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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

THE FRESH ICE CREAM COMPANY, LLC  
d/b/a Craft Collective  
d/b/a Steve's Ice Cream,

Chapter 11  
Case No. 17-40716-ess

Debtor.  
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**DEBTOR'S FIRST AMENDED CHAPTER 11 PLAN OF LIQUIDATION**

The Fresh Ice Cream Company, LLC d/b/a Craft Collective d/b/a Steve's Ice Cream (the "Debtor") hereby proposes the following First Amended Chapter 11 Plan of Liquidation pursuant to the provisions of Chapter 11 of the Bankruptcy Code.

**ARTICLE I**  
**DEFINITIONS**

For the purposes of this Plan, and the First Amended Disclosure Statement simultaneously filed by the Debtor, the following terms shall have the respective meanings set forth below:

1.1 "*Administrative Claim*" shall mean, except as otherwise set forth in this Plan, all or that portion of a Claim for any cost or expense of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor's estate, and all fees and charges assessed against the Debtor's estate

pursuant to 28 U.S.C. §1930. The term Administrative Claim does not include Fee Claims, which are treated separately in this Plan.

1.2 "Allowed" shall mean with respect to any Claim or Interest that portion of such Claim or Interest (i) which has been allowed by a Final Order; (ii) which is allowed under the terms of this Plan; or (iii) (a) which has been scheduled by the Debtor as not disputed, not contingent and not unliquidated, or (b) for which a proof of claim was timely filed and otherwise properly filed on or before September 30, 2016 with the Bankruptcy Court and, with respect to Claims described in point (iii) above, as to which no objection to the allowance thereof has been interposed within the period of time fixed by the Bankruptcy Code, the Plan in Article IX hereof, the Bankruptcy Rules or an order of the Bankruptcy Court, or as to which any objection has been determined by a Final Order of the Bankruptcy Court allowing such Claim or any portion thereof. Except as otherwise specifically set forth in this Plan, each Allowed Claim shall be net of any valid setoff exercised with respect to such Claim pursuant to the provision of the Bankruptcy Code and applicable law.

1.3 "Allowed Administrative Claim" shall mean all or that portion of any Administrative Claim which has become allowed by a Final Order or was incurred by the Debtor in the ordinary course of business during the Chapter 11 Case and is due and owing under the terms and conditions of any agreement and applicable law.

1.4 "Avoidance Actions" shall mean any cause of action assertable under sections 510, 542, 543, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code or non-bankruptcy law.

1.5 "Ballot" shall mean each of the voting forms to be distributed with the Plan and the Disclosure Statement to holders of Claims or Interests in Classes that are impaired under the

terms of the Plan and are entitled to vote in connection with the solicitation of acceptances of the Plan.

1.6 "*Bankruptcy Code*" shall mean title 11 of the United States Code, 11 U.S.C. §§101, et seq., as in effect on the Petition Date.

1.7 "*Bankruptcy Court*" shall mean the United States Bankruptcy Court for the Eastern District of New York, Brooklyn Division.

1.8 "*Bankruptcy Rules*" shall mean the Federal Rules of Bankruptcy Procedure, as amended from time to time, as applicable to the Chapter 11 Case, including the Local Rules of the Bankruptcy Court.

1.9 "*Business Day*" shall mean any day on which commercial banks are open for business in the City of New York and County of New York, New York, other than, a Saturday, Sunday or legal holiday in the State of New York.

1.10 "*Cash*" shall mean the legal tender of the United States of America.

1.11 "*Causes of Action*" shall mean any claim, cause of action, controversy, demand, agreement, right (including to legal or equitable remedies), action, lien, indemnity, guaranty, suit, obligation, liability, damage, judgment, account, defense, offset, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. Cause of Action also includes: (a) any right of setoff, counterclaim, or recoupment and any claim on contracts or for breaches of duties imposed by law or in equity; (b) the right to object to Claims or Interests; (c) any claim pursuant to section 362 or chapter 5 of the Bankruptcy

Code; (d) any claim or defense including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any state law fraudulent transfer claim.

1.12 "*Chapter 11 Case*" shall mean the above-captioned case commenced by the filing of a voluntary petition by the Debtor seeking relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court on the Petition Date.

1.13 "*Claim*" shall mean a claim as defined in section 101(5) of the Bankruptcy Code, including, without limitation, claims arising under section 502 of the Bankruptcy Code.

1.14 "*Class*" shall mean a class of holders of Claims or Interests described in Article III of this Plan.

1.15 "*Committee*" shall mean the Official Committee of Unsecured Creditors appointed by the United States Trustee.

1.16 "*Confirmation Date*" shall mean the date upon which the Confirmation Order is entered by the Bankruptcy Court.

1.17 "*Confirmation Order*" shall mean the order of the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code confirming the Plan.

1.18 "*Debtor*" shall mean The Fresh Ice Cream Company, LLC d/b/a Craft Collective d/b/a Steve's Ice Cream.

1.19 "*Disbursing Agent*" shall mean the party that shall open and maintain a separate attorney trust bank account in which all cash received for purposes of distribution shall be deposited in accordance with section 345 of the Bankruptcy Code and as otherwise may be required by the Local Rules of the Bankruptcy Court, by the Office of the United States Trustee,

or this Plan, and shall distribute payment under the Plan, which Disbursing Agent shall be DelBello Donnellan Weingarten Wise & Wiederkehr, LLP.

1.20 "*Disclosure Statement*" shall mean the First Amended Disclosure Statement filed simultaneously with this First Amended Plan of Liquidation by the Debtor in the Chapter 11 Case.

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1.21 "*Disputed Claim*" shall mean any Claim (i) which is scheduled by the Debtor as disputed, contingent or unliquidated, or (ii) proof of which has been filed with the Bankruptcy Court and an objection to the allowance has been or is interposed within the period of time set forth in Article IX hereof or by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or an order of the Bankruptcy Court extending such time for the filing of such objections, and as to which, such objection has not been determined by a Final Order of the Bankruptcy Court or withdrawn. Such Claim, or a portion thereof, shall not be deemed an Allowed Claim until and unless and to the extent it is resolved as an Allowed Claim by a Bankruptcy Court order.

1.22 "*Effective Date*" shall mean the first Business Day that is one (1) Business Day after the date upon which the Confirmation Order becomes a Final Order.

1.23 "*Estate*" shall mean the estate of the Debtor created by the Chapter 11 Case pursuant to Bankruptcy Code section 541.

1.24 "*Exculpated Claim*" shall mean any claim related to any act or omission in connection with, relating to or arising out of the formulation, preparation, dissemination, negotiation or filing of the Disclosure Statement or this Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or this Plan, the pursuit of confirmation of this Plan, and/or the administration and implementation of this Plan; *provided, however*, that Exculpated Claims shall not include any act

or omission that is determined in a Final Order to have constituted gross negligence, willful misconduct or fraud to the extent imposed by applicable non-bankruptcy law. For the avoidance of doubt, no cause of action, obligation or liability expressly set forth in or preserved by this Plan constitutes an Exculpated Claim.

1.25 “*Exculpated Party*” shall mean the Debtor, the Committee and their respective current and former officers, directors, members, managers, employees, attorneys and advisors, each in their respective capacities as such.

1.26 “*Fee Claim*” shall mean a Claim by any Professional for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103.

1.27 “*Final Order*” shall mean an order or judgment of the Bankruptcy Court entered by the clerk of the Bankruptcy Court on the docket of the Chapter 11 Case which has not been reversed, vacated or stayed and as to which (a) the time to appeal or seek review or rehearing has expired, and a notice of appeal or request for review or rehearing is not pending, or (b) any appeal that has been taken has been finally determined or dismissed on grounds that affirm the order or judgment, it being further provided that if such appeal or request for a rehearing is pending, that if such order is not stayed pending appeal or rehearing pursuant to Fed.R.Civ.P. 62 as incorporated by Bankruptcy Rule 7062, the order shall be deemed to be a Final Order. The possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed related to such order or judgment shall not cause such order or judgment to not be a Final Order.

1.28 “*Impaired*” shall mean a Claim or class of Claims that is impaired within the meaning of section 1124 of the Bankruptcy Code.

1.29 "*Interest*" shall mean the interest of any holder of an equity security of or membership interest in the Debtor, within the meaning of Bankruptcy Code sections 101(16), (17), represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership or membership interest in the Debtor, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest, including a partnership, limited liability company or similar interest.

1.30 "*Petition Date*" shall mean February 17, 2017.

1.31 "*Person*" shall mean means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization, governmental unit, government (or agency or political subdivision thereof), or other entity, including, without limitation, the Debtor.

1.32 "*Plan*" shall mean this Chapter 11 Plan of Liquidation and any amendments hereto or modifications hereof made in accordance with the provisions of the Bankruptcy Code.

1.33 "*Plan Distribution Fund*" shall mean all of the Debtor's remaining Cash on hand, including the net proceeds from (a) the Sale, (b) the collection of accounts receivable, (c) the sale of the Debtor's remaining inventory excluded from the sale of the Debtor's assets to the Purchaser, and (d) proceeds from Estate Causes of Action, which shall be used to fund a distribution under the Plan to all unclassified, Allowed Class 1, 2, and 3 Claims, and the Post-Confirmation Date Reserve defined herein.

1.34 "*Post-Confirmation Date Reserve*" shall mean a fund reserved form the Plan Distribution Fund in the amount of \$40,000 to be used for the payment of Professional fees and expenses for post-Confirmation services rendered by the Professionals in accordance with Sections 6.6 and 8.10 of this Plan.

1.35 "*Priority Claim*" shall mean a Claim other than an Administrative Claim that is entitled to priority under section 507 of the Bankruptcy Code.

1.36 "*Priority Tax Claim*" shall mean any Claim of a governmental unit of the kind entitled to priority in payment as specified in sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.37 "*Pro Rata*" shall mean (i) regarding Claims, the ratio of the amount of an Allowed Claim in a particular Class to the aggregate amount of Allowed Claims in such Class; and (ii) regarding Interests, the ratio of the amount of the Interest to the aggregate amount of Interests.

1.38 "*Professionals*" shall mean professional persons retained under section 327 or 1103 of the Bankruptcy Code pursuant to a Final Order of the Bankruptcy Court and shall specifically include (i) DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP, (ii) Anchin Block & Anchin, and (iii) Westerman Ball Ederer Miller Zucker & Sharfstein, LLP.

1.39 "*Purchaser*" shall mean DGI Ventures, Inc.

1.40 "*Sale*" shall mean the sale of certain of the Debtor's assets to the Purchaser pursuant to the Order Approving Sale entered by the Bankruptcy Court on June 16, 2017.

1.41 "*Sale Order*" shall mean the Amended Order Authorizing the Sale of the Debtor's Assets entered by the Bankruptcy Court on June 19, 2017 [ECF Docket No. 61].

1.42 "*Sale Proceeds*" shall mean the purchase price paid by the Purchaser for the Sale.

1.43 "*Secured Claim*" shall mean a Claim held by creditors secured by mortgages or liens on real and/or personal property owned by the Debtor or upon the leasehold interests and assets of the Debtor in accordance with section 506(a) of the Bankruptcy Code.



1.44 “*Schedules*” shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor as required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and all amendments thereto.

1.45 “*Unimpaired*” shall mean, with respect to any Class, that such Class is not Impaired.

1.46 “*Unsecured Claim*” shall mean any Claim which is not an Administrative Claim, Secured Claim, Priority Claim, or Interest that arose prior to the Petition Date and includes, without limitation, Claims based upon pre-petition trade accounts payable or Claims based upon the rejection of an executory contract during the pendency of the Chapter 11 Case.

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in, or exhibit to, the 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 the Plan as a whole and not to any particular section, subsection, or clause contained therein. A term used herein that is not defined herein shall have the meaning assigned to that term in the Bankruptcy Code. The rules of construction contained in section 102 of the Bankruptcy Code shall apply to the Plan. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. Unless otherwise provided, any reference in this Plan to an existing document, exhibit or schedule means such document, exhibit or schedule as it may have been amended, restated, revised, supplemented or otherwise modified. If a time or date is specified for any payments or other distribution under the Plan, it shall mean on or as soon as reasonably practicable thereafter. Further, where appropriate from a contextual reading of a term, each term includes the singular and plural form of the term regardless of how the term is stated and each stated pronoun is gender neutral.

**ARTICLE II**  
**DESIGNATION AND TREATMENT OF UNCLASSIFIED CLAIMS**

2.1 Allowed Administrative Claims other than Claims of Professionals.

Administrative expenses are costs or expenses of administration in connection with the Chapter 11 Case, including, without limitation, any actual, necessary costs and expenses of preserving the Debtor's estate, and all fees and charges assessed against the Debtor's estate pursuant to 28 U.S.C. section 1930. The term Administrative Claim does not include Fee Claims and quarterly fees owed to the Office of the U.S. Trustee, which are treated separately in this Plan. These Allowed Claims shall be paid in Cash on the Effective Date from the Plan Distribution Fund.

2.2 Allowed Administrative Claims of Professionals. These are Claims by any

Professionals for compensation for legal and other services and reimbursement of expenses allowed or awarded under Bankruptcy Code sections 327, 328, 330(a), 331, 503(b) and/or 1103. The Allowed Administrative Claims of the Professionals shall be paid in full, in Cash, from the Plan Distribution Fund upon the later of (i) allowance by the Court pursuant to 11 U.S.C. § 330, or (ii) the Effective Date.

2.3 United States Trustee's Fees. These are claims for United States Trustee statutory

fees arising under 28 U.S.C. § 1930 and 31 U.S.C. §3717. The Debtor shall pay outstanding United States Trustee statutory fees in full, in Cash on the Effective Date from the Plan Distribution Fund. Thereafter, such fees shall be paid in full, in Cash, in such amount as incurred in the ordinary course of business by the Debtor from the Plan Distribution Fund. The Debtor shall be responsible to effectuate payment of United States Trustee quarterly fees through the earlier of dismissal, conversion or the entry of a final decree closing the Chapter 11 Case, as may be applicable.

2.4 Allowed Priority Tax Claims. Priority tax claims are unsecured income, employment, sales and other taxes described by §507(a)(8) of the Bankruptcy Code. The Debtor shall pay all Allowed Priority Tax claims in full, in Cash from the Plan Distribution Fund on the Effective Date.

**ARTICLE III**  
**DESIGNATION OF CLAIMS AND INTERESTS**

3.1 Classification of Claims. Other than those Claims described in Article II of this Plan, all Claims against the Debtor, of whatever nature, whether or not scheduled or liquidated, absolute or contingent, and all Interests arising from the ownership of the Debtor whether resulting in an Allowed Claim or an Allowed Interest or not, shall be bound by the provisions of the Plan and are classified in Section 3.2 hereof.

A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of the Class and is classified in a different Class or Classes to the extent any remainder of the Claim or Interest qualifies within the description of that different Class or Classes. Unless otherwise provided, to the extent a Claim or Interest qualifies for inclusion in a more specifically defined Class and a more generally defined Class, it shall be included in the more specifically defined Class.

3.2 Classes. For purposes of the Plan, those persons holding Claims against, or Interests in, the Debtor are grouped in accordance with section 1122 of the Bankruptcy Code.

**Class 1: Allowed non-Tax Priority Claims:** Class 1 consists of the holders of all Allowed Non-Tax Priority Claims against the Debtor.

**Class 2: Allowed Secured Claims:** Class 2 consists of the holders of all Allowed Secured Claims against the Debtor.

**Class 3: Allowed Unsecured Claims:** Class 3 consists of the holders of all Allowed, non-priority Unsecured Claims against the Debtor.

**Class 4: Interests:** Class 4 consists of all Interests.

**ARTICLE IV  
TREATMENT OF CLASSES UNDER THE PLAN**

4.1 Treatment of Claims and Interests. The treatment of and consideration to be received by holders of Allowed Claims and Interests pursuant to Article IV of the Plan shall be in full satisfaction, release and discharge of their respective Claims or Interests against the Debtor and the holders of an Interest in the Debtor, whether or not a holder of a Claim receives a distribution under the Plan.

4.2 Class 1: Class 1 Non-Tax Priority Claims shall receive the amount of their Allowed Claim in full, in Cash on the Effective Date from the Plan Distribution Fund in full and final satisfaction of their Claims against the Debtor. Class 1 Claims are unimpaired and deemed to accept the Plan.

4.3 Class 2: Class 2 Secured Claims have heretofore received the amount of their Allowed Claims in full, in Cash, in full and final satisfaction of their Secured Claims against the Debtor. Class 2 Claims are unimpaired and are deemed to accept the Plan.

4.4 Class 3: Class 3 Claims shall each receive up to 100% of its Allowed Class 3 Claim, on a Pro Rata basis from the remaining monies in the Plan Distribution Fund after payment of all Allowed unclassified, Class 1 and 2 Claims and the Post-Confirmation Date Reserve. Class 3 Claims are Impaired and are allowed to vote on the Plan.

4.5 Class 4: Class 4 Interests shall ~~not~~ receive ~~any distribution on account of their~~ Interests under the Plan. Class 4 Interests are ~~impaired~~ and deemed to ~~reject~~ the Plan.

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- Deleted:** the Plan Distribution Fund, if any, after the payment of all Allowed Claims and the Post-Confirmation Date Reserve
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**ARTICLE V**  
**ACCEPTANCE OR REJECTION OF THE PLAN**

5.1 Impaired Classes Vote. In accordance with section 1126(c) of the Bankruptcy Code and except as provided in section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Allowed Claims of such Class that have timely and properly voted to accept or reject this Plan.

5.2 Presumed Acceptance of the Plan. Classes 1 and 2 are unimpaired under this Plan and are, therefore, conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code.

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5.3 Voting Class. Class 3 is Impaired, and the holders of Claims in Class 3 are entitled to vote on the Plan. Class 4 is deemed to reject the Plan.

**ARTICLE VI**  
**MEANS FOR EXECUTION**

6.1 Distribution of Cash. Except as otherwise provided in the Plan, including without limitation Article IX of this Plan, the Cash required to be distributed to holders of Allowed Claims under the Plan shall be distributed by the Disbursing Agent on the later of the following dates: (i) on the Effective Date to the extent the Claim has been Allowed or (ii) to the extent that a Claim becomes an Allowed Claim after the Effective Date, within ten (10) days after the order allowing such Claim becomes a Final Order.

6.2 Means For Implementation. The Plan shall be funded with the Plan Distribution Fund, which shall be distributed by DelBello Donnellan Weingarten Wise & Wiederkehr, LLP (the "Disbursing Agent") in accordance with the terms of the Plan. Except as otherwise provided in the Plan, including without limitation Article IX of the Plan, the Cash required to be

distributed to holders of Allowed Claims under the Plan shall be distributed by the Disbursing Agent on the later of the following dates: (i) on the Effective Date to the extent the Claim has been Allowed or (ii) to the extent that a Claim becomes an Allowed Claim after the Effective Date, within ten (10) days after the order allowing such Claim becomes a Final Order.

6.3 Continuing Existence. All matters provided under this Plan, including all corporate action to be taken or required to be taken by the Debtor, and the execution of all necessary documents shall be deemed to have occurred and be effective as provided herein, and shall be authorized and approved in all respects without any requirement or further action by directors of the Debtor. From and after the Effective Date, the Debtor shall continue in existence for the purposes of (i) winding up its affairs as expeditiously as reasonably possible, (ii) resolving disputed Claims, (iii) prosecuting Causes of Action, if any. (iv) administering this Plan, and (v) filing appropriate tax returns. Following the Effective Date, the Debtor shall not engage in any business activities or take any actions, except those necessary to consummate this Plan and wind up the affairs of the Debtor.

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6.4 Vesting of Assets. As of the Effective Date, and except as otherwise provided in this Plan, all Assets shall vest in the reorganized Debtor. Except as otherwise set forth in this Plan, all Causes of Action shall survive confirmation and the commencement and/or prosecution of Causes of Action shall not be barred or limited by any estoppel, whether judicial, equitable or otherwise.

6.5 Bar Date for Administrative Claims and Professional Fee Claims. Each Person that desires to assert any Professional Fee Claim must file with the Bankruptcy Court an application for allowance thereof within thirty (30) days prior to the first scheduled hearing to consider Confirmation of this Plan. Each Person that desires to assert an Administrative Claim

other than an Administrative Claim held by a trade vendor incurred by the Debtor in the ordinary course of business during the Chapter 11 Case must file with the Bankruptcy Court an application for allowance thereof no later than thirty (30) days prior to the first scheduled hearing to consider Confirmation of this Plan. All such Claims not timely filed shall be forever barred. The Debtor or any other party in interest may object to the allowance of any such Claim filed before, on, or after the Effective Date.

6.6 Payment of Professionals for Post-Confirmation Date Services. The reasonable compensation and out-of-pocket expenses incurred post-Effective Date by the Disbursing Agent and Professionals retained in the Chapter 11 Case for post-Effective Date services (other than services related to Avoidance Actions, compensation for which is exclusively governed under Article IX of this Plan) and paid by the Disbursing Agent from the Post-Confirmation Date Reserve within ten (10) days after presentation of invoices for such professional services to the Disbursing Agent and Debtor. To the extent that the Post-Confirmation Date Reserve is exhausted, any further payments to the Professionals cannot be made until after all Plan payments have been made and further provided, however, that if the Debtor and any Professionals cannot agree on the amount of post-Effective Date fees and costs to be paid to such Professionals, such amount shall be determined by the Bankruptcy Court.

**ARTICLE VII**  
**EXECUTORY CONTRACTS**

7.1 Rejection. As of the Effective Date, and except as otherwise set forth in this Plan, any written lease or contract that is executory, in whole or in part, to which any of the Debtor is a party and which has not been assumed on or prior to the Confirmation Date pursuant to Sections 365 and 1123 of the Bankruptcy Code during the pendency of the Chapter 11 Case, or assumed

pursuant to this Plan, shall be deemed rejected. Any person or entity whose Claim arises from rejection of an executory contract shall, to the extent such Claim becomes an Allowed Claim, have the rights of a holder of an Unsecured Claim in Class 2 with respect thereto. **Any person or entity who has a Claim against the Debtor by virtue of rejection of an executory contract may file a Claim with the Clerk of the Court, and serve such claim upon counsel for the Debtor no later than thirty (30) days prior to the first noticed date for a hearing to consider confirmation of this Plan. If such Claim is not filed within such specified time, it shall forever be barred from assertion against the Debtor and its estate.**

**ARTICLE VIII**  
**GENERAL AND MISCELLANEOUS PROVISIONS**

8.1 Modification of the Plan. The Debtor reserves the right, in accordance with section 1127(a) of the Bankruptcy Code, to amend or modify the Plan prior to the Confirmation Date. After the Confirmation Date, the Debtor may, upon order of the Bankruptcy Court, in accordance with section 1127(b) of the Bankruptcy Code, remedy any defect or omission or reconcile and inconsistencies in the Plan in such manner as may be necessary to carry out the purposes and intent of the Plan.

8.2 Payment Dates. If any payment or act under the Plan is required to be made or falls on a date which shall be a Saturday, Sunday or a legal holiday, then the making of such payment or performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed timely.

8.3 Notices. Any notices to be forwarded under the Plan shall be in writing and sent by certified mail, return receipt requested, postage pre-paid; or by overnight mail or hand delivery, addressed as follows:



If ~~to~~ The Debtor:

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c/o DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Avenue, 11<sup>th</sup> Floor  
White Plains, New York 10601  
Attn: Jonathan S. Pasternak, Esq.

If to The Committee:  
c/o Westerman Ball Ederer Miller Zucker & Sharfstein, LLP  
1201 RXR Plaza  
Uniondale, New York 11556  
Attn: William C. Heuer, Esq.

The above notice parties may designate in writing any other address for purposes of this section, which designation shall be effective upon receipt. Any payment required under the Plan shall be deemed to have been paid on the date when such payment is received.

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

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

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

8.7 Reservation of Rights. Neither the filing of this Plan, nor any statement or provision contained herein, shall be or be deemed to be an admission against interest. In the event that the Effective Date does not occur, neither this Plan nor any statement contained herein

may be used or relied upon in any manner in any suit, action, proceeding or controversy within or outside of the Chapter 11 Case.

8.8 U.S. Trustee Fees and Monthly Operating Reports. After the Confirmation Date, the Debtor will pay or cause the payment of fees, and any applicable interest, incurred pursuant to 28 U.S.C. § 1930(a)(6) and 31 U.S.C. section 3717 and will file or cause the filing with the Bankruptcy Court and serve or cause service on the U.S. Trustee of monthly operating reports while the Chapter 11 Case remains open, unless the Bankruptcy Court orders otherwise.

8.9 Creditors Committee. The Creditors Committee will continue to exist until the earlier of (a) ~~the Effective Date or (b)~~ dismissal or conversion of the Chapter 11 case, ~~Prior to the~~ Effective Date, the Creditors Committee will have the right to (a) object to Claims, (b) direct Debtor's counsel to commence avoidance actions or, in the event that Debtor's counsel refuses to commence a particular action, then in such event the Creditors Committee shall have the standing and legal authority to commence such action(s), and (c) be heard in connection with all Claim objections and other actions.

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**Deleted:** Class 3 Unsecured Creditors under the Plan. After

8.10 Post-Confirmation Date Reserve. The Post-Confirmation Date Reserve shall be used to fund post-Confirmation Date professional fees incurred by the Professionals and the Disbursing Agent in the prosecution of ~~Causes of Action, if any, adjudication of Claims, filing of~~ final tax returns, and in connection with the carrying out of the duties and responsibilities as the Disbursing Agent as well as payment of United States Trustee fees. The balance of such reserve, if any, shall be distributed in accordance with Article III hereof.

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**ARTICLE IX**  
**RESOLUTION OF DISPUTED CLAIMS & RESERVES**

9.1 Objections. An objection to either the allowance of a Claim or an amendment to the Debtor's Schedules shall be in writing and may either be filed with the Bankruptcy Court or pursued and resolved by other means by the Debtor and/or Committee, at any time on or before the Effective Date, or for a period of 30 days thereafter, or within such other time period as may be fixed by the Bankruptcy Court. Except as otherwise set forth in this Plan, any Claim not filed with the Bankruptcy Court by September 30, 2016, unless specifically scheduled by the Debtor as nondisputed, noncontingent and liquidated is hereby deemed invalid for all purposes. The Debtor and/or Committee will object to and settle any Claims and shall settle, compromise or prosecute all Claims objections.

9.2 Amendment of Claims. A Claim may not be amended to increase the amount sought after the hearing to approve confirmation of this Plan absent consent from the Debtor or approval from the Bankruptcy Court.

9.3 Distributions to Holders of Subsequently Allowed Claims. Unless another date is agreed on by the Debtor and the holder of a particular subsequently Allowed Claim, the Debtor shall, on the first Business Day to occur after the fourteenth (14th) day after the Allowed amount of such theretofore Disputed Claim is determined, distribute to such holder with respect to such subsequently Allowed Claim the amount of distribution required under the Plan at that time, in Cash. The holder of a subsequently Allowed Claim shall not be entitled to any interest on the Allowed amount of its Claim, regardless of when distribution thereon is made to or received by such holder.

9.4 Reserve for Disputed Claims. The Debtor shall reserve for account of each holder of a Disputed Claim that property which would otherwise be distributable to such holder on such date were such Disputed Claim an Allowed Claim on the Effective Date, or such other property as the holder of such Disputed Claim and the Debtor may agree upon. The property so reserved for the holder, to the extent such Disputed Claim is allowed, and only after such Disputed Claim becomes a subsequently Allowed Claim, shall thereafter be distributed to such holder.

**ARTICLE X**  
**AVOIDANCE ACTIONS**

The Debtor's estate will pursue all Causes of Action under Sections 544, 547, 548, 550 and 553 of the Bankruptcy Code that should be pursued. The Debtor shall file and such actions no later than 120 days after the Effective Date. The proceeds from any recoveries from Avoidance Actions shall be used to first pay any outstanding Professional Fees and expenses incurred in connection with the prosecution of Avoidance Actions, with the balance to be paid to holders of Allowed Class 3 Claims in accordance with this Plan.

**ARTICLE XI**  
**EFFECT OF CONFIRMATION, DISCHARGE,**  
**SURRENDER AND CANCELLATION OF CLAIMS**

11.1 No Discharge Under the Plan. Since the Plan provides for a distribution of the Debtor's liquidated assets, the Confirmation Order shall not operate as a discharge pursuant to section 1141(d)(1) of the Bankruptcy Code.

11.2 Exculpation. *Except as otherwise specifically provided in this Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim, or obligation, cause of action or liability for any Exculpated Claim, and shall be entitled to reasonably rely on the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. Each Exculpated Party and*

*their respective affiliates, agents, directors, members, officers, officials, employees, advisors and attorneys have, and upon the Effective Date shall be deemed to have participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code and applicable non-bankruptcy law and shall not be liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of this Plan or distributions made pursuant to this Plan. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute and may be submitted as a complete defense to any claim or liability satisfied, enjoined or subject to exculpation pursuant to Article XI of the Plan; provided, however, that nothing in the Plan shall, or shall be deemed to, release Debtor, the Committee, the members of the Debtor or the Committee, or exculpate the Debtor, the Committee, the members of the Debtor or the Committee with respect to, its obligations or covenants arising from bad faith, willful misconduct, gross negligence, breach of fiduciary duty, malpractice, fraud, criminal conduct, unauthorized use of confidential information that causes damages, and/or ultra vires acts. Upon confirmation of the Plan, Creditors will be unable to pursue any claims that are satisfied, enjoined or subject to exculpation under the Plan, but creditors may pursue claims against the Debtor that may arise in the future, or pursuant to the Plan. Any such liability against the Debtor's attorneys will not be limited in accordance with DR 6-102 of the Code of Professional Responsibility.*

*11.3 Exculpation Release. As of the Effective Date and except as set forth in this Plan, each holder of a Claim or Interest shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Exculpated Parties from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, including any derivative Claims assertable on behalf of the Debtor,*

*whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Person would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the negotiation, formulation or preparation of this Plan, the Disclosure Statement, or related agreements, instruments or other documents (collectively, “Released Claims”), other than Released Claims against the Debtor or an Exculpated Party arising out of or relating to any act or omission of that party constituting willful misconduct or gross negligence. For the avoidance of doubt, no provision of this Plan, including without limitation, any release or exculpation provision, shall modify, release, or otherwise limit the liability of any Person in their capacity as a co-obligor, guarantor, or surety of the Debtor or an Exculpated Party or that otherwise is liable under theories of vicarious or other derivative liability.*

*11.4 Confirmation Injunction. Effective on the Confirmation Date, all persons who have held, hold or may hold Claims against the Debtor and the Debtor’s assets (inclusive of those assets conveyed in the Sale) are enjoined from taking actions which would have an adverse effect on implementation of the Plan or the Plan Distribution Fund, except as otherwise set forth in this Plan, and other than actions brought to enforce any rights or obligations under this Plan or appeals, if any, from the Confirmation Order which would have an adverse effect on implementation of this Plan or the Plan Distribution Fund, respectively.*

*11.5 Nothing herein shall affect the terms and conditions of the Sale Order and all such terms and conditions shall be preserved and remain in full force and effect.*

Deleted: any of the following actions against or affecting the Debtor or the aforementioned assets with respect to such Claims

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Deleted: <#>Commencing, conducting or continuing in any manner, directly or indirectly, any suit, action, arbitration, or other proceeding of any kind;¶  
 <#>Enforcing, levying, attaching, or otherwise recovering by any manner or means, whether directly or indirectly, any judgment, award, decree, or order;¶  
 <#>Creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind; ¶  
 (iv) . Asserting any setoff, right of subrogation, or recoupment of any kind, directly or indirectly; and ¶  
 (v) . Proceeding in any manner and any place whatsoever that does not conform to or comply with the provisions of the Plan.¶

**ARTICLE XII**  
**DUTIES AND RIGHTS OF THE DISBURSING AGENT**

12.1 The Disbursing Agent shall be DelBello Donnellan Weingarten Wise & Wiederkehr, LLP.

12.2 The Disbursing Agent shall make and effectuate all distributions required under the Plan and be responsible for the liquidation of the Debtor's remaining assets and administration of the Plan.

12.3 The Disbursing Agent shall open and maintain, in accordance with this Plan, an interest-bearing bank account in which all cash received for purposes of distribution shall be deposited in accordance with section 345 of the Bankruptcy Code and as provided herein. The Disbursing Agent shall not be liable for any distributions made in accordance with this Plan. Unless otherwise ordered by a Final Order of the Bankruptcy Court or otherwise provided in this Plan, the record date for distributions shall be the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Case.

12.4 To the extent that the Disbursing Agent shall maintain the Plan Distribution Funds in an attorney escrow account, there is no need for the Disbursing Agent to obtain a bond.

12.5 The Disbursing Agent shall not be liable to the Debtor, any creditor or any other person, firm or corporation, for any error of judgment or for any mistake of law or fact or any act done, caused to be done, or omitted to be done, by the Disbursing Agent or any of its agents. The Disbursing Agent shall be liable only for acts of willful misconduct, gross negligence or breach of fiduciary duty by itself or such agents.

**ARTICLE XIII**  
**MEANS FOR IMPLEMENTATION**

13.1 Plan Funding. The Plan shall be funded with the Plan Distribution Fund, which shall be held pursuant to Section 345 of the Bankruptcy Code and ultimately distributed by the Disbursing Agent in accordance with the terms of this Plan.

13.2 Means For Implementation: Sale. Pursuant to an Order of the Bankruptcy Court, the Debtor sold its interests in its non-excluded assets to the Purchaser in the amount of \$1 million. The proceeds from the Sale have been deposited into an escrow account maintained by the Disbursing Agent to establish the Plan Distribution Fund. The Plan Distribution Fund will be further funded by (a) the proceeds, if any, from the sale of Debtor's excluded inventory, (b) collection of its accounts receivable and (c) proceeds from any Estate Causes of Action.

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**ARTICLE XIV**  
**DISTRIBUTIONS AND UNCLAIMED PAYMENTS**

14.1 Distributions to holders of Allowed Claims shall be sent to their last known address set forth on a proof of claim filed with the Bankruptcy Court or if no proof of claim is filed, on the Schedules, or to such other address as may be designated by such Creditor in writing to the Debtor. A payment is to be deemed unclaimed if the payment on the distribution is not negotiated by the particular claimholder within 120 days of it being sent by the Debtor.

14.2 If after thirty (30) days additional attempted notice to the claimholder such distribution remains unclaimed or unnegotiated, then and in that event such holder's Claim shall thereupon be deemed canceled and any such holder shall not be entitled to any payments under the Plan, and such unclaimed distributions shall be distributed Pro Rata to Allowed Class 3



Creditors unless such unclaimed distributions total less than \$5,000, and in such event will be deemed available for post-Effective Date Professional Fees.

**ARTICLE XV**  
**CONDITIONS PRECEDENT TO CONFIRMATION**  
**OF PLAN AND EFFECTIVE DATE**

15.1 Conditions to the Occurrence of Confirmation. The occurrence of the Confirmation Date shall be subject to the entry of the Confirmation Order in form and substance reasonably acceptable to the Debtor and the Committee.

15.2 Conditions to the Occurrence of the Effective Date. The Plan may not be effective until the entry of the Confirmation Order as a Final Order that remains in full force and effect and shall not have been stayed or reversed.

15.3 Non-Occurrence of the Effective Date; Non-Waiver of Conditions. In the event that the Debtor determines that the conditions to the Effective Date set forth in the immediately foregoing paragraph of this Plan cannot be satisfied, the Debtor may propose a new plan, may modify this Plan as permitted by law, or may request other appropriate relief.

**ARTICLE XVI**  
**EVENTS OF DEFAULT**

16.1 Events of Default. The occurrence of any of the following events shall constitute an event of default under the Plan (“Event of Default”):

(a) The failure of the Debtor, after receipt of ten (10) business days written notice, to make any payment required to be made under the Plan, which failure, prior to the receipt of the ten (10) days written notice, shall have remained uncured for a period of thirty (30) days after the date such payment is required to be made, unless the time for such payment has been extended in accordance with the Plan.

(a) The failure of the Debtor to comply with any of the other covenants contained in the Plan, which failure shall remain uncured for a period of thirty (30) days after the Debtor has received ten (10) days written notice of such failure.

16.2 Effect of Default. In the event that the Debtor defaults under the provisions of the Plan, and such default is not cured, then, at the option of the Committee, any creditor or the United States Trustee, a motion may be filed with the Bankruptcy Court seeking an Order of the Bankruptcy Court compelling the Debtor to make such payment or act in a manner consistent with the provisions of the Plan or seeking the conversion of the Chapter 11 Case to a Chapter 7 proceeding.

**ARTICLE XVII**  
**VOTING INSTRUCTIONS**

17.1 Time To Vote. Pursuant to a Court order, ballots on the Debtor's Plan must be filed within a prescribed period of time. All ballots should be properly completed as to whether the creditor accepts or rejects the Plan and be forwarded, in accordance with the instructions.

17.2 Blank Ballots. Any ballot which is executed by the holder of an Allowed Claim or Interest but which does not indicate an acceptance or rejection of the Plan shall be deemed to be an acceptance of the Plan, in the amount set forth on the Debtor's Schedules as may be amended.

17.3 Deemed Acceptance. Any impaired Class which fails to vote either to accept or reject the Plan shall be deemed to accept the Plan.

**ARTICLE XVIII**  
**POST-CONFIRMATION REPORTS**

18.1 The Debtor shall be responsible for filing post-confirmation reports with the Bankruptcy Court and shall pay all quarterly fees required under 28 U.S.C. section 1930 until the

earlier of (a) conversion or dismissal of the Chapter 11 Case or (b) entry of a final decree closing the Chapter 11 Case.

**ARTICLE XIX**  
**RETENTION OF JURISDICTION**

19.1 The Bankruptcy Court shall retain jurisdiction of the Chapter 11 Case:

(a) To determine all controversies relating to or concerning the allowance of Claims upon objection to such Claims by the Debtor;

(b) To determine requests for payment of Claims entitled to priority under section 507(a)(1) of the Bankruptcy Code, including any and all applications for compensation for professional and similar fees;

(c) To determine any and all applications pursuant to section 365 of the Bankruptcy Code for the rejection, or assumption and/or assignment, as the case may be, of executory contracts and unexpired leases to which the Debtor is a party or with respect to which the Debtor may be liable, and to determine and, if necessary, to liquidate, any and all Claims arising therefrom;

(d) To determine any and all applications, adversary proceedings, and contested or litigated matters over which the Bankruptcy Court has subject matter jurisdiction pursuant to 28 U.S.C. sections 157 and 1334;

(e) To determine all Disputed Claims and amendments to the Debtor's Schedules;

(f) To adjudicate controversies or interpretations pursuant to any order or stipulation entered by the Bankruptcy Court prior to the Confirmation Date;

(g) To modify this Plan pursuant to section 1127 of the Bankruptcy Code or to remedy any defect or omission or reconcile any inconsistencies in this Plan or Confirmation Order to the extent authorized by the Code;

(h) To make such orders as are necessary or appropriate to carry out the provisions of this Plan;

(i) To resolve controversies and disputes regarding the interpretation or enforcement of the terms of this Plan; and

(j) To enter a final decree closing the Chapter 11 Case.

Dated: Brooklyn, New York  
October 16, 2017

Deleted: September 12

THE FRESH ICE CREAM COMPANY, LLC

By: /s/ David Stein  
David Stein, Managing Member

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