ending on March 31, 2019, December 30, 2018 and September 30, 2018.
- Consolidated EBITDA shall be measured for each quarter thereafter as it is calculated to be measured under the Prepetition Loan Documents.

The New Cadence Notes and the New Revolver shall constitute a modification to and not a novation of the Cadence Prepetition Loan Documents and shall be secured by fully perfected, first priority liens on and security interests in all the assets of the Reorganized Debtor constituting Collateral for the Cadence Prepetition Claims and the Cadence DIP Claim. The Reorganized Debtor and Cadence are authorized to make all recordings and filings necessary to establish and perfect the liens, and the Reorganized Debtor shall cooperate in making such filings and recordings; provided that, the liens are perfected automatically upon the entry of the Confirmation Order. All other material terms of the New Cadence Notes other than as set forth herein, including but not limited to reporting requirements, will be on terms and conditions mutually acceptable to Cadence and the Debtor or the Reorganized Debtor. Notwithstanding anything in this Plan to the contrary, pursuant to the Cadence DIP Facility Agreement, the Debtor, or the Reorganized Debtor as the case may be, shall pay on demand from Cadence, and without application to the Bankruptcy Court, all reasonable and documented expenses of Cadence, including the reasonable fees, charges, disbursements and expenses of its advisors and counsel to Cadence.

### **Class 1 Cadence Prepetition Claims are Impaired under the Plan.**

6.2.7 Priority Non-Tax Claims – Class 2. The legal, equitable and contractual rights of the holders of Priority Non-Tax Claims, including, but not limited to, Priority Wage Claims, are unaltered by the Plan. Except to the extent that a holder of an Allowed Priority

Non-Tax Claim agrees to a different treatment, on the applicable distribution date, each holder of an Allowed Priority Non-Tax Claim shall receive Cash from the Reorganized Debtor in an amount equal to such Allowed Claim to the extent such Allowed Priority Non-Tax Claim is unpaid prior to the Effective Date.

Class 2 Priority Non-Tax Claims are not impaired under the Plan and, therefore, are conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan. Votes of such holders will not be solicited with respect to such Allowed Priority Non-Tax Claims. The Debtor believes that there are no holders of Class 2 Priority Non-Tax Claims as of the date of this Disclosure Statement.

6.2.8 General Unsecured Claims – Class 3. Unless specifically provided otherwise in the Plan, nothing in the Plan Allows or Disallows Unsecured Claims. Each Unsecured Claim that is Allowed, but only to the extent Allowed, shall receive payment by the Reorganized Debtor on a *pro rata* basis with all other Unsecured Claims in Class 3. The Debtor shall pay Unsecured Claims in Class 3 from the Unsecured Creditors Fund, to the extent such Claims are Allowed.

**Class 3 General Unsecured Claims are Impaired under the Plan.**

6.2.9 DQ's Claim – Class 4. The DQ Claim shall be deemed an Allowed Unsecured Claim in the amount of \$609,770.57 (the “**Allowed DQ Claim**”), and is the amount agreed between the Debtor and DQ to be due to cure defaults under the Debtor's franchise agreements with DQ to permit assumption of the same by the Reorganized Debtor. The Allowed DQ Claim shall receive a Distribution of \$150,000 on the Effective Date on account of the Allowed DQ Claim, and the Reorganized Debtor shall, in addition such Cash Distribution, execute and deliver the DQ Note in the principal amount of \$459,770.57 to the holder of the Allowed DQ Claim on the Effective Date.

**The Class 4 DQ Claim is Impaired under the Plan.**

6.2.10 Sponsor Affiliate Claims – Class 5. The Sponsor Affiliate Claims shall be deemed Allowed Unsecured Claims in the amount of \$1,631,178 (the “**Allowed Sponsor Affiliate Claims**”). In connection with and contingent upon the closing of the transaction contemplated by the Subscription Agreement, the holders of the Sponsor Affiliate Claims have agreed to waive any right to receive Distributions from the Debtor under the Plan; provided, however, if the Effective Date of the Plan does not occur, the Sponsor Affiliate Claims shall not be waived and the holders of the Sponsor Affiliate Claims shall reserve all of their rights with respect to the treatment of such Claims.

**Class 5 Sponsor Affiliate Claims are Impaired under the Plan.**

6.2.11 Interests Holders – Class 6. Class 6 consists of the holders of Interests. The Interests shall be cancelled, eliminated and extinguished upon the Effective Date and holders of Interests shall not receive any Distributions from the Debtor nor retain any property of the Debtor under the Plan on account of such Interests.



Class 6 Interests Holders are Impaired under the Plan, but are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. Class 6 Interest Holders are not entitled to vote to accept or reject the Plan and votes of such holders will not be solicited with respect to such Interests.

**6.3 Acceptance or Rejection of the Plan; Effect of Rejection by One or More Classes of Claims or Interests.**

**6.3.1 Class Acceptance Requirement.** A Class of Claims shall have accepted the Plan if it is accepted by at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of holders of the Allowed Claims in such Class that have voted on the Plan.

**6.3.2 Confirmation.** Pursuant to Section 1129(b) of the Bankruptcy Code or “Cramdown.” Because certain Classes are deemed to have rejected the Plan, the Debtor will request confirmation of the Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code with respect to such Classes. Subject to Section 13.11 of the Plan, the Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan or any Plan Document in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary. Subject to Sections 13.11 and 13.12 of the Plan (including the consent of the Consent Parties), the Debtor also reserves the right to request confirmation of the Plan, as it may be modified, supplemented or amended from time to time, with respect to any Class that affirmatively votes to reject the Plan.

**6.3.3 Elimination of Vacant Classes.** Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan pursuant to section 1129(a)(8) of the Bankruptcy Code.

**6.3.4 Voting Classes; Deemed Acceptance by Non-Voting Classes.** If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by such Class.

**6.4 Summary of Capital Structure of Reorganized Debtor.**

**6.4.1 Emergence Capital Structure.** The following summarizes the capital structure of the Reorganized Debtor, including the post-Effective Date financing arrangements the Reorganized Debtor expects to enter into. The summary of the Reorganized Debtor’s capital structure is qualified in its entirety by reference to the Plan and the applicable Plan Documents.

Instrument	Description
New Cadence Notes	The New Cadence Notes are described in detail in Section 4.1 of the Plan. Note A consists of a promissory note evidencing a term loan in the principal amount of \$9,000,000. Note B consists of a promissory note evidencing a term loan in the principal amount of \$1,969,120. Note A shall accrue interest at a variable rate per annum calculated as London Interbank Offer Rate plus 4.50% to be paid monthly on an interest-only basis. Note B shall accrue interest on a non-compounding basis at the fixed rate of 8.0% and shall not contain scheduled principal or interest payments. The matrix in Section 4.1 provides the repayment schedule for Note B so long as Note B is not accelerated as a result of default.
New Revolver	The New Revolver is described in detail in Section 6.1 of the Plan. The New Revolver consists of a new revolving working capital loan in the principal amount of \$2,300,000.00. The New Revolver shall accrue interest at a variable rate per annum calculated as London Interbank Offer Rate plus 4.50%.
New Member Interests	On the Effective Date, the Reorganized Debtor is authorized to issue or cause to be issued the New Member Interests for distribution in accordance with the Plan, without further need for corporate, member, manager or Board of Managers action, as provided in the Subscription Agreement to be included in the Plan Supplement

## 6.5 Means for Implementation.

6.5.1 Plan Funding and Operation the Businesses. The Plan Distributions to be made in Cash under the terms of this Plan shall be funded from (a) the Debtor's Cash on hand as of the Effective Date; (b) the Subscription Amount and (c) Cash generated from the ongoing operations of the Debtor. In addition, Cadence shall provide to the Reorganized Debtor a revolving working capital loan in an amount up to \$2,300,000.00 (the "**New Revolver**"), which shall be subject to appropriate documentation acceptable to Cadence and the Debtor or Reorganized Debtor that shall contain the following terms:

- (a) Accruing interest at a variable rate per annum calculated as the London Interbank Offered Rate plus 4.50% (the "**Revolver Rate**").
- (b) \$1,250,000.00 available for borrowing.
- (c) A letter of credit sublimit in the aggregate amount of \$400,000.00 (the "L/C Sublimit"), which amount may be borrowed only for the purpose of reimbursing Cadence for any draws made by the beneficiary under any letter of credit issued by Cadence, and which amount shall be part of, and not in addition to, the New

Revolver. If Cadence, DQ, and the Debtor are able to mutually agree on the terms and conditions of a replacement letter of credit in favor of International Dairy Queen, Inc. in accordance with the terms and conditions contained in the RSA (the “Replacement DQ L/C”), the L/C Sublimit shall be \$1,050,000.00.

- (d) Letter of credit fees to be paid quarterly at the Revolver Rate.
- (e) To be repaid from Net Excess Cash Flow.
- (f) The Debtor shall not be permitted to make any draws under the New Revolver for a period of sixty (60) days after the Debtor makes any payment towards the DQ Note.
- (g) The New Revolver shall constitute a modification to and not a novation of the Cadence Prepetition Loan Documents and shall be secured on a pro-rata basis with the New Cadence Notes by fully perfected, first priority liens on and security interests in all the assets of the Reorganized Debtor constituting Collateral for the Cadence Prepetition Claims and the Cadence DIP Claim. The Reorganized Debtor and Cadence are authorized to make all recordings and filings necessary to establish and perfect the liens, and the Reorganized Debtor shall cooperate in making such filings and recordings; provided that, the liens are perfected automatically upon the entry of the Confirmation Order.

All other material terms of the New Revolver other than as set forth herein will be on terms and conditions mutually acceptable to Cadence and the Debtor or the Reorganized Debtor.

**6.5.2 Continued Corporate Existence.** Except as otherwise provided in the Plan, the Debtor shall continue to exist after the Effective Date as the Reorganized Debtor in accordance with the applicable laws of the jurisdiction in which it is organized and pursuant to the operative certificates of formation and operating agreements, for the purposes of satisfying its obligations under the Plan and the continuation of its business. On and after the Effective Date, the Reorganized Debtor shall conduct business going forward under its new corporate name, Square1 Restaurants, LLC.

**6.5.3 Vesting of Assets in the Reorganized Debtor.** Except as otherwise provided in the Plan, on and after the Effective Date, all property of the Estate, including all claims, rights and Causes of Action and any property acquired by the Debtor under or in connection with the Plan, shall vest in the Organized Debtor free and clear of all Claims, Liens, charges, other encumbrances and Interests. Subject to Section 6.2 of the Plan, on and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property and prosecute, compromise or settle any Claims (including any Administrative Expense Claims) and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Professional Persons’ fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

6.5.4 Documents. The Reorganized Debtor shall be authorized to take all actions that may be necessary or appropriate to effectuate any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (1) the execution and delivery of appropriate agreements or other documents containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law and any other terms to which the applicable entities may agree including, but not limited to, those agreements or other documents underlying the New Cadence Notes and the New Revolver; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable state law (as long as such actions are not prohibited pursuant to the terms of the Franchise Agreement and the New Cadence Notes); and (4) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law. Other than with respect to the New Cadence Notes and the Franchise Agreement, to the extent that the relevant parties in interest herein are unable to agree on the form or substance of such documents, such unresolved issues shall be submitted to the Bankruptcy Court for determination.

6.5.5 Post-Effective Date Franchise Agreements. Commencing on the Effective Date, unless otherwise agreed to by DQ and the Reorganized Debtor. Commencing on the Effective Date, DQ shall permit the Reorganized Debtor to assume the existing franchise agreements relating to the Retained Stores (subject to modifications as set forth herein) (the “**Franchise Agreement**”(s)) for each Retained Store. The Franchise Agreements shall include the following modifications: upon change in control of the Debtor, sale, or closure of any store after DQ’s acceptance of the DQ Note, the Reorganized Debtor shall be immediately obligated to pay down the outstanding balance of the DQ Note in an amount to be agreed upon between the Debtor and DQ that reflects the change in the Reorganized Debtor’s business. Such modifications shall be removed and/or shall be of no further force or effect upon the transfer or assignment of a Franchise Agreement to a third party other than a transfer or assignment between any two wholly-owned direct or indirect subsidiaries of the Reorganized Debtor, unless otherwise agreed to in writing by DQ and the Reorganized Debtor.

6.5.6 Guaranty of Franchise Agreement. On and after the date on which the Debtor or the Reorganized Debtor, as account party, obtains the Replacement DQ L/C, the maximum aggregate liability of the guarantors under the DQ Guaranty shall be reduced to \$250,000 and DQ and the guarantors shall execute an amendment to the DQ Guaranty to reflect such reduction. DQ shall retain the right to require a personal guarantee from any assignee of a Franchise Agreement other than an assignment between any two wholly-owned subsidiaries of the Reorganized Debtor.

6.5.7 Cancellation of Existing Interests and Agreements. Except for the purpose of evidencing a right to distribution under the Plan (if any) and except as otherwise set forth herein, on the Effective Date all agreements, instruments, and other documents evidencing, related to or connected with any Claim or Interest, and any rights of any holder in respect thereof, shall be deemed cancelled, discharged and of no force or effect. The holders of or parties to such cancelled instruments, Interests and other documentation will have no rights

arising from or relating to such instruments, Interests and other documentation or the cancellation thereof, except the rights, if any, provided for pursuant to the Plan.

6.5.8 Authorization, Issuance and Delivery of New Member Interests. As soon as reasonably practicable following the Effective Date, but effective as of the Effective Date, and without any further action or consent, the Reorganized Debtor is authorized to and shall issue and deliver the New Member Interests in the Reorganized Debtor to the Investor or to any Person(s) designated by the Investor. The New Member Interests qualify under the new value exception to the absolute priority rule because the capital infusion provided by the Investor (an affiliate of the Sponsor) is (i) substantial, (ii) reasonably equivalent to the value received, and (iii) necessary for the continued operations of the Reorganized Debtor. *See In re Mangia Pizza Investments LP*, 480 B.R. 669, 699 (Bankr. W.D. Tex. 2012). Here, the capital infusion of \$500,000 in Cash is substantial as the investment will permit the Reorganized Debtor to fund the Plan and make Plan Distributions. Without the Investor's capital infusion, the Reorganized Debtor would not be capable of meeting the proposed Plan Distributions on the Effective Date from Cash on hand and Cash generated from ongoing operations. Moreover, the Debtor believes that the \$500,000 capital infusion is equivalent to the value to be received by the Investor based upon the Debtor's current operating deficiencies.

#### 6.6 Treatment of Executory Contracts and Unexpired Leases.

6.6.1 General Assumption of Executory Contracts and Unexpired Leases. Except as set forth in Section 8.2 of the Plan, all executory contracts and unexpired leases of the Debtor (including, but not limited to, those listed on the Debtor's Schedules) shall be deemed rejected as of the Effective Date, except that (a) any executory contracts and unexpired leases that previously have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court shall be treated as provided in such Final Order; (b) any executory contracts and unexpired leases listed on the Schedule of Assumed Contracts and Leases shall be deemed assumed as of the Effective Date; and (c) all executory contracts and unexpired leases that are the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date shall be treated as provided for in the Final Order resolving such motion. Each prepetition executory contract and unexpired lease will be rejected only to the extent that any such contract or lease constitutes an executory contract or unexpired lease. Listing a contract or lease as an executory contract or unexpired lease will not constitute an admission by the Debtor, or the Debtor-in-Possession that such contract or lease is an executory contract or unexpired lease or that the Debtor, or the Debtor-in-Possession has any liability thereunder. Subject to the occurrence of the Effective Date, the Confirmation Order shall constitute an Order of the Bankruptcy Court approving rejection under sections 365 and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed pursuant to Section 8.1 of the Plan shall revest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable federal law. The Reorganized Debtor shall continue to have all rights of assignment contained in 11 U.S.C. § 365 of any executory contract or unexpired lease following Confirmation of the Plan.

6.6.2 Cure of Defaults for Assumed Executory Contracts and Unexpired Leases. The applicable Reorganized Debtor shall cure all defaults other than non-monetary defaults

existing under any assumed executory contract or unexpired lease in accordance with sections 1123(a)(5)(G) and 365(b) of the Bankruptcy Code. Except to the extent that less favorable treatment has been agreed to by the non-Debtor party or parties to each such executory contract or unexpired lease to be assumed pursuant to the Plan, any monetary defaults arising under such executory contract or unexpired lease shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount (the “**Cure Amount**”) in Cash on or before the later of thirty (30) days after: (i) the Effective Date; or (ii) the date on which any Cure Dispute relating to such Cure Amount has been resolved (either consensually or through judicial decision). No later than twenty-one (21) calendar days prior to the commencement of the Confirmation Hearing, the Debtor shall file a schedule (the “**Cure Schedule**”) setting forth the Cure Amount, if any, for each executory contract and unexpired lease to be assumed pursuant to Section 8.1 of the Plan, and serve such Cure Schedule on each applicable counterparty. Any party that fails to object to the applicable Cure Amount listed on the Cure Schedule within fifteen (15) calendar days of the filing thereof, shall be forever barred, estopped and enjoined from disputing the Cure Amount set forth on the Cure Schedule (including a Cure Amount of \$0.00) and/or from asserting any Claim against the applicable Debtor or the Reorganized Debtor arising under section 365(b)(1) of the Bankruptcy Code except as set forth on the Cure Schedule. In the event of a dispute (each, a “**Cure Dispute**”) regarding: (i) the Cure Amount; (ii) the ability of the Reorganized Debtor to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (iii) any other matter pertaining to the proposed assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such Cure Dispute and approving the assumption. To the extent a Cure Dispute relates solely to the Cure Amount, the Debtor may assume and/or assume and assign the applicable contract or lease prior to the resolution of the Cure Dispute provided that (i) the Debtor reserves Cash in an amount sufficient to pay the disputed Cure Amounts, and (ii) that the Debtor shall pay on the Effective Date any undisputed Cure Amounts.

**6.6.3 Claims for Damages.** Each Person that is a party to a rejected executory contract or unexpired lease, and only such Person, shall be entitled to file a proof of Claim for damages alleged to have arisen from the rejection of the contract or lease to which such Person is a party. As to rejected unexpired leases, a majority, if not all of the rejected unexpired leases, have been rejected by operation of law pursuant to 11 U.S.C. § 365(d)(4). Any Claims based upon rejection of an executory contract or unexpired lease must be filed with the Bankruptcy Court and served on the Reorganized Debtor such that they are actually received within thirty (30) days from the Effective Date. Objections to any such proof of Claim shall be filed not later than the later of (i) forty-five (45) days after the filing of the applicable rejection damages proof of Claim and (ii) sixty (60) days after the entry of the Confirmation Order or such other period of limitation as may be specifically fixed by an order of this Court for objecting to such Claims. The Bankruptcy Court shall determine any such objections, unless they are otherwise resolved. All Allowed Claims for rejection damages shall be treated as an Unsecured Claim against the Reorganized Debtor. Any rejection Claim not filed within such time will be forever barred from assertion against the Debtor, the Reorganized Debtor or the Estate.

## 6.7 Effect of Plan Confirmation.

6.7.1 Binding Effect. On and after the Effective Date, the provisions of the Plan shall be binding upon the Debtor, the Reorganized Debtor, and any holder of a Claim against, or Interest in, the Debtor and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under the Plan and whether or not such holder has accepted the Plan.

6.7.2 Discharge of Claims Against and Interests in the Debtor. Upon the Effective Date and in consideration of the Plan Distributions and the other terms and provisions of the Plan, except as otherwise expressly provided herein or in the Confirmation Order, each Person that is a holder (as well as any trustees and agents on behalf of such Person) of a Claim or Interest shall be deemed to have forever waived, released, and discharged the Debtor of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided herein, upon the Effective Date, all such holders of Claims and Interests shall be forever precluded and enjoined, pursuant to sections 105, 524, 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor or Reorganized Debtor.

6.7.3 Term of Pre-Confirmation Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

## 6.7.4 Injunction.

(a) Except as otherwise provided in the Plan or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtor or the Estate are, solely with respect to such Claims or Interests, permanently enjoined after the Confirmation Date from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Reorganized Debtor, the Estate or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor, the Reorganized Debtor, or the Estate or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Reorganized Debtor, or the Estate or any of their property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Plan to the full extent permitted by applicable law; and (v) commencing or continuing, in any manner or in

any place, any action that does not comply with or is inconsistent with the provisions of the Plan; *provided, however*, that nothing contained herein shall preclude such Persons from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of the Plan and the documents and agreements entered into with respect to the Plan including, but not limited to, the executory contracts and leases assumed pursuant to the Plan.

(b) By accepting Plan Distributions, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the injunctions set forth in this Section.

#### 6.7.5 Releases.

(a) Releases by the Debtor. For good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise provided in the Plan or the Confirmation Order, as of the Effective Date, the Debtor and Reorganized Debtor, in their individual capacities and as debtor in possession on behalf of the Estate, shall be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtor or Reorganized Debtor to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder) against the Released Parties, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Reorganized Debtor, the Released Parties, this Reorganization Case, the Plan or this Disclosure Statement, and all claims that could have been asserted by or on behalf of the Debtor or its Estates or Reorganized Debtor, including claims that could be asserted by the Committee, whether directly, indirectly, derivatively or in any representative or any other capacity, other than claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities arising out of or relating to any act or omission of a Released Party or a former officer or director of the Debtor that constitutes fraud or willful misconduct.

In addition, notwithstanding any other provision of the Plan, neither the Debtor, the Reorganized Debtor, nor any other representative of or successor to the Estate shall retain, and each of them is hereby deemed to waive and release, any and all claims, causes of action and other rights against the holders of Class 3 Claims based on section 547 of the Bankruptcy Code or any similar law providing for the avoidance and/or recovery of preferences.

(b) Releases by Holders of Claims and Interests. Except as otherwise provided in the Plan or the Confirmation Order, on the Effective Date, in consideration for the obligations of the Debtor and Reorganized Debtor under the Plan and the terms and provisions of the Plan (including, without limitation, the settlements and compromises embodied in the Plan), shall be deemed to have consented to the Plan for all purposes and the restructuring embodied herein and, unless such holder returns the appropriate ballot clearly choosing to opt-out of such releases, shall also be deemed to forever release, waive and discharge all claims, demands, debts, rights, Causes of Action or liabilities (other than the right to enforce the obligations of any party under the Plan and the contracts, instruments, releases, agreements and documents delivered under or in connection with the Plan) against the Released Parties, whether liquidated or



unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, this Reorganized Debtor, the Reorganization Case, the Plan or the Disclosure Statement.

(c) Releases by DQ. In addition to the release provided by DQ above, on the Effective Date, DQ shall be deemed to forever release, waive and discharge all claims it's has with respect to (or arising under) the DQ Guaranty which relate to amounts owed by (or obligations of) the Debtor pursuant to, and in connection with, franchise and/or license agreements that existed prior to the Petition Date.

(d) Exceptions to Releases. Notwithstanding anything to the contrary contained herein: (i) except to the extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, the releases provided for in Section 9.5 of the Plan shall not release any non-Debtor entity from any liability arising under (x) the Internal Revenue Code, or (y) any criminal laws of the United States or any state, city or municipality; and (ii) the releases set forth in Section 9.5 of the Plan shall not release any (x) claims against any Person to the extent such Person asserts a crossclaim, counterclaim and/or claim for setoff which seeks affirmative relief against the Debtor or any of its officers, directors, or representatives and (y) claims against any Person arising from or relating to such Person's fraud or willful misconduct, each as determined by a Final Order of the Bankruptcy Court. Furthermore, notwithstanding anything to the contrary herein, the releases provided for in this Section 9.5 of the Disclosure Statement shall not release the Reorganized Debtor from the accrued but unbilled liabilities (as of the Effective Date) arising under the terms of the leases of nonresidential real property assumed pursuant to the Plan, including, without limitation, periodic operating expenses, real estate taxes and insurance reconciliations, and Reorganized Debtor shall receive the benefit of any credits associated therewith.

(e) As to the United States of America, its agencies, departments, or agents (collectively, the "**United States**"), nothing in the Plan or Confirmation Order shall limit or expand the scope of any discharge, release or injunction to which the Debtor or Reorganized Debtor are entitled under the Bankruptcy Code. The discharge, release and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Order, pursuing any police or regulatory action, except to the extent those discharge and injunctive provisions bar a Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) from pursuing Claims.

(f) Accordingly, notwithstanding anything contained in the Plan or Confirmation Order to the contrary, nothing in the Plan or Confirmation Order shall discharge, release, impair or otherwise preclude: (1) any liability to the United States that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code; (2) any Claim of the United States arising on or after the Confirmation Date; (3) any valid right of setoff or recoupment of the United States against any of the Debtor; or (4) any liability of the Debtor or the Reorganized Debtor under environmental law to any Governmental Unit as the owner or operator of property that such entity owns or operates after the Confirmation Date, except those obligations to reimburse costs expended or paid by a Governmental Unit before the Petition Date or to pay

penalties owing to a Governmental Unit for violations of environmental laws or regulations that occurred before the Petition Date. Nor shall anything in the Plan or Confirmation Order: (i) enjoin or otherwise bar the United States or any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding sentence; or (ii) divest any court of jurisdiction to determine whether any liabilities asserted by the United States or any Governmental Unit are discharged or otherwise barred by the Plan, Confirmation Order, or the Bankruptcy Code.

**6.7.6 Exculpation and Limitation of Liability.** None of the Released Parties shall have or incur any liability to any holder of any Claim or Interest or any other Person for any act or omission in connection with, or arising out of the Debtor's restructuring, including (without limitation) the negotiation, implementation and execution of the Plan, this Reorganization Case, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all activities leading to the promulgation and confirmation of the Plan except for fraud or willful misconduct, each as determined by a Final Order of the Bankruptcy Court; *provided, however,* that (i) nothing in this section shall affect any Person's rights to enforce the Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder, and (ii) nothing in this Section 9.6 shall apply to claims arising under assumed unexpired leases after the date of such assumption.

**6.7.7 Injunction Related to Releases and Exculpation.** As of the Effective Date, the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released pursuant to the Plan, including (but not limited to) the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released in Sections 9.5 and 9.6 of the Plan.

**6.7.8 Retention of Causes of Action/Reservation of Rights.** Subject to Section 9.5 of the Plan and except as expressly set forth herein, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims or Causes of Action, rights of setoff, or other legal or equitable defenses that the Debtor had immediately prior to the Effective Date on behalf of the Estate or itself in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtor shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff, or other legal or equitable defenses as fully as if this Reorganization Case had not been commenced, and all of the Debtor's legal and/or equitable rights respecting any Claim left unimpaired, as set forth in Section 2.4 of the Plan, may be asserted after the Confirmation Date to the same extent as if this Reorganization Case had not been commenced. The Debtor specifically reserves any and all rights, claims or Causes of Action, rights of setoff, or other legal or equitable defenses that the Debtor had prior to the Effective Date against Fundcorp related to, but not limited to, sales and use taxes accrued but unpaid prior to acquisition of the Debtor's DQ restaurants from Fundcorp.

The Debtor has conducted a preliminary analysis of potential Causes of Action and has reached a preliminary conclusion that potential Causes of Action are *de minimis* at best as they do not represent significant recovery for the Estate. Specifically, upon a review of the Debtor's Statement of Financial Affairs, transfers or payments made to creditors within ninety (90) days of the Petition Date were made to trade vendors and employees. Parties may request copies of the Debtor's Statement of Financial Affairs by logging on to the debtor's website at: <https://www.donlinrecano.com/Clients/vasari/Index> or by contacting the Debtor's claims and noticing agent, Donlin, Recano & Company, at (212) 771-1128.

6.7.9 Indemnification Obligations. Notwithstanding anything to the contrary contained herein, including Section 8.1 of the Plan, subject to the occurrence of the Effective Date, the obligations of the Debtor under the Debtor's operating agreements, other formation documents, board resolutions, or contracts to indemnify, defend, reimburse, exculpate, advance fees and expenses to, or limit the liability of Debtor's current and former directors, officers, equity holders, managers, employees, attorneys, other professionals and agents of the Debtor and such persons' respective affiliates, against any liability, including but not limited to, Causes of Action, remain unaffected thereby after the Effective Date and are not discharged. The Debtor's/Reorganized Debtor's governance documents on or after the Effective Date will provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to the Reorganized Debtor's current and former directors, equity holders, officers, employees, or agents, and such persons' respective affiliates, to the fullest extent permitted by law and at least to the same extent as the organizational documents of the Debtor as of the commencement of this Reorganization Case. On and after the Effective Date, the Reorganized Debtor shall not terminate or otherwise reduce the coverage under any directors' and officers' insurance policies in effect on the Petition Date, and all directors and officers of the Debtor at any time shall be entitled to the full benefits of any such policy for the full term of such policy, regardless of whether such directors and/or officers remain in such positions after the Effective Date.

## **ARTICLE VII. CONFIRMATION OF THE PLAN OF REORGANIZATION**

7.1 Confirmation Hearing. Section 1128(a) of the Bankruptcy Code requires the bankruptcy court, after appropriate notice, to hold a hearing on confirmation of a Chapter 11 plan. The Confirmation Hearing with respect to the Plan is scheduled to commence on June 15, 2018 at 9:00 a.m. (prevailing Central Time). The hearing may be adjourned or continued from time to time by the Debtor or the Bankruptcy Court without further notice except for an announcement of the adjourned or continued date made at the Confirmation Hearing (or an appropriate filing with the Bankruptcy Court) or any subsequent adjourned or continued Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a Chapter 11 plan of reorganization. Any objection to confirmation of the Plan must be in writing, must conform to the Bankruptcy Rules, must set forth the name of the objector, the nature and amount of Claims or Interests held or asserted by the objector against the Debtor, the basis for the objection and the specific grounds therefor, and must be filed with the Clerk of the Bankruptcy Court electronically using the Bankruptcy Court's Case

Management/Electronic Case File (“**CM/ECF**”) System at <https://ecf.txnb.uscourts.gov/> (a CM/ECF password will be required), and by mailing a hard copy of such objection to the chambers of the Honorable Mark X. Mullin, United States Bankruptcy Judge for the Northern District of Texas, United States Bankruptcy Court, U.S. Courthouse, 501 W. 10th Street, Fort Worth, Texas 76102, together with proof of service, and served upon: (i) Husch Blackwell LLP, 2001 Ross Avenue, Suite 2000, Dallas Texas, 75201; (ii) Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Room 976, Dallas, Texas 75242; (iii) counsel to Cadence, Morris Manning & Martin, LLP, 3343 Peachtree Road, NE, Atlanta, Georgia 30326; and (iv) counsel to DQ, Faegre Baker Daniels LLP, 90 South Seventh Street, Minneapolis, Minnesota 55402. Bankruptcy Rule 9014 governs objections to confirmation of the Plan. Copies of any objections to confirmation of Debtor’s Plan can be accessed for free on Donlin, Recano & Company’s website at: <https://www.donlinrecano.com/Clients/vasari/Dockets>. **UNLESS AN OBJECTION TO CONFIRMATION IS TIMELY SERVED AND FILED, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.**

7.2 Confirmation. At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied with respect to the Plan.

7.2.1 Confirmation Requirements. Confirmation of a Chapter 11 plan under section 1129(a) of the Bankruptcy Code requires, among other things, that: (i) the plan complies with the applicable provisions of the Bankruptcy Code; (ii) the proponent of the plan has complied with the applicable provisions of the Bankruptcy Code; (iii) the plan has been proposed in good faith and not by any means forbidden by law; (iv) any plan payment made or to be made by the proponent under the plan for services or for costs and expenses in, or in connection with, the Chapter 11 case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable; (v) the proponent has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in the plan with the debtor, or a successor to the debtor under the plan. The appointment to, or continuance in, such office by such individual must be consistent with the interests of creditors and equity security holders and with public policy and the proponent must have disclosed the identity of any insider that the reorganized debtor will employ or retain, and the nature of any compensation for such insider; (i) with respect to each impaired class of claims or interests, either each holder of a claim or interest of such class has accepted the plan, or will receive or retain under the plan, on account of such claim or 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 debtor were liquidated on such date under Chapter 7 of the Bankruptcy Code; (ii) subject to the “cramdown” provisions of section 1129(b) of the Bankruptcy Code, each class of claims or interests has either accepted the plan or is not impaired under the plan; (iii) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that allowed administrative expenses and priority claims will be paid in full on the effective date (except that holders of priority tax claims may receive deferred Cash payments of a value, as of the effective date of the plan, equal to the allowed amounts of such claims and that holders of priority tax claims may receive on account of such claims deferred Cash payments, over a period not exceeding 5 years after the date of assessment of such claims, of a value, as of the effective date, equal to the allowed amount of such claims); (iv) if a class of

claims is impaired, at least one (1) impaired class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim in such class; and (v) confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

The Debtor believes that (i) the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code; (ii) the Debtor, as the proponents of the Plan, have complied or will have complied with all of the requirements of Chapter 11 of the Bankruptcy Code; and (iii) the Plan has been proposed in good faith.

Set forth below is a summary of certain relevant statutory confirmation requirements.

(a) Acceptance. Claims in Classes 1, 3, 4, and 5 are impaired under the Plan and are entitled to vote to accept or reject the Plan. Class 2 is unimpaired and, therefore, is conclusively presumed to have voted to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. Class 6 is impaired and not receiving any property under the Plan, and thus is deemed to have rejected the Plan.

Because certain Classes are deemed to have rejected the Plan, the Debtor will request confirmation of the Plan under section 1129(b) of the Bankruptcy Code; *provided, however*, that Class 6 shall not be deemed or treated as an accepting impaired class for purposes of cramdown. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan, any exhibit, or schedule thereto or any Plan Document in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary. The Debtor believes that the Plan satisfies the “cramdown” requirements of section 1129(b) of the Bankruptcy Code with respect to Claims and Interests in Class 6.

The Debtor also will seek confirmation of the Plan over the objection of any individual holders of Claims who are members of an accepting Class. There can be no assurance, however, that the Bankruptcy Court will determine that the Plan meets the requirements of section 1129(b) of the Bankruptcy Code.

(b) Unfair Discrimination and Fair and Equitable Test. To obtain nonconsensual confirmation of the Plan, it must be demonstrated to the Bankruptcy Court that the Plan “does not discriminate unfairly” and is “fair and equitable” with respect to each impaired, non-accepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase “fair and equitable” for, respectively, secured creditors, unsecured creditors and holders of equity interests. In general, section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding non-acceptance by an impaired class if that class and all junior classes are treated in accordance with the “absolute priority” rule, which requires that the dissenting class be paid in full before a junior class may receive anything under the plan.

A Chapter 11 plan does not “discriminate unfairly” with respect to a non-accepting class if the value of the Cash and/or other consideration, including New Member Interests, to be distributed to the non-accepting class is equal to, or otherwise fair when compared to, the value of the distributions to other classes whose legal rights are the same as those of the non-accepting

class. The Debtor believes the Plan will not discriminate unfairly against any non-accepting Class.

(c) Feasibility; Financial Projections. The Bankruptcy Code permits a plan to be confirmed only if confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan. For purposes of determining whether the Plan meets this requirement, the Debtor has analyzed the ability of the Reorganized Debtor to meet its obligations under the Plan and retain sufficient liquidity and capital resources to conduct its business. Under the terms of the Plan, the Allowed Claims potentially being paid in whole or in part in Cash are the Cadence DIP Claim, Allowed Administrative Expense Claims, Allowed Fee Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Cadence Prepetition Claims, Allowed General Unsecured Claims and Allowed DQ Claims. The Debtor has estimated the total amount of these Cash payments to be approximately \$770,000.00 and expect sufficient liquidity from Cash on hand on the Effective Date, the proceeds of sale of the New Member Interests and post-Effective Date operations and future sales of assets to fund these Cash payments as and when they become due.

In connection with developing the Plan, the Debtor has prepared detailed financial projections (the “**Financial Projections**”), attached as **Exhibit C** hereto, which detail, among other things, the financial feasibility of the Plan. The Financial Projections indicate, on a pro forma basis, that the projected level of Cash flow is sufficient to satisfy all of the Reorganized Debtor’s future debt and debt related interest cost, research and development, capital expenditure and other obligations during this period. Accordingly, the Debtor believes that confirmation of the Plan is not likely to be followed by the liquidation or further reorganization of the Reorganized Debtor.

THE FINANCIAL PROJECTIONS, INCLUDING THE UNDERLYING ASSUMPTIONS, SHOULD BE CAREFULLY REVIEWED IN EVALUATING THE PLAN. WHILE DEBTOR BELIEVES THE ASSUMPTIONS UNDERLYING THE FINANCIAL PROJECTIONS, WHEN CONSIDERED ON AN OVERALL BASIS, WERE REASONABLE WHEN PREPARED IN LIGHT OF CURRENT CIRCUMSTANCES AND EXPECTATIONS, NO ASSURANCE CAN BE GIVEN THAT THE FINANCIAL PROJECTIONS WILL BE REALIZED. THE DEBTOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY OF THE FINANCIAL PROJECTIONS. THE PROJECTIONS ARE SUBJECT TO A NUMBER OF RISKS, UNCERTAINTIES AND ASSUMPTIONS, INCLUDING THOSE DESCRIBED BELOW UNDER ARTICLE XI. IN LIGHT OF THESE RISKS AND UNCERTAINTIES, ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THE FINANCIAL PROJECTIONS.

The Debtor prepared the Financial Projections based upon certain assumptions that it believes to be reasonable under the circumstances. The Financial Projections have not been examined or compiled by independent accountants. Moreover, such information is not prepared in accordance with accounting principles generally accepted in the United States (“**GAAP**”). The Debtor makes no representation as to the accuracy of the Financial Projections or their ability to achieve the projected results. Many of the assumptions on which the Financial Projections are based are inherently subject to significant economic and competitive

uncertainties and contingencies beyond the control of the Debtor and its management. Inevitably, some assumptions will not materialize and unanticipated events and circumstances may affect the actual financial results. Therefore, the actual results achieved may vary from the projected results and the variations may be material. All holders of Claims that are entitled to vote to accept or reject the Plan are urged to examine carefully all of the assumptions on which the Financial Projections are based in connection with their evaluation of the Plan.

The Committee believes that the projections prepared by the Debtor render the Plan not feasible, because if the Debtor misses its projections even slightly, the Debtor will default under the Plan as early as Q4 2018. Further, the Committee also believes the Plan is not feasible because even if the Debtor is able to avoid a default in paying Cadence under the Plan, the Debtor will have to re-finance the Cadence debt when it matures in 2021. The Committee believes the Debtor's projected 4.9x secured debt to EBITDA ratio is far in excess of the median secured debt to EBITDA ratio for other companies in the QSR industry (as researched by the Committee's financial advisor). The Committee thus believes that even if there is no Plan default before the Cadence notes mature in 3 years, the Debtor will likely be unable to re-finance the Cadence debt in 2021 and will likely be in need of further restructuring and reorganization at that time.

7.2.2 Valuation of the Debtor. In conjunction with formulating the Plan, the Debtor determined it was necessary to estimate the going concern value of the Reorganized Debtor (the “**Valuation Analysis**”). The Valuation Analysis was performed by Mastodon Ventures, LLC.

THE VALUATION ANALYSIS AS DESCRIBED IN THIS SECTION REPRESENTS A HYPOTHETICAL VALUATION OF THE REORGANIZED DEBTOR, WHICH ASSUMES THAT SUCH REORGANIZED DEBTOR CONTINUES AS AN OPERATING BUSINESS. THE ESTIMATED VALUE SET FORTH IN THE VALUATION ANALYSIS DOES NOT PURPORT TO CONSTITUTE AN APPRAISAL OR NECESSARILY REFLECT THE ACTUAL MARKET VALUE THAT MIGHT BE REALIZED THROUGH A SALE OR LIQUIDATION OF THE REORGANIZED DEBTOR, ITS MEMBER INTERESTS OR ITS ASSETS, WHICH MAY BE MATERIALLY DIFFERENT THAN THE ESTIMATE SET FORTH IN THE VALUATION ANALYSIS. ACCORDINGLY, SUCH ESTIMATED VALUE IS NOT NECESSARILY INDICATIVE OF THE PRICES AT WHICH ANY MEMBER INTERESTS OF THE REORGANIZED DEBTOR MAY TRADE AFTER GIVING EFFECT TO THE TRANSACTIONS SET FORTH IN THE PLAN. ANY SUCH PRICES MAY BE MATERIALLY DIFFERENT THAN INDICATED BY THE VALUATION ANALYSIS.

The Debtor considered several methodologies to estimate the value of the equity in the Reorganized Debtor at consummation:

(a) Multiples of Operating Results: The Debtor's operating results for the year ending December 31, 2017 and the financial projections for the period ending March 31, 2018 show negative operating income and negative EBITDA. Thus, applying a multiple of operating income or EBITDA does not produce a valid result.

(b) Book Value of Equity: As of December 31, 2017, and as projected at Plan confirmation, the consolidated book value of the equity of the Sponsor, shows a negative amount.

(c) Acquisition Value: A comparable transaction would be the purchase of 48 locations by the Debtor in 2013 at an EBITDA valuation multiple of 5.0x. Applying the multiple of EBITDA implied by this transaction to the latest twelve months of EBITDA of the Debtor indicates a value at or below the secured debt and administrative claims of the Debtor, which would equate to an equity value of essentially zero. In addition, DQ's right of approval of a buyer severely limits the pool of potential buyers, further dampening the potential acquisition price. Prior to and following the Petition Date, the Debtor's professional's marketed the Debtor's business, in part and as a whole, to over 70 potential purchasers. Despite these marketing efforts, the Debtor's professionals did not receive any offers to purchase the Debtor's business that were funded.

(d) Market Value of Assets:

- Equipment: The equipment is of limited value in a sale in its current state and location.
  - The Debtor has previously sold equipment from closed stores, yielding minimal value.
  - The Debtor does not have current appraisal values.
- Real Estate: The Debtor owns no real estate. The Debtor's leaseholds, valued at current market indications, have negative value in the aggregate.
  - The prices at which leasehold interests may be sold is based on estimated preliminary valuations for transactions currently contemplated.
  - The Debtor does not have current appraisal values.

In addition, there are a number of significant risks to achieving the Debtor's business plan, both inside and outside of the Debtor's control. Although the above discussion would point to an equity value of zero, the equity can be viewed as an option or contingency such that if the business plan were achieved over the next three years, the equity would ultimately have some value. This value cannot be quantified at this time.

7.2.3 Best Interests Test. The "best interests" test requires that the Bankruptcy Court find either: (i) that all members of each impaired class have accepted the plan; or (ii) that each holder of an allowed claim or interest in each impaired class of claims or interests will receive or retain under the plan on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date.

To determine what the holders of Claims and Interests in each impaired Class would receive if the Debtor were liquidated under Chapter 7 on the Confirmation Date, the Bankruptcy



Court must determine the dollar amount that would have been generated from the liquidation of the Debtor's assets and properties in a liquidation under Chapter 7 of the Bankruptcy Code.

The Cash that would be available for satisfaction of Claims and Interests would consist of the proceeds from the disposition of the assets and properties of the Debtor, augmented by the Cash held by the Debtor. Such Cash amount would be: (i) first, reduced by the amount of the Cadence DIP Claim and the secured portion of the Cadence Prepetition Claims; (ii) second, reduced by the costs and expenses of liquidation under Chapter 7 (including the fees payable to a Chapter 7 trustee and the fees payable to professionals that such trustee might engage) and such additional administrative claims that might result from the termination of the Debtor's business; and (iii) third, reduced by the amount of the Allowed Administrative Expense Claims, U.S. Trustee Fees, Allowed Priority Tax Claims, and Allowed Priority Non-Tax Claims. Any remaining net Cash would be allocated to creditors and stakeholders in strict order of priority contained in section 726 of the Bankruptcy Code. Additional claims would arise by reason of the breach or rejection of obligations under unexpired leases and executory contracts.

To determine if the Plan is in the best interests of each impaired Class, the present value of the distributions from the proceeds of a liquidation of the Debtor's assets and properties, after subtracting the amounts discussed above, must be compared with the value of the property offered to each such Class of Claims under the Plan.

After considering the effects that a Chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in this Reorganization Case, the Debtor has determined that confirmation of the Plan will provide each holder of an Allowed Claim with a recovery that is not less than such holder would have received pursuant to the liquidation of the Debtor under Chapter 7.

Moreover, the Debtor believes that the value of distributions to each Class of Allowed Claims in a Chapter 7 case would be materially less than the value of distributions under the Plan. It is likely that a liquidation of the Debtor's assets could take more than six months to complete, and distribution of the proceeds of the liquidation could be delayed for six months or more after the completion of such liquidation to resolve claims and prepare for distributions. In the likely event litigation was necessary to resolve claims asserted in the Chapter 7 case, the delay could be prolonged.

The Debtor, with the assistance of its advisors, has prepared a liquidation analysis that summarizes the Debtor's best estimate of recoveries by creditors and equity interest holders in the event of liquidation as of March 31, 2018 (the "**Liquidation Analysis**"), which is attached hereto as **Exhibit D**. The Liquidation Analysis provides: (a) a summary of the liquidation values of the Debtor's assets, assuming a Chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the assets of the Estates, and (b) the expected recoveries of the Debtor's creditors and equity interest holders under the Plan. The Liquidation Analysis contains estimates and assumptions that, although developed and considered reasonable by the Debtor's management, are inherently subject to significant economic uncertainties and contingencies beyond the control of the Debtor and its management. Accordingly, the values reflected might not be realized. The Chapter 7 liquidation period is assumed to last six months following the appointment of a Chapter 7 trustee, allowing for, among other things, the

discontinuation and wind-down of operations, the sale of the fixed equipment and properties as individual assets and the collection of miscellaneous amounts owed. All holders of Claims that are entitled to vote to accept or reject the Plan are urged to examine carefully all of the assumptions on which the Liquidation Analysis is based in connection with their evaluation of the Plan.

The Liquidation Analysis is based on certain assumptions, including, but not limited to, the following:

(a) The operations likely cannot be sold as a going concern, especially given a contracted period to market the Debtor's operations and close a transaction.

- DQ's right of approval of a buyer severely limits the pool of potential buyers.
- For the same reasons described in the Valuation Analysis regarding the going concern valuation, a buyer is not likely to be willing to pay a premium in excess of the amount of the secured debt and administrative expenses, and bear the risk of an additional capital investment, if needed.

(b) The equipment is of limited value in a sale in its current state and location.

- The Debtor has previously sold equipment from closed stores yielding minimal proceeds.

(c) Claims are held constant although likely to be higher as a result of the expenses which would be incurred by a Chapter 7 trustee in carrying out the duties to liquidate the estate.

The combined proceeds of sale, net of the expenses of a Chapter 7 case, are projected to be significantly below the amount of the Cadence DIP Claim, the Cadence Prepetition Claims and the Administrative Expense Claims and other classes before the General Unsecured Claims. The General Unsecured Claims would receive no recovery.

7.3 Standards Applicable to Releases. Article IX of the Plan provides for releases for certain claims against non-Debtor in consideration of services provided to the Debtor and the contributions made by the Released Parties to the Debtor's Chapter 11 case. The Released Parties are: (a) the Debtor; (b) Cadence; (c) DQ; and (d) each of the foregoing parties' and each of such entities' predecessors, successor and assigns, subsidiaries, funds, portfolio companies, affiliates, respective attorneys, and each of their respective officers, directors, employees, managers, financial advisors or other professionals or representatives; *provided, however*, that such attorneys and professional advisors shall only include those that provided services related to the Reorganization Case and the transactions contemplated by the Plan; provided, further, that no Person shall be a Released Party if it objects to and/or opts out of the releases provided for in Article IX of the Plan.

As set forth in the Plan, the releases are given by (i) the Debtor; (ii) each of the Released Parties; (iii) each holder of a Claim or Interest entitled to vote on the Plan that did not "opt out" of the releases provided in Section 9.5 of the Plan in a timely submitted Ballot; and (iv) to the

fullest extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, all holders of Claims and Interests. The released claims and exculpated claims are limited to those claims or causes of action that may have arisen in connection with, related to or arising out of the Plan, this Disclosure Statement, the Plan Supplement, any other Plan Document, the Debtor or this Reorganization Case.

The Debtor believes that the releases set forth in the Plan are appropriate because, among other things, the releases are narrowly tailored to the Debtor's restructuring proceedings, and each of the Released Parties has provided value to the Debtor and aided in the reorganization process, including, with respect to certain Released Parties, by entry into the Cadence DIP Facility and permitting assumption of franchise agreements, which facilitated the Debtor's ability to propose and pursue confirmation of the Plan. The Debtor believes that each of the Released Parties has played an integral role in this Reorganization Case and has expended significant time and resources analyzing and negotiating the issues presented by the Debtor's prepetition capital structure.

The United States Court of Appeals for the Second Circuit has determined that releases of non-debtor may be approved as part of a Chapter 11 plan of reorganization if there are "unusual circumstances" that render the release terms important to the success of the plan. *Deutsche Bank AG v. Metromedia Fiber Network Inc. (In re Metromedia Fiber Network, Inc.)*, 416 F.3d 136, 143 (2d Cir. 2005). Courts have approved releases of non-debtor when, for example, (a) the estate received substantial consideration; (b) the enjoined claims were channeled to a settlement fund rather than extinguished; (c) the enjoined claims would indirectly impact the reorganization by way of indemnity or contribution; (d) the plan otherwise provided for the full payment of the enjoined claims; and (e) the affected creditors consented to the release. *Id.* at 142. Before a determination can be made as to whether releases are appropriate as warranted by "unusual circumstances," a court must address the threshold jurisdictional question of whether a court has subject matter jurisdiction to grant such releases. *In re Johns-Manville Corp.*, 517 F.3d 52, 65 (2d Cir. 2008); *see also In re Dreier LLP*, 429 B.R. 112, 132 (Bankr. S.D.N.Y. 2010) (finding no jurisdiction to approve releases of claims that did not affect the estate); *In re Metcalf & Mansfield Alternative Investments*, 421 B.R. 685, 695 (Bankr. S.D.N.Y. 2010) (discussing and approving releases in a case under Chapter 15 of the Bankruptcy Code).

Courts have jurisdiction over a third party cause of action or claim if it will "directly and adversely impact the reorganization." *Dreier*, 429 B.R. at 132. Conversely, the court may lack jurisdiction if the released claim is one that would "not affect the property of the estate or the administration of the estate." *Id.* at 133. Here, each of the non-Debtor Released Parties contributed significantly to the Debtor's reorganization process, including, among other things, through provision of the DIP Facility or the Postpetition License. Absent those actions, the Debtor could not have filed for Chapter 11 protection with a clear path to reorganization and emergence. Additionally, parties entitled to vote on the Plan may elect to opt-out of providing non-Debtor releases consistent with applicable law. Accordingly, the Debtor contends that the circumstances of the Debtor's Chapter 11 case satisfy the *Metromedia* requirements.

Further, the Debtor is not aware of any cognizable claims of any material value against the Released Parties that the Debtor or the Estate would be releasing in connection with Section 9.5(a) of the Plan.

7.4 Classification of Claims and Interests. The Debtor believes that the Plan complies with the classification requirements of the Bankruptcy Code, which require that a Chapter 11 plan place each claim and interest into a class with other claims or interests that are “substantially similar.”

7.5 Consummation. The Plan will be consummated on the Effective Date. The Effective Date will occur on the first Business Day on which the conditions precedent to the effectiveness of the Plan, as set forth in Section 10 of the Plan, have been satisfied or waived pursuant to the Plan.

7.6 Exemption from Certain Transfer Taxes. To the fullest extent permitted by applicable law, all sale transactions consummated by the Debtor and approved by the Bankruptcy Court on and after the Confirmation Date, including any transfers effectuated under the Plan, the sale by the Debtor of any owned property pursuant to section 363(b) of the Bankruptcy Code, and any assumption, assignment, and/or sale by the Debtor of its interests in unexpired leases of non-residential real property or executory contracts pursuant to section 365(a) of the Bankruptcy Code, shall constitute a “transfer under a plan” within the purview of section 1146 of the Bankruptcy Code, and shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

7.7 Termination of Professionals. On the Effective Date, the engagement of each Professional Person retained by the Debtor shall be terminated without further order of the Bankruptcy Court or act of the parties; *provided, however*, such Professional Persons shall be entitled to prosecute their respective Fee Claims and represent their respective constituents with respect to applications for payment of such Fee Claims. Nothing in the Plan shall preclude the Reorganized Debtor from engaging a former Professional Person on and after the Effective Date in the same capacity as such Professional Person was engaged prior to the Effective Date.

7.8 Amendments. The Plan may be amended, modified, or supplemented by the Debtor with the consent of the Consent Parties in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as otherwise ordered by the Bankruptcy Court. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims pursuant to the Plan, the Debtor may make appropriate technical adjustments, remedy any defect or omission or reconcile any inconsistencies in the Plan, the Plan Documents and/or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of the Plan, and any holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan as amended, modified, or supplemented.

7.9 Revocation or Withdrawal of the Plan. The Debtor reserves the right to revoke or withdraw the Plan prior to the Effective Date. If the Debtor revokes or withdraws the Plan, in accordance with the preceding sentence, prior to the Effective Date or if prior to confirmation or consummation, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by the Plan, and any document or agreement executed pursuant to the Plan

shall be deemed null and void; and (c) nothing contained in the Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor or any other Person, (ii) prejudice in any manner the rights of the Debtor or any other Person or (iii) constitute an admission of any sort by the Debtor or any other Person.

7.10 Post-Confirmation Jurisdiction of the Bankruptcy Court. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in, arising under, or related to this Reorganization Case for, among other things, the following purposes:

(a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the Cure Disputes resulting therefrom;

(b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on the Confirmation Date or commenced after the Confirmation Date in connection with any of the terms and provisions of, deadlines created by or obligations created by the Plan or any other Final Order of the Bankruptcy Court;

(c) To hear and resolve any disputes arising from or relating to (i) any orders of the Bankruptcy Court granting relief under Bankruptcy Rule 2004, or (ii) any protective orders entered by the Bankruptcy Court in connection with the foregoing;

(d) To ensure that Plan Distributions to holders of Allowed Claims are accomplished as provided herein;

(e) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim, including any Administrative Expense Claim;

(f) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;

(g) To issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of the Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(h) To hear and determine any application to modify the Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in the Plan, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) To hear and determine all Fee Claims;

(j) To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(k) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan, the Confirmation Order, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(l) To take any action and issue such orders, including any such action or orders as may be necessary after occurrence of the Effective Date and/or consummation of the Plan, as may be necessary to construe, enforce, implement, execute, and consummate the Plan or other rulings entered in connection with this Reorganization Case, including any release or injunction provisions set forth herein, or to maintain the integrity of the Plan following consummation;

(m) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(n) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(o) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(p) To resolve any disputes concerning whether a Person had sufficient notice of the Reorganization Case, the Disclosure Statement Hearing, the Confirmation Hearing, any applicable Bar Date, or the deadline for responding or objecting to a Cure Amount, for the purpose of determining whether a Claim or Interest is discharged hereunder, or for any other purpose;

(q) To recover all assets of the Debtor and property of the Estate, wherever located; and

(r) To enter a final decree closing this Reorganization Case.

## **ARTICLE VIII.**

### **ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

If the Plan is not consummated, the Debtor's capital structure will remain over-leveraged and the Debtor will be unable to satisfy in full their debt obligations. Accordingly, if the Plan is not confirmed and consummated, the alternatives include:

8.1 Liquidation Under Chapter 7 of the Bankruptcy Code. The Debtor could be liquidated under Chapter 7 of the Bankruptcy Code. A discussion of the effect a Chapter 7 liquidation would have on the recoveries of the holders of Claims is set forth in Article VII of this Disclosure Statement. The Debtor believes that liquidation would result in lower aggregate distributions being made to creditors than those provided for in the Plan, which is demonstrated by the Liquidation Analysis set forth in Article VII and attached as **Exhibit D** to this Disclosure Statement.

8.2 Alternative Plan(s) of Reorganization. The Debtor believes that failure to confirm the Plan will lead inevitably to an expensive and protracted Reorganization Case, whereas the Plan will enable the Debtor to emerge from Chapter 11 successfully and expeditiously, preserving their business and allowing creditors to realize the highest recoveries under the circumstances. In a liquidation under Chapter 11 of the Bankruptcy Code, the assets of the Debtor would be sold in an orderly fashion over a more extended period of time than in a liquidation under Chapter 7, and a trustee need not be appointed. Accordingly, creditors would receive greater recoveries than in a Chapter 7 liquidation. Although a Chapter 11 liquidation may be preferable to a Chapter 7 liquidation, the Debtor believes that a liquidation under Chapter 11 is a much less attractive alternative to holders of Claims and Interests than the Plan because the Plan provides for a greater return to holders of Claims and Interests.

Moreover, the prolonged continuation of this Reorganization Case is likely to adversely affect the Debtor's business and operations. So long as the Reorganization Case continues, Debtor's management will be required to spend a significant amount of time and effort dealing with the Debtor's reorganization instead of focusing exclusively on business operations. Prolonged continuation of this Reorganization Case will also make it more difficult to attract and retain management and other key personnel necessary to the success and growth of the Debtor's business. In addition, the longer the Reorganization Case continues, the more likely it is that the Debtor's customers, vendors and suppliers will lose confidence in the Debtor's ability to reorganize its business successfully and will seek to establish alternative commercial relationships. Furthermore, so long as the Reorganization Case continues, the Debtor will be required to incur substantial costs for professional fees and other expenses associated with this Reorganization Case.

The Debtor believes that not only does the Plan fairly adjust the rights of various Classes of Claims, but also that the Plan provides superior recoveries over any alternative capable of rational consideration (such as a Chapter 7 liquidation), thus enabling stakeholders to maximize their returns. Rejection of the Plan in favor of some alternative method of reconciling the Claims and Interests will require, at the very least, an extensive and time-consuming process (including the possibility of protracted and costly litigation) and will not result in a better recovery for any Class of Claims or Interests.

THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ANY ALTERNATIVE BECAUSE THE PLAN MAXIMIZES THE AMOUNT OF DISTRIBUTIONS TO ALL HOLDERS OF CLAIMS AND ANY ALTERNATIVE TO CONFIRMATION OF THE PLAN WILL RESULT IN SUBSTANTIAL DELAYS IN THE DISTRIBUTION OF ANY RECOVERIES. THEREFORE, THE DEBTOR RECOMMENDS THAT ALL HOLDERS OF IMPAIRED CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.

8.3 Dismissal of the Reorganization Case. Dismissal of this Reorganization Case would have the effect of restoring (or attempting to restore) all parties to the *status quo ante*. Upon dismissal of this Reorganization Case, the Debtor would lose the protection of the Bankruptcy Code, thereby requiring, at the very least, an extensive and time consuming process of negotiations with its creditors, possibly resulting in costly and protracted litigation in various jurisdictions. Moreover, holders of Secured Claims may be permitted to foreclose upon the

assets that are subject to their Liens, which is likely all of the Debtor's assets, including all of their Cash. Dismissal may also permit certain unpaid unsecured creditors to obtain and enforce judgments against the Debtor. The Debtor believes that these actions would seriously undermine their ability to obtain financing and could lead ultimately to the liquidation of the Debtor under Chapter 7 of the Bankruptcy Code. Therefore, the Debtor believes that dismissal of this Reorganization Case is not a viable alternative to the Plan.

## ARTICLE IX. SUMMARY OF VOTING PROCEDURES

This Disclosure Statement, including all exhibits hereto and the related materials included herewith, is being furnished to the holders of Claims in Classes 1, 3, 4, 5, and 6, which are the only Claims entitled to vote on the Plan.

All votes to accept or reject the Plan must be cast by using the Ballot(s) enclosed with this Disclosure Statement. No other votes will be counted. Consistent with the provisions of Bankruptcy Rule 3018, the Debtor has fixed May 16, 2018, at 4:00 p.m. (prevailing Central Time) as the Voting Record Date. Ballots must be RECEIVED by Donlin, Recano & Company, Inc. no later than the Voting Deadline, **4:00 p.m. (prevailing Central Time) on June 12, 2018**, unless the Debtor, at any time, in its sole discretion, extends such date by oral or written notice, in which event the period during which Ballots will be accepted will terminate at 5:00 p.m. (prevailing Central Time) on such extended date. *See* Section 1.4 "*Voting; Holders of Claims Entitled to Vote*" above for additional disclosures regarding voting.

Ballots previously delivered may be withdrawn or revoked at any time prior to the Voting Deadline by the claimant who completed the original Ballot. A Ballot may be revoked or withdrawn either by submitting a superseding Ballot or by providing written notice to counsel for the Debtor.

To be effective, notice of revocation or withdrawal must: (a) be received on or before the Voting Deadline by counsel for the Debtor at their address specified in Section 1.4 above; (b) specify the name of the holder of the Claim whose vote on the Plan is being withdrawn or revoked; (c) contain the description of the Claim as to which a vote on the Plan is withdrawn or revoked; and (d) be signed by the holder of the Claim in the same manner as such holder signed the original Ballot. The foregoing procedures should also be followed with respect to a person entitled to vote on the Plan who wishes to change (rather than revoke or withdraw) its vote.

## ARTICLE X. DESCRIPTION AND HISTORY OF REORGANIZATION CASE

**10.1 General Case Background.** On October 30, 2017, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Honorable Mark X. Mullin is presiding over the Debtor's bankruptcy case. The Debtor continues to operate its business and manage its properties as debtor and debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The following is a brief description of certain significant events that have occurred during the pendency of the Debtor's bankruptcy case.



10.2 Retention of Professionals. To assist them in carrying out its duties as debtor in possession, to represent their interests in this bankruptcy case and as otherwise required pursuant to the terms of the Plan Term Sheet, the Debtor, on November 29, 2017, filed with the Bankruptcy Court a motion seeking entry of an order authorizing the Debtor to retain Mastodon Ventures, LLC as its financial advisor. On November 29, 2017, the Debtor also filed (i) an application seeking entry of orders authorizing the Debtor to retain Husch Blackwell, LLP. On December 15, 2017, the Bankruptcy Court entered an order authorizing the Debtor to retain Mastodon Ventures, LLC the Debtor's financial advisor. On December 13, 2017, the Bankruptcy Court entered an order approving the retention of Husch Blackwell, LLP as counsel to the Debtor. On April 16, 2018, the Debtor also filed an application seeking employment of Thomas B. Cahill Attorney at Law, P.C. as the Debtor's real estate professional. The application seeking approval and retention of Thomas B. Cahill Attorney at Law, P.C. as the Debtor's real estate professional is pending at the time of filing this Disclosure Statement.

10.3 Employment Obligations. The Debtor believes that it has a valuable asset in its workforce, and that the efforts of the Debtor's employees are critical to a successful reorganization. On the Petition Date, the Debtor filed with the Bankruptcy Court a motion for an order authorizing the Debtor to pay certain prepetition employee wage and benefit obligations [Docket No. 10] (the "**Employee Wage Motion**"). In the Employee Wage Motion, the Debtor requested to, among other things, satisfy certain of its prepetition obligations to its current employees, reimburse employees for business expenses incurred on behalf of the Debtor, pay prepetition payroll-related taxes and withholdings associated with the Debtor's employee wage claims and the employee benefit obligations, and other similar tax obligations, and to continue employee programs in the ordinary course of business and consistent with the Debtor's past practices. On November 2, 2017, the Bankruptcy Court entered an order approving the Employee Wage Motion [Docket No. 60].

10.4 Cash Management System. The Debtor believes it would be disruptive to its operations if they were forced to change their cash management system significantly upon the commencement of its bankruptcy case. Accordingly, on the Petition Date, the Debtor filed with the Bankruptcy Court a motion seeking entry of an order authorizing the Debtor to maintain their current cash management system and bank accounts [Docket No. 11] (the "**Cash Management Motion**"). On November 2, 2017, the Bankruptcy Court entered an order granting the Cash Management Motion [Docket No. 56].

10.5 Utilities. On November 3, 2017, the Debtor filed with the Bankruptcy Court a motion for an order (a) prohibiting utilities from altering or discontinuing services; (b) providing utility companies with adequate assurance of payment; and (c) establishing procedures for resolving requests for additional assurance of payment [Docket No. 71] (the "**Utilities Motion**"). On November 20, 2017, the Bankruptcy Court entered an order granting the Utilities Motion [Docket No. 137, 184].

10.6 Plan Term Sheet Motion. On November 24, 2017, the Debtor filed its motion for an order authorizing the Debtor to enter into and perform the RSA and Plan Term Sheet (the "**Plan Term Sheet Motion**"). On December 15, 2017, the Bankruptcy Court entered an order granting the Plan Term Sheet Motion [Docket No. 225]. The RSA and Plan Term Sheet have since been superseded by the terms included in the Plan.

10.7 The DIP Facilities. On the Petition Date, the Debtor filed its motion for entry of interim and final orders (i) authorizing the Debtor to obtain postpetition financing, (ii) authorizing use of cash collateral, (iii) granting adequate protection to prepetition lender, and (iv) granting liens and superpriority claims (the “**DIP Motion**”). On November 2, 2017, the Bankruptcy Court entered an interim order [Docket No. 57] authorizing, on an interim basis, the DIP Motion. On December 18, 2017, the Bankruptcy Court entered an amended final order [Docket No. 229] authorizing, on a final basis, the DIP Motion. The DIP Credit Facilities comprise a \$1.0 million asset-based revolving loan.

10.8 Schedules and Statements. The Debtor filed its Schedules of Assets and Liabilities and Statements of Financial Affairs on December 5, 2017.

10.9 Formation of Committee and Retention of Committee Counsel. On November 9, 2017, the United States Trustee appointed an official committee of unsecured creditors for the Debtor’s bankruptcy case comprised of the following entities: (i) Southcrest Consulting, Inc.; (ii) Ware Seagraves Assoc., LLC; and (iii) Wilport, LLC (the “**Official Committee**”).

On November 21, 2017, the Official Committee filed its Application for an Order Authorizing and Approving the Employment and Retention of Gray Reed & McGraw LLP as Counsel to the Official Committee of Unsecured Creditors of Vasari, LLC. On December 13, 2017, the Bankruptcy Court entered an order authorizing the Official Committee to retain Gray Reed & McGraw LLP.

10.10 Plan Exclusivity. Pursuant to Section 1121 of Bankruptcy Code, the Debtor is permitted the exclusive right to file a plan of reorganization during the first 120 days of the bankruptcy case, commonly referred to as the “exclusivity period.” The Debtor’s exclusivity period expired on February 27, 2018. To date, no competing plan of reorganization has been filed in this bankruptcy case.

## ARTICLE XI. CERTAIN RISK FACTORS TO BE CONSIDERED

### 11.1 Certain Bankruptcy Considerations.

11.1.1 General. Although the Plan is designed to implement the restructuring transactions contemplated thereby and provide distributions to creditors in an expedient and efficient manner, it is impossible to predict with certainty the amount of time that the Debtor may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed.

If the Debtor is unable to obtain confirmation of the Plan on a timely basis because of a challenge to confirmation of the Plan or a failure to satisfy the conditions to consummation of the Plan, it may be forced to operate in bankruptcy for an extended period while it tries to develop a different Chapter 11 plan that can be confirmed. Such a scenario could jeopardize the Debtor’s relationships with their key vendors and suppliers, customers and employees, which, in turn, would have an adverse effect on the Debtor’s operations. A material deterioration in the Debtor’s operations likely would diminish recoveries under any subsequent Chapter 11 plan. Further, in such event, the Debtor may not have sufficient liquidity to operate in bankruptcy for such an extended period.

11.1.2 Failure to Receive Requisite Acceptances. Claims in Classes 1, 3, 4, and 5 are the only Claims that are entitled to vote to accept or reject the Plan. Although the Debtor believes it will receive the requisite acceptances, the Debtor cannot provide assurances that the requisite acceptances to confirm the Plan will be received for at least one of these Classes. If the requisite acceptances are not received for at least one of these Classes, the Debtor will not be able to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code because at least one impaired Class will not have voted in favor of the Plan as required by section 1129(a)(10) of the Bankruptcy Code. In such a circumstance, the Debtor may seek to accomplish an alternative restructuring of their capitalization and obligations to creditors and obtain acceptances of an alternative plan of reorganization for the Debtor, or otherwise, may be required to liquidate the Estate under Chapter 7 or 11 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to, or as favorable to the Debtor's creditors as, those proposed in the Plan.

11.1.3 Failure to Secure Confirmation of the Plan. Even if the requisite acceptances are received, the Debtor cannot provide assurances that the Bankruptcy Court will confirm the Plan. A non-accepting creditor or equity interest holder of the Debtor might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or the Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization and that the value of distributions to non-accepting holders of claims and interests within a particular class under the Plan will not be less than the value of distributions such holders would receive if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. While the Debtor cannot provide assurances that the Bankruptcy Court will conclude that these requirements have been met, the Debtor believes that the Plan will not be followed by a need for further financial reorganization and that non-accepting holders within each Class under the Plan will receive distributions at least as great as would be received following a liquidation under Chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and the costs and uncertainty associated with any such Chapter 7 case.

If the Plan is not confirmed, the Plan will need to be revised and it is unclear whether a restructuring of the Debtor could be implemented and what distribution holders of Claims ultimately would receive with respect to their Claims. If an alternative reorganization could not be agreed to, it is possible that the Debtor would have to liquidate its assets, in which case it is likely that holders of Claims would receive substantially less favorable treatment than they would receive under the Plan. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to the Debtor's creditors as those proposed in the Plan.

11.1.4 Failure to Consummate the Plan. Section 10.1 of the Plan contains various conditions to consummation of the Plan, including the Confirmation Order having become final and non-appealable, and all conditions precedent to effectiveness of certain agreements having been satisfied or waived in accordance with the terms thereof. As of the date of this Disclosure

Statement, there can be no assurance that these or the other conditions to consummation will be satisfied or waived. Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated and the restructuring completed. If the Plan is not consummated and the restructuring completed, this Reorganization Case will be prolonged and the Debtor may lack sufficient liquidity to effect a successful restructuring under Chapter 11 of the Bankruptcy Code.

11.1.5 Objections to Treatment of Claims. Section 1129(b) of the Bankruptcy Code provides that a plan of reorganization must not discriminate unfairly with respect to each class of Claims or Interests. Holders of Claims or Interests may argue that the Plan discriminates unfairly with respect to their Claims or Interests. The Debtor believes that the treatment of each class of Claims or Interests complies with the requirements set forth in the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will reach the same conclusion.

11.1.6 Objections to Classification of Claims. Section 1122 of the Bankruptcy Code provides that a plan of reorganization 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 Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. There can be no assurance, however, that the Bankruptcy Court will reach the same conclusion.

11.1.7 The Debtor May Object to the Amount or Classification of Your Claim. The Debtor reserves the right to object to the amount or classification of any Claim. It is the Debtor's position that the estimates set forth in this Disclosure Statement cannot be relied on by any creditor whose Claim or Interest is subject to an objection. Any such Claim holder may not receive its specified share of the estimated distributions described in this Disclosure Statement.

11.1.8 The Debtor May Adjourn Certain Deadlines. In certain circumstances, the Debtor may deem it appropriate to adjourn either or both of the Voting Deadline and/or the Confirmation Hearing. While the Debtor estimates that the Effective Date will occur on or before July 2, 2018, it cannot provide assurances that applicable dates related to the foregoing will not be extended and the Effective Date will not be delayed.

## 11.2 Risks Relating to the Capital Structure of the Reorganized Debtor.

11.2.1 Variances from Financial Projections. The Financial Projections included as **Exhibit C** to this Disclosure Statement reflect numerous assumptions, which involve significant levels of judgment and estimation concerning the anticipated future performance of the Reorganized Debtor, as well as assumptions with respect to the prevailing market, economic and competitive conditions, which are beyond the control of the Reorganized Debtor, and which may not materialize, particularly given the current difficult economic environment. Any significant differences in actual future results versus estimates used to prepare the Financial Projections, such as lower sales, lower pricing, increases in costs, technological changes, environmental or safety issues, workforce disruptions, competition or changes in any applicable regulatory environment, could result in significant differences from the Financial Projections. The Debtor believes that the assumptions underlying the Financial Projections are reasonable. However, unanticipated events and circumstances occurring subsequent to the preparation of the

Financial Projections may affect the Debtor's and the Reorganized Debtor's ability to initiate the endeavors and meet the financial benchmarks contemplated by the Plan. Therefore, the actual results achieved throughout the period covered by the Financial Projections necessarily will vary from the projected results, and these variations may be material and adverse.

11.2.2 Leverage. Although the Reorganized Debtor will have less burdensome indebtedness than the Debtor, the Reorganized Debtor will still have a significant amount of secured indebtedness. On the Effective Date, after giving effect to the transactions contemplated by the Plan, in addition to payment of Claims, if any, that require payment beyond the Effective Date and ordinary course debt, the Reorganized Debtor will, on a consolidated basis, have approximately \$11,600,000 in secured indebtedness.

**The degree to which the Reorganized Debtor will be leveraged could have important consequences because:**

- it could affect the Reorganized Debtor's ability to satisfy their obligations under their secured indebtedness following the Effective Date;
- a portion of the Reorganized Debtor's Cash flow from operations will be used for debt service and unavailable to support operations, or for working capital, capital expenditures, expansion, or general corporate or other purposes;
- the Reorganized Debtor's ability to obtain additional debt financing or equity financing in the future may be limited; and
- the Reorganized Debtor's operational flexibility in planning for, or reacting to, changes in their businesses may be severely limited.

11.2.3 Ability to Service Debt. Although the Reorganized Debtor will have less burdensome indebtedness than the Debtor, the Reorganized Debtor will still have significant interest expense and principal repayment obligations. The Reorganized Debtor's ability to make payments on and to refinance its debt will depend on its future financial and operating performance and their ability to generate cash in the future. This, to a certain extent, is subject to general economic, business, financial, competitive, legislative, regulatory and other factors that are beyond the control of the Reorganized Debtor.

Although the Debtor believes the Plan is feasible, there can be no assurance that the Reorganized Debtor will be able to generate sufficient cash flow from operations or that sufficient future borrowings will be available to pay off the Reorganized Debtor's debt obligations. The Reorganized Debtor may need to refinance all or a portion of its debt on or before maturity; however, there can be no assurance that the Reorganized Debtor will be able to refinance any of their debt on commercially reasonable terms or at all.

11.2.4 Obligations Under Certain Financing Agreements. The Reorganized Debtor's obligations under certain financing agreements, including, but not limited to, the New Cadence Note, will be secured by liens on substantially all of the assets of the Reorganized Debtor (subject to certain exclusions set forth therein). If the Reorganized Debtor becomes

insolvent or is liquidated, or if there is a default under the New Cadence Note, and payment on any obligation thereunder is accelerated, the lender under the New Cadence Note would be entitled to exercise the remedies available to a secured lender under applicable law, including foreclosure on the collateral that is pledged to secure the indebtedness thereunder, and it would have a claim on the assets securing the obligations under the applicable loan agreement(s) that would be superior to any claim of the holders of unsecured debt.

11.2.5 Risks Relating to Tax and Accounting Consequences of the Plan. The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor currently do not intend to seek any ruling from the Internal Revenue Service (“IRS”) on the tax consequences of the Plan. Thus, there can be no assurance that the IRS will not challenge the various positions the Debtor has taken, or intends to take, with respect to the tax treatment in the Plan, or that a court would not sustain such a challenge.

11.3 Risks Associated with the Company’s Businesses. **THE FOLLOWING PROVIDES A SUMMARY OF CERTAIN OF THE RISKS ASSOCIATED WITH THE COMPANY’S BUSINESSES. HOWEVER, THIS SECTION IS NOT INTENDED TO BE EXHAUSTIVE.**

11.3.1 The Debtor’s Reorganization Case May Negatively Impact the Company’s Future Operations. While the Debtor believes that it will be able to emerge from Chapter 11 relatively expeditiously, there can be no assurance as to timing for approval of the Plan or the Debtor’s emergence from Chapter 11. Additionally, notwithstanding the support of the Consent Parties, this Reorganization Case may adversely affect the Debtor’s ability to retain existing customers and suppliers, attract new customers and maintain contracts that are critical to its operations.

## **ARTICLE XII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

12.1 Introduction. The following discussion summarizes certain federal income tax consequences to the Debtor or Reorganized Debtor expected to result from the consummation of the Plan. This discussion is only for general information purposes. It is not a complete analysis of all potential federal income tax consequences and does not address any tax consequences arising under any state, local or foreign tax laws or federal estate or gift tax laws. No opinion of counsel has been sought or obtained with respect to any tax consequences of the Plan. This discussion is based on the Internal Revenue Code of 1986, as amended (“IRC”), Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the IRS, all as in effect on the date of this Disclosure Statement. These authorities may change, possibly retroactively, resulting in federal income tax consequences different from those discussed below. No ruling has been or will be sought from the IRS, and no legal opinion of counsel will be rendered, with respect to the matters discussed below. There can be no assurance that the IRS will not take a contrary position regarding the federal income tax consequences resulting from the consummation of the Plan or that any contrary position would not be sustained by a court.

Additionally, a significant amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Plan. Events occurring after the date of this Disclosure Statement, could affect the U.S. federal income tax consequences of the Plan.

**12.2 Federal Income Tax Consequences to the Debtor.** It is anticipated that the, upon implementation of the Plan, the Debtor generally should realize cancellation of indebtedness income (“**COD Income**”) to the extent the discharge of a debt obligation is in exchange for an amount of cash and other property having a fair market value less than the “adjusted issue price” of the debt that is discharged. The Debtor expects that the amount of COD Income realized upon consummation of the Plan could be significant; however, the ultimate amount of COD Income realized by the debtor is uncertain. Estimated recoveries for the Debtor’s various Claims are set forth in Article II above. COD Income realized by a Debtor will be excluded from income if the discharge of debt occurs in a case brought under the Bankruptcy Code, the debtor is under the court’s jurisdiction in such case and the discharge is granted by the court or is pursuant to a Chapter 11 plan approved by the court (the “**Bankruptcy Exception**”). Because the Bankruptcy Exception will apply to the transactions consummated pursuant to the Plan, the Debtor will not be required to recognize any COD Income realized as a result of the implementation of the Plan.

A debtor that does not recognize COD Income under the Bankruptcy Exception generally must reduce certain tax attributes by the amount of the excluded COD Income. Where the debtor joins in the filing of a consolidated U.S. federal income tax return, applicable Treasury Regulations require, in certain circumstances, that the tax attributes of the consolidated subsidiaries of the debtor and other members of the group also be reduced. Attributes subject to reduction include net operating losses (“**NOLs**”), NOL carryforwards and certain other losses, credits and carryforwards, and the debtor’s tax basis in its assets. NOLs for the taxable year of the discharge and NOL carryovers to such year generally are the first attributes subject to reduction. However, a debtor may elect under IRC Section 108(b)(5) (the “**Section 108(b)(5) Election**”) to reduce its basis in its depreciable property first. The reduction in tax attributes occurs at the beginning of the taxable year following the taxable year in which the discharge occurs. Any excess COD income over the amount of available tax attributes is not subject to U.S. federal income tax.

As of the filing of this Disclosure Statement, the Bar Date has not passed. Additionally, as of the filing of this Disclosure Statement, certain of the Debtor’s outstanding indebtedness will be satisfied in exchange for property other than Cash under the Plan, the amount of COD income and accordingly the amount of tax attributes required to be reduced, will depend in part on the fair market value of the that property. These values cannot be known with certainty until after the Effective Date. Thus, although it is expected that the Debtor will be required to reduce its tax attributes, the exact amount of such reduction will not be known until after the Effective Date.

**12.3 Federal Income Tax Consequences to Holders of Certain Claims. THE PLAN AND ITS RELATED TAX CONSEQUENCES ARE COMPLEX. THERE ALSO MAY BE STATE, LOCAL OR OTHER TAX CONSIDERATIONS APPLICABLE TO EACH CREDITOR. CREDITORS ARE URGED TO CONSULT THEIR TAX ADVISORS REGARDING THE U.S. FEDERAL INCOME TAX CONSEQUENCES TO THEM OF THE CONSUMMATION OF THE PLAN AS WELL AS ANY TAX CONSEQUENCES**

**ARISING UNDER ANY STATE, LOCAL OR FOREIGN TAX LAWS, OR ANY OTHER FEDERAL TAX LAWS. NOTHING IN THIS DISCLOSURE STATEMENT IS MEANT TO PROVIDE ANY TAX ADVICE TO ANY CREDITOR**

**ARTICLE XIII.  
PROCEDURES FOR DISTRIBUTIONS UNDER THE PLAN**

13.1 Distributions. The Reorganized Debtor shall make all Plan Distributions to the appropriate holders of Allowed Claims in accordance with the terms of the Plan. The Reorganized Debtor is authorized to (i) effectuate all actions and execute all agreements, instruments, and other documents necessary to perform its distribution duties under the Plan; (ii) make all applicable Plan Distributions or payments contemplated hereby; (iii) employ professionals to represent them with respect to their responsibilities; and (iv) exercise such other powers as may be deemed by the Reorganized Debtor to be necessary and proper to implement the provisions hereof.

13.2 No Postpetition Interest on Claims. Other than with respect to the Cadence DIP Claim unless otherwise specifically provided for in the Plan, Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy or non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claim, and no holder of a prepetition Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

13.3 Date of Distributions. Unless otherwise provided herein, any Plan Distributions and deliveries to be made hereunder shall be made on the applicable distribution date provided herein; *provided, however*, that the Reorganized Debtor may utilize periodic distribution dates to the extent appropriate. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

13.4 Distribution Record Date. As of the close of business on the Distribution Record Date, the various lists of holders of Claims in each of the Classes, as maintained by the Debtor, or its agents, shall be deemed closed and there shall be no further changes in the record holders of any of the Claims after the Distribution Record Date. The Debtor shall not have any obligation to recognize any transfer of Claims occurring after the close of business on the Distribution Record Date. Additionally, with respect to payment of any Cure Claims in connection with the assumption and/or assignment of the Debtor's executory contracts and unexpired leases, the Debtor shall not have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable executory contract or unexpired lease, even if such non-Debtor party has sold, assigned or otherwise transferred its Cure Claim or any other Claim it may hold.

13.5 Delivery of Distribution. Subject to the provisions contained in this Article XI, the Reorganized Debtor will issue, or cause to be issued, and authenticate, as applicable, all Plan Consideration, and subject to Bankruptcy Rule 9010, make all Plan Distributions or payments to any holder of an Allowed Claim as and when required by the Plan at: (a) the address of such



holder on the books and records of the Debtor or its agents; or (b) at the address in any written notice of address change delivered to the Debtor, including any addresses included on any filed proofs of Claim or transfers of Claim filed with the Bankruptcy Court. In the event that any Plan Distribution to any holder is returned as undeliverable, no distribution or payment to such holder shall be made unless and until the Reorganized Debtor has been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter such Plan Distribution shall be made to such holder without interest, *provided, however*, such Plan Distributions or payments shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of the later of one year from: (i) the Effective Date; and (ii) the first distribution date after such holder's Claim is first Allowed.

13.6 Unclaimed Property. One year from the later of: (i) the Effective Date, and (ii) the date that a Claim is first Allowed, all unclaimed property or interests in property distributable hereunder on account of such Claim shall revert to the Reorganized Debtor or the successors or assigns of the Reorganized Debtor, and any claim or right of the holder of such Claim to such property or interest in property shall be discharged and forever barred. The Reorganized Debtor shall have no obligation to attempt to locate any holder of an Allowed Claim other than by reviewing the Debtor's books and records, and the proofs of Claim filed against the Debtor, as reflected on the claims register maintained by the Bankruptcy Court.

13.7 Satisfaction of Claims. Unless otherwise provided herein, any Plan Distributions and deliveries to be made on account of Allowed Claims hereunder shall be in complete settlement, satisfaction and discharge of such Allowed Claims.

13.8 Manner of Payment Under Plan. Except as specifically provided herein, at the option of the Reorganized Debtor, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtor or the Reorganized Debtor.

13.9 De Minimis Cash Distributions. The Reorganized Debtor, shall have no obligation to make a Plan Distribution that is less than \$50.00 in Cash. Such Plan Distribution shall be included in any later Distribution that, with such inclusion, exceeds \$50.

13.10 No Distribution in Excess of Amount of Allowed Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a Plan Distribution of a value in excess of the Allowed amount of such Claim plus any postpetition interest on such Claim, to the extent such interest is permitted by Section 11.2 of the Plan.

13.11 Setoffs and Recoupments. Except as expressly provided in the Plan, the Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code set off and/or recoup against any Plan Distributions to be made on account of any Allowed Claim, any and all claims, rights and Causes of Action that the Reorganized Debtor may hold against the holder of such Allowed Claim; *provided, however*, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtor or its successor of any and all claims, rights and Causes of Action that the Reorganized Debtor or its successor may possess against the applicable holder.

13.12 Withholding and Reporting Requirements. In connection with the Plan and all Plan Distributions hereunder, the Reorganized Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Plan Distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, liquidating a portion of any Plan Distribution to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanisms the Debtor or Reorganized Debtor believes are reasonable and appropriate, including requiring a holder of a Claim to submit appropriate tax and withholding certifications. Notwithstanding any other provision of the Plan: (a) each holder of an Allowed Claim that is to receive a Plan Distribution under the Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations on account of such distribution; and (b) no Plan Distributions shall be required to be made to or on behalf of such holder pursuant to the Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtor for the payment and satisfaction of such tax obligations or has, to the Reorganized Debtor's satisfaction, established an exemption therefrom

#### **ARTICLE XIV. PROCEDURES FOR RESOLVING CLAIMS**

14.1 Objections to Claims. Other than with respect to Fee Claims, only the Reorganized Debtor shall be entitled to object to Claims after the Effective Date; *provided, however*, Cadence shall also be entitled to object to any Claims made by any Insider other than the Sponsor Affiliate Claims. Any objections to those Claims (other than Administrative Expense Claims), shall be served and filed on or before the later of: (a) the date that is 180 days after the Effective Date and (b) such other date as may be fixed by the Bankruptcy Court, whether fixed before or after the date specified in clause (a) hereof (the “**Claims Objection Deadline**”). Any Claims filed after the Bar Date or Administrative Bar Date, as applicable, shall be deemed Disallowed and expunged in their entirety without further order of the Bankruptcy Court or any action being required on the part of the Debtor or the Reorganized Debtor, unless the Person wishing to file such untimely Claim has received the Bankruptcy Court's authorization to do so. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the objecting party effects service in any of the following manners: (x) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (y) by first class mail, postage prepaid, on the signatory on the proof of claim as well as all other representatives identified in the proof of claim or any attachment thereto; or (z) if counsel has agreed to or is otherwise deemed to accept service, by first class mail, postage prepaid, on any counsel that has appeared on the claimant's behalf in this Reorganization Case (so long as such appearance has not been subsequently withdrawn). From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without approval of the Bankruptcy Court; *provided, however*, that the consent of the Consent Parties shall be necessary to settle or compromise any objection to any Claims made by any insider, other than the Sponsor Affiliate Claims.

14.2 Amendment to Claims. From and after the Effective Date, no proof of Claim may be amended to increase or assert additional claims not reflected in a previously timely filed Claim (or Claim scheduled on the Debtor's Schedules, unless superseded by a filed Claim), and any such Claim shall be deemed Disallowed and expunged in its entirety without further order of the Bankruptcy Court or any action being required on the part of the Debtor or the Reorganized Debtor unless the claimant has obtained the Bankruptcy Court's prior approval to file such amended or increased Claim.

14.3 Disputed Claims. Disputed Claims shall not be entitled to any Plan Distributions unless and until they become Allowed Claims.

14.4 Estimation of Claims. The Debtor and/or the Reorganized Debtor may request that the Bankruptcy Court enter an Estimation Order with respect to any Claim, pursuant to section 502(c) of the Bankruptcy Code, for purposes of determining the Allowed amount of such Claim regardless of whether any Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time (including during the pendency of any appeal with respect to the allowance or disallowance of such Claims). In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim for allowance purposes, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the objecting party may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, resolved or withdrawn by any mechanism approved by the Bankruptcy Court.

14.5 Expenses Incurred On or After the Effective Date. Except as otherwise ordered by the Bankruptcy Court, and subject to the written agreement of the Reorganized Debtor, the amount of any reasonable fees and expenses incurred by any Professional Person on or after the Effective Date in connection with implementation of the Plan, including without limitation, reconciliation of, objection to, and settlement of Claims, shall be paid in Cash by the Reorganized Debtor.

## **CONCLUSION**

The Debtor believes that confirmation and implementation of the Plan is preferable to any of the alternatives described herein because it will provide the greatest recovery to holders of Claims. Other alternatives would involve significant delay, uncertainty and substantial administrative costs and are likely to reduce any return to creditors who hold Claims. The Debtor urges the holders of Impaired Claims in Classes 1, 3, 4, and 5 who are entitled to vote on the Plan to vote to accept the Plan and to evidence such acceptance by returning their Ballots to Donlin, Recano & Company, Inc. so that they will be received not later than 4:00 p.m. (prevailing Central Time) on June 12, 2018.

Dated: May 16, 2018  
Fort Worth, Texas

By: /s/ Bill Spae  
Name: Bill Spae  
Its: Chief Executive Officer

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### **Table of Exhibits**

Exhibit A – Debtor’s Plan of Reorganization

Exhibit B – Chart Showing Prepetition Organizational Structure

Exhibit C – Detailed Financial Projections

Exhibit D – Liquidation Analysis

**Exhibit A**

**Debtor's Plan of Reorganization**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

In re:

VASARI, LLC.

§  
§ Case No. 17-44346-MXM-11  
§  
§ (Chapter 11)

**SECOND AMENDED PLAN OF REORGANIZATION FOR VASARI, LLC**

Dated: May 16, 2018

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## TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION.....	1
ARTICLE I. DEFINITIONS AND INTERPRETATIONS.....	1
A.    Definitions.....	1
1.1    503(b) (9) Claims .....	1
1.2    Administrative Bar Date .....	1
1.3    Administrative Expense Claim .....	1
1.4    Allocations After Payment of the New Revolver.....	2
1.5    Allowed Cadence Claim .....	2
1.6    Allowed Claim or Allowed Interest .....	2
1.7    Allowed DQ Claim .....	2
1.8    Allowed Priority Claim.....	2
1.9    Allowed Sponsor Affiliate Claims.....	2
1.10    Ballot .....	2
1.11    Bankruptcy Code .....	2
1.12    Bankruptcy Court.....	2
1.13    Bankruptcy Rules.....	2
1.14    Bar Date .....	3
1.15    Business Day .....	3
1.16    Business Plan .....	3
1.17    Cadence.....	3
1.18    Cadence DIP Claim.....	3
1.19    Cadence DIP Facility .....	3
1.20    Cadence DIP Facility Agreement .....	3
1.21    Cadence Prepetition Claims.....	3
1.22    Cadence Prepetition Credit Agreement.....	3
1.23    Cadence Prepetition Loan Documents.....	3
1.24    Cadence Purchasing Card Obligations.....	3
1.25    Cash.....	4
1.26    Causes of Action.....	4
1.27    Claim .....	4
1.28    Claims Objection Deadline.....	4
1.29    Collateral .....	4
1.30    Committee.....	4
1.31    Confirmation .....	4
1.32    Confirmation Date .....	4
1.33    Confirmation Hearing .....	4
1.34    Confirmation Order.....	5
1.35    Consent Parties.....	5
1.36    Creditor.....	5

1.37	Cure Amount.....	5
1.38	Cure Disputes .....	5
1.39	Cure Schedule.....	5
1.40	Dark Store Sales.....	5
1.41	Debtor.....	5
1.42	DIP Lender .....	5
1.43	Disallowed.....	5
1.44	Disclosure Statement .....	5
1.45	Disclosure Statement Order.....	5
1.46	Disputed Claim.....	5
1.47	Distribution Record Date .....	5
1.48	DQ.....	5
1.49	DQ Claims.....	5
1.50	DQ Guaranty .....	6
1.51	DQ Note.....	6
1.52	Effective Date .....	6
1.53	Estate.....	6
1.54	Estimation Order .....	6
1.55	Fee Application.....	6
1.56	Fee Claim .....	6
1.57	Final DIP Order .....	6
1.58	Final Distribution.....	6
1.59	Final Order .....	6
1.60	Franchise Agreement.....	7
1.61	Holder or Claimholder .....	7
1.62	Impaired.....	7
1.63	Interests.....	7
1.64	Interests Holders .....	7
1.65	Investor .....	7
1.66	Lien.....	7
1.67	LTM .....	7
1.68	Maturity Date.....	7
1.69	Net Cash Flow .....	7
1.70	Net Excess Cash Flow .....	7
1.71	New Cadence Notes.....	7
1.72	New Member Interests .....	7
1.73	New Revolver.....	7
1.74	Note A.....	8
1.75	Note B.....	8
1.76	Order.....	8
1.77	Person.....	8
1.78	Petition Date .....	8
1.79	Plan.....	8
1.80	Plan Consideration.....	8
1.81	Plan Distributions .....	8
1.82	Plan Supplement .....	8

1.83	Priority Claims .....	8
1.84	Priority Non-Tax Claim .....	8
1.85	Priority Tax Claim .....	8
1.86	Priority Wage Claims .....	9
1.87	Pro Rata .....	9
1.88	Professional Person .....	9
1.89	Released Parties .....	9
1.90	Reorganization Case .....	9
1.91	Reorganized Debtor .....	9
1.92	Retained Stores.....	9
1.93	RSA.....	9
1.94	Schedule of Assumed Contracts and Leases.....	9
1.95	Secured Claim .....	9
1.96	Secured Creditor .....	10
1.97	Sponsor.....	10
1.98	Sponsor Affiliate Claims.....	10
1.99	Subscription Agreement.....	10
1.100	Subscription Amount.....	10
1.101	U.S. Trustee .....	10
1.102	U.S. Trustee Fees.....	10
1.103	United States.....	10
1.104	Unsecured Claim.....	10
1.105	Unsecured Creditors Fund.....	10
<b>B.</b>	<b>Rules of Interpretation .....</b>	<b>10</b>
<b>ARTICLE II. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS; IDENTIFICATION OF IMPAIRED CLASSES .....</b>		<b>11</b>
2.1	Classification Generally.....	11
2.2	Unclassified Claims .....	11
2.3	Designation of Classes of Claims and Interests; Identification of Impairment.....	11
2.4	Classes and Claims Entitled to Vote.....	12
2.5	Impairment Controversies .....	12
<b>ARTICLE III. PROVISIONS FOR THE TREATMENT OF UNCLASSIFIED CLAIMS.....</b>		<b>12</b>
3.1	Cadence DIP Claim.....	12
3.2	Administrative Expense Claims.....	13
3.2.1	Time for Filing Administrative Expense Claims .....	13
3.2.2	Debtor's or Reorganized Debtor's Address for Service of Administrative Expense Claims.....	13
3.2.3	Treatment of Administrative Expense Claims .....	13
3.3	Fee Claims.....	14
3.3.1	Time for Filing Fee Claims.....	14

3.3.2	Treatment of Fee Claims .....	14
3.4	U.S. Trustee Fees .....	14
3.5	Priority Tax Claims .....	14
<b>ARTICLE IV. PROVISIONS FOR THE TREATMENT OF CLASSIFIED CLAIMS.....</b>		<b>14</b>
4.1	Cadence Prepetition Claims - Class 1 .....	14
4.2	Priority Non-Tax Claims – Class 2.....	18
4.3	General Unsecured Claims – Class 3 .....	18
4.4	DQ Claim – Class 4 .....	19
4.5	Sponsor Affiliate Claims – Class 5 .....	19
4.6	Interests Holders – Class 6 .....	19
<b>ARTICLE V. ACCEPTANCE OR REJECTION OF THE PLAN .....</b>		<b>19</b>
5.1	Class Acceptance Requirement .....	19
5.2	Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or “Cramdown” .....	19
5.3	Elimination of Vacant Classes .....	20
5.4	Voting Classes; Deemed Acceptance by Non-Voting Classes .....	20
<b>ARTICLE VI. MEANS FOR IMPLEMENTATION OF THE PLAN .....</b>		<b>20</b>
6.1	Plan Funding and Operation the Businesses .....	20
6.2	Continued Corporate Existence.....	21
6.3	Vesting of Assets in the Reorganized Debtor .....	21
6.4	Documents .....	21
6.5	Post-Effective Date Franchise Agreements .....	22
6.5.1	Transferability .....	22
6.5.2	Guaranty of Franchise Agreement .....	22
6.6	Cancellation of Existing Interests and Agreements .....	22
6.7	Authorization, Issuance and Delivery of New Member Interests.....	23
<b>ARTICLE VII. PROVISIONS FOR THE RESOLUTION &amp; TREATMENT OF DISPUTED CLAIMS .....</b>		<b>23</b>
7.1	Objections to Claims .....	23
7.2	Amendment to Claims .....	23
7.3	Disputed Claims .....	23
7.4	Estimation of Claims.....	24
7.5	Expenses Incurred On or After the Effective Date.....	24
<b>ARTICLE VIII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....</b>		<b>24</b>
8.1	General Assumption of Executory Contracts and Unexpired Leases.....	24

8.2	Cure of Defaults for Assumed Executory Contracts and Unexpired Leases .....	25
8.3	Claims for Rejection Damages.....	25
<b>ARTICLE IX. EFFECTS OF PLAN CONFIRMATION.....</b>		<b>26</b>
9.1	Binding Effect.....	26
9.2	Discharge of Claims Against and Interests in the Debtor .....	26
9.3	Term of Pre-Confirmation Injunctions or Stays.....	26
9.4	Injunction.....	26
9.5	Releases .....	27
9.6	Exculpation and Limitation of Liability .....	29
9.7	Injunction Related to Releases and Exculpation.....	29
9.8	Retention of Causes of Action/Reservation of Rights.....	29
9.9	Indemnification Obligations .....	29
<b>ARTICLE X. CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN.....</b>		<b>30</b>
10.1	Conditions Precedent to the Effective Date .....	30
10.2	Satisfaction and Waiver of Conditions Precedent .....	31
10.3	Effect of Failure of Conditions.....	31
<b>ARTICLE XI. DISTRIBUTIONS UNDER THE PLAN.....</b>		<b>32</b>
11.1	Distributions .....	32
11.2	No Postpetition Interest on Claims.....	32
11.3	Date of Distributions.....	32
11.4	Distribution Record Date .....	32
11.5	Delivery of Distribution.....	32
11.6	Unclaimed Property.....	33
11.7	Satisfaction of Claims .....	33
11.8	Manner of Payment Under Plan.....	33
11.9	<i>De Minimis</i> Cash Distributions.....	33
11.10	No Distribution in Excess of Amount of Allowed Claim .....	33
11.11	Setoffs and Recoupments .....	33
11.12	Withholding and Reporting Requirements .....	34
<b>ARTICLE XII. RETENTION OF JURISDICTION AND CLAIMS .....</b>		<b>34</b>
12.1	Retention of Jurisdiction and Claims.....	34
<b>ARTICLE XIII. MISCELLANEOUS PROVISIONS.....</b>		<b>36</b>
13.1	Certain Rights Unaffected.....	36
13.2	Headings.....	36
13.3	Severability .....	36

<b>13.4</b>	<b>Governing Law.....</b>	<b>36</b>
<b>13.5</b>	<b>Notices .....</b>	<b>36</b>
<b>13.6</b>	<b>Time.....</b>	<b>37</b>
<b>13.7</b>	<b>Exhibits .....</b>	<b>37</b>
<b>13.8</b>	<b>Successors and Assigns.....</b>	<b>37</b>
<b>13.9</b>	<b>Exemption from Certain Transfer Taxes .....</b>	<b>37</b>
<b>13.10</b>	<b>Termination of Professionals .....</b>	<b>37</b>
<b>13.11</b>	<b>Amendments.....</b>	<b>38</b>
<b>13.12</b>	<b>Revocation or Withdrawal of this Plan.....</b>	<b>38</b>
<b>13.13</b>	<b>Allocation of Plan Distributions Between Principal and Interest .....</b>	<b>38</b>
<b>13.14</b>	<b>Section 1125(e) of the Bankruptcy Code.....</b>	<b>38</b>
<b>13.15</b>	<b>Inconsistency .....</b>	<b>38</b>

## **INTRODUCTION**

Vasari, LLC, the debtor and debtor in possession in the above-captioned case, proposes the following chapter 11 plan of reorganization for the resolution of the Claims against and Interests in the Debtor.

Reference is made to the Disclosure Statement accompanying this Plan, including the exhibits and supplements thereto, for a discussion of the Debtor's history, business, properties and operations, projections for those operations, risk factors, a summary and analysis of this Plan, and certain related matters including, among other things, certain tax matters, and the membership interests and other consideration to be issued and/or distributed under this Plan. Subject to certain restrictions and requirements set forth in 11 U.S.C. § 1127, Fed. R. Bankr. P. 3019 and Sections 13.11 and 13.12 of this Plan, the Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation.

The only Persons that are entitled to vote on this Plan are the holders of the Cadence Prepetition Claim(s), General Unsecured Claims, DQ Claims and Sponsor Affiliate Claims, in each case to the extent Allowed. Such Persons are encouraged to read the Plan and the Disclosure Statement and its exhibits and schedules in their entirety before voting to accept or reject the Plan. No materials other than the Disclosure Statement, the schedules, notices and exhibits attached thereto and referenced therein have been authorized by the Bankruptcy Court for use in soliciting acceptances or rejections of the Plan.

## **ARTICLE I.**

### **DEFINITIONS AND INTERPRETATIONS**

#### **A. Definitions**

As used in this Plan, the following terms shall have their respective meanings set forth below and, unless the context otherwise requires, shall be equally applicable to the singular and plural forms of the terms defined. Unless otherwise defined herein, the terms used in this Plan shall have the same meaning ascribed thereto in the Bankruptcy Code and the Bankruptcy Rules.

1.1 503(b)(9) Claims. Claims that have been timely and properly filed prior to the Bar Date, unless otherwise provided herein, and that are granted administrative priority treatment pursuant to Section 503(b)(9) of the Bankruptcy Code.

1.2 Administrative Bar Date. The meaning set forth in Section 3.2.1 of this Plan.

1.3 Administrative Expense Claim. Any (a) claim for payment of any cost or expense of administration of the Reorganization Case of the kind specified in section 503(b) of the Bankruptcy Code and entitled to priority pursuant to sections 328, 330, 363, 364(c)(1), 365, 503(b), 507(a)(2) or 507(b) of the Bankruptcy Code (other than the Cadence DIP Claim, Fee Claims or U.S. Trustee Fees) incurred during the period from the Petition Date to the Effective Date, including, without limitation: (i) any actual and necessary costs and expenses of preserving the Estate, any actual and necessary costs and expenses of operating the Debtor's business, and any indebtedness or obligations incurred or assumed by the Debtor during this

Reorganization Case; (ii) any payment to be made under this Plan to cure a default under an assumed executory contract or unexpired lease; and (iii) 503(b)(9) Claims.

1.4 Allocations After Payment of the New Revolver. The Net Excess Cash Flow shall first be used to pay down the balance on the New Revolver, if any. Then, the Net Excess Cash Flow shall be utilized and allocated as follows: 50.00% shall be paid to Cadence in reduction of Note A and 50.00% shall be paid in reduction of the balance of the DQ Note; *provided, however*, that the Debtor shall not be permitted to make any draws under the New Revolver for a period of sixty (60) days after the Debtor makes any payment towards the DQ Note.

1.5 Allowed Cadence Claim. The meaning set forth in Section 4.1 of this Plan.

1.6 Allowed Claim or Allowed Interest. Any Claim (a) based on an application of a Professional Person to the extent such application is approved by Final Order; (b) allowed under this Plan; or (c) proof of which was timely and properly filed, deemed filed under applicable law or by reason of a Final Order or, if no proof of claim was filed or Final Order entered, which has been or hereafter is listed by the Debtor in its schedules filed under section 521(1) of the Bankruptcy Code as liquidated in amount and not disputed or contingent, provided that a timely filed proof of claim shall supersede any scheduling of such claim, and, in either case, a claim as to which such other applicable period of limitation fixed by the Bankruptcy Code or by a Final Order to which (i) no objection has been filed, or (ii) in the event that an objection has been filed, any objection has been withdrawn pursuant to the provisions of this Plan or has been overruled by a Final Order.

1.7 Allowed DQ Claim. The meaning set forth in Section 4.4 of this Plan.

1.8 Allowed Priority Claim. All or that portion of any Priority Claim which is or has become an Allowed Claim.

1.9 Allowed Sponsor Affiliate Claims. The meaning set forth in Section 4.5 of this Plan.

1.10 Ballot. The form approved by the Bankruptcy Court and distributed to holders of impaired Claims entitled to vote on the Plan to be used to indicate their acceptance or rejection of the Plan.

1.11 Bankruptcy Code. Title 11 of the United States Code, as amended from time to time, as applicable to this Reorganization Case.

1.12 Bankruptcy Court. The United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, or any other court exercising competent jurisdiction over this Reorganization Case or any proceeding therein.

1.13 Bankruptcy Rules. The Federal Rules of Bankruptcy Procedure, promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as amended from time to time, as applicable to this Reorganization Case, and any local rules of the Bankruptcy Court.



1.14 Bar Date. Any deadline for filing proofs of Claim, including, without limitation, Claims arising prior to the Petition Date (including 503(b)(9) Claims) and Administrative Expense Claims, as established by an order of the Bankruptcy Court or under the Plan.

1.15 Business Day. Any day on which banks are open to carry on their ordinary commercial banking business in New York, New York.

1.16 Business Plan. A plan and budget approved by Cadence for the ongoing operation of the Reorganized Debtor after the Effective Date.

1.17 Cadence. Cadence Bank, N.A., its affiliates, subsidiaries, predecessors, successors or assigns.

1.18 Cadence DIP Claim. All Claims or obligations held by the DIP Lender arising under or pursuant to the Cadence DIP Facility Agreement, including, without limitation, Claims for all principal amounts outstanding, interest, fees, reasonable and documented expenses, costs and other charges of the DIP Lender.

1.19 Cadence DIP Facility. The debtor-in-possession asset based loan facility provided under the Cadence DIP Facility Agreement that was approved by the Bankruptcy Court pursuant to the Final DIP Order.

1.20 Cadence DIP Facility Agreement. That certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of November 7, 2017, between and among the Debtor and the DIP Lender, as amended, modified or supplemented from time to time.

1.21 Cadence Prepetition Claims. All Claims arising under or relating to the Cadence Prepetition Loan Documents in the amount not less than, as of April 23, 2018, \$11,011,966.40, consisting of \$10,969,120.10 in principal (inclusive of the Cadence Purchasing Card Obligations), \$41,264.72 in accrued and unpaid interest, and \$1,581.25 in fees, plus any and all other obligations of the Debtor pursuant to the Cadence Prepetition Loan Documents, including but not limited to interest and fees accruing after April 23, 2018 and any and all accrued and accruing legal fees and disbursements, which amounts are collectively secured by substantially all assets of the Debtor.

1.22 Cadence Prepetition Credit Agreement. That certain Credit Agreement dated as of December 5, 2013 by and between Cadence and the Debtor.

1.23 Cadence Prepetition Loan Documents. The Cadence Prepetition Credit Agreement together with all other documents, instruments, and agreements delivered in connection with the Pre-Petition Credit Agreement, as may have been amended from time to time.

1.24 Cadence Purchasing Card Obligations. Debtor's obligations in the amount of \$187,191.76 to Cadence arising under that certain Indemnification Agreement dated as of August 24, 2016 between Debtor and Cadence pursuant to which the Debtor agreed to indemnify Cadence in connection with Cadence's separate agreement with Elan Financial Services ("Elan")

to underwrite the Debtor's participation in a purchasing card program with Elan, which amount is secured by virtue of the Cadence Prepetition Loan Documents.

1.25 Cash. Cash, cash equivalents and other readily marketable securities or instruments, including, without limitation, direct obligations of the United States of America, certificates of deposits issued by banks and commercial paper of any entity, including interest earned or accrued thereon.

1.26 Causes of Action. Any and all actions, causes of action (including causes of action under sections 510, 544, 545, 546, 547, 548, 549, 550 and 553 of the Bankruptcy Code), suits, accounts, controversies, obligations, judgments, damages, demands, debts, rights, agreements, promises, rights to legal remedies, rights to equitable remedies, rights to payment, and Claims, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured and whether asserted or assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or tort, arising in law, equity or otherwise.

1.27 Claim. Any right against the Debtor for (a) payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured or (b) an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, including, without limitation, any Claim arising after the Petition Date.

1.28 Claims Objection Deadline. The meaning set forth in Section 7.1 of this Plan.

1.29 Collateral. Any property or interest in property of the estate of the Debtor subject to a Lien that secures, in whole or in part, payment or performance of an Allowed Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or applicable non-bankruptcy law.

1.30 Committee. The Official Committee of Unsecured Creditors appointed in the Reorganization Case by the U.S. Trustee.

1.31 Confirmation. Confirmation means the entry of the Confirmation Order.

1.32 Confirmation Date. The date of entry of the Confirmation Order in accordance with the provisions of the Bankruptcy Code, provided, however, that if the Confirmation Order or consummation of the Plan is stayed pending appeal, then the Confirmation Date shall be the date of entry of the Final Order vacating such stay or the date on which such stay expires or is no longer in effect.

1.33 Confirmation Hearing. The date set by the Bankruptcy Court to consider confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

1.34 Confirmation Order. Order of the Bankruptcy Court confirming the Plan and approving the transactions contemplated herein.

1.35 Consent Parties. (a) Cadence, (b) DQ, and (c) the Investor.

1.36 Creditor. Any entity that is the holder of a Claim, including (but not limited to): (a) a Claim that arose on or before the Petition Date, (b) a Claim against the Debtor's Estate of any kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code or (c) an Administrative Expense Claim.

1.37 Cure Amount. The meaning set forth in Section 8.2 of this Plan.

1.38 Cure Disputes. The meaning set forth in Section 8.2 of this Plan.

1.39 Cure Schedule. The meaning set forth in Section 8.2 of this Plan.

1.40 Dark Store Sales. The sale, whether approved by Final Order, approved by the Confirmation Order, or implemented post-Effective Date, of those certain closed locations or assets related thereto and contained therein and listed on Schedule 1.38.

1.41 Debtor. Vasari, LLC.

1.42 DIP Lender. Cadence Bank, N.A.

1.43 Disallowed. A finding by the Bankruptcy Court in a Final Order, or provision in the Plan providing, that a Disputed Claim shall not be an Allowed Claim.

1.44 Disclosure Statement. The written Disclosure Statement with respect to this Plan approved by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

1.45 Disclosure Statement Order. An order of the Bankruptcy Court approving the Disclosure Statement as having adequate information in accordance with section 1125 of the Bankruptcy Code.

1.46 Disputed Claim. Any Claim to which an objection has been interposed in accordance with the Bankruptcy Code, Bankruptcy Rules, this Plan or Orders of the Bankruptcy Court.

1.47 Distribution Record Date. With respect to all Classes for which Plan Distributions are to be made, the third Business Day after the Confirmation Date or such other later date as set forth in the Plan or as shall be established by the Bankruptcy Court in the Confirmation Order.

1.48 DQ. American Dairy Queen Corporation and its affiliates, subsidiaries, successors or assigns.

1.49 DQ Claims. All Claims or obligations held by DQ that relate to unpaid royalty and advertising funds arising under or pursuant to any franchise agreement in effect prior to the

Petition Date. For the avoidance of doubt, DQ Claims shall not include Administrative Expense Claims.

1.50 DQ Guaranty. The Undertaking and Guaranty, dated February 10, 2016, executed by E. Stockton Croft IV, J. W. Ransom James, William A. Lundstrom and Andrew Hirsekorn in favor of DQ, pursuant to which the guarantors have guaranteed the payment by the Debtor to DQ of amounts owed by the Debtor in an aggregate amount that does not exceed \$550,000.

1.51 DQ Note. That certain promissory note issued to DQ by the Reorganized Debtor in an amount not to exceed \$459,770.62 described in the RSA and Term Sheet appended thereto.

1.52 Effective Date. The date specified by the Debtor in a notice filed with the Bankruptcy Court as the date on which the Plan shall take effect, which date shall be the first Business Day on which all of the conditions set forth in Section 10.1 hereof have been satisfied or waived and no stay of the Confirmation Order is in effect.

1.53 Estate. The estate created in this Reorganization Case pursuant to section 541 of the Bankruptcy Code.

1.54 Estimation Order. An order or orders of the Bankruptcy Court estimating for voting and/or distribution purposes (under section 502(c) of the Bankruptcy Code) the Allowed amount of any Claim. The term Estimation Order includes the Confirmation Order if the Confirmation Order grants the same relief that would have been granted in a separate Estimation Order.

1.55 Fee Application. An application of a Professional Person under sections 328, 330, 331 or 503 of the Bankruptcy Code for allowance of compensation and reimbursement of expenses in the Reorganization Case.

1.56 Fee Claim. A Claim by a Professional Person for compensation, indemnification or reimbursement of expenses pursuant to sections 326, 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code in connection with the Reorganization Case, including, without limitation, in connection with final Fee Applications of such Professional Persons.

1.57 Final DIP Order. That certain Amended Final Order (I) Authorizing the Debtor (A) Obtain Postpetition Financing on a Secured, Superpriority Basis and (B) Use Cash Collateral, (II) Granting Adequate Protection, and (III) Granting Related Relief [Docket No. 229].

1.58 Final Distribution. Final distribution under the Plan to be applied to the payment of the Allowed Claims.

1.59 Final Order. An Order or a judgment which has not been reversed, stayed, modified or amended and as to which (i) the time to appeal or seek review, reargument or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending or (ii) its appeal, review, reargument, rehearing or certiorari has been denied and a time to seek a further appeal, review, reargument, rehearing or certiorari has expired as a result of which such order shall have become final and nonappealable in accordance with applicable law.

1.60 Franchise Agreement. The meaning set forth in Section 6.5 of this Plan.

1.61 Holder or Claimholder. Any entity that is the holder of a Claim, including (but not limited to) (a) a Claim that arose on or before the Petition Date, (b) a Claim against the Debtor's Estate of any kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code or (c) an Administrative Expense Claim.

1.62 Impaired. When used with respect to any Claim, Interest or class, it has the same meaning as that contained in section 1124 of the Bankruptcy Code.

1.63 Interests. The member interests in the Debtor as of the Petition Date.

1.64 Interests Holders. All holders of Interests.

1.65 Investor. Square One Restaurant Holdings LLC, a Delaware limited liability company affiliated with the Sponsor.

1.66 Lien. Charge against or interest in property to secure payment of a debt or performance of an obligation.

1.67 LTM. Lagging twelve-month.

1.68 Maturity Date. December 5, 2021.

1.69 Net Cash Flow. For each month after the Effective Date, an amount equal to the Reorganized Debtor's actual cash flow calculated by the methodology of the Business Plan and accounting only for expenses allowed to be incurred under the Business Plan and actually incurred.

1.70 Net Excess Cash Flow. Debtor's Cash balance at the end of each month, if any, that exceeds 110% of the projected Cash budget set forth in the Business Plan in the corresponding month; provided, that the allocation of Net Excess Cash Flow shall not cause the Reorganized Debtor's aggregate cash balance for the Retained Stores to be less than \$100,000.

1.71 New Cadence Notes. Note A and Note B, collectively, to be issued pursuant to Section 4.1 of this Plan, together with all related loan, security, mortgage, lock box and ancillary agreements between Cadence and the Reorganized Debtor, which may include a continuation, ratification, extension, modification or restatement of existing loan, security and mortgage agreements and all other documentation related to the Cadence Pre-Petition Claim. All other material terms of the New Cadence Notes other than as set forth herein will be on terms and conditions mutually acceptable to Cadence and the Debtor or the Reorganized Debtor.

1.72 New Member Interests. The new membership interests of the Reorganized Debtor to be issued and distributed pursuant to this Plan on or immediately following the Effective Date to the Investor and/or Persons designated by the Investor.

1.73 New Revolver. The meaning set forth in Section 6.1 of this Plan.

1.74 Note A. A promissory note evidencing a term loan in the original principal amount of \$9,000,000.00 and containing the terms and conditions provided in Section 4.1 of this Plan.

1.75 Note B. A promissory note evidencing a term loan in the original principal amount of \$1,969,120.00 and containing the terms and conditions provided in Section 4.1 of this Plan.

1.76 Order. An order or judgment of the Bankruptcy Court as entered on the docket.

1.77 Person. Any individual, corporation, partnership, association, indenture trustee, limited liability company, organization, joint stock company, joint venture, estate, trust, governmental unit or any political subdivision thereof, or any other entity or organization of whatever nature.

1.78 Petition Date. October 30, 2017.

1.79 Plan. This chapter 11 plan proposed by the Debtor, including (without limitation) all applicable exhibits, supplements, appendices, and schedules hereto, either in its present form or as it may be amended, altered or modified by the Debtor from time to time in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules and the terms hereof.

1.80 Plan Consideration. Cash, the New Cadence Notes and the DQ Note, as the context requires.

1.81 Plan Distributions. The distributions under this Plan of Plan Consideration.

1.82 Plan Supplement. The supplement to this Plan, to be filed no later than ten (10) calendar days prior to the deadline for Ballots to be received in connection with voting to accept or reject the Plan, which may contain, among other things, draft forms, signed copies, or summaries of material terms, as the case may be, of (i) the New Cadence Notes and the New Revolver and an exemplar form of such other documents deemed necessary or beneficial to Cadence to evidence and perfect its first priority lien in the Reorganized Debtor's assets; (ii) exemplar forms of the post-Effective Date franchise agreement to be entered into with DQ and the DQ Note; (iii) the Schedule of Assumed Contracts and Leases; and (iv) additional documents filed with the Bankruptcy Court before the Effective Date as amendments to the Plan Supplement.

1.83 Priority Claims. An Allowed Claim entitled to a priority under, inter alia, section 507(a) of the Bankruptcy Code.

1.84 Priority Non-Tax Claim. Any Claim, other than an Administrative Expense Claim, a Fee Claim or a Priority Tax Claim, that is entitled to priority in payment under section 507(a) of the Bankruptcy Code.

1.85 Priority Tax Claim. Any Claim that is entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

1.86 Priority Wage Claims. Allowed Claims entitled to a priority under section 507(a)(4) Bankruptcy Code.

1.87 Pro Rata. Proportionately so that the ratio of the amount of consideration distributed on account of a particular Allowed Claim or to the amount of the Allowed Claim is the same as the ratio of the amount of consideration distributed on account of all Allowed Claims of the class in which the particular Allowed Claim is included to the amount of all Allowed Claims of that class.

1.88 Professional Person. Any entity retained or to be compensated pursuant to sections 326, 327, 328, 330, 331, 503(b) or 1103 of the Bankruptcy Code.

1.89 Released Parties. Collectively, and each solely in its capacity as such: (a) the Sponsor together with each of the Sponsor's current and former affiliates and subsidiaries and each such Person's respective current and former officers, directors, principals, employees, shareholders, members (including ex officio members), managers, managed accounts or funds, management companies, fund advisors, advisory board members, partners, agents, financial advisors, attorneys, accountants, investment bankers, investment advisors, consultants, representatives and other professionals; (b) the DIP lender; (c) Cadence; (d) DQ; (e) the Committee and its members and, with respect to (b), (c), (d) and (e), each of such entities' predecessors, successors and assigns, subsidiaries, funds, portfolio companies, affiliates, respective attorneys, and each of their respective officers, directors, employees, members, managers, financial advisors or other professionals or representatives.

1.90 Reorganization Case. The administered case under chapter 11 of the Bankruptcy Code commenced by the Debtor on the Petition Date in the Bankruptcy Court and captioned; In re Vasari LLC, et al., No. 17-44346-MXM-11.

1.91 Reorganized Debtor. The Reorganized Debtor, being Square 1 Restaurants LLC as successor by change of name to Vasari, LLC, or any successors thereto by merger, consolidation or otherwise, on and after the Effective Date, after giving effect to the restructuring transactions occurring on the Effective Date in accordance with this Plan.

1.92 Retained Stores. Those certain restaurant locations determined by the Debtor, along with the consent of the Consent Parties, to be operated after the Effective Date and identified on Schedule 1.89 hereto.

1.93 RSA. The Restructuring Support Agreement, by and among the Debtor, the Sponsor, DQ and Cadence, and approved by the Bankruptcy Court on December 15, 2017 [Docket No. 225] and including the Term Sheet appended thereto.

1.94 Schedule of Assumed Contracts and Leases. That schedule of executory contracts and leases to be assumed on the Effective Date under the Plan and to be provided in the Plan Supplement, expressly excluding any executory contracts or unexpired leases previously rejected by Final Order.

1.95 Secured Claim. A Claim of a Creditor arising on or before the Petition Date to the extent (a) secured by a Lien on Collateral which is not void or avoidable under applicable

state and federal law, including the Bankruptcy Code or (b) subject to set off under section 553 of the Bankruptcy Code, in each case to the extent of the value of said Creditor's interest in the Debtor's interests in the property or the amount of the set off, as applicable; provided, however, that nothing herein shall prohibit a Secured Creditor from making the election provided in section 1111(b)(2) of the Bankruptcy Code.

1.96 Secured Creditor. Any Creditor that is the holder of a Secured Claim.

1.97 Sponsor. EMP Vasari Holding LLC.

1.98 Sponsor Affiliate Claims. the Claims against the Debtor (a) arising under that certain Subordinated Promissory Note, dated May 25, 2016, executed by the Debtor in favor of Edward S. Croft, in the principal amount of \$750,000 plus interest in the amount of \$31,178 accrued thereon through the Petition Date, and (b) in the amount of \$850,000 for accrued and unpaid management fees due and owing to EMP Management LLC as of the Petition Date.

1.99 Subscription Agreement. The Subscription Agreement between the Debtor and the Investor, pursuant to which the New Member Interests will be issued to the Investor (or the Investor's designees) in exchange for payment of the Subscription Amount.

1.100 Subscription Amount. Cash in an amount equal to \$500,000.

1.101 U.S. Trustee. The United States Trustee for the Northern District of Texas.

1.102 U.S. Trustee Fees. Fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

1.103 United States. The meaning set forth in 9.5(d) of this Plan.

1.104 Unsecured Claim. Any Claim against the Debtor whatsoever, other than (a) a Secured Claim; (b) an Administrative Expense Claim; (c) a Fee Claim; (d) a Priority Tax Claim; (e) a Priority Wage Claim; (f) a Priority Non-Tax Claim; (g) the DQ Claim; (h) the Sponsor Affiliate Claims; and (i) U.S. Trustee Fees.

1.105 Unsecured Creditors Fund. Cash in an amount equal to \$150,000.

## **B. Rules of Interpretation**

Unless otherwise specified, all section, article, and exhibit references in this Plan are to the respective section in, or article of, this Plan, as the same may be amended, waived or modified from time to time. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Words denoting the singular number shall include the plural number and vice versa. In construing this Plan, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply. In computing any period of time prescribed or allowed by this Plan, the provision of Bankruptcy Rule 9006(c) shall apply. Any



reference to a Person as a holder of a Claim or Interest includes that Person's successors and assigns.

**ARTICLE II.**  
**CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS;**  
**IDENTIFICATION OF IMPAIRED CLASSES**

2.1 Classification Generally. All Claims and Interests, except the Cadence DIP Claim, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims, are placed in Classes under the Plan. A Claim is classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and is classified in a different Class to the extent that any remainder of the Claim qualifies within the description of such different Class. A Claim which is properly includible in more than one Class is only entitled to inclusion within a particular Class to the extent that it qualifies under the description of such Class, and shall be included within a different Class(es) to the extent that it qualifies under the description of such different Class(es). A Claim is in a particular Class only to the extent that the Claim is an Allowed Claim in that Class and has not been paid, released or otherwise satisfied before the Effective Date.

2.2 Unclassified Claims. The following types of Claims are not classified under the Plan, the treatment of which are addressed in Article III herein:

- The Cadence DIP Claim
- Administrative Expense Claims
- Fee Claims
- U.S. Trustee Fees
- Priority Tax Claims

2.3 Designation of Classes of Claims and Interests; Identification of Impairment. The following table is a designation of the Classes of Claims and Interests under this Plan, the treatment of which are addressed in Article IV herein.

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitlement to Vote</b>
Class 1	Cadence Prepetition Claims	Impaired	Yes
Class 2	Priority Non-Tax Claims	Unimpaired	No (Deemed to Accept)
Class 3	General Unsecured Claims	Impaired	Yes
Class 4	DQ Claims	Impaired	Yes
Class 5	Sponsor Affiliate Claims	Impaired	Yes

Class 6	Interests Holders	Impaired	No (Deemed to Reject)
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2.4 Classes and Claims Entitled to Vote. Class 2 is not Impaired under this Plan and, therefore, is deemed to have accepted this Plan and is not entitled to vote on this Plan under section 1126(f) of the Bankruptcy Code. Classes 1, 3, 4, and 5 are Impaired under this Plan and are entitled to vote on the Plan to the extent that a Claim in such Class is not the subject of a pending objection as to allowance, or the holder of any such objected-to Claim has obtained an order from the Bankruptcy Court permitting such holder to vote on the Plan. Ballots for the acceptance or rejection of the Plan shall be mailed to holders of Claims in Classes 1, 3, 4, and 5 only. Class 6 is Impaired under this Plan but is deemed to have rejected the Plan without the necessity of voting pursuant to section 1126(g) of the Bankruptcy Code. Ballots will not be mailed to holders of Class 2 Priority Non-Tax Claims and Class 6 Interests.

2.5 Impairment Controversies. If a controversy arises as to whether any Class is impaired under this Plan, such Class shall be treated as specified in this Plan unless the Bankruptcy Court shall determine such controversy differently upon motion of the party challenging the characterization of a particular Class under this Plan.

### **ARTICLE III.**

#### **PROVISIONS FOR THE TREATMENT OF UNCLASSIFIED CLAIMS**

All Claims and Interests, except the Cadence DIP Claim, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims, are placed in the Classes set forth in Article II above and are treated under Article IV below. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Cadence DIP Claim, Administrative Expense Claims, Fee Claims, U.S. Trustee Fees and Priority Tax Claims have not been classified, and the holders thereof are not entitled to vote on this Plan on account of such Claims. A Claim or Interest is placed in a particular Class only to the extent that such Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes.

A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation and distribution under this Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code. However, a Claim or Interest is placed in a particular Class for the purpose of receiving Plan Distributions only to the extent that such Claim or Interest is an Allowed Claim or Allowed Interest and has not been paid, released or otherwise settled prior to the Effective Date.

3.1 Cadence DIP Claim. The Cadence DIP Claim shall be deemed to be an Allowed Claim under the Plan without the need to file a proof of such Claim with the Bankruptcy Court and without further order of the Bankruptcy Court. On the Confirmation Date, the Cadence DIP Claim shall not be subject to any avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether contractual, equitable or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under any applicable law or regulation by any person or entity. The Cadence DIP Claim shall be satisfied in full on or before July 2, 2018 in accordance with the terms and conditions of the DIP Facility Agreement.

All net proceeds generated during the Reorganization Case and paid to Cadence from any Dark Store Sales shall be applied to reduce the total Cadence DIP Claim.

### 3.2 Administrative Expense Claims.

3.2.1 Time for Filing Administrative Expense Claims. Each holder of an Administrative Expense Claim, other than the holder(s) of: (i) the Cadence DIP Claim; (ii) a Fee Claim; (iii) a 503(b)(9) Claim; (iv) an Administrative Expense Claim that has been Allowed on or before the Effective Date; (v) an Administrative Expense Claim for an expense or liability incurred and payable in the ordinary course of business by the Debtor; (vi) an Administrative Expense Claim on account of fees and expenses incurred on or after the Petition Date by ordinary course professionals retained by the Debtor pursuant to an order of the Bankruptcy Court; (vii) an Administrative Expense Claim arising, in the ordinary course of business, out of the employment by the Debtor of an individual from and after the Petition Date, but only to the extent that such Administrative Expense Claim is solely for outstanding wages, commissions, accrued benefits, or reimbursement of business expenses; or (viii) a claim for adequate protection arising under the Final DIP Order, must file with the Bankruptcy Court and serve on the Debtor or the Reorganized Debtor (as the case may be) at the address listed below and the Office of the U.S. Trustee, proof of such Administrative Expense Claim within ten (10) days after the filing of Notice of the Effective Date (the “**Administrative Bar Date**”). Such proof of Administrative Expense Claim must include at a minimum: (i) the exact amount asserted to be owed by the Debtor; (ii) the name of the holder of the Administrative Expense Claim; (iii) the asserted amount of the Administrative Expense Claim; (iv) the basis of the Administrative Expense Claim; and (v) supporting documentation for the Administrative Expense Claim. **FAILURE TO FILE AND SERVE SUCH PROOF OF ADMINISTRATIVE EXPENSE CLAIM TIMELY AND PROPERLY SHALL RESULT IN SUCH CLAIM BEING FOREVER BARRED AND DISCHARGED.**

3.2.2 Debtor’s or Reorganized Debtor’s Address for Service of Administrative Expense Claims. 5100 N. O’Connor Blvd., Suite 325, Irving, Texas 75039, with a copy to Husch Blackwell, LLP, 2001 Ross Avenue, Dallas, Texas 75201-2995, Attn: Vickie Driver, Esq.

3.2.3 Treatment of Administrative Expense Claims. Except to the extent that a holder of an Allowed Administrative Expense Claim agrees to a different treatment, on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is ten (10) business days after the date an Administrative Expense Claim becomes an Allowed Claim, the holder of such Allowed Administrative Expense Claim shall receive from the Reorganized Debtor Cash in an amount equal to such Allowed Claim; provided, however, that Allowed Administrative Expense Claims representing liabilities incurred in the ordinary course of business by the Debtor, as Debtor in possession, shall be paid by the Debtor or the Reorganized Debtor in the ordinary course of business, consistent with past practice and in accordance with the terms and subject to the conditions of any orders or agreements governing, instruments evidencing, or other documents relating to, such liabilities.

### 3.3 Fee Claims.

3.3.1 Time for Filing Fee Claims. Any Professional Person seeking allowance of a Fee Claim shall file, with the Bankruptcy Court, its final application for allowance of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date and in connection with the preparation and prosecution of such final application no later than ten (10) calendar days after the Effective Date.

3.3.2 Treatment of Fee Claims. All Professional Persons seeking allowance by the Bankruptcy Court of a Fee Claim shall be paid in full in Cash in such amounts as are approved by the Bankruptcy Court: (i) upon the later of (x) the Effective Date, and (y) fourteen (14) calendar days after the date upon which the order relating to the allowance of any such Fee Claim is entered, or (ii) upon such other terms as have been or may be mutually agreed upon between the holder of such Fee Claim and the Reorganized Debtor. On the Effective Date, to the extent known, the Reorganized Debtor shall reserve and hold in a segregated account Cash in an amount equal to all accrued but unpaid Fee Claims as of the Effective Date, which Cash shall be disbursed solely to the holders of Allowed Fee Claims with the remainder to be reserved until all Fee Claims have been either Allowed and paid in full or Disallowed by Final Order, at which time any remaining Cash in the segregated account shall become the sole and exclusive property of the Reorganized Debtor.

3.4 U.S. Trustee Fees. The Debtor or the Reorganized Debtor, as applicable, shall pay all outstanding U.S. Trustee Fees of the Debtor on an ongoing basis on the date such U.S. Trustee Fees become due, until such time as a final decree is entered closing the Reorganization Case, the Reorganization Case is converted or dismissed, or the Bankruptcy Court orders otherwise.

3.5 Priority Tax Claims. Except to the extent that a holder of an Allowed Priority Tax Claim agrees to different treatment, each holder of an Allowed Priority Tax Claim shall receive, in the Debtor's or the Reorganized Debtor's discretion, either: (a) on, or as soon thereafter as is reasonably practicable, the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date a Priority Tax Claim becomes an Allowed Claim, Cash in an amount equal to such Claim; or (b) deferred Cash payments following the Effective Date, over a period ending not later than five (5) years after the Petition Date, in an aggregate amount equal to the Allowed amount of such Priority Tax Claim (with any interest to which the holder of such Priority Tax Claim may be entitled calculated at 10% in accordance with section 511 of the Bankruptcy Code); provided, however, that all Allowed Priority Tax Claims that are not due and payable on or before the Petition Date shall be paid in the ordinary course of the Debtor's business.

## **ARTICLE IV.**

### **PROVISIONS FOR THE TREATMENT OF CLASSIFIED CLAIMS**

4.1 Cadence Prepetition Claims - Class 1. The Cadence Prepetition Claims shall be deemed Allowed Claims in the amount not less than \$11,011,966.10 as of April 23, 2018, as follows: \$10,969,120.10 in principal, \$41,264.72 in accrued and unpaid interest, and \$1,581.25 in fees. The amount of the Allowed Cadence Claim is comprised of the following amounts due

and owing under each of the loans as of April 23, 2018: (i) under the Term Loan,<sup>1</sup> \$6,441,928.34 in principal amount outstanding, plus \$23,762.67 in accrued and unpaid interest; (ii) under the Development Loan, \$3,400,000.00 in principal amount outstanding, plus \$13,635.90 in accrued and unpaid interest; (iii) under the Revolving Loan, \$940,000.00 in principal amount outstanding, plus \$3,866.15 in accrued and unpaid interest, and \$1,581.25 in fees; and (iv) the Cadence Purchasing Card Obligations, in the total principal amount of \$187,191.76, plus any and all other obligations of the Debtor pursuant to the Cadence Prepetition Loan Documents, including but not limited to interest and fees accruing after April 23, 2018 and any and all accrued and accruing legal fees and disbursements any and all accrued and accruing legal fees and disbursements (the “**Allowed Cadence Claim**”).<sup>2</sup>

The Allowed Cadence Claim shall not be subject to any avoidance, reductions, setoff, offset, recharacterization, subordination (whether equitable, contractual or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, or any other challenges under any applicable law or regulation by any person or entity. Except to the extent that Cadence shall have agreed in writing to a different treatment, the Class 1 Allowed Claim shall receive, in full satisfaction of such Claim, on or as soon as reasonably practicable after the Effective Date, (i) the New Cadence Notes and (ii) Cash in full and final payment of the Cadence Purchasing Card Obligations.

Note A shall (i) accrue interest at a variable rate per annum calculated as the London Interbank Offered Rate plus 4.50%, (ii) be payable monthly on an interest-only basis, and (iii) become due and payable in full on the Maturity Date unless accelerated prior thereto as a result of any default or event of default thereunder.

Note B shall (i) accrue interest at a fixed rate per annum equal to 8.00% on a non-compounding basis, (ii) not contain scheduled principal or interest payments, and (iii) become due and payable in full on the Maturity Date unless accelerated prior thereto as a result of any default or event of default thereunder.

Note B shall further provide that, so long as not accelerated as a result of an event of default, upon a sale of all or substantially all assets of the Debtor or a refinancing of all obligations owed to Cadence that occurs after June 30, 2019 (a “Payoff Date”), Note B shall be repaid according to the following matrix:

<b><u>Consolidated EBITDA</u></b> (as of Payoff Date on a trailing twelve (12) month basis)	<b><u>Note B Repayment Amount</u></b>
Greater than or equal to \$2,300,000.00	\$1,969,120.00 plus all accrued interest as of Payoff Date (the “Full Note B Amount”)
Less than \$2,300,000.00 and greater than	The greater of:

<sup>1</sup> Capitalized terms used in this Section 4.1 and not otherwise defined in this Plan shall have the meanings assigned such terms in the Cadence Prepetition Loan Documents. See Declaration of Daniel Holland [Dkt. 203].

<sup>2</sup> In addition, Cadence is committed under a standby letter of credit issued in favor of Labatt Food Service, LLC in the maximum amount available for drawing of \$400,000.00.

or equal to \$2,000,000.00	<p>(a) net proceeds from any sale in excess of the amount required for full repayment of all other obligations owed to Cadence, up to the Full Note B Amount</p> <p>And</p> <p>(b) The full principal amount of Note B (accrued interest waived).</p>
Less than \$2,000,000.00 and greater than or equal to \$1,800,000.00	<p>The greater of:</p> <p>(a) net proceeds from any sale in excess of the amount required for full repayment of all other obligations owed to Cadence, up to the Full Note B Amount</p> <p>And</p> <p>(b) Principal in the amount of \$969,120.00 (accrued interest waived).</p>
Less than \$1,800,000.00	<p>Net proceeds, if any, from any sale in excess of the amount required for full repayment all other obligations owed to Cadence, up to the Full Note B Amount.</p>

In addition, during the term of the New Cadence Notes, the Reorganized Debtor shall make additional principal payments from remaining Net Excess Cash Flow as provided by the Allocations After Payment of the New Revolver, which shall be applied to the outstanding principal balance of Note A.

The New Cadence Notes shall be subject the following financial covenants:

- (a) The Debtor shall not permit the Consolidated Fixed Charge Coverage Ratio for the Third Quarter 2018 and Fourth Quarter 2018 to be less than 1.10 to 1.00. For the First Quarter 2019 and Second Quarter 2019, the Debtor shall not permit the Consolidated Fixed Charge Coverage Ratio to be less than 1.15 to 1.00. Following the Second Quarter 2019 and any Fiscal Quarter of the Loan parties thereafter, the Debtor shall not permit the Consolidated Fixed Charge Coverage Ratio to be less than 1.20 to 1.00. The Consolidated Fixed Charge Coverage Ratio shall be tested quarterly on a trailing twelve (12) month period.

- “Consolidated Fixed Charge Coverage Ratio” shall mean, as of any date of determination, the ratio of (a) the sum of Consolidated EBITDAR for the applicable period minus cash federal, state, local and foreign income taxes (and franchise tax in the nature of income tax) paid by Loan Parties for such period to (b) Debt Service for such period plus Operating Lease and Rental Expense.

(b) The Debtor shall not permit Total Receipts (as provided in the Business Plan) for each Fiscal Quarter to be less than the amount provided below for the end of the applicable Fiscal Quarter:

<b>Fiscal Quarter ending:</b>	<b>9/30/18</b>	<b>12/30/18</b>	<b>3/31/19</b>	<b>6/30/19</b>	<b>9/29/19</b>	<b>12/29/19</b>	<b>3/29/20</b>
<b>Minimum Total Receipts:</b>	\$8,350,000	\$7,100,000	\$7,250,000	\$8,650,000	\$8,450,000	\$7,150,000	\$7,350,000

<b>Fiscal Quarter ending:</b>	<b>6/28/20</b>	<b>9/27/20</b>	<b>12/27/20</b>	<b>3/28/21</b>	<b>6/27/21</b>	<b>9/26/21</b>	<b>12/26/21</b>
<b>Minimum Total Receipts:</b>	\$8,750,000	\$8,550,000	\$7,250,000	\$7,450,000	\$8,850,000	\$8,600,000	\$7,300,000

(c) The Debtor shall not permit Consolidated EBITDA for each Fiscal Quarter to be less than the cumulative amount provided below for the end of the applicable Fiscal Quarter which shall be measured as stated below:

<b>Fiscal Quarter ending:</b>	<b>9/30/18</b>	<b>12/30/18</b>	<b>3/31/19</b>	<b>6/30/19</b>	<b>9/29/19</b>	<b>12/29/19</b>	<b>3/29/20</b>
<b>Minimum Consolidated EBITDA:</b>	\$515,000	\$645,000	\$1,000,000	\$1,725,000	\$1,800,000	\$1,800,000	\$1,850,000

<b>Fiscal Quarter ending:</b>	<b>6/28/20</b>	<b>9/27/20</b>	<b>12/27/20</b>	<b>3/28/21</b>	<b>6/27/21</b>	<b>9/26/21</b>	<b>12/26/21</b>
<b>Minimum Consolidated EBITDA:</b>	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000	\$1,850,000

- Consolidated EBITDA shall be measured for the Fiscal Quarter ending September 30, 2018 by using the EBITDA for the quarter ending on that date.
- Consolidated EBITDA shall be measured on 12/30/18 by adding EBITDA for the Fiscal Quarters ending December 30, 2018 and September 30, 2018.

- Consolidated EBITDA shall be measured on 3/31/19 by adding EBITDA for the Fiscal Quarters ending on March 31, 2019, December 30, 2018 and September 30, 2018.
- Consolidated EBITDA shall be measured for each quarter thereafter as it is calculated to be measured under the Prepetition Loan Documents.

The New Cadence Notes and the New Revolver (as defined below) shall constitute a modification to and not a novation of the Cadence Prepetition Loan Documents and shall be secured by fully perfected, first priority liens on and security interests in all the assets of the Reorganized Debtor constituting Collateral for the Cadence Prepetition Claims and the Cadence DIP Claim. The Reorganized Debtor and Cadence are authorized to make all recordings and filings necessary to establish and perfect the liens, and the Reorganized Debtor shall cooperate in making such filings and recordings; provided that, the liens are perfected automatically upon the entry of the Confirmation Order. All other material terms of the New Cadence Notes other than as set forth herein, including but not limited to reporting requirements, will be on terms and conditions mutually acceptable to Cadence and the Debtor or the Reorganized Debtor. Notwithstanding anything in this Plan to the contrary, pursuant to the Cadence DIP Facility Agreement, the Debtor, or the Reorganized Debtor as the case may be, shall pay on demand from Cadence, and without application to the Bankruptcy Court, all reasonable and documented expenses of Cadence, including the reasonable fees, charges, disbursements and expenses of its advisors and counsel to Cadence.

Class 1 Cadence Prepetition Claims are Impaired under the Plan.

4.2 Priority Non-Tax Claims – Class 2. The legal, equitable and contractual rights of the holders of Priority Non-Tax Claims, including, but not limited to, Priority Wage Claims, are unaltered by this Plan. Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to a different treatment, on the applicable distribution date, each holder of an Allowed Priority Non-Tax Claim shall receive Cash from the Reorganized Debtor in an amount equal to such Allowed Claim to the extent such Allowed Priority Non-Tax Claim is unpaid prior to the Effective Date.

Class 2 Priority Non-Tax Claims are not Impaired under the Plan and, therefore, are conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject the Plan. Votes of such holders will not be solicited with respect to such Allowed Priority Non-Tax Claims. The Debtor believes that there are no holders of Class 2 Priority Non-Tax Claims as of the date of this Plan.

4.3 General Unsecured Claims – Class 3. Unless specifically provided otherwise in this Plan, nothing in this Plan Allows or Disallows Unsecured Claims. Each Unsecured Claim that is Allowed, but only to the extent Allowed, shall receive payment by the Reorganized Debtor on a *pro rata* basis with all other Unsecured Claims in Class 3. The Debtor shall pay Unsecured Claims in Class 3 from the Unsecured Creditors Fund to the extent such Claims are Allowed.

Class 3 General Unsecured Claims are Impaired under the Plan.



4.4 DQ Claim – Class 4. The DQ Claim shall be deemed an Allowed Unsecured Claim in the amount of \$609,770.57 (the “**Allowed DQ Claim**”),<sup>3</sup> and is the amount agreed between the Debtor and DQ to be due to cure defaults under the Debtor’s franchise agreements with DQ to permit assumption of the same by the Reorganized Debtor. The Allowed DQ Claim shall receive a Distribution in the amount of \$150,000 on the Effective Date on account of the Allowed DQ Claim, and the Reorganized Debtor shall, in addition to such Cash Distribution, execute and deliver the DQ Note in the principal amount of \$459,770.62 to the holder of the Allowed DQ Claim on the Effective Date.

The Class 4 DQ Claim is Impaired under the Plan.

4.5 Sponsor Affiliate Claims – Class 5. The Sponsor Affiliate Claims shall be deemed Allowed Unsecured Claims in the amount of \$1,631,178 (the “**Allowed Sponsor Affiliate Claims**”). In connection with and contingent upon the closing of the transaction contemplated by the Subscription Agreement, the holders of the Sponsor Affiliate Claims have agreed to waive any right to receive Distributions from the Debtor under the Plan; provided, however, if the Effective Date of the Plan does not occur, the Sponsor Affiliate Claims shall not be waived and the holders of the Sponsor Affiliate Claims shall reserve all of their rights with respect to the treatment of such Claims.

Class 5 Sponsor Affiliate Claims are Impaired under the Plan.

4.6 Interests Holders – Class 6. Class 6 consists of the holders of Interests. The Interests shall be cancelled, eliminated and extinguished upon the Effective Date and holders of Interests shall not receive any Distributions from the Debtor nor retain any property of the Debtor under the Plan on account of such Interests.

Class 6 Interests Holders are Impaired under the Plan, but are deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. Class 6 Interest Holders are not entitled to vote to accept or reject the Plan and votes of such holders will not be solicited with respect to such Interests.

## **ARTICLE V.**

### **ACCEPTANCE OR REJECTION OF THE PLAN**

5.1 Class Acceptance Requirement. A Class of Claims shall have accepted the Plan if it is accepted by at least two thirds (2/3) in dollar amount and more than one-half (1/2) in number of holders of the Allowed Claims in such Class that have voted on the Plan.

5.2 Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or “Cramdown”. Because certain Classes are deemed to have rejected this Plan, the Debtor will request confirmation of this Plan, as it may be modified and amended from time to time, under section 1129(b) of the Bankruptcy Code with respect to such Classes. This Section shall constitute the request by the Debtor, pursuant to section 1129(b) of the Bankruptcy Code, that

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<sup>3</sup> This amount excludes termination damages under franchise and/or license agreements effective prior to the Petition Date, any termination damages to which DQ may be entitled under any franchise or license agreement prior to the Petition Date are not included in the Allowed DQ Claim and will be waived by DQ on the Effective Date.

the Bankruptcy Court confirm the Plan notwithstanding the fact that the requirements of section 1129(a)(8) may not be met. Subject to Section 13.11 and 13.12 of the Plan, the Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan or any Plan Document in order to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary. Subject to Sections 13.11 and 13.12 of the Plan, the Debtor also reserves the right to request confirmation of the Plan, as it may be modified, supplemented or amended from time to time, with respect to any Class that affirmatively votes to reject the Plan.

5.3 Elimination of Vacant Classes. Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan pursuant to section 1129(a)(8) of the Bankruptcy Code.

5.4 Voting Classes; Deemed Acceptance by Non-Voting Classes. If a Class contains Claims or Interests eligible to vote and no holders of Claims or Interests eligible to vote in such Class vote to accept or reject the Plan, the Plan shall be deemed accepted by such Class.

## **ARTICLE VI.**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

6.1 Plan Funding and Operation the Businesses. The Plan Distributions to be made in Cash under the terms of this Plan shall be funded from (a) the Debtor's Cash on hand as of the Effective Date; (b) the Subscription Amount and (c) Cash generated from the ongoing operations of the Debtor. In addition, Cadence shall provide to the Reorganized Debtor a revolving working capital loan in an amount up to \$2,300,000.00 (the "**New Revolver**"), which shall be subject to appropriate documentation acceptable to Cadence and the Debtor or Reorganized Debtor that shall contain the following terms:

- 6.1.1 Accruing interest at a variable rate per annum calculated as the London Interbank Offered Rate plus 4.50% (the "**Revolver Rate**").
- 6.1.2 \$1,250,000.00 available for borrowing.
- 6.1.3 A letter of credit sublimit in the aggregate amount of \$400,000.00 (the "L/C Sublimit"), which amount may be borrowed only for the purpose of reimbursing Cadence for any draws made by the beneficiary under any letter of credit issued by Cadence, and which amount shall be part of, and not in addition to, the New Revolver. If Cadence, DQ, and the Debtor are able to mutually agree on the terms and conditions of a replacement letter of credit in favor of International Dairy Queen, Inc. in accordance with the terms and conditions contained in the RSA (the "Replacement DQ L/C"), the L/C Sublimit shall be \$1,050,000.00.
- 6.1.4 Letter of credit fees to be paid quarterly at the Revolver Rate.
- 6.1.5 To be repaid from Net Excess Cash Flow.

- 6.1.6 The Debtor shall not be permitted to make any draws under the New Revolver for a period of sixty (60) days after the Debtor makes any payment towards the DQ Note.
- 6.1.7 The New Revolver shall constitute a modification to and not a novation of the Cadence Prepetition Loan Documents and shall be secured on a pro-rata basis with the New Cadence Notes by fully perfected, first priority liens on and security interests in all the assets of the Reorganized Debtor constituting Collateral for the Cadence Prepetition Claims and the Cadence DIP Claim. The Reorganized Debtor and Cadence are authorized to make all recordings and filings necessary to establish and perfect the liens, and the Reorganized Debtor shall cooperate in making such filings and recordings; provided that, the liens are perfected automatically upon the entry of the Confirmation Order.

All other material terms of the New Revolver other than as set forth herein will be on terms and conditions mutually acceptable to Cadence and the Debtor or the Reorganized Debtor.

6.2 Continued Corporate Existence. Except as otherwise provided in this Plan, the Debtor shall continue to exist after the Effective Date as the Reorganized Debtor in accordance with the applicable laws of the jurisdictions in which it is organized and pursuant to the operative certificates of formation and operating agreements, for the purposes of satisfying its obligations under the Plan and the continuation of its business. On and after the Effective Date, the Reorganized Debtor shall conduct business going forward under its new corporate name, Square1Restaurants, LLC.

6.3 Vesting of Assets in the Reorganized Debtor. Except as otherwise provided in this Plan, on and after the Effective Date, all property of the Estate, including all claims, rights and Causes of Action and any property acquired by the Debtor under or in connection with this Plan, shall vest in the Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances and Interests. Subject to the foregoing Section 6.2, on and after the Effective Date, the Reorganized Debtor may operate its business and may use, acquire and dispose of property and prosecute, compromise or settle any Claims (including any Administrative Expense Claims) and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by this Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtor may pay the charges that it incurs on or after the Effective Date for Professional Persons' fees, disbursements, expenses or related support services without application to the Bankruptcy Court.

6.4 Documents. The Reorganized Debtor shall be authorized to take all actions that may be necessary or appropriate to effectuate any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including: (1) the execution and delivery of appropriate agreements or other documents containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law and any other terms to which the applicable entities may agree including, but not limited to, those agreements or other documents underlying the New Cadence Notes and the New Revolver; (2) the execution and delivery of

appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree; (3) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion or dissolution pursuant to applicable state law (as long as such actions are not prohibited pursuant to the terms of the Franchise Agreement and the New Cadence Notes); and (4) all other actions that the applicable entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law. Other than with respect to the New Cadence Notes and the Franchise Agreement, to the extent that the relevant parties in interest herein are unable to agree on the form or substance of such documents, such unresolved issues shall be submitted to the Bankruptcy Court for determination.

6.5 Post-Effective Date Franchise Agreements. Commencing on the Effective Date, DQ shall permit the Reorganized Debtor to assume the existing franchise agreements relating to the Retained Stores (subject to modifications as set forth herein) (the “**Franchise Agreement(s)**”) for each Retained Store. The Franchise Agreements shall include the following modifications: upon change in control of the Debtor, sale, or closure of any store after DQ’s acceptance of the DQ Note, the Reorganized Debtor shall be immediately obligated to pay down the outstanding balance of the DQ Note in an amount to be agreed upon between the Debtor and DQ that reflects the change in the Reorganized Debtor’s business. Such modifications shall be removed and/or shall be of no further force or effect upon the transfer or assignment of a Franchise Agreement to a third party other than a transfer or assignment between any two wholly-owned direct or indirect subsidiaries of the Reorganized Debtor, unless otherwise agreed to in writing by DQ and the Reorganized Debtor:

6.5.1 Transferability. Except as otherwise set forth or modified herein, subject to the standard transfer provisions in DQ then-current form of franchise agreement, each Franchise Agreement shall be freely assignable to any third party designated by the Reorganized Debtor during the initial 3-year term and/or any renewal term; an assignment between any two wholly-owned direct or indirect subsidiaries of the Reorganized Debtor will not be deemed to be an assignment.

6.5.2 Guaranty of Franchise Agreement. On and after the date on which the Debtor or Reorganized Debtor, as account party, obtains the Replacement DQ L/C, the maximum aggregate liability of the guarantors under the DQ Guaranty shall be reduced to \$250,000 and DQ and the guarantors shall execute an amendment to the DQ Guaranty to reflect such reduction. DQ shall retain the right to require a personal guarantee from any assignee of a Franchise Agreement other than an assignment between any two wholly-owned subsidiaries of the Reorganized Debtor.

6.6 Cancellation of Existing Interests and Agreements. Except for the purpose of evidencing a right to distribution under this Plan (if any) and except as otherwise set forth herein, on the Effective Date all agreements, instruments, and other documents evidencing, related to or connected with any Claim or Interest, and any rights of any holder in respect thereof, shall be deemed cancelled, discharged and of no force or effect. The holders of or parties to such cancelled instruments, Interests and other documentation will have no rights arising from or

relating to such instruments, Interests and other documentation or the cancellation thereof, except the rights, if any, provided for pursuant to this Plan.

6.7 Authorization, Issuance and Delivery of New Member Interests. As soon as reasonably practicable following the Effective Date, but effective as of the Effective Date, and without any further action or consent, the Reorganized Debtor is authorized to and shall issue and deliver the New Member Interests in the Reorganized Debtor as provided in the Subscription Agreement.

## **ARTICLE VII.**

### **PROVISIONS FOR THE RESOLUTION & TREATMENT OF DISPUTED CLAIMS**

7.1 Objections to Claims. Other than with respect to Fee Claims, only the Reorganized Debtor shall be entitled to object to Claims after the Effective Date; provided, however, Cadence and DQ shall also be entitled to object to any Claims made by any Insider other than the Sponsor Affiliate Claims. Any objections to those Claims (other than Administrative Expense Claims), shall be served and filed on or before the later of: (a) the date that is 45 days after the Effective Date and (b) such other date as may be fixed by the Bankruptcy Court for cause, whether fixed before or after the date specified in clause (a) hereof (the “**Claims Objection Deadline**”). Any Claims filed after the Bar Date or Administrative Bar Date, as applicable, shall be deemed Disallowed and expunged in their entirety upon order of the Bankruptcy Court, unless the Person wishing to file such untimely Claim has received the Bankruptcy Court’s authorization to do so. Notwithstanding any authority to the contrary, an objection to a Claim shall be deemed properly served on the claimant if the objecting party effects service in any of the following manners: (x) in accordance with Federal Rule of Civil Procedure 4, as modified and made applicable by Bankruptcy Rule 7004; (y) by first class mail, postage prepaid, on the signatory on the proof of claim as well as all other representatives identified in the proof of claim or any attachment thereto; or (z) if counsel has agreed to or is otherwise deemed to accept service, by first class mail, postage prepaid, on any counsel that has appeared on the claimant’s behalf in the Reorganization Case (so long as such appearance has not been subsequently withdrawn). From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without approval of the Bankruptcy Court; provided, however, that the consent of the Consent Parties shall be necessary to settle or compromise any objection to any Claims made by any insider, other than the Sponsor Affiliate Claims.

7.2 Amendment to Claims. From and after the Effective Date, no proof of Claim may be amended to increase or assert additional claims not reflected in a previously timely filed Claim (or Claim scheduled on the applicable Debtor’s Schedules, unless superseded by a filed Claim), and any such Claim shall be deemed Disallowed and expunged in its entirety upon order of the Bankruptcy Court unless the claimant has obtained the Bankruptcy Court’s prior approval to file such amended or increased Claim.

7.3 Disputed Claims. Disputed Claims shall not be entitled to any Plan Distributions unless and until they become Allowed Claims.

7.4 Estimation of Claims. The Debtor and/or the Reorganized Debtor may request that the Bankruptcy Court enter an Estimation Order with respect to any Claim, pursuant to section 502(c) of the Bankruptcy Code, for purposes of determining the Allowed amount of such Claim regardless of whether any Person has previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time (including during the pendency of any appeal with respect to the allowance or disallowance of such Claims). In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim for allowance purposes, that estimated amount will constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the objecting party may elect to pursue any supplemental proceedings to object to any ultimate allowance of such Claim. All of the objection, estimation, settlement, and resolution procedures set forth in the Plan are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, resolved or withdrawn by any mechanism approved by the Bankruptcy Court.

7.5 Expenses Incurred On or After the Effective Date. Except as otherwise ordered by the Bankruptcy Court, and subject to the written agreement of the Reorganized Debtor, the amount of any reasonable fees and expenses incurred by any Professional Person on or after the Effective Date in connection with implementation of this Plan, including without limitation, reconciliation of, objection to, and settlement of Claims, shall be paid in Cash by the Reorganized Debtor.

## **ARTICLE VIII.**

### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

8.1 General Assumption of Executory Contracts and Unexpired Leases. Except as set forth in Section 8.2, all executory contracts and unexpired leases of the Debtor (including, but not limited to, those listed on the Debtor's Schedules) shall be deemed rejected as of the Effective Date, except that (a) any executory contracts and unexpired leases that previously have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court shall be treated as provided in such Final Order; (b) any executory contracts and unexpired leases listed on the Schedule of Assumed Contracts and Leases shall be deemed assumed as of the Effective Date; and (c) all executory contracts and unexpired leases that are the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date shall be treated as provided for in the Final Order resolving such motion. Each prepetition executory contract and unexpired lease will be assumed only to the extent that any such contract or lease constitutes an executory contract or unexpired lease. Listing a contract or lease as an executory contract or unexpired lease will not constitute an admission by the Debtor that such contract or lease is an executory contract or unexpired lease or that the Debtor has any liability thereunder. Subject to the occurrence of the Effective Date, the Confirmation Order shall constitute an Order of the Bankruptcy Court approving assumption hereunder under sections 365 and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed pursuant to this Section 8.1 shall revest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan, or any order of the Bankruptcy Court authorizing and providing for its assumption, or applicable federal law. The Reorganized

Debtor shall continue to have all rights of assignment contained in 11 U.S.C. § 365 of any executory contract or unexpired lease following Confirmation of this Plan.

8.2 Cure of Defaults for Assumed Executory Contracts and Unexpired Leases. The Reorganized Debtor shall cure all defaults other than non-monetary defaults existing under any assumed executory contract or unexpired lease in accordance with sections 1123(a)(5)(G) and 365(b) of the Bankruptcy Code. Except to the extent that less favorable treatment has been agreed to by the non-Debtor party or parties to each such executory contract or unexpired lease to be assumed pursuant to the Plan, any monetary defaults arising under such executory contract or unexpired lease shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the cure amount (the “**Cure Amount**”) in Cash on or before the later of thirty (30) days after: (i) the Effective Date; or (ii) the date on which any Cure Dispute relating to such Cure Amount has been resolved (either consensually or through judicial decision). No later than twenty-one (21) calendar days prior to the commencement of the Confirmation Hearing, the Debtor shall file a schedule (the “**Cure Schedule**”) setting forth the Cure Amount, if any, for each executory contract and unexpired lease to be assumed pursuant to Section 8.1 of the Plan, and serve such Cure Schedule on each applicable counterparty. Any party that fails to object to the applicable Cure Amount listed on the Cure Schedule within fifteen (15) calendar days of the filing thereof, shall be forever barred, estopped and enjoined from disputing the Cure Amount set forth on the Cure Schedule (including a Cure Amount of \$0.00) and/or from asserting any Claim against the Debtor or the Reorganized Debtor arising under section 365(b)(1) of the Bankruptcy Code except as set forth on the Cure Schedule. In the event of a dispute (each, a “**Cure Dispute**”) regarding: (i) the Cure Amount; (ii) the ability of the Reorganized Debtor to provide “adequate assurance of future performance” (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed; or (iii) any other matter pertaining to the proposed assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving such Cure Dispute and approving the assumption. To the extent a Cure Dispute relates solely to the Cure Amount, the Debtor may assume and/or assume and assign the applicable contract or lease prior to the resolution of the Cure Dispute provided that (i) such Debtor reserves Cash in an amount sufficient to pay the disputed Cure Amounts, and (ii) that the Debtor shall pay on the Effective Date any undisputed Cure Amounts.

8.3 Claims for Rejection Damages. Each Person that is a party to a rejected executory contract or unexpired lease, and only such Person, shall be entitled to file a proof of Claim for damages alleged to have arisen from the rejection of the contract or lease to which such Person is a party. As to rejected unexpired leases, a majority, if not all of the rejected unexpired leases, have been rejected by operation of law pursuant to 11 U.S.C. § 365(d)(4). Any Claims based upon rejection of an executory contract or unexpired lease must be filed with the Bankruptcy Court and served on the Reorganized Debtor such that they are actually received within thirty (30) days from the Effective Date. Objections to any such proof of Claim shall be filed not later than the later of (i) forty-five (45) days after the filing of the applicable rejection damages proof of Claim and (ii) sixty (60) days after the entry of the Confirmation Order or such other period of limitation as may be specifically fixed by an order of this Court for objecting to such Claims. The Bankruptcy Court shall determine any such objections, unless they are otherwise resolved. All Allowed Claims for rejection damages shall be treated as an Unsecured

Claim against the Reorganized Debtor. Any rejection Claim not filed within such time will be forever barred from assertion against the Debtor, the Reorganized Debtor or the Estate.

**ARTICLE IX.**  
**EFFECTS OF PLAN CONFIRMATION**

9.1 Binding Effect. On and after the Effective Date, the provisions of this Plan shall be binding upon the Debtor, the Reorganized Debtor, and any holder of a Claim against, or Interest in, the Debtor and such holder's respective successors and assigns, whether or not the Claim or Interest of such holder is impaired under this Plan and whether or not such holder has accepted this Plan.

9.2 Discharge of Claims Against and Interests in the Debtor. Upon the Effective Date and in consideration of the Plan Distributions and the other terms and provisions of the Plan, except as otherwise expressly provided herein or in the Confirmation Order, each Person that is a holder (as well as any trustees and agents on behalf of such Person) of a Claim or Interest shall be deemed to have forever waived, released, and discharged the Debtor of and from any and all Claims, Interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided herein, upon the Effective Date, all such holders of Claims and Interests shall be forever precluded and enjoined, pursuant to sections 105, 524, 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or terminated Interest in the Debtor or the Reorganized Debtor.

9.3 Term of Pre-Confirmation Injunctions or Stays. Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays arising prior to the Confirmation Date in accordance with sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

9.4 Injunction.

(a) Except as otherwise provided in this Plan or the Confirmation Order, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Persons who have held, hold or may hold Claims against or Interests in the Debtor or the Estate are, solely with respect to such Claims or Interests, permanently enjoined after the Confirmation Date from: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against or affecting the Debtor, the Reorganized Debtor, the Estate or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including, without limitation, any prejudgment attachment), collecting or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree or order against the Debtor, the Reorganized Debtor, or the Estate or any of their property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons, or any property of any such transferee or successor; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor, the Reorganized Debtor, or the Estate or any of their property, or any direct or indirect transferee of any property of, or



successor in interest to, any of the foregoing Persons (iv) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of this Plan to the full extent permitted by applicable law; and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan; provided, however, that nothing contained herein shall preclude such Persons from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of this Plan and the documents and agreements entered into with respect to this Plan including, but not limited to, the executory contracts and leases assumed pursuant to the Plan.

(b) By accepting Plan Distributions, each holder of an Allowed Claim or Interest will be deemed to have specifically consented to the injunctions set forth in this Section.

#### 9.5 Releases.

(a) Releases by the Debtor. For good and valuable consideration, the adequacy of which is hereby confirmed, and except as otherwise provided in this Plan or the Confirmation Order, as of the Effective Date, the Debtor and the Reorganized Debtor, in their individual capacities and as debtor in possession on behalf of the Estate, shall be deemed to forever release, waive and discharge all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities (other than the rights of the Debtor or the Reorganized Debtor to enforce this Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder) against the Released Parties, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act, omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Reorganized Debtor, the Released Parties, this Reorganization Case, this Plan or the Disclosure Statement, and all claims that could have been asserted by or on behalf of the Debtor or its Estate or the Reorganized Debtor, including claims that could be asserted by the Committee, whether directly, indirectly, derivatively or in any representative or any other capacity, other than claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities arising out of or relating to any act or omission of a Released Party or a former officer or director of the Debtor that constitutes fraud or willful misconduct.

In addition, notwithstanding any other provision of the Plan, neither the Debtor, the Reorganized Debtor, nor any other representative of or successor to the Debtor's Estate shall retain, and each of them is hereby deemed to waive and release, any and all claims, causes of action and other rights against the holders of Class 3 Claims based on section 547 of the Bankruptcy Code or any similar law providing for the avoidance and/or recovery of preferences.

(b) Releases by Holders of Claims and Interests. Except as otherwise provided in this Plan or the Confirmation Order, on the Effective Date each holder of a Claim or Interest, in consideration for the obligations of the Debtor and the Reorganized Debtor under this Plan and the terms and provisions of this Plan (including, without limitation, the settlements and compromises embodied in the Plan), shall be deemed to have consented to this Plan for all purposes and the restructuring embodied herein and, unless such holder returns the appropriate ballot clearly choosing to opt-out of such releases, shall also be deemed to forever release, waive

and discharge all claims, demands, debts, rights, Causes of Action or liabilities (other than the right to enforce the obligations of any party under this Plan and the contracts, instruments, releases, agreements and documents delivered under or in connection with this Plan) against the Released Parties, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Reorganized Debtor, this Reorganization Case, this Plan or the Disclosure Statement.

(c) Releases by DQ. In addition to the release provided by DQ above, on the Effective Date, DQ shall be deemed to forever release, waive and discharge all claims it has with respect to (or arising under) the DQ Guaranty which relate to amounts owed by (or obligations of) the Debtor pursuant to, and in connection with, franchise and/or license agreements that existed prior to the Petition Date.

(d) Exceptions to Releases. Notwithstanding anything to the contrary contained herein: (i) except to the extent permissible under applicable law, as such law may be extended or interpreted subsequent to the Effective Date, the releases provided for in this Section 9.5 of the Plan shall not release any non-Debtor entity from any liability arising under (x) the Internal Revenue Code, or (y) any criminal laws of the United States or any state, city or municipality; and (ii) the releases set forth in this Section 9.5 shall not release any (x) claims against any Person to the extent such Person asserts a crossclaim, counterclaim and/or claim for setoff which seeks affirmative relief against the Debtor or any of its officers, directors, or representatives and (y) claims against any Person arising from or relating to such Person's fraud or willful misconduct, each as determined by a Final Order of the Bankruptcy Court. Furthermore, notwithstanding anything to the contrary herein, the releases provided for in this Section 9.5 of the Plan shall not release the Reorganized Debtor from the accrued but unbilled liabilities (as of the Effective Date) arising under the terms of the leases of nonresidential real property assumed pursuant to the Plan, including, without limitation, periodic operating expenses, real estate taxes and insurance reconciliations, and Reorganized Debtor shall receive the benefit of any credits associated therewith.

As to the United States of America, its agencies, departments, or agents (collectively, the **"United States"**), nothing in the Plan or Confirmation Order shall limit or expand the scope of any discharge, release or injunction to which the Debtor or the Reorganized Debtor are entitled under the Bankruptcy Code. The discharge, release and injunction provisions contained in the Plan and Confirmation Order are not intended and shall not be construed to bar the United States from, subsequent to the Confirmation Order, pursuing any police or regulatory action, except to the extent those discharge and injunctive provisions bar a Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) from pursuing Claims.

Accordingly, notwithstanding anything contained in the Plan or Confirmation Order to the contrary, nothing in the Plan or Confirmation Order shall discharge, release, impair or otherwise preclude: (1) any liability to the United States that is not a "claim" within the meaning of section 101(5) of the Bankruptcy Code; (2) any Claim of the United States arising on or after the Confirmation Date; (3) any valid right of setoff or recoupment of the United States against any of the Debtor; or (4) any liability of the Debtor or the Reorganized Debtor under

environmental law to any Governmental Unit as the owner or operator of property that such entity owns or operates after the Confirmation Date, except those obligations to reimburse costs expended or paid by a Governmental Unit before the Petition Date or to pay penalties owing to a Governmental Unit for violations of environmental laws or regulations that occurred before the Petition Date. Nor shall anything in the Plan or Confirmation Order: (i) enjoin or otherwise bar the United States or any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any liability described in the preceding sentence; or (ii) divest any court of jurisdiction to determine whether any liabilities asserted by the United States or any Governmental Unit are discharged or otherwise barred by the Plan, Confirmation Order, or the Bankruptcy Code.

9.6 Exculpation and Limitation of Liability. *None of the Released Parties shall have or incur any liability to any holder of any Claim or Interest or any other Person for any act or omission in connection with, or arising out of the Debtor's restructuring, including (without limitation) the negotiation, implementation and execution of this Plan, this Reorganization Case, the Disclosure Statement, the solicitation of votes for and the pursuit of confirmation of this Plan, the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, including, without limitation, all documents ancillary thereto, all decisions, actions, inactions and alleged negligence or misconduct relating thereto and all activities leading to the promulgation and confirmation of this Plan except for fraud or willful misconduct, each as determined by a Final Order of the Bankruptcy Court; provided, however, that (i) nothing in this Section 9.6 shall affect any Person's rights to enforce this Plan and the contracts, instruments, releases, indentures and other agreements or documents delivered thereunder, and (ii) nothing in this Section 9.6 shall apply to claims arising under assumed unexpired leases after the date of such assumption.*

9.7 Injunction Related to Releases and Exculpation. *As of the Effective Date, the Confirmation Order shall permanently enjoin the commencement or prosecution by any Person, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released pursuant to this Plan, including (but not limited to) the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action or liabilities released in Section 9.5 and 9.6 of this Plan.*

9.8 Retention of Causes of Action/Reservation of Rights. Subject to Section 9.5 of the Plan and except as expressly set forth herein, nothing contained in the Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any rights, claims or Causes of Action, rights of setoff, or other legal or equitable defenses that the Debtor had immediately prior to the Effective Date on behalf of the Estate or itself in accordance with any provision of the Bankruptcy Code or any applicable non-bankruptcy law. The Reorganized Debtor shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff, or other legal or equitable defenses as fully as if the Reorganization Case had not been commenced, and all of the Debtor's legal and/or equitable rights respecting any Claim left unimpaired, as set forth in Section 2.4 of the Plan, may be asserted after the Confirmation Date to the same extent as if the Reorganization Cases had not been commenced.

9.9 Indemnification Obligations. Notwithstanding anything to the contrary contained herein, including Section 8.1 of the Plan, subject to the occurrence of the Effective Date, the obligations of the Debtor under the Debtor's operating agreements, other formation documents,

board resolutions, or contracts to indemnify, defend, reimburse, exculpate, advance fees and expenses to, or limit the liability of Debtor's current and former directors, officers, equity holders, managers, employees, attorneys, other professionals and agents of the Debtor and such persons' respective affiliates, against any liability, including but not limited to, Causes of Action, remain unaffected thereby after the Effective Date and are not discharged. The Debtor's/Reorganized Debtor's governance documents on or after the Effective Date will provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to the Reorganized Debtor's current and former directors, equity holders, officers, employees, or agents, and such persons' respective affiliates, to the fullest extent permitted by law and at least to the same extent as the organizational documents of the Debtor as of the commencement of this Reorganization Case. On and after the Effective Date, none of the Reorganized Debtor shall terminate or otherwise reduce the coverage under any directors' and officers' insurance policies in effect on the Petition Date, and all directors and officers of the Debtor at any time shall be entitled to the full benefits of any such policy for the full term of such policy, regardless of whether such directors and/or officers remain in such positions after the Effective Date.

**ARTICLE X.**  
**CONDITIONS PRECEDENT TO CONSUMMATION OF THE PLAN**

10.1 Conditions Precedent to the Effective Date. The occurrence of the Effective Date is subject to:

(a) the Disclosure Statement Order (in form and substance satisfactory to the Consent Parties) having been entered by the Bankruptcy Court and remaining in full force and effect;

(b) the Confirmation Order (in form and substance satisfactory to the Consent Parties) having been entered by the Bankruptcy Court and remaining in full force and effect;

(c) an Event of Default under the Cadence DIP Facility Agreement (that has not otherwise been cured or waived in accordance with the terms thereof) having not occurred;

(d) an acceleration of the obligations or termination of commitments or termination of commitments under the Cadence DIP Facility Agreement having not occurred;

(e) a chapter 11 trustee, a responsible officer, or an examiner with enlarged powers relating to the operation of the business of the Debtor (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) not having been appointed in this Reorganization Case;

(f) all fees and expenses payable or owed by the Debtor under the Cadence DIP Facility Agreement having been paid;

(g) all material governmental, regulatory and third party approvals, authorizations, certifications, rulings, no-action letters, opinions, waivers and/or consents required in connection with the Plan, if any, having been obtained and remaining in full force and effect, and there existing no claim, action, suit, litigation or proceeding pending in any court

or before any arbitrator or governmental instrumentality, which would prohibit the consummation of the Plan;

(h) the New Cadence Note and all related documents provided for therein or contemplated thereby, in each case in form and substance satisfactory to the Debtor and Cadence having been duly and validly executed and delivered by all parties thereto and consummated, and being in full force and effect (with all conditions precedent to such agreement having occurred or otherwise been satisfied or waived);

(i) the Franchise Agreement, in each case in form and substance satisfactory to the Debtor and DQ, having been duly and validly executed and delivered by all parties thereto and consummated, and being in full force and effect (with all conditions precedent to such agreements having occurred or otherwise been satisfied or waived); and

(j) the conditions precedent set forth in the Subscription Agreement shall have been satisfied (or waived) and the transactions contemplated by the Subscription Agreement shall have been consummated.

**10.2 Satisfaction and Waiver of Conditions Precedent.** Except as otherwise provided herein, any actions taken on the Effective Date shall be deemed to have occurred simultaneously and no such action shall be deemed to have occurred prior to the taking of any other such action. Any of the conditions set forth in Section 10.1 may be waived in whole or part by the Debtor (with the consent of the Consent Parties) without notice and a hearing, and the Debtor's benefits under the "mootness doctrine" shall be unaffected by any provision hereof. The failure to satisfy or waive any condition may be asserted by the Debtor regardless of the circumstances giving rise to the failure of such condition to be satisfied (including, without limitation, any act, action, failure to act or inaction by the Debtor). The failure of the Debtor to assert the non-satisfaction of any such conditions shall not be deemed a waiver of any other rights hereunder, and each such right shall be deemed an ongoing right that may be asserted or waived (as set forth herein) at any time or from time to time.

**10.3 Effect of Failure of Conditions.** If all of the conditions to effectiveness have not been satisfied or duly waived (as provided in Section 10.2 above) and the Effective Date has not occurred on or before the first Business Day that is more than 30 days after the Confirmation Date, or, if agreed by the Consent Parties, by such later date as set forth by the Debtor in a notice filed with the Bankruptcy Court prior to the expiration of such period, then the Debtor may file a motion to vacate the Confirmation Order. Notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if all of the conditions to consummation set forth in Section 10.1 hereof are either satisfied or duly waived before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated pursuant to this Section 10.3, this Plan shall be null and void in all respects, the Confirmation Order shall be of no further force or effect, no Plan Distributions shall be made, the Debtor and all holders of Claims and Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and upon such occurrence, nothing contained in this Plan shall: (a) constitute a waiver, settlement, or release of any Claims against or Interests in the Debtor; (b) prejudice in any manner the rights of the holder of any Claim against or Interest in the Debtor; or (c) constitute an admission, acknowledgment,

offer or undertaking by the Debtor or any other Person with respect to any matter set forth in the Plan.

## **ARTICLE XI.**

### **DISTRIBUTIONS UNDER THE PLAN**

11.1 Distributions. The Reorganized Debtor shall make all Plan Distributions to the appropriate holders of Allowed Claims in accordance with the terms of this Plan. The Reorganized Debtor is authorized to (i) effectuate all actions and execute all agreements, instruments, and other documents necessary to perform its distribution duties under this Plan; (ii) make all applicable Plan Distributions or payments contemplated hereby; (iii) employ professionals to represent them with respect to their responsibilities; and (iv) exercise such other powers as may be deemed by the Reorganized Debtor to be necessary and proper to implement the provisions hereof.

11.2 No Postpetition Interest on Claims. Other than with respect to the Cadence DIP Claim, unless otherwise specifically provided for in the Plan, Confirmation Order or other order of the Bankruptcy Court, or required by applicable bankruptcy or non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claim, and no holder of a prepetition Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

11.3 Date of Distributions. Unless otherwise provided herein, any Plan Distributions and deliveries to be made hereunder shall be made on the applicable distribution date provided herein. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

11.4 Distribution Record Date. As of the close of business on the Distribution Record Date, the various lists of holders of Claims in each of the Classes, as maintained by the Debtor, or their agents, shall be deemed closed and there shall be no further changes in the record holders of any of the Claims after the Distribution Record Date. The Debtor shall not have any obligation to recognize any transfer of Claims occurring after the close of business on the Distribution Record Date. Additionally, with respect to payment of any Cure Claims in connection with the assumption and/or assignment of the Debtor's executory contracts and unexpired leases, the Debtor shall not have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable executory contract or unexpired lease, even if such non-Debtor party has sold, assigned or otherwise transferred its Cure Claim or any other Claim it may hold.

11.5 Delivery of Distribution. Subject to the provisions contained in this Article XI, the Reorganized Debtor will issue, or cause to be issued, and authenticate, as applicable, all Plan Consideration, and subject to Bankruptcy Rule 9010, make all Plan Distributions or payments to any holder of an Allowed Claim as and when required by this Plan at: (a) the address of such holder on the books and records of the Debtor or their agents; or (b) at the address in any written notice of address change delivered to the Debtor, including any addresses included on any filed

proofs of Claim or transfers of Claim filed with the Bankruptcy Court. In the event that any Plan Distribution to any holder is returned as undeliverable, no distribution or payment to such holder shall be made unless and until the Reorganized Debtor have been notified of the then current address of such holder, at which time or as soon as reasonably practicable thereafter such Plan Distribution shall be made to such holder without interest, provided, however, such Plan Distributions or payments shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of the later of one year from: (i) the Effective Date; and (ii) the first distribution date after such holder's Claim is first Allowed.

11.6 Unclaimed Property. One year from the later of: (i) the Effective Date, and (ii) the date that a Claim is first Allowed, all unclaimed property or interests in property distributable hereunder on account of such Claim shall revert to the Reorganized Debtor or the successors or assigns of the Reorganized Debtor, and any claim or right of the holder of such Claim to such property or interest in property shall be discharged and forever barred. The Reorganized Debtor shall have no obligation to attempt to locate any holder of an Allowed Claim other than by reviewing the Debtor's books and records, and the proofs of Claim filed against the Debtor, as reflected on the claims register maintained by the Bankruptcy Court.

11.7 Satisfaction of Claims. Unless otherwise provided herein, any Plan Distributions and deliveries to be made on account of Allowed Claims hereunder shall be in complete settlement, satisfaction and discharge of such Allowed Claims.

11.8 Manner of Payment Under Plan. Except as specifically provided herein, at the option of the Reorganized Debtor, any Cash payment to be made hereunder may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtor or the Reorganized Debtor.

11.9 De Minimis Cash Distributions. The Reorganized Debtor shall have no obligation to make a Plan Distribution that is less than \$50.00 in Cash. Such Plan Distribution shall be included on any later Distribution that, with such inclusion, exceeds \$50.00.

11.10 No Distribution in Excess of Amount of Allowed Claim. Notwithstanding anything to the contrary herein, no holder of an Allowed Claim shall, on account of such Allowed Claim, receive a Plan Distribution of a value in excess of the Allowed amount of such Claim plus any postpetition interest on such Claim, to the extent such interest is permitted by Section 11.2 of this Plan.

11.11 Setoffs and Recoupments. Except as expressly provided in this Plan, the Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code set off and/or recoup against any Plan Distributions to be made on account of any Allowed Claim, any and all claims, rights and Causes of Action that the Reorganized Debtor may hold against the holder of such Allowed Claim; provided, however, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Reorganized Debtor or its successor of any and all claims, rights and Causes of Action that the Reorganized Debtor or its successor may possess against the applicable holder.

11.12 Withholding and Reporting Requirements. In connection with this Plan and all Plan Distributions hereunder, the Reorganized Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local or foreign taxing authority, and all Plan Distributions hereunder shall be subject to any such withholding and reporting requirements. The Reorganized Debtor shall be authorized to take any and all actions that may be necessary or appropriate to comply with such withholding and reporting requirements, including, without limitation, liquidating a portion of any Plan Distribution to generate sufficient funds to pay applicable withholding taxes or establishing any other mechanisms the Debtor or the Reorganized Debtor believe are reasonable and appropriate, including requiring a holder of a Claim to submit appropriate tax and withholding certifications. Notwithstanding any other provision of this Plan: (a) each holder of an Allowed Claim that is to receive a Plan Distribution under this Plan shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any governmental unit, including income, withholding and other tax obligations on account of such distribution; and (b) no Plan Distributions shall be required to be made to or on behalf of such holder pursuant to this Plan unless and until such holder has made arrangements satisfactory to the Reorganized Debtor for the payment and satisfaction of such tax obligations or has, to the Reorganized Debtor's satisfaction, established an exemption therefrom.

## **ARTICLE XII.**

### **RETENTION OF JURISDICTION AND CLAIMS**

12.1 Retention of Jurisdiction and Claims. Pursuant to sections 105(c) and 1142 of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in, arising under, or related to this Reorganization Case for, among other things, the following purposes:

- (a) To hear and determine applications for the assumption or rejection of executory contracts or unexpired leases and the Cure Disputes resulting therefrom;
- (b) To determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on the Confirmation Date or commenced after the Confirmation Date in connection with any of the terms and provisions of, deadlines created by or obligations created by this Plan or any other Final Order of the Bankruptcy Court;
- (c) To hear and resolve any disputes arising from or relating to (i) any orders of the Bankruptcy Court granting relief under Bankruptcy Rule 2004, or (ii) any protective orders entered by the Bankruptcy Court in connection with the foregoing;
- (d) To ensure that Plan Distributions to holders of Allowed Claims are accomplished as provided herein;
- (e) To consider Claims or the allowance, classification, priority, compromise, estimation, or payment of any Claim, including any Administrative Expense Claim;
- (f) To enter, implement, or enforce such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;



(g) To issue and enforce injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation, or enforcement of this Plan, the Confirmation Order, or any other order of the Bankruptcy Court;

(h) To hear and determine any application to modify this Plan in accordance with section 1127 of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistency in this Plan or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;

(i) To hear and determine all Fee Claims;

(j) To resolve disputes concerning any reserves with respect to Disputed Claims or the administration thereof;

(k) To hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan, the Confirmation Order, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;

(l) To take any action and issue such orders, including any such action or orders as may be necessary after occurrence of the Effective Date and/or consummation of the Plan, as may be necessary to construe, enforce, implement, execute, and consummate this Plan or other rulings entered in connection with this Reorganization Case, including any release or injunction provisions set forth herein, or to maintain the integrity of this Plan following consummation;

(m) To determine such other matters and for such other purposes as may be provided in the Confirmation Order;

(n) To hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

(o) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and title 28 of the United States Code;

(p) To resolve any disputes concerning whether a Person had sufficient notice of the Reorganization Case, the Disclosure Statement Hearing, the Confirmation Hearing, any applicable Bar Date, or the deadline for responding or objecting to a Cure Amount, for the purpose of determining whether a Claim or Interest is discharged hereunder, or for any other purpose;

(q) To recover all assets of the Debtor and property of the Estate, wherever located; and

(r) To enter a final decree closing this Reorganization Case.

**ARTICLE XIII.**  
**MISCELLANEOUS PROVISIONS**

13.1 Certain Rights Unaffected. Except as otherwise provided herein, any rights or obligations which the Debtor's Creditors may have among themselves as to their respective claims or the relative priority or subordination thereof remain unaffected by this Plan.

13.2 Headings. The article and section headings used in this Plan are inserted for convenience and reference only and neither constitutes a part of this Plan nor in any manner affects the terms, provisions or interpretations of this Plan.

13.3 Severability. Should any term or provision in this Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any other term or provision of this Plan. If, prior to the entry of the Confirmation Order, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court, at the request of the Debtor shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

13.4 Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan and any documents, agreements and instruments executed in connection with this Plan (except to the extent such documents, agreements and instruments designate otherwise) shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

13.5 Notices. In order to be effective, all notices, requests, and demands to or upon the Debtor shall be in writing (including by facsimile transmission) and, unless otherwise provided herein, shall be deemed to have been duly given or made only when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Vasari, LLC  
5100 N. O'Connor Boulevard, Suite 325  
Irving, Texas 75037  
Attn: Chief Executive Officer  
Telephone: 972.499.4967  
Facsimile: 972.499.4628

-and-

Husch Blackwell, LLP  
Dallas, Texas 752  
2001 Ross Avenue  
Dallas, TX 75201-2995  
Attn: Vickie Driver, Esq.  
Telephone: 214.999.6100  
Facsimile: 214.999.6170

-and-

Husch Blackwell, LLP  
120 South Riverside Plaza  
Suite 2200  
Chicago, Illinois 60606  
Attn: Alexander Terras, Esq.  
Telephone: 312.655.1500  
Facsimile: 312.655.1501

13.6 Time. In computing any period of time prescribed or allowed by this plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the provisions of Bankruptcy Rule 9006 shall apply.

13.7 Exhibits. All exhibits to this Plan are incorporated and are a part of this Plan as if set forth in full herein.

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

13.9 Exemption from Certain Transfer Taxes. To the fullest extent permitted by applicable law, all sale transactions consummated by the Debtor and approved by the Bankruptcy Court on and after the Confirmation Date, including any transfers effectuated under this Plan, the sale by the Debtor of any owned property pursuant to section 363(b) of the Bankruptcy Code, and any assumption, assignment, and/or sale by the Debtor of its interests in unexpired leases of non-residential real property or executory contracts pursuant to section 365(a) of the Bankruptcy Code, shall constitute a "transfer under a plan" within the purview of section 1146 of the Bankruptcy Code, and shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax.

13.10 Termination of Professionals. On the Effective Date, the engagement of each Professional Person retained by the Debtor shall be terminated without further order of the Bankruptcy Court or act of the parties; provided, however, such Professional Persons shall be entitled to prosecute their respective Fee Claims and represent their respective constituents with respect to applications for allowance and payment of such Fee Claims. Nothing herein shall preclude the Reorganized Debtor from engaging a former Professional Person on and after the Effective Date in the same capacity as such Professional Person was engaged prior to the Effective Date.

13.11 Amendments. This Plan may be amended, modified, or supplemented by the Debtor with the Consent of the Consent Parties in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code, except as otherwise ordered by the Bankruptcy Court. In addition, after the Confirmation Date, so long as such action does not materially and adversely affect the treatment of holders of Allowed Claims pursuant to this Plan, the Debtor may make appropriate technical adjustments, remedy any defect or omission or reconcile any inconsistencies in this Plan, the Plan Documents and/or the Confirmation Order, with respect to such matters as may be necessary to carry out the purposes and effects of this Plan, and any holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented.

13.12 Revocation or Withdrawal of this Plan. The Debtor reserves the right to revoke or withdraw this Plan prior to the Effective Date. If the Debtor revokes or withdraws this Plan, in accordance with the preceding sentence, prior to the Effective Date, or if prior to confirmation or consummation, then, (a) this Plan shall be null and void in all respects; (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Interest or Class of Claims or Interests), assumption or rejection of executory contracts or leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (c) nothing contained in this Plan shall (i) constitute a waiver or release of any Claims by or against, or any Interests in, such Debtor or any other Person, (ii) prejudice in any manner the rights of the Debtor or any other Person or (iii) constitute an admission of any sort by the Debtor or any other Person.

13.13 Allocation of Plan Distributions Between Principal and Interest. To the extent that any Allowed Claim entitled to a distribution under the Plan consists of indebtedness and other amounts (such as accrued but unpaid interest thereon), such distribution shall be allocated first to the principal amount of the Claim (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claim, to such other amounts.

13.14 Section 1125(e) of the Bankruptcy Code. To the extent applicable, the Debtor have, and upon confirmation of this Plan shall be deemed to have, solicited acceptances of this Plan in good faith and in compliance with the applicable provisions of the Bankruptcy Code, and the Debtor (and its affiliates, agents, directors, officers, employees, advisors, and attorneys) participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code in the offer and/or issuance of the New Member Interests offered under this Plan, and therefore are not, and on account of such offer and/or issuance will not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or offer, issuance, sale, or purchase of the New Member Interests offered under this Plan.

13.15 Inconsistency. In the event of any inconsistency among the Plan, the Disclosure Statement, the Plan Documents, any exhibit to the Plan or any other instrument or document created or executed pursuant to the Plan, the provisions of the Plan shall govern.

Dated: May 16, 2018  
Fort Worth, Texas

By: /s/ Bill Spae  
Name: Bill Spae  
Its: Chief Executive Officer

Filed by:

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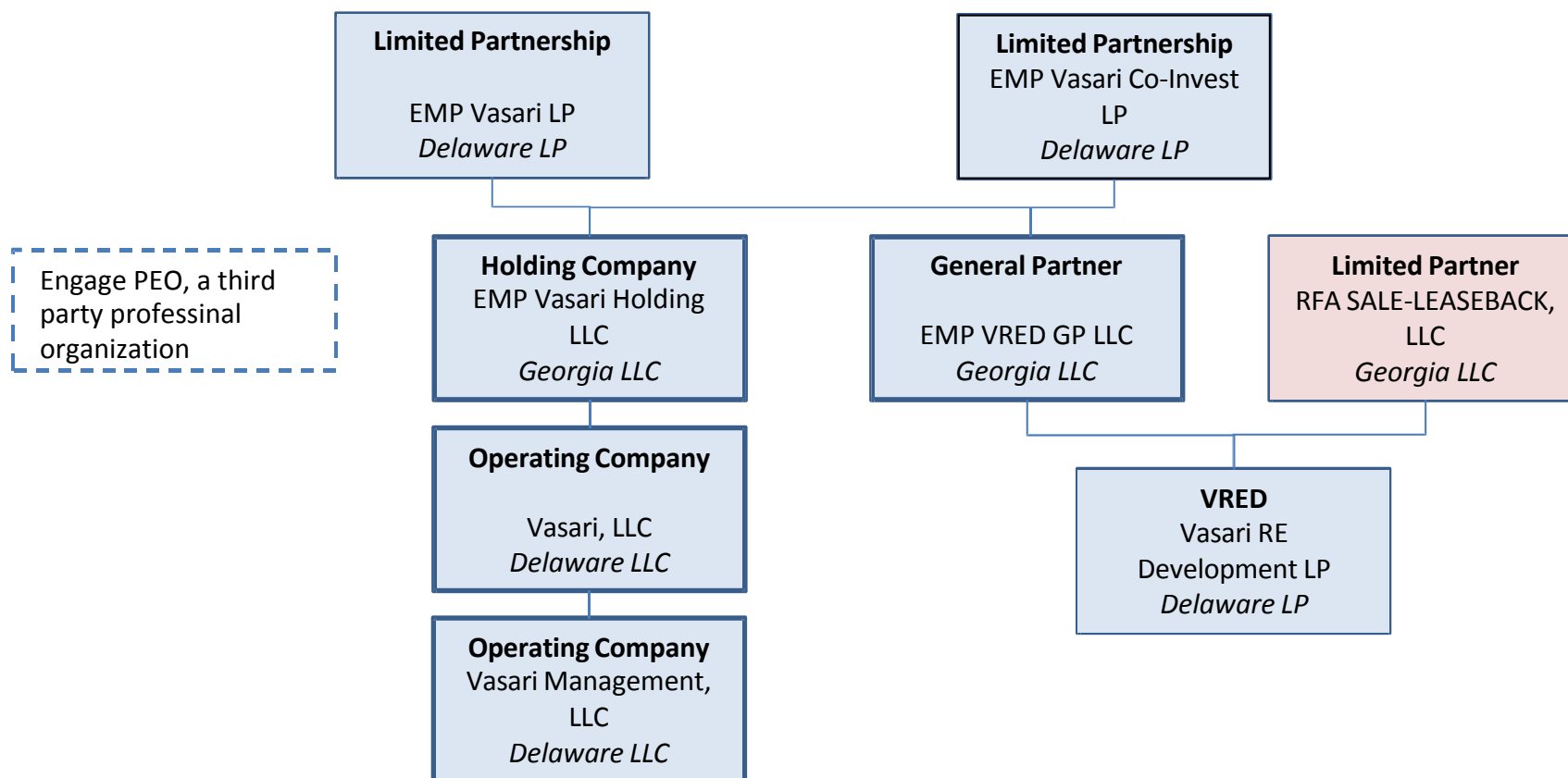
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*Counsel to the Debtor and Debtor in Possession*

**Exhibit B**

**Chart Showing Prepetition Organizational Structure**



**Exhibit C**  
**Detailed Financial Projections**



CONFIRM (EFF)												
Week Ended -->	4/22/2018	1	2	3	4	5	6	7	8	9	10	11
Week Number -->	Sun	4/29/2018	5/6/2018	5/13/2018	5/20/2018	5/27/2018	6/3/2018	6/10/2018	6/17/2018	6/24/2018	7/1/2018	7/8/2018
Weekly Cash Flow Forecast	2018-16	2018-17	2018-18	2018-19	2018-20	2018-21	2018-22	2018-23	2018-24	2018-25	2018-26	2018-27
	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
<b>Beginning Balance</b>	293,531	225,017	200,000	200,000	200,000	200,000	200,000	262,414	200,000	200,000	200,000	524,252
<b>Receipts</b>												
Cash Receipts	363,620	389,336	397,373	415,312	414,478	394,639	400,791	437,967	415,342	448,663	427,215	424,521
Credit Cards	387,415	374,067	381,790	399,026	398,224	379,163	385,074	420,792	399,054	431,069	410,461	407,873
Rebates	0	0	0	0	0	0	0	0	0	0	0	0
Other (Gift Cards, etc)	(18,190)	0	0	0	0	0	0	0	0	0	0	0
<b>Total Receipts</b>	<b>732,844</b>	<b>763,403</b>	<b>779,163</b>	<b>814,338</b>	<b>812,702</b>	<b>773,802</b>	<b>785,865</b>	<b>858,760</b>	<b>814,396</b>	<b>879,732</b>	<b>837,676</b>	<b>832,394</b>
<b>Disbursements</b>												
Sales Tax	256,480	0	0	0	233,379	0	0	0	0	242,356	0	0
Food & Paper	217,634	211,085	211,085	211,085	218,965	218,965	218,965	218,965	228,496	228,496	228,496	242,098
ADQ Fees	0	0	0	113,153	0	0	0	0	117,506	0	0	0
TXDQ Fees	0	0	0	93,352	0	0	0	0	96,942	0	0	0
Field Payroll	0	394,761	5,000	400,413	0	406,066	5,000	410,645	0	415,225	5,000	415,225
Field Payroll - Stay Bonuses	0	0	0	0	0	0	0	0	0	0	0	0
Corporate Payroll	0	67,502	0	55,502	0	55,502	0	67,687	0	51,873	0	67,873
Marketing	0	4,814	4,675	4,675	4,675	4,675	4,845	4,845	4,845	5,078	5,078	53,051
Utilities	34,353	37,835	29,894	29,894	29,894	29,894	31,044	31,044	31,044	31,044	32,617	32,617
Rent	8,791	3,853	253,144	0	0	0	0	253,144	0	0	0	257,899
Property Tax (Real)	0	0	0	0	0	0	0	0	0	0	0	0
Property Tax (Personal)	0	0	0	0	0	0	0	0	0	0	0	0
R&M	15,903	13,430	13,021	13,021	13,021	13,021	13,521	13,521	13,521	13,521	14,207	14,207
Other Store-Level & G&A	57,806	86,095	39,298	43,486	42,563	43,188	82,426	44,005	42,872	44,008	44,323	91,743
Other/Misc	0	0	0	0	0	0	0	0	0	0	0	0
Tax	0	0	0	75,000	0	0	0	0	0	0	0	75,000
<b>Operating Outflows</b>	<b>590,966</b>	<b>819,375</b>	<b>556,118</b>	<b>1,039,581</b>	<b>542,496</b>	<b>771,310</b>	<b>355,802</b>	<b>1,043,858</b>	<b>535,228</b>	<b>1,031,370</b>	<b>329,721</b>	<b>1,113,139</b>
<b>Operating Cash Flow</b>	<b>141,877</b>	<b>(55,972)</b>	<b>223,046</b>	<b>(225,243)</b>	<b>270,206</b>	<b>2,492</b>	<b>430,063</b>	<b>(185,098)</b>	<b>279,168</b>	<b>(151,637)</b>	<b>507,955</b>	<b>(280,745)</b>
Capex (Maint., signage, roofs, FPC)	0	64,813	14,813	14,813	14,813	14,813	11,850	11,850	11,850	11,850	11,850	14,813
De-Imaging Costs (Incl. transportation & storage)	0	0	0	0	0	0	0	0	0	0	0	0
Cadence Term Loan Principal	0	0	0	0	0	0	0	0	0	0	0	0
Cadence Term Loan Interest Payments	0	0	0	39,725	0	0	0	39,725	0	0	0	39,725
Cadence Revolver Principal Payments	0	0	0	0	0	0	0	0	0	0	0	0
Cadence Revolver Interest Payments	0	0	0	4,933	0	863	0	4,933	0	863	0	4,933
Cadence Development Loan Interest Payments	10,391	0	3,645	0	14,412	7,129	3,645	0	8,085	7,129	0	3,645
Cadence Development Loan Principal Payments	0	0	0	0	0	0	0	0	0	0	0	0
Cadence Interest Rate Swap	0	0	0	0	0	0	0	0	0	0	0	0
Cadence Debt (Post Conf.) Principal Payments	0	0	0	0	0	0	0	0	0	0	0	0
Cadence Debt (Post Conf.) Interest Payments	0	0	0	0	0	0	0	0	0	0	0	0
Cadence LC Fees	0	0	0	0	0	0	0	0	0	0	5,600	5,600
Restricted Cash	0	0	0	0	0	0	0	0	0	0	0	0
EMP Sub Debt	0	0	0	0	0	0	0	0	0	0	0	0
Other Debt (Direct Capital)	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Debt, Interest and Capex</b>	<b>10,391</b>	<b>64,813</b>	<b>18,457</b>	<b>59,471</b>	<b>29,224</b>	<b>22,805</b>	<b>15,495</b>	<b>56,509</b>	<b>19,935</b>	<b>19,842</b>	<b>11,850</b>	<b>68,716</b>
Filing Fees	0	0	0	0	0	0	0	0	0	0	0	0
Legal - Vasari	0	0	0	0	0	0	0	0	0	0	130,000	130,000
Legal - Board	0	0	0	0	0	0	0	0	0	0	0	0
IB/FA	0	0	25,000	0	0	0	0	25,000	0	0	0	60,000
IB Incremental FA	0	0	7,500	0	0	0	0	7,500	0	0	7,500	22,500
US Trustee	0	89,591	0	0	0	0	0	0	0	0	0	160,000
Claims Agent	0	0	0	0	35,000	0	0	0	15,000	0	0	84,500
Creditors Committee	0	0	0	0	0	0	0	0	0	0	0	50,000
Other (Bank Legal/Advisory)	0	33,918	5,000	0	0	0	0	30,000	0	0	0	30,000
<b>Total Bankruptcy Fees</b>	<b>0</b>	<b>123,508</b>	<b>37,500</b>	<b>0</b>	<b>35,000</b>	<b>0</b>	<b>0</b>	<b>62,500</b>	<b>15,000</b>	<b>0</b>	<b>0</b>	<b>522,000</b>
PACA/503(b)(9) Claims (non-critical vendors)	0	0	0	0	0	0	0	0	0	0	0	0
Utility Adequate Assurance Payments	0	0	0	0	0	0	0	0	0	0	0	0
Cure Costs: ADQ/TXDQ Fees (pre-petition portion)	0	0	0	0	0	0	0	0	0	0	150,000	150,000
Cure Costs: October Rent (remaining stores)	0	0	0	0	0	0	0	0	0	0	312,110	312,110
Cure Costs: Other Cures	0	0	0	0	0	0	0	0	0	0	0	0
Unsecured: Rejected Leases	0	0	0	0	0	0	0	0	0	0	150,000	150,000
Unsecured: Other Claims	0	0	0	0	0	0	0	0	0	0	0	0
Wind Down/Liquidating Trust	0	0	0	0	0	0	0	0	0	0	0	0
<b>Total Disbursements</b>	<b>601,357</b>	<b>1,007,696</b>	<b>612,075</b>	<b>1,099,052</b>	<b>606,720</b>	<b>794,114</b>	<b>371,297</b>	<b>1,162,866</b>	<b>570,162</b>	<b>1,051,212</b>	<b>341,571</b>	<b>2,315,964</b>
<b>Change in Cash</b>	<b>131,487</b>	<b>(244,293)</b>	<b>167,089</b>	<b>(284,714)</b>	<b>205,982</b>	<b>(20,312)</b>	<b>414,569</b>	<b>(304,107)</b>	<b>244,234</b>	<b>(171,479)</b>	<b>496,105</b>	<b>(1,483,570)</b>
<b>Ending Balance (Prior to Financing)</b>	<b>425,017</b>	<b>(19,276)</b>	<b>367,089</b>	<b>(84,714)</b>	<b>405,982</b>	<b>179,688</b>	<b>614,569</b>	<b>(41,693)</b>	<b>444,234</b>	<b>28,521</b>	<b>696,105</b>	<b>(755,481)</b>
Plus: DIP Funding	0	219,276	0	284,714	0	20,312	0	244,607	0	171,479	0	0
Less: DIP Interest Payment	0	0	(923)	0	0	0	0	(2,914)	0	0	0	(641)
Less: DIP Repayment Principal Payment	(200,000)	0	(166,165)	0	(205,982)	0	(352,155)	0	(244,234)	0	(171,853)	0
Less: DIP Fees	0	0	0	0	0	0	0	0	0	0	0	0
Plus: Exit Financing Plan Sponsor	0	0	0	0	0	0	0	0	0	0	0	500,000
Plus: Cadence Seasonal Revolver Funding	0	0	0	0	0	0	0	0	0	0	559,960	559,960
Less: Cadence Seasonal Revolver Repayment	0	0	0	0	0	0	0	0	0	0	0	0
Less: ADQ Royalty Note Repayment	0	0	0	0	0	0	0	0	0	0	0	0
Less: ADQ Royalty Note Accrued Interest Payment	0	0	0	0	0	0	0	0	0	0	0	0
<b>Ending Balance</b>	<b>225,017</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>262,414</b>	<b>200,000</b>	<b>200,000</b>	<b>200,000</b>	<b>524,252</b>	<b>100,000</b>

CHD-725260-5-53547-7-1

P&L	Historical		Post Confirmation Projections			
<i>December FYE</i>	2017A	2018P	2018P Stub	2019P	2020P	2021P
<i>Unit Count:</i>	48	48	48	48	48	48
Net Revenue	\$35,721,186	\$34,817,179	\$17,231,570	\$35,165,351	\$35,517,004	\$35,872,174
<i>% Growth</i>		-2.5%	NM	1.0%	1.0%	1.0%
COGS	10,511,153	10,084,983	4,968,337	10,185,833	10,287,691	10,390,568
<i>% of Net Revenue</i>	29.4%	29.0%	28.8%	29.0%	29.0%	29.0%
<b>Gross Profit</b>	<b>25,210,033</b>	<b>24,732,196</b>	<b>12,263,233</b>	<b>24,979,518</b>	<b>25,229,313</b>	<b>25,481,606</b>
<b>Margin %</b>	<b>70.6%</b>	<b>71.0%</b>	<b>71.2%</b>	<b>71.0%</b>	<b>71.0%</b>	<b>71.0%</b>
Labor	9,838,531	9,603,346	4,834,989	9,699,379	9,796,373	9,894,337
<i>% of Net Revenue</i>	27.5%	27.6%	28.1%	27.6%	27.6%	27.6%
Operating Expenses	7,727,817	7,708,500	3,890,943	7,785,585	7,863,441	7,942,076
<i>% of Net Revenue</i>	21.6%	22.1%	22.6%	22.1%	22.1%	22.1%
<b>Store-Level EBITDAR</b>	<b>7,643,685</b>	<b>7,420,350</b>	<b>3,537,300</b>	<b>7,494,553</b>	<b>7,569,499</b>	<b>7,645,194</b>
<b>Margin %</b>	<b>21.4%</b>	<b>21.3%</b>	<b>20.5%</b>	<b>21.3%</b>	<b>21.3%</b>	<b>21.3%</b>
Cash Rent	3,242,308	3,085,423	1,558,894	3,128,035	3,183,236	3,239,426
<i>% Growth</i>		-4.8%	NM	1.4%	1.8%	1.8%
<i>% of Net Revenue</i>	9.1%	8.9%	9.0%	8.9%	9.0%	9.0%
<b>Store-Level EBITDA</b>	<b>4,401,378</b>	<b>4,334,927</b>	<b>1,978,406</b>	<b>4,366,519</b>	<b>4,386,263</b>	<b>4,405,768</b>
<b>Margin %</b>	<b>12.3%</b>	<b>12.5%</b>	<b>11.5%</b>	<b>12.4%</b>	<b>12.3%</b>	<b>12.3%</b>
Corporate G&A Expense	2,737,171	2,231,930	1,114,343	2,254,249	2,276,792	2,299,559
<i>% of Net Revenue</i>	7.7%	6.4%	6.5%	6.4%	6.4%	6.4%
<b>Corporate EBITDA</b>	<b>1,664,206</b>	<b>2,102,998</b>	<b>864,063</b>	<b>2,112,270</b>	<b>2,109,471</b>	<b>2,106,209</b>
<b>Margin %</b>	<b>4.7%</b>	<b>6.0%</b>	<b>5.0%</b>	<b>6.0%</b>	<b>5.9%</b>	<b>5.9%</b>

Note: 2017A is pro forma to include 48 current operating stores only. 2017A was a 53-week year

Free Cash Flow	Post Confirmation Projections			
<i>December FYE</i>	2018P Stub	2019P	2020P	2021P
Corporate EBITDA	864,063	2,112,270	2,109,471	2,106,209
Less: Cash Interest Expense	339,771	688,946	684,693	686,899
Less: Accrued Interest Expense ( <i>when paid</i> )	0	0	0	56,753
Decrease/ (Increase) in Working Capital	0	0	0	0
<b>Cash from Operations</b>	<b>524,292</b>	<b>1,423,324</b>	<b>1,424,779</b>	<b>1,362,557</b>
Maintenance Capex	295,500	591,000	591,000	591,000
Cab Freezer Capex	18,000	0	0	0
FPC Capex	60,000	120,000	120,000	120,000
Roof Capex	36,347	50,886	72,694	72,694
Signage Capex	130,196	130,196	0	0
MOD Capex	0	0	0	0
<b>Total Capital Expenditures</b>	<b>540,043</b>	<b>892,082</b>	<b>783,694</b>	<b>783,694</b>
<b>Free Cash Flow</b>	<b>(15,751)</b>	<b>531,242</b>	<b>641,085</b>	<b>578,864</b>
Beginning Cash	100,000	100,000	100,000	100,000
Plus: Free Cash Flow	(15,751)	531,242	641,085	578,864
Less: Minimum Cash Balance	100,000	100,000	100,000	100,000
<b>Cash Available to Paydown Debt</b>	<b>(15,751)</b>	<b>531,242</b>	<b>641,085</b>	<b>578,864</b>
Cash Used to Paydown Debt	(15,751)	531,242	44,469	0
Cash Flow Sweep - Debt Payments	0	0	596,617	450,894
Cash Flow Sweep - MODs	0	0	0	0
<b>Ending Cash Balance</b>	<b>100,000</b>	<b>100,000</b>	<b>100,000</b>	<b>227,970</b>

Debt & Interest Schedule		Post Confirmation Projections			
December FYE	2018P Stub	2019P	2020P	2021P	
Cadence New Revolver					
Beginning Balance	559,960	575,710	44,469	0	
Draw / (Paydown)	15,751	(531,242)	(44,469)	0	
Ending Balance	575,710	44,469	0	0	
LIBOR	1.90%	2.15%	2.40%	2.65%	
Interest Rate	6.40%	6.65%	6.90%	7.15%	
Cash Interest Expense	18,171	20,621	1,534	0	
Letter of Credit					
Interest Rate	6.40%	6.65%	6.90%	7.15%	
Cash Interest Expense	33,600	69,825	72,450	75,075	
Cadence Note A					
Beginning Balance	9,000,000	9,000,000	9,000,000	8,701,692	
Principal Payment	0	0	0	0	
Cash Flow Sweep	0	0	(298,308)	(289,432)	
Ending Balance	9,000,000	9,000,000	8,701,692	8,412,260	
Interest Rate	6.40%	6.65%	6.90%	7.15%	
Cash Interest Expense	288,000	598,500	610,708	611,824	
Cadence Note B					
Beginning Balance	1,969,120	1,969,120	1,969,120	1,969,120	
Principal Payment	0	0	0	0	
Ending Balance	1,969,120	1,969,120	1,969,120	1,969,120	
Interest Rate	8.00%	8.00%	8.00%	8.00%	
Accrued Interest Expense	78,765	236,294	393,824	551,354	
ADQ Note					
Beginning Balance	459,771	459,771	459,771	161,462	
Principal Payment	0	0	0	0	
Cash Flow Sweep	0	0	(298,308)	(161,462)	
Ending Balance	459,771	459,771	161,462	0	
Interest Rate	5.25%	5.25%	5.25%	5.25%	
Accrued Interest Expense	12,069	36,207	52,514	56,753	
Total Interest Expense					
Cash Interest	339,771	688,946	684,693	686,899	
Accrued Interest	90,834	272,501	446,338	608,106	
Total Interest Expense	430,605	961,447	1,131,031	1,295,005	

Credit Stats		Post Confirmation Projections			
December FYE		2018P Stub	2019P	2020P	2021P
[a]	Cadence Debt/Corporate EBITDA		5.21x	5.06x	4.93x
[b]	Rent Adjusted Cadence Debt/Corporate EBITDAR		6.88x	6.83x	6.79x
[c]	Fixed Charge Coverage Ratio (FCCR)		1.37x	1.37x	1.34x
[d]	Debt Service Coverage Ratio (DSCR)		1.73x	1.59x	1.76x

Notes:

[a] Cadence debt / corporate EBITDA

[b] Cash rent x 8.0x + total debt (ind. Cadence debt only) / corporate EBITDA + cash rent

[c] Corporate EBITDAR / interest expense + cash rent

[d] Corporate EBITDA / debt service (all principal, cash sweep and cash and accrued interest paid)

## Exhibit D

### Liquidation Analysis

Implied Valuation	Historical
<i>December FYE</i>	<i>LTM Mar 2018</i>
Unit Count:	48
Net Revenue	\$34,436,127
% Growth	NM
SSS Comps	(4.1%)
<b>Store-Level EBITDAR</b>	<b>7,207,614</b>
<b>Margin %</b>	<b>20.9%</b>
Cash Rent	3,219,316
% of Net Revenue	9.3%
<b>Store-Level EBITDA</b>	<b>3,988,299</b>
<b>Margin %</b>	<b>11.6%</b>
Corporate G&A Expense	2,559,880
% of Net Revenue	7.4%
<b>Corporate EBITDA</b>	<b>1,428,419</b>
<b>Margin %</b>	<b>4.1%</b>
Impled EBITDA Multiple	5.0x
<b>Implied Enterprise Value</b>	<b>\$7,142,093</b>
[a] Less: Health & Safety Capex	1,095,537
[b] Less: Remodel Capex	3,135,392
<b>Implied Enterprise Value (After Capex Discount)</b>	<b>\$2,911,164</b>

Notes:

- Assumes liquidation occurs in a Chapter 11 context

[a] Includes FPC, roofs and cab freezers; excludes maintenance capex

[b] Includes signage and MODs

Implied Enterprise Value Sensitivity						
Corp. EBITDA	EBITDA Multiple					
		4.0x	4.5x	5.0x	5.5x	6.0x
	\$928,419	3,713,674	4,177,884	4,642,093	5,106,302	5,570,512
	\$1,178,419	4,713,674	5,302,884	5,892,093	6,481,302	7,070,512
	\$1,428,419	5,713,674	6,427,884	\$7,142,093	7,856,302	8,570,512
	\$1,678,419	6,713,674	7,552,884	8,392,093	9,231,302	10,070,512
	\$1,928,419	7,713,674	8,677,884	9,642,093	10,606,302	11,570,512

Implied Enterprise Value (After Capex Discount) Sensitivity						
Corp. EBITDA	EBITDA Multiple					
		4.0x	4.5x	5.0x	5.5x	6.0x
	\$928,419	0	0	411,164	875,373	1,339,583
	\$1,178,419	482,745	1,071,955	1,661,164	2,250,373	2,839,583
	\$1,428,419	1,482,745	2,196,955	\$2,911,164	3,625,373	4,339,583
	\$1,678,419	2,482,745	3,321,955	4,161,164	5,000,373	5,839,583
	\$1,928,419	3,482,745	4,446,955	5,411,164	6,375,373	7,339,583

363 Sale Waterfall		
<b>Sources:</b>		
Purchase Price	\$7,142,093	\$7,142,093
Less: Health/Safety & Remodel Capex	0	4,230,929
<b>Total Sources</b>	<b>\$7,142,093</b>	<b>\$2,911,164</b>
<b>Uses:</b>		
[a] Bankruptcy Professional Fees	522,000	522,000
Investment Banking Success Fee	285,684	116,447
<i>Working Capital</i>		
Cash from Operations	(524,252)	(524,252)
Net Working Capital	0	0
Net Working Capital	(524,252)	(524,252)
<i>Admin Claims</i>		
[b] PACA/503(b)(9) Claims	0	0
Deferred ADQ Royalty Cure	609,771	609,771
October Rent Cure	312,110	312,110
Accrued Property Taxes (Pro Rata)	328,000	328,000
Sales Tax (Pro Rata)	318,296	318,296
[c] Sales & Use Tax Liability (Audit)	120,000	120,000
Total Administrative Claims	1,688,176	1,688,176
[d] Windown Expense/Liquidating Trust	60,000	60,000
DIP Loan Repayment	641	641
<b>Proceeds Available for Recovery</b>	<b>5,109,844</b>	<b>1,048,152</b>
Cadence Debt Balance	10,969,120	10,969,120
Cadence Recovery \$	5,109,844	1,048,152
Cadence Recovery %	46.6%	9.6%
Proceeds Available for Unsecureds	0	0
<b>Total Uses</b>	<b>\$7,142,093</b>	<b>\$2,911,164</b>

## Notes:

- [a] Remaining projected professional fees unpaid as of acquisition date
- [b] No PACA/503(b)(9) claims filed as of preparation of this document
- [c] Company reviewing audit findings
- [d] Estimated estate winddown expenses post-acquisition