

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re:</b>	:	<b>Chapter 11</b>
	:	
<b>GSC GROUP, INC., et al.,</b>	:	<b>Case No. 10-14653 (AJG)</b>
	:	
<b>Debtors.<sup>1</sup></b>	:	<b>(Jointly Administered)</b>
	:	
	:	
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**DISCLOSURE STATEMENT PURSUANT TO  
SECTION 1125 OF THE BANKRUPTCY CODE FOR  
BLACK DIAMOND CAPITAL MANAGEMENT, L.L.C.'S FOURTH AMENDED  
JOINT CHAPTER 11 PLAN FOR GSC GROUP, INC. AND ITS AFFILIATED DEBTORS**

**THIS DISCLOSURE STATEMENT, AND THE PLAN DESCRIBED HEREIN, ARE NOT RELATED TO THE DISCLOSURE STATEMENT FOR THE CHAPTER 11 TRUSTEE'S JOINT CHAPTER 11 PLAN FOR WHICH SOLICITATION ALREADY OCCURRED. THIS DISCLOSURE STATEMENT IS FOR AN ALTERNATIVE JOINT CHAPTER 11 PLAN PROPOSED BY BLACK DIAMOND CAPITAL MANAGEMENT, L.L.C.**

**IF YOU ARE A CREDITOR OF THE DEBTORS YOU HAVE THE RIGHT TO ELECT BETWEEN THREE PAYMENT OPTIONS UNDER THIS PLAN. IF YOU DO NOT TAKE ACTION AND CHOOSE ONE OF THESE OPTIONS YOU WILL BE DEEMED TO HAVE ELECTED TO RECEIVE AN UP-FRONT CASH DISTRIBUTION. THE UP-FRONT CASH DISTRIBUTION PROVIDES A QUICKER RECOVERY AND MORE CERTAIN RECOVERY BUT MAY NOT BE THE MOST VALUABLE OPTION THAT YOU ARE ENTITLED TO. YOU SHOULD CAREFULLY REVIEW THE DISCLOSURE STATEMENT, INCLUDING THE PROJECTED RECOVERIES ON PAGES 16-18, TO CONSIDER WHICH OPTION YOU PREFER. YOU MUST SUBMIT A BALLOT BY FEBRUARY 6, 2012 AT 4:00 P.M. (PREVAILING EASTERN TIME) IF YOU PREFER AN OPTION OTHER THAN THE UP-FRONT CASH OPTION.**

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**Dated: January 12, 2012**

*Counsel to Black Diamond Capital Management, L.L.C.*

<sup>1</sup> The Filing Debtors along with the last four digits of each Filing Debtor's federal tax identification number are GSC Group, Inc. (6382), GSCP, LLC (6520), GSC Active Partners, Inc. (4896), GSCP (NJ) Inc. (3944), GSCP (NJ) Holdings, L.P. (0940), GSCP (NJ), L.P. (0785), and GSC Secondary Interest Fund, LLC (6477).

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	4
A. Approval of the Disclosure Statement .....	9
B. Voting Procedures.....	10
C. Confirmation Hearing .....	11
D. Notice to Holders of Claims Entitled to Vote.....	11
II. OVERVIEW OF THE PLAN.....	14
A. Summary of Classification and Treatment of Claims and Equity Interests Under the Plan.....	14
B. Formation of the Liquidating Trust.....	19
C. Reorganized Debtors.....	21
D. Tax Indemnification Agreement .....	22
E. Substantive Consolidation .....	22
III. DESCRIPTION AND HISTORY OF THE DEBTORS' BUSINESS .....	23
A. The Investment Management Business of GSC .....	23
B. Prepetition Funding of the Debtors' Operations.....	25
IV. EVENTS LEADING TO CHAPTER 11 FILING.....	25
A. Economic Crisis .....	25
B. Negotiations with Prepetition Lenders.....	25
V. HISTORY OF THESE BANKRUPTCY CASES .....	26
A. Entry of the Bidding Procedures Order .....	26
B. The Initial Bonus Motion.....	27
C. Marketing Process.....	28
D. The Auction .....	29
E. The Consent Process .....	30
F. The Initial Proposed Sale .....	30
G. Amendment to the Initial APA .....	31
H. The Option Agreement .....	31
I. Hearing on the Initial Sale Order .....	31
J. Appointment of the Chapter 11 Trustee.....	32
K. Cessna Finance Moves to Lift the Stay.....	32
L. The Bar Date Order.....	33
M. Employee Bonus Program .....	33
N. The Frank Bonus Motion .....	34
O. Non-Controlling Lender Group's Plan of Reorganization.....	34

P.	The Chapter 11 Trustee’s Investigations .....	35
Q.	The Purchase Agreements and the Chapter 11 Trustee’s Sale Motion.....	35
R.	Litigation Against the Debtors.....	38
S.	Rejection of the Chapter 11 Trustee’s Plan & Vote Disqualification/Designation Efforts .....	39
T.	Achieving the Agreed Stipulated Order & its Material Terms .....	40
VI.	SUMMARY OF BDCM’S JOINT CHAPTER 11 PLAN.....	42
A.	Classification and Treatment of Claims and Equity Interests.....	42
B.	Means for Implementation of the Plan.....	47
C.	Treatment of Executory Contracts and Unexpired Leases .....	54
D.	Provisions Governing Distributions Under the Plan.....	54
E.	Procedures for Resolving Disputed Claims .....	58
F.	Conditions Precedent to Plan’s Confirmation and Effective Date.....	59
G.	Effect of Confirmation.....	59
H.	Administrative Provisions.....	66
VII.	CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN .....	68
A.	IRS Circular 230 Disclosure .....	69
B.	Tax Consequences to GSC Group .....	70
C.	Cancellation of Indebtedness and Reduction of Tax Attributes .....	70
D.	Section 382 Limitation.....	71
E.	Alternative Minimum Tax .....	72
F.	Tax Consequences of Receipt of Trust Units by Reorganized GSC Group .....	73
G.	Tax Consequences to General Unsecured Creditors.....	73
H.	Tax Consequences to Preferred Stockholders.....	77
I.	Disputed General Unsecured Claims Reserves.....	77
J.	Information Reporting and Backup Withholding .....	77
VIII.	CERTAIN RISK FACTORS AND OTHER CONSIDERATIONS .....	78
A.	Certain Bankruptcy Law Considerations .....	78
B.	Risks Related to the Reorganized GSC Group Stock .....	79
C.	Additional Risk Factors .....	81
IX.	CONFIRMATION AND CONSUMMATION OF THE PLAN.....	82
A.	Solicitation of Votes .....	82
B.	The Confirmation Hearing.....	83
C.	Confirmation.....	83
D.	Consummation .....	85
X.	ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN .....	86
A.	Liquidation Under Chapter 7 of the Bankruptcy Code.....	86

B. Alternative Plan(s) of Reorganization .....86  
C. Dismissal of the Chapter 11 Cases.....86  
XI. CONCLUSION AND RECOMMENDATION.....86  
  
EXHIBIT A PLAN .....88

## I. INTRODUCTION

*Unless otherwise defined herein, capitalized terms have the meanings ascribed to them in the BDCM Plan attached hereto as Exhibit A.*

BDCM submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code in connection with the solicitation of votes for *Black Diamond Capital Management, L.L.C.'s Fourth Amended Joint Chapter 11 Plan for GSC Group, Inc. and its Affiliated Debtors*, as the same may be amended or modified (the “Plan” or “BDCM Plan,” attached hereto as Exhibit A), filed by BDCM with the Bankruptcy Court on the date hereto. BDCM is providing the information in this Disclosure Statement to Holders of Class 3 General Unsecured Claims and Holders of Class 4 Preferred Equity Interests, the only parties entitled to vote on the BDCM Plan. *BDCM urges every Holder of a Claim or Equity Interest entitled to vote on the Plan to read the entire Disclosure Statement and the BDCM Plan carefully and consider all information in this Disclosure Statement before deciding whether to vote to accept or reject the BDCM Plan.*

### ***BDCM's Settlement with the Chapter 11 Trustee***

After the Chapter 11 Trustee completed solicitation of its chapter 11 plan, but prior to confirmation, BDCM and the Chapter 11 Trustee agreed to a settlement (memorialized in the Agreed Stipulated Order) that paved the way for BDCM to proceed with its Plan with the Chapter 11 Trustee's support. The Bankruptcy Court approved the Agreed Stipulated Order reached between BDCM and the Chapter 11 Trustee on December 20, 2011. Pursuant to the Agreed Stipulated Order, the Chapter 11 Trustee has adjourned seeking confirmation of the Trustee's Plan while BDCM solicits votes on the BDCM Plan and pursues confirmation of such plan. In the event that the BDCM Plan is confirmed and consummated by March 31, 2012, the Chapter 11 Trustee shall abandon pursuing Bankruptcy Court approval of the Trustee's Plan and the distributions, set forth in the BDCM Plan and described in this Disclosure Statement, shall be made to the Debtors' creditors and interest holders. Pursuant to the Agreed Stipulated Order, the Chapter 11 Trustee has agreed to support the Plan.

In addition, pursuant to the Agreed Stipulated Order, BDCM has provided additional funds to the Chapter 11 Trustee to preserve the Cash available for distribution to Holders of General Unsecured Claims. Accordingly, the Agreed Stipulated Order resulted in BDCM moving forward with its Plan, which is now supported by the Chapter 11 Trustee and which provides greater recovery alternatives to Holders of General Unsecured Claims and Preferred Equity Interests than the Chapter 11 Trustee's Plan.

### ***Overview of the BDCM Plan***

The BDCM Plan is a plan of reorganization under which the Reorganized Debtors will continue the operation of the Debtors' existing investment management business. BDCM submits that its proposed plan of reorganization is a more preferable and value-preserving alternative to the *Chapter 11 Trustee's Modified Joint Chapter 11 Plan for GSC Group, Inc. and its Affiliated Debtors Other Than GSC Secondary Interest Fund, LLC* [Docket No. 981] (the “Trustee's Plan”), as described in the Trustee's Plan's accompanying disclosure statement

[Docket No. 800] (the “**Trustee’s Disclosure Statement**”).<sup>2</sup> In particular, BDCM believes that the BDCM Plan provides a greater economic recovery to the Debtors’ stakeholders than contemplated under the Trustee’s Plan and maximizes going forward value for the estate and its constituents.

The Trustee’s Plan contemplated the wind-down and liquidation of the Debtors, with most of the Debtors’ assets to be placed in, and distributions made from, a liquidating trust. The BDCM Plan, by contrast, would both preserve all of the Debtors as reorganized going forward entities with ongoing administration, and deliver all of the benefits as the Trustee’s Plan vis-à-vis liquid assets through the creation of a Liquidating Trust to distribute the proceeds of all assets of the estates that are not related to the going-forward business of the Reorganized Debtors enhanced by additional cash to be provided by BDCM and certain amendments to the Tax Indemnification Agreement that will accelerate cash distributions to Holders of Allowed General Unsecured Claims.

Under the BDCM Plan, all unsecured creditors will have the option of receiving a greater recovery than under the Trustee’s Plan. While the Trustee’s Plan offered only a single option for unsecured creditors, the BDCM Plan offers three separate options, as discussed in detail below. Further, under the BDCM Plan, Preferred Equity Interest holders will receive shares of Reorganized GSC Group’s Class A Common Stock. Under the Trustee’s Plan, Preferred Equity Interest holders would receive no recovery. The benefits of the BDCM Plan to Holders of General Unsecured Claims and Preferred Equity Interests compared with the Trustee’s Plan are set forth below:

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<sup>2</sup> On October 6, 2011, the Court entered that certain *Order Granting Trustee’s Motion for Entry of an Order: (I) Approving the Disclosure Statement; (II) Approving the Disclosure Statement Hearing Notice; (III) Approving Solicitation Packages and Procedures for Distribution Thereof; (IV) Approving Form of Ballot and Establishing Procedures for Voting on the Trustee’s Joint Chapter 11 Plan; and (V) Scheduling a Hearing and Establishing Notice and Objection Procedures in Respect of Confirmation of the Trustee’s Joint Chapter 11 Plan* [Docket No. 812] (the “**Trustee’s Disclosure Statement Order**”), which approved the disclosure statement filed by the chapter 11 trustee appointed in these chapter 11 cases (the “**Chapter 11 Trustee**”).

Features	The BDCM Plan (Reorganization)			The Trustee's Plan (Liquidation)
	<u>Up-front Cash Option</u>	<u>Combination Cash Option</u>	<u>Equity Option</u>	<u>Single Option</u>
<b>Initial Cash Distribution</b>	\$6.6 Million <sup>3</sup>	\$5.6 Million	--	\$4.6 Million
<b>Interest in Liquidating Trust</b>	--	Yes <sup>4</sup>	-- <sup>5</sup>	Yes
<b>Equity in Reorganized GSC Group</b>	--	--	Yes	No
<b>Preferred Equity Recovery</b>	Yes	Yes	Yes	No

BDCM has filed the BDCM Plan to preserve more of the Debtors' value for the Debtors' stakeholders than it believes would be preserved if the Trustee's Plan was consummated. BDCM submits that the BDCM Plan provides more attractive treatment for general unsecured claims and preferred equity holders than the Trustee's Plan. BDCM is interested in maximizing the value of the Debtors because BDCM or its affiliates hold over \$4 million of General Unsecured Claims and have additional financial interests in GSC Group, Inc. as a result of certain claims belonging to investment funds now managed by an affiliate of BDCM. Further, in accordance with the Purchase Agreements discussed in Section V.Q hereof, the Debtors entered into a Service Agreement relating to the Management Contracts, pursuant to which an affiliate of BDCM is compensated for providing services relating to the Management Contracts.

The BDCM Plan offers Holders of General Unsecured Claims three recovery options from which to select, rather than just the single recovery option the Chapter 11 Trustee offered. The BDCM Plan affords Holders of Allowed General Unsecured Claims the option of choosing: (1) a fast cash payout (called the "**Up-front Cash Option**"); (2) a partial cash payout close to the Effective Date plus a delayed cash payout from the proceeds of assets contributed to the Liquidating Trust (called the "**Combination Cash Option**"); or (3) shares of Reorganized GSC Group Series B Preferred Stock and shares of Reorganized GSC Group Convertible Class B

<sup>3</sup> The aggregate amount of Cash available for distribution to General Unsecured Creditors under the Up-front Cash Option and Combination Cash Option may be reduced to the extent such Cash is required to pay Allowed Claims senior in priority to General Unsecured Claims. Any such reduction would also have applied under the Trustee's Plan.

<sup>4</sup> The Liquidating Trust will hold assets including: (i) a \$50 million life insurance policy that the Chapter 11 Trustee believes is worth approximately \$3-10 million (or the proceeds of such policy if it is sold in advance of the Effective Date); and (ii) certain causes of action retained by GSC and its affiliates.

<sup>5</sup> Under the Equity Option, any general unsecured creditor who elects the Equity Option will receive shares of Reorganized GSC Group Series B Preferred Stock and Reorganized GSC Group Convertible Class B Common Stock and Reorganized GSC Group will receive the pro rata share of Combination Option Plan Cash and the pro rata share of beneficial interests in the Liquidating Trust that such creditor would have otherwise received had it elected the Combination Cash Option instead of the Equity Option.

Common Stock, which will comprise between 33% and 49%, at BDCM's discretion, of the Reorganized GSC Group Common Stock with 24.9% of the voting rights (called the "**Equity Option**"). Further, the BDCM Plan increases the amount of money available for a near term distribution to Holders of Allowed General Unsecured Claims from that offered under the Trustee's Plan by up to \$2 million, depending on whether such Holder elects the Up-front Cash Option or the Combination Cash Option and loosens restrictions on near term distributions to Holders of Allowed General Unsecured Claims by increasing the permitted distributions under the Tax Indemnification Agreement from \$4.6 million to up to \$6.6 million. The Up-front Cash Option and the Combination Cash Option, therefore, permit Holders of Allowed General Unsecured Claims who elect one of these Cash Options to receive an enhanced Cash recovery as compared to the Chapter 11 Trustee's Plan. The Equity Option provides Holders who elect the Equity Option with an alternative to Cash recoveries under which such Holders may participate in any equity value associated with Reorganized GSC Group, subject to risks inherent in such equity securities as further described in Article VIII.

**Holders of General Unsecured Claims will have to elect one – and only one – option at the time they cast a vote regarding the BDCM Plan. Holders of General Unsecured Claims who do not vote, or who vote but do not affirmatively elect the Up-front Cash Option, the Combination Cash Option or the Equity Option, or elect more than one of these options, will be deemed to have elected the Up-front Cash Option.**

If a Holder of an Allowed General Unsecured Claim elects (or is deemed to elect) the Up-front Cash Option, that Holder will be entitled to its pro-rata share of \$6.6 million (minus payment of Allowed Priority Claims and Allowed Other Priority Claims), prorated based on the percentage of such Holder's Allowed General Unsecured Claim relative to the pool of Allowed General Unsecured Claims, on or shortly after the Effective Date on account of its Allowed General Unsecured Claim. If a Holder of an Allowed General Unsecured Claim elects the Combination Cash Option, that Holder will be entitled to (i) its pro-rata share of \$5.6 million (minus payment of Allowed Priority Claims and Allowed Other Priority Claims), prorated based on the percentage of such Holder's Allowed General Unsecured Claim relative to the pool of Allowed General Unsecured Claims, on or shortly after the Effective Date on account of its Allowed General Unsecured Claim, plus (ii) its pro-rata share of units in the Liquidating Trust, prorated based on the percentage of such Holder's Allowed General Unsecured Claim relative to the pool of Allowed General Unsecured Claims. Also, any Holder of an Allowed General Unsecured Claim that elects the Equity Option will be able to participate through its share of Reorganized GSC Group Stock in future value associated with the Reorganized Debtors' going forward operations; *provided, however*, that such Holder will be a minority equityholder in Reorganized GSC Group and, as such, will have significantly limited decisionmaking authority, limited control over the business and affairs of the Reorganized Debtors, and a limited trading market for its shares. As a minority equityholder, a Holder electing the Equity Option likely will have no material influence over decisions of the Reorganized Debtors, and there is no guarantee that an active trading market for shares in Reorganized GSC Group will develop. Please refer to Articles II.A and VIII herein for a more detailed discussion of applicable risks related to the Equity Option.

To provide for the cash recoveries set forth in the BDCM Plan, the Tax Indemnification Agreement (under which the Debtors are obligated to reimburse the Designated Purchaser for tax



payments made by the Designated Purchaser to the extent that the Debtors have available cash in excess of the initial \$4.6 million designated for distribution to Priority and General Unsecured Claims) would be amended to allow the cash designated for distribution to Priority Creditors and General Unsecured Creditors to be increased from \$4.6 million to up to \$6.6 million, all of which will be available for distribution regardless of the status of the Tax Indemnification Agreement.

Further, under the Agreed Stipulated Order, that BDCM entered into with the Chapter 11 Trustee and the Bankruptcy Court approved, BDCM has provided the Chapter 11 Trustee with \$1 million to satisfy allowed chapter 11 professional fees and agreed to provide \$4 million in escrow funds (or through a letter of credit) for the Reorganized Debtors to use to satisfy any “Straddle Tax” (*i.e.*, any income tax liability required to be paid by the Debtors or Reorganized GSC Group that would not have been required to be paid had the Effective Date occurred on or before December 31, 2011), likely ensuring that cash available for Holders of General Unsecured Claims is not reduced by any Straddle Tax or additional chapter 11 professional fees incurred prior to consummation of the BDCM Plan.

In light of these provisions, with respect to cash recoveries, BDCM submits that the BDCM Plan provides unsecured creditors the option of the certainty of a larger cash recovery payable shortly following the Effective Date (an option that BDCM believes many creditors might prefer) or an option that is functionally identical to the Chapter 11 Trustee’s Liquidating Trust, but gives creditors electing such option an upfront payment greater than what they would receive under the Trustee’s Plan. The increase in available cash for prompt distribution from \$4.6 million to \$6.6 million is a key feature of the BDCM Plan, which provides that BDCM or an affiliate will loan the Debtors up to an additional \$2 million specifically to increase the cash available for cash payment of Allowed Unsecured General Claims.

By contrast, the Trustee’s Plan contained only one option for general unsecured creditors — to receive its pro-rata share of only *up to* \$4.6 million on or shortly after the Effective Date on account of its Allowed General Unsecured Claim, plus the prospect of subsequent distributions out of the Liquidating Trust in an indeterminate amount above the initial distribution.

### ***BDCM Plan Distribution Recoveries***

Utilizing the assumptions made by the Chapter 11 Trustee and discussed in detail below with respect to the estimated amount of Allowed General Unsecured Claims and Allowed Priority Tax claims, the estimated cash distribution to Holders of Allowed General Unsecured Claims upon the Effective Date (and for so long thereafter as the Tax Indemnification Agreement remains in effect) would range from 44-55%<sup>6</sup> under the BDCM Plan for those who elect the Upfront Cash Option. Creditors who select the Combination Cash Option will receive less cash immediately, but will receive trust units and may receive substantially higher recoveries in the

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<sup>6</sup> The estimated Up-front Cash Option recoveries are based upon current estimates provided by the Chapter 11 Trustee that there will be no Allowed Priority Tax Claims. In the event that there are Allowed Priority Tax Claims, the recovery may be lower.

long-term on account of any distributable assets in the Liquidating Trust (subject to a risk that certain tax obligations might reduce or eliminate such higher recoveries).<sup>7</sup>

If a Holder of an Allowed General Unsecured Claim affirmatively elects the Equity Option, the BDCM Plan provides that Reorganized GSC Group will make an in-kind distribution to that Holder on account of its Allowed General Unsecured Claim of (a) Reorganized GSC Group Series B Preferred Stock, and (b) Reorganized GSC Group Convertible Class B Common Stock, a new class of common stock which will comprise between 33% and 49%, at BDCM's discretion, of the common stock (with 24.9% of the voting rights) of Reorganized GSC Group and will be convertible upon majority vote of the holders of such Reorganized GSC Group Convertible Class B Common Stock on a one-for-one basis to shares of Reorganized GSC Group Class C Common Stock, which will, upon exercise of such conversion, comprise 49% of the common stock of Reorganized GSC Group (and hold 49% of the voting rights). This option, while inherently involving a meaningful risk of return, offers Holders of Allowed General Unsecured Claims who elect the Equity Option the possibility of a greater percentage recovery on their allowed claims. BDCM intends to elect the Equity Option for any claims held or controlled by it or any of its affiliates.

Moreover, while the Trustee's Plan contemplates no recovery for Holders of Preferred Equity Interests, the BDCM Plan provides that Holders of Preferred Equity Interests will receive a Pro Rata share of Reorganized GSC Group Class A Common Stock equal to between 51% and 67%, at BDCM's discretion, of the total GSC Group Common Stock (with voting rights of 75.1% subject to potential reduction to 51%). The value of these shares is dependent upon the performance of the Reorganized Debtors' operations and the Reorganized Debtors' enterprise value.

A. Approval of the Disclosure Statement

On January 12, 2012, after notice and a hearing, the Bankruptcy Court approved this Disclosure Statement as containing adequate information of a kind and in sufficient detail to enable a hypothetical investor in a voting class to make an informed judgment whether to accept or reject the Plan (the "**Disclosure Statement Order**"). APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN OR AS TO THE ACCURACY OF ANY INFORMATION SET FORTH HEREIN OR AS TO THE LEGITIMACY OF ANY STATEMENT OR ALLEGATION CONTAINED HEREIN. Instead, approval indicates that the Bankruptcy Court found only that the Disclosure Statement contains adequate information of a kind, and in sufficient detail, to enable a hypothetical, reasonable investor typical of the Holders of Claims in the solicited Classes to make informed judgments with respect to the acceptance or rejection of the Plan.

The Disclosure Statement Order sets forth in detail, among other things, 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.

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<sup>7</sup> The Chapter 11 Trustee presently believes no such tax exposure exists.

B. Voting Procedures

Pursuant to the Disclosure Statement Order, the Bankruptcy Court set October 5, 2011 as the record date for holders of Claims and Equity Interests entitled to vote on the Plan (the “**Voting Record Date**”). Holders of Class 3 General Unsecured Claims and Holders of Class 4 Preferred Equity Interests are the only parties entitled to vote on the Plan. Further, only Holders of record as of the Voting Record Date that otherwise are entitled to vote under the Plan will receive a Ballot and may vote on the Plan. Unless objected to by BDCM, Holders of Claims that were entitled to vote to accept or reject the Trustee’s Plan as of the Voting Record Date will likewise be entitled to vote to accept or reject BDCM’s Plan.

If you are entitled to vote to accept or reject the BDCM Plan, a ballot for the acceptance or rejection of the BDCM Plan is enclosed with this Disclosure Statement mailed to you for the purpose of voting on the BDCM Plan. The ballot also provides for the selection among the Up-front Cash Option, the Combination Cash Option and the Equity Option.

**IF YOU VOTED TO ACCEPT OR REJECT THE TRUSTEE’S PLAN THAT DOES NOT IN ANY WAY PRECLUDE YOU FROM VOTING ON THE BDCM PLAN. FURTHER, ANY VOTE YOU CASTED WITH RESPECT TO THE TRUSTEE’S PLAN WILL NOT COUNT IN DETERMINING WHETHER THE BDCM PLAN IS ACCEPTED OR REJECTED.**

After carefully reviewing this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the BDCM Plan and your selection of the Up-front Cash Option, the Combination Cash Option or the Equity Option by voting in favor of or against the BDCM Plan and making your option election<sup>8</sup> on the enclosed ballot(s) and return the same to:

VIA FIRST CLASS MAIL

GSC Group, Inc. Ballot Processing  
c/o Epiq Bankruptcy Solutions, LLC  
FDR Station, P.O. Box 5014  
New York, New York 10150-5014

VIA OVERNIGHT MAIL or HAND DELIVERY

GSC Group, Inc. Ballot Processing  
c/o Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, 3rd Floor  
New York, New York 10017

**TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED BY NO LATER THAN 4:00 P.M. (PREVAILING**

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<sup>8</sup> As noted above on page 2 and below in Section II.A. hereof, Holders of General Unsecured Claims who do not vote, or who vote but do not affirmatively elect the Combination Cash Option or the Equity Option, or elect more than one of these options, will be deemed to have elected the Up-front Cash Option.

**EASTERN TIME) ON FEBRUARY 6, 2012. ANY EXECUTED BALLOT RECEIVED THAT DOES NOT INDICATE EITHER AN ACCEPTANCE OR A REJECTION OF THE PLAN SHALL NOT BE COUNTED.**

If you are a Holder of a Claim entitled to vote on the Plan and you did not receive a ballot, received a damaged ballot or lost your ballot, or if you have any questions concerning the Disclosure Statement, the Plan or the procedures for voting on the Plan, please call Epiq Bankruptcy Solutions, LLC at (877) 797-6086.

C. Confirmation Hearing

Pursuant to Section 1128 of the Bankruptcy Code, the Confirmation Hearing will be held on **February 14, 2012, at 2:00 p.m. (prevailing Eastern Time)** before the Honorable Arthur J. Gonzalez in Room 523, United States Bankruptcy Court for the Southern District of New York, Alexander Hamilton House, One Bowling Green, New York, New York 10004. Objections, if any, to Confirmation of the Plan must be served and filed so that they are actually filed and received on or before **February 10, 2012 at 4:00 p.m. (prevailing Eastern Time)**. The Confirmation Hearing may be adjourned from time to time without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

D. Notice to Holders of Claims Entitled to Vote

The purpose of this Disclosure Statement is to enable you, as a creditor whose Claim is Impaired under the Plan, to make an informed decision in exercising your right to accept or reject the Plan.

**THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN. PLEASE READ THIS DOCUMENT WITH CARE.**

**THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THE DELIVERY OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF REGARDLESS OF THE DATE OF ACTUAL DELIVERY OF THE DISCLOSURE STATEMENT. HOLDERS OF CLAIMS SHOULD CAREFULLY READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING THE EXHIBITS, PRIOR TO VOTING ON THE PLAN.**

**THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE BDCM PLAN. IF ANY INCONSISTENCY EXISTS BETWEEN THE BDCM PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE BDCM PLAN CONTROL.**

**IN SEVERAL INSTANCES, THIS DISCLOSURE STATEMENT INCORPORATES INFORMATION CONTAINED IN THE TRUSTEE'S DISCLOSURE STATEMENT. THIS IS INTENDED TO SIMPLIFY THE PROCESS OF VOTE SOLICITATION AND REFLECTS THAT FOR PURPOSES OF THE PLAN PROCESS**

**BDCM DOES NOT HAVE ANY SUBSTANTIVE OR PERTINENT ISSUES WITH THE INFORMATION CONTAINED IN SUCH SECTIONS. BDCM IS NOT, HOWEVER, VOUCHING FOR THE ACCURACY OR COMPLETENESS OF ANY SUCH INFORMATION. BDCM RESERVES ITS RIGHTS TO CONTEST ANY SUCH INFORMATION IN ANY CONTEXT OTHER THAN THE PLAN PROCESS.**

THE DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE BDCM PLAN, AND NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY LIABILITY BY ANY PARTY OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE BDCM PLAN ON THE DEBTORS OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

NO PERSON SHOULD RELY ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM OR EQUITY INTEREST IS, OR IS NOT, IDENTIFIED IN THIS DISCLOSURE STATEMENT. THE REORGANIZED DEBTORS MAY SEEK TO INVESTIGATE, FILE, AND PROSECUTE CLAIMS AND INTERESTS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN REGARDLESS OF WHETHER THIS DISCLOSURE STATEMENT IDENTIFIES SUCH CLAIMS OR OBJECTIONS TO CLAIMS.

THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION. NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE REGULATORY AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT, OR THE EXHIBITS OR THE STATEMENTS CONTAINED HEREIN, AND ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

THIS DISCLOSURE STATEMENT IS NOT LEGAL ADVICE TO YOU. THE CONTENTS OF THIS DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS LEGAL, BUSINESS OR TAX ADVICE. EACH HOLDER OF A CLAIM OR AN EQUITY INTEREST SHOULD CONSULT HIS OR HER OWN LEGAL COUNSEL AND ACCOUNTANT WITH REGARD TO ANY LEGAL, TAX AND OTHER MATTERS CONCERNING HIS OR HER CLAIM OR INTEREST. THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE BDCM PLAN OR OBJECT TO CONFIRMATION OF THE BDCM PLAN.

ALL HOLDERS OF CLAIMS SHOULD CAREFULLY READ AND CONSIDER FULLY THE RISK FACTORS SET FORTH IN ARTICLE IX – “CERTAIN RISK FACTORS AND OTHER CONSIDERATIONS” – OF THIS DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT THE BDCM PLAN.

SUMMARIES OF CERTAIN PROVISIONS OF AGREEMENTS REFERRED TO IN THIS DISCLOSURE STATEMENT DO NOT PURPORT TO BE COMPLETE AND ARE SUBJECT TO, AND ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO, THE FULL TEXT OF THE APPLICABLE AGREEMENTS, INCLUDING THE DEFINITIONS OF TERMS CONTAINED IN SUCH AGREEMENTS.

***CAUTIONARY STATEMENTS CONCERNING PROJECTIONS, VALUATION OF ASSETS, ESTIMATION OF CLAIMS AND FINANCIAL STATEMENTS; FORWARD-LOOKING STATEMENTS.*** THE INCLUSION IN THIS DISCLOSURE STATEMENT OF PROJECTIONS, ASSETS VALUATIONS, ESTIMATES OF CLAIMS OR PLAN RECOVERIES, TAX ISSUES, ATTRIBUTES, AND RAMIFICATIONS AND FINANCIAL STATEMENTS SHOULD NOT BE REGARDED AS AN INDICATION, THAT BDCM OR ANY OF ITS ADVISORS OR REPRESENTATIVES CONSIDER SUCH INFORMATION TO BE AN ACCURATE PREDICTION OF FUTURE EVENTS OR A COMPLETE AND ACCURATE REFLECTION OF THE DEBTORS' CURRENT FINANCIAL CONDITION OR TAX SITUATION, AND SUCH INFORMATION SHOULD NOT BE RELIED ON AS SUCH. NEITHER BDCM NOR ANY OF ITS ADVISORS OR REPRESENTATIVES ASSUMES ANY RESPONSIBILITY FOR THE REASONABLENESS, COMPLETENESS, ACCURACY OR RELIABILITY OF SUCH INFORMATION, AND NONE OF THEM INTENDS TO UPDATE OR OTHERWISE REVISE SUCH INFORMATION TO REFLECT EITHER CIRCUMSTANCES EXISTING AFTER THE DATE WHEN MADE OR THE OCCURRENCE OF FUTURE EVENTS, EVEN IF ANY OR ALL OF SUCH INFORMATION IS SHOWN TO BE IN ERROR.

CERTAIN MATTERS DISCUSSED HEREIN (INCLUDING, BUT NOT LIMITED TO, THE PROJECTIONS) ARE FORWARD-LOOKING STATEMENTS THAT ARE SUBJECT TO CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THE STATEMENTS INCLUDED HEREIN (INCLUDING PROJECTIONS AND ANALYSES) AND SHOULD BE READ WITH CAUTION. THESE MATTERS INCLUDE, BUT ARE NOT LIMITED TO STATEMENTS AS TO: THE DEBTORS' EXPECTED FUTURE FINANCIAL POSITION, LIQUIDITY, AND CASH FLOWS, ESTIMATES AS TO RISK THE DEBTORS ARE UNABLE TO COLLECT UPON THEIR OUTSTANDING RECEIVABLES/ASSETS, FUTURE POTENTIAL EFFECTS OF THE CHAPTER 11 CASES, LIQUIDATION VALUATIONS OF ASSETS AND ESTIMATED AMOUNTS OF CLAIMS.

THESE STATEMENTS REFLECT VIEWS AND ASSUMPTIONS THAT MAY BE AFFECTED BY VARIOUS FACTORS, INCLUDING THE ABILITY OF BDCM AND/OR THE REORGANIZED DEBTORS TO CONFIRM AND CONSUMMATE THE BDCM PLAN AND DISCHARGE OR SETTLE CLAIMS DURING THE CHAPTER 11 CASES, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC AND COMPETITIVE UNCERTAINTIES AND CONTINGENCIES, ALL OF WHICH ARE DIFFICULT TO PREDICT AND MANY OF WHICH ARE BEYOND THE CONTROL OF BDCM AND THE REORGANIZED DEBTORS. ACCORDINGLY, THERE CAN BE NO ASSURANCE THAT THESE STATEMENTS WILL PROVE ACCURATE, AND ACTUAL RESULTS MAY BE MATERIALLY DIFFERENT THAN THOSE CONTAINED HEREIN.

## II. OVERVIEW OF THE PLAN

The Plan provides for, among other things, distributions to Claim Holders, cancellation of Remaining Equity Interests in Debtor GSC Group, Inc., while Holders of Preferred Equity Interests in the Debtors will receive between 51% and 67%, at BDCM's discretion, of the Reorganized GSC Group Common Stock. This represents a substantial improvement over the Trustee's Plan, which contemplates no recovery for any Holders of Equity Interests. The Plan also provides for substantive consolidation of the Debtors for the purposes of voting, confirmation and making distributions to Holders of Allowed Claims as described below.

The Plan does not provide for the reorganization or dissolution of SIF. The Designated Purchaser acquired GSC Group's equity interests in SIF in connection with the sale process outlined below. Further, neither the Chapter 11 Trustee nor BDCM believe that there are any pending prepetition Claims against SIF (See Trustee's Disclosure Statement at Section II). It is BDCM's understanding that the Chapter 11 Trustee may file a motion seeking the dismissal of SIF's Chapter 11 Case. In the event such motion is not filed and approved prior to entry of the Confirmation Order, SIF's Chapter 11 Case shall be dismissed under the Plan.

### A. Summary of Classification and Treatment of Claims and Equity Interests Under the Plan

#### *Treatment of Administrative, Priority & Secured Claims*

Similar to the Trustee's Plan, the BDCM Plan contemplates the payment in full in Cash of all Allowed Administrative Claims and Allowed Priority Tax Claims. The BDCM Plan also provides for the same treatment of Allowed Secured Claims and Other Priority Claims as was provided in the Trustee's Plan.

As discussed above, the BDCM Plan and the Trustee's Plan, however, diverge in their treatment of Allowed General Unsecured Claims and Preferred Equity Interest Holders.

#### *Treatment of General Unsecured Claims*

Under the BDCM Plan, each Holder of an Allowed General Unsecured Claim shall be permitted to elect the Up-front Cash Option, Combination Cash Option or Equity Option.

Up-front Cash Option. If such Holder elects the Up-front Cash Option, such Holder shall receive its Up-front Cash Distribution Share, on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee, BDCM or the Reorganized Debtors, as the case may be.

Combination Cash Option: If a Holder of an Allowed General Unsecured Claim elects the Combination Cash Option, such Holder shall receive (A) its Combination Cash Distribution Share and (B) its Pro Rata Share of Trust Units, in each case, on or as soon as practicable after

(but in any event not later than five Business Days after), the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, BDCM or the Reorganized Debtors, as the case may be.

*(Considerations With Respect to the Combination Cash Option.* As noted above, the Combination Cash Option provides Holders of General Unsecured Claims who elect this option (i) an aggregate initial Cash distribution that is \$1 million lower than the Cash distribution provided under the Up-front Cash Option and (ii) Trust Units. The Trust Units allow Holders of General Unsecured Claims who elect the Combination Cash Option to receive their pro rata share of the proceeds available for distribution after the Liquidating Trustee liquidates the remaining estate assets vested to it on the Effective Date and satisfies certain obligations. The estate assets around which the Debtors are not reorganizing will be transferred to the Liquidating Trust upon consummation of the BDCM Plan. These remaining assets consist principally of certain key-man life insurance policies that the Debtors had purchased.

Recoveries on account of the Trust Units are dependent, in substantial part, upon the value the Liquidating Trustee receives in the sale or other realization of the key-man life insurance policies. The insurance policies have a \$50 million face value and the Chapter 11 Trustee has estimated that their net present value is somewhere between \$3-10 million. At this time, however, there are no present bids for the life insurance policies and, therefore, the ultimate value of the life insurance policies cannot be guaranteed. Further, unless the Tax Indemnification Agreement is modified (which may not occur), it is likely that Holders of General Unsecured Claims who elect the Combination Cash Option may not receive distributions from the Liquidating Trust on account of their Trust Units until the amounts owed between the Designated Purchaser and the Debtors are completely settled at some future date and any amounts owed to the Designated Purchaser pursuant to the Tax Indemnification Agreement are paid. Holders of General Unsecured Claims are urged to consider these factors, in addition to those set forth in Section VIII.C.2. herein, in evaluating whether to select the Combination Cash Option.)

Equity Option. If a Holder of an Allowed General Unsecured Claim elects the Equity Option, such Holder shall receive: (A) one share of Reorganized GSC Group Series B Preferred Stock with a liquidation preference equal to the lesser of (i) the face amount of such Holder's Allowed General Unsecured Claim and (ii) a pro rata portion of 80% of the net asset value of Reorganized GSC Group as of the Effective Date; and (B) such Holder's Equity Distribution Share of Reorganized GSC Group Convertible Class B Common Stock.

If a Holder of General Unsecured Claim, whether Disputed or Allowed, does not elect the Up-front Cash Option, the Combination Cash Option or the Equity Option on or before the Voting Deadline, such Holder will be deemed to have elected the Up-front Cash Option. Additionally, Holders of Allowed General Unsecured Claims arising on account of executory contracts or unexpired leases that are rejected pursuant to Section 6.2 of the Plan will have the opportunity to elect the Up-front Cash Option, the Combination Cash Option, or the Equity Option in accordance with Section 6.3 of the Plan.



Reorganized GSC Group shall be entitled to (A) the Combination Cash Distribution Share and (B) the Pro Rata Share of Trust Units that any Holder of a General Unsecured Claim who elects the Equity Option would have received had such Holder instead elected the Combination Cash Option.

***Treatment of Holders of Preferred Equity Interests***

As is the case with treatment of Allowed General Unsecured Claims, the Plan provides for more favorable treatment of Holders of Preferred Equity Interests than that provided in the Trustee’s Plan. While the Trustee's Plan contemplates no recovery for Holders of Preferred Equity Interests, the Plan provides that Holders of Preferred Equity Interests will receive a Pro Rata share of Reorganized GSC Group Class A Common Stock equal to between 51% and 67%, at BDCM’s discretion, of the total GSC Group Common Stock (with post-dilution voting rights of 51%).

***Summary of Classification & Treatment of Claims & Equity Interests***

The following table summarizes the classification, treatment and projected recoveries for Allowed Claims and Equity Interests under the BDCM Plan. The information in the table below is provided in summary form for illustrative purposes only, is subject to change based upon changes in Allowed Claims and proceeds and is qualified in its entirety by references to the provisions of the Plan.

<b>Class</b>	<b>Type of Claim or Equity Interest</b>	<b>BDCM Plan Treatment</b>	<b>Initial Recovery Distribution Percentage</b>	<b>Status</b>
Class 1	Secured Claims	Each Holder of an Allowed Secured Claim shall receive either (i) payment in full in Plan Cash on the latest of: (A) the Effective Date; (B) the date on which such Secured Claim becomes Allowed; (C) the date on which such Secured Claim otherwise is due and payable; or (D) such other date as mutually may be agreed to by and between such Holder and the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors or (ii) its collateral.	100%	Unimpaired, Not Entitled to Vote
Class 2	Other Priority Claims	Each Holder of an Allowed Other Priority Claim shall receive Plan Cash in an amount sufficient to pay the Claim in full or otherwise leave unaltered the legal, equitable and contractual rights to which such Claim entitles such Holder on or as soon as practicable after (but in any event not later than five Business Days after), the latest of: (i) the Effective Date; (ii) the date on which such Other Priority Claim becomes Allowed; (iii) the date on which such Other Priority Claim otherwise is due and payable; and (iv) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors.	100%	Unimpaired, Not Entitled to Vote
Class 3	General Unsecured	Each Holder of an Allowed General Unsecured Claim shall be permitted to elect the Up-front Cash Option,		Impaired, Entitled to

Class	Type of Claim or Equity Interest	BDCM Plan Treatment	Initial Recovery Distribution Percentage	Status
	Claims	<p>Combination Cash Option or Equity Option.</p> <p>If such Holder elects the Up-front Cash Option, such Holder shall receive its Up-front Cash Distribution Share, on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be.</p> <p>If such Holder elects the Combination Cash Option, such Holder shall receive (A) its Combination Cash Distribution Share and (B) its Pro Rata Share of Trust Units, in each case, on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be.</p> <p>If such Holder elects the Equity Option, such Holder shall receive: (A) one share of Reorganized GSC Group Series B Preferred Stock with a liquidation preference equal to the <u>lesser</u> of (i) the face amount of such Holder's Allowed General Unsecured Claim and (ii) a pro rata portion of 80% of the net asset value of Reorganized GSC Group as of the Effective Date; and (B) such Holder's Equity Distribution Share of Reorganized GSC Group Convertible Class B Common Stock.</p> <p>If a Holder of a General Unsecured Claim, whether Disputed or Allowed, does not elect either the Up-front Cash Option, the Combination Cash Option or the Equity Option on or before the Voting Deadline, such Holder will be deemed to have elected the Up-front Cash Option. Holders of Allowed General Unsecured Claims arising on account of executory contracts or unexpired leases that are rejected pursuant to Section 6.2 of the Plan will have the opportunity to elect the Up-front Cash Option, the Combination Cash Option, or the Equity Option in</p>	<p>Up-Front Cash Option 44-55%</p> <p>Combination Cash Option 37-100%<sup>9</sup></p> <p>Equity Option - Indeterminate</p>	Vote

<sup>9</sup> The recovery under the Combination Cash Option turns, in large part, on the value the Liquidating Trust receives in any sale or transfer of the Life Insurance Policies. As noted above, the Chapter 11 Trustee estimates that the Life Insurance Policies are worth (or are capable of being monetized for) \$3-10 million. At this time, however, there are no existing offers to purchase the Life Insurance Policies and, therefore the ultimate amount received by the Liquidating Trustee on account of these policies is uncertain.

Class	Type of Claim or Equity Interest	BDCM Plan Treatment	Initial Recovery Distribution Percentage	Status
		accordance with Section 6.3 of the Plan.		
Class 4	Preferred Equity Interests	On the Effective Date, all Preferred Equity Interests shall be cancelled and extinguished and Holders of Preferred Equity Interests shall be issued Reorganized GSC Group Class A Common Stock, according to the Pro Rata Share of Preferred Equity Interests they held, equal to between 51% and 67%, at BDCM's discretion, of total Reorganized GSC Group Common Stock (with 75.1% of voting rights subject to the conversion of the Reorganized GSC Group Convertible Class B Common Stock to Reorganized GSC Group Class C Common Stock, at which time the voting rights of such existing Common Equity Interests would be diluted to 51%) as a result of the issuance of the Reorganized GSC Group Class C Common Stock.	Indeterminate	Impaired, Entitled to Vote
Class 5	Remaining Equity Interests	Holders of Remaining Equity Interests shall not receive or retain any property or interest in property on account of such Remaining Equity Interests. On the Effective Date, all Remaining Equity Interests shall be cancelled, extinguished and discharged.	0%	Impaired, Not Entitled to Vote

*Holders of Claims in Class 3 should note that only the Up-front Cash Option provides an immediate and complete Cash recovery. The Combination Cash Option provides an initial Cash distribution that, in aggregate, is \$1 million less than that available under the Up-front Cash Option and the possibility of later additional recovery on account of the Trust Units. The Equity Option will provide no immediate Cash recovery of any kind, and there can be no guarantee that Reorganized GSC Group stock will retain value in the future.*

The estimated recovery for Holders of General Unsecured Claims is based on a number of assumptions and estimates. Although BDCM believes these assumptions and estimates are reasonable, there can be no assurance that recoveries will not be higher or lower than the estimated recoveries set forth herein.

Among the more important assumptions and estimates relevant to the actual recovery that will be received by Holders of Allowed General Unsecured Claims is the fact that the total size of the claims pool is not yet certain. The projected recovery set forth above for Holders of General Unsecured Claims is predicated on the Chapter 11 Trustee's estimations that were also set forth in the Trustee's Disclosure Statement. In estimating the distributions of cash to Holders of General Unsecured Claims set forth above under the Trustee Plan, the Chapter 11 Trustee made the following assumptions:<sup>10</sup>

<sup>10</sup> As noted in the Trustee's Disclosure Statement, certain claims that have been asserted against the Debtors' estates are not, in the Chapter 11 Trustee's opinion, meritorious, or the size of otherwise valid claims may have been overstated and they are not included in the Chapter 11 Trustee's estimate. (See Trustee's Disclosure Statement section II.A.) Such claims also were not included in the estimates provided in this Disclosure Statement.

- a. All Administrative Claims will be paid in full from the cash available to the Debtor, which cash is in addition to the \$6.6 million available under the Tax Indemnification Agreement for distribution to unsecured creditors;
- b. All Secured Claims have been satisfied in full;
- c. There will be no Other Priority Claims;
- d. Total Allowed General Unsecured Claims will range from \$12 million to \$15 million; and
- e. The maximum distribution that can be made to Holders of General Unsecured Claims prior to the resolution of all obligations under the Tax Indemnification Agreement is \$6.6 million less Priority Tax Claims and Other Priority Claims.

Another assumption relevant to actual recovery by those Holders of Allowed General Unsecured Claims that elect the Equity Option is the valuation of Reorganized GSC Group as a going-forward entity. As discussed in greater detail in Exhibit C attached to the Plan, Holders who elect the Equity Option will receive Reorganized GSC Group Preferred Stock. The liquidation preference of that stock will be measured by reference to a valuation of Reorganized GSC Group that will be conducted within 90 days after the Effective Date. While the valuation of Reorganized GSC Group is uncertain, BDCM views this option as sufficiently attractive to elect the Equity Option on account of its General Unsecured Claims and those of its affiliates.

For a better understanding of the risks and assumptions upon which the estimated recovery is based, Holders of General Unsecured Claims and Preferred Equity Interests are encouraged to review this entire Disclosure Statement.

#### B. Formation of the Liquidating Trust

On the Effective Date, the Liquidating Trust shall be formed pursuant to the Liquidating Trust Agreement. Confirmation of the Plan shall constitute the appointment of the Liquidating Trustee by the Bankruptcy Court as the representative of the Estates, subject to the Liquidating Trust Agreement, for all purposes. The Liquidating Trustee shall sign the Liquidating Trust Agreement and accept the Residual Estate Assets, including the Liquidating Trust Cash, the Disputed Priority Claims Reserve Amount and the Disputed General Unsecured Claims Cash Reserve Amount, to be transferred to the Liquidating Trust pursuant to Section 5.4 of the Plan on behalf of the beneficiaries thereof, and the Liquidating Trust will then be deemed created and effective without any further action of the Chapter 11 Trustee, the Debtors or the employees, officers, directors, members, partners or shareholders of the Debtors. On the Effective Date, the Chapter 11 Trustee's rights and obligations with respect to the Escrow Funds or the Straddle Tax Letter of Credit, as applicable, shall be transferred to the Liquidating Trust. The Liquidating Trust shall be established for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidating Trust. The beneficiaries of the Liquidating Trust shall be bound by the Liquidating Trust Agreement.

The Liquidating Trust is intended to be classified for U.S. federal income tax purposes as a “liquidating trust” within the meaning of U.S. Treasury Regulation section 301.7701-4(d), and the Plan, the Liquidating Trust and the Disclosure Statement are intended to comply with the advance-ruling guidelines contained in Rev. Proc. 94-45, 1994-2 C.B. 684, although no advance ruling will be sought for the Liquidating Trust. The Liquidating Trust will be treated as a grantor trust for U.S. federal income tax purposes, all of the assets of which are deemed owned by the Holders of General Unsecured Claims pursuant to Tax Code sections 671 through 677 (or successor provisions). The Liquidating Trustee will file all returns for the Liquidating Trust as a grantor trust pursuant to U.S. Treasury Regulation section 1.671-4(a) (or successor provisions).

The transfers by the GSC Group or its subsidiaries of assets to the Liquidating Trust will be treated for all federal income tax purposes as a transfer of such assets directly to Reorganized GSC Group and the Holders of General Unsecured Claims who have elected the Combination Cash Option at the time of the creation of the Liquidating Trust, followed by the immediate transfer by Reorganized GSC Group and the Holders of General Unsecured Claims of such assets to the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust. Reorganized GSC Group and Holders of General Unsecured Claims who have elected the Combination Cash Option will be treated as the grantors and direct owners of a specified undivided interest in the assets held by the Liquidating Trust for all U.S. federal income tax purposes (such assets will have a tax basis equal to their fair market value on the date transferred to the Liquidating Trust). The Liquidating Trustee shall determine the valuations of the transferred property, such valuations will be used for all U.S. federal income tax purposes, and Reorganized GSC Group and all Holders of General Unsecured Claims who have elected the Combination Cash Option shall be bound by such valuations.

The Liquidating Trustee shall provide to Reorganized GSC Group and the Holders of General Unsecured Claims who have elected the Combination Cash Option an annual statement that will list items of income, deduction and credit applicable to the Liquidating Trust in the taxable year. The statement also will clearly specify the portion of the total items that is attributed to (a) Reorganized GSC Group and (b) each Holder of a General Unsecured Claim who has elected the Combination Cash Option. The character of items of income, deduction and credit to any General Unsecured Creditor who has elected the Combination Cash Option, and the ability of such General Unsecured Creditor who has elected the Combination Cash Option to benefit from any deduction or losses will depend on the particular situation of such General Unsecured Creditor. In addition, the character of items of income, deduction and credit to Reorganized GSC Group and the ability of Reorganized GSC Group to benefit from any deduction or losses will depend on the particular situation of Reorganized GSC Group. Reorganized GSC Group and each General Unsecured Creditor who has elected the Combination Cash Option shall pay any tax imposed by any governmental unit on its portion of the income of the Liquidating Trust. The Liquidating Trustee, however, will comply with all withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements.

The Liquidating Trust shall terminate five years from the Effective Date. If warranted by the facts and circumstances and subject to the approval of the Bankruptcy Court upon a finding that an early termination of the Liquidating Trust is appropriate or that an extension of the term of the Liquidating Trust is necessary to the liquidating purpose of the Liquidating Trust, the term

of the Liquidating Trust may be terminated early or may be extended for a finite term based on the particular facts and circumstances. For any extension, Bankruptcy Court approval must be obtained within six months of the beginning of the extended term.

Until all of the beneficial interests in the Liquidating Trust can be distributed to the Holders in accordance with the terms of the Plan, the Disputed General Unsecured Claims Cash Reserve will be treated as owning a portion of the assets in the Liquidating Trust. Distributions from the Disputed General Unsecured Claims Cash Reserve will be made to Holders of Disputed Claims in accordance with the Cash Option elected by such Holder when such Claims are subsequently Allowed and will be retained or paid to other beneficiaries when Disputed Claims are subsequently Disallowed. Distributions from the Disputed General Unsecured Claims Cash Reserve will be made to Reorganized GSC Group when Disputed General Unsecured Claims held by Holders that have elected the Equity Option are subsequently Allowed. The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed General Unsecured Claims Cash Reserve and shall pay the federal, state and local income taxes attributable to the Disputed General Unsecured Claims Cash Reserve, based on the items of income, deduction, credit or loss allocable thereto.

C. Reorganized Debtors

On the Effective Date, all Equity Interests in Debtor GSC Group, Inc. shall be cancelled and the Reorganized GSC Group Class A Common Stock and the Reorganized GSC Group Convertible Class B Common Stock and the Reorganized GSC Group Preferred Stock will be distributed.

Also on the Effective Date, all of the Equity Interests in the Debtors other than GSC Group, Inc., will remain outstanding and as presently classified.

Also on the Effective Date, the certificate of incorporation of the Reorganized GSC Group will be amended in its entirety in substantially the form contained in the Plan Supplement to, among other things, permit the Reorganized Debtors to increase the number of authorized shares and to establish the rights, preferences, privileges and other terms of each of the Reorganized GSC Group Convertible Class B Common Stock, the Reorganized GSC Group Class C Common Stock and the Reorganized GSC Group Preferred Stock.

Following the Effective Date, it is anticipated that Reorganized GSC Group will continue the operation of its present investment management business, consisting of the management of six investment funds (collectively, the “**GSC Funds**”). The GSC Funds are managed pursuant to collateral management agreements between GSCP (NJ), LP (the “**GSC Manager**”), one of the GSC Debtors, and each of the GSC Funds. In connection with the management of the GSC Funds, the GSC Manager is presently party to a Services Agreement with an affiliate of BDCM pursuant to which such affiliate of BDCM provides the GSC Manager with administrative and other support with respect to the management of the GSC Funds. In addition to the management of the GSC Funds, it is anticipated that Reorganized GSC Group will seek to serve as investment manager for other investment funds established by Reorganized GSC Group with assistance from BDCM. There can be no assurance that Reorganized GSC Group will be successful in obtaining

new investment management agreements or that the collateral management agreements with respect to the GSC Funds will not be terminated.

D. Tax Indemnification Agreement

As discussed further below, as part of the sale of certain of the Debtors' assets to the Designated Purchaser during these chapter 11 cases, the Debtors, the Chapter 11 Trustee and the Designated Purchaser entered into the Tax Indemnification Agreement under which the Designated Purchaser agreed to indemnify the Estates, the Chapter 11 Trustee and their respective successors and assigns for certain tax liabilities that may arise on account of the asset sale to the Designated Purchaser. The Tax Indemnification Agreement was negotiated and entered into at a time when the Chapter 11 Trustee contemplated that a liquidating chapter 11 plan would be confirmed and consummated. As noted above, the BDCM Plan is a plan of reorganization (not a liquidating plan). In the context of the reorganization contemplated under the BDCM Plan, it is possible that the Tax Indemnification Agreement may be modified (if agreed by BDCM and the Chapter 11 Trustee) in a way that may affect the timing and amount of distributions available on account of the Trust Units.

E. Substantive Consolidation

Substantive consolidation is an equitable remedy that a bankruptcy court may be asked to apply in chapter 11 cases of affiliated debtors. Substantive consolidation involves the pooling of the assets and liabilities of the affected debtors and distributions on Allowed Claims are made from a common fund. All of the debtors in the substantively consolidated group are treated as if they were a single corporate and economic entity and Intercompany Claims, subsidiary equity or ownership interests, joint and several liability Claims and Claims based on the guarantee obligations of one debtor for another debtor are disregarded. Consequently, a creditor of one of the substantively consolidated debtors is treated as a creditor of the substantively consolidated group of debtors, and issues of individual corporate ownership of property and individual corporate liability on obligations are ignored.

The Plan provides for the substantive consolidation of the Debtors solely for purposes of voting on the Plan, confirmation of the Plan and treatment and distribution with respect to Claims against the Debtors under the Plan. Accordingly, all assets and liabilities of the Debtors will be treated as if they are assets and liabilities of a single legal entity for purposes of the Plan. Consequently, any Holder of a Claim against a Debtor and a guaranty claim against another Debtor in respect of such Claim shall only receive a single recovery in respect of such Claims. Intercompany Subrogation Claims will be offset as provided in the Plan and then cancelled as a result of the substantive consolidation of the Debtors.

In considering whether substantive consolidation was appropriate for the Plan, BDCM relied upon the Chapter 11 Trustee's consideration of the manner in which the Debtors operated and interacted with each other and their affiliates prior to the Petition Date and during the course of the Chapter 11 Cases, the financial book-keeping for each Debtor and creditor reliance on the credit of a particular Debtor as opposed to the GSC group as a whole, among other relevant factors. Substantive consolidation is dependent upon mixed questions of fact and law. There are facts relating to the manner in which the Debtors operated their businesses and the way in which

creditors interacted with the Debtors that support the Chapter 11 Trustee's belief that the Debtors should be substantively consolidated. Moreover, the specific circumstances and terms of the chapter 11 sale process in these cases support the requested substantive consolidation. Courts may approve substantive consolidation in factual circumstances where the accurate identification and allocation of assets and liabilities is not possible. In these cases, the Chapter 11 Trustee believes, and BDCM does not dispute, that the fact that each of the Debtors was either a direct obligor or a guarantor under the Prepetition Loan Documents, coupled with the fact that none of the Debtors had assets sufficient to satisfy their secured debts, suggest that it would be extremely difficult if not impossible to arrive at an appropriate inter-Debtor allocation of the assets that were excluded from the sale. As a result, BDCM has elected, at this time, to propose substantive consolidation for the limited purposes set forth above in the Plan and believes that such a result is supported by applicable law.

### **III. DESCRIPTION AND HISTORY OF THE DEBTORS' BUSINESS<sup>11</sup>**

#### **A. The Investment Management Business of GSC**

GSC Group (initially established as Greenwich Street Capital Partners, Inc.) was founded in 1994 as a subsidiary of Travelers Group Inc. to invest in private equity transactions. In 1998, following the merger of Travelers Group Inc. and Citicorp, GSC Group became independent from Citigroup and became a diversified alternative asset manager. GSC Group and its Filing Debtor affiliates grew into a debt-focused investment manager of alternative assets with a full spectrum of complementary investment product offerings. At its peak, the Filing Debtors had \$28 billion of assets under management. As of March 31, 2010, the Filing Debtors had approximately \$8.4 billion of assets under management in approximately 28 separately managed investment funds.

The Filing Debtors offered investment management and advisory services through their principal subsidiary, NJLP. NJLP has been a registered investment advisor with the SEC since March 2001. The Filing Debtors, through Holdings LP and SIF, held investments in certain affiliated investment funds. NJ Inc. served as the general partner of NJLP and Holdings LP. GSCP LLC provided investment advisory services to NJLP and monitoring and management services to certain portfolio companies of the affiliated investment funds. AP Holdings, which holds one hundred percent of the Class A common stock of GSC Group, was created in 2006 as part of a restructuring transaction pursuant to which some of the former owners of GSC Group contributed their partnership ownership interests in GSC Group in exchange for limited partnership interests in AP Holdings. AP Inc. was created as part of the same restructuring transaction, and it has acted as the general partner of AP Holdings.

The Filing Debtors focused their businesses and funds along the following five product lines: (i) distressed debt; (ii) U.S. corporate debt; (iii) European corporate debt; (iv) European mezzanine lending; and (v) U.S. ABS CDOs.

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<sup>11</sup> *Article III of this Disclosure Statement is incorporated verbatim in its entirety form the Trustee's Disclosure Statement. All such incorporations herein are subject to the caveats set forth in Section I.D. hereof.*



1. *Distressed Debt.*

The Filing Debtors' recovery funds employed a controlled distressed debt investment strategy that targeted companies that the funds believed were operationally sound but overburdened with high levels of debt. The Filing Debtors focused on securities that were either the most senior in the capital structure or had only a moderate level of debt senior to them. The acquired debt securities often were converted into new "restructured" equity at a cost basis that the Filing Debtors believed represented attractive acquisition valuations. Post-restructuring, the funds sought to further enhance value as an active owner through various strategic and financial initiatives.

2. *U.S. Corporate Debt.*

The Filing Debtors were experienced U.S. loan managers with eight CLOs and CDOs under management.

3. *European Corporate Debt.*

The Filing Debtors had a strong presence as a manager of European CLOs with three such CLOs under management. The portfolios consisted of loans and some mezzanine securities. The Filing Debtors had expertise in credit analysis, diverse industries, and all parts of capital structure in many jurisdictions in Europe.

4. *European Mezzanine Lending.*

The Filing Debtors' corporate mezzanine lending team provided mezzanine lending in the form of subordinated debt and preferred equity to support financial sponsors, corporations and others seeking to finance leveraged buyouts, strategic acquisitions, growth strategies, or recapitalizations in Europe.

5. *U.S. ABS CDOs.*

The Filing Debtors were experienced ABS CDO managers with approximately eleven ABS CDO Funds under management.

The Filing Debtors generated revenue through management fees, transaction and portfolio monitoring fees, incentive fees, and returns on investments. Through NJLP, the Filing Debtors earned fees for managing investment funds. The nature and amount of the management fees earned were governed by the applicable management or advisory agreement and varied widely across the funds. GSC Group earned transaction fees for structuring and negotiating transactions with portfolio companies in which the Filing Debtors' funds had invested. The Filing Debtors earned portfolio monitoring fees for providing management advisory services to portfolio companies owned by GSC-managed funds. They also usually earned incentive fees if the performance of an investment exceeded a threshold set forth in the applicable management contract. The Filing Debtors also co-invested in their funds. As investors, the Filing Debtors were entitled to returns on such investments in accordance with the provisions of the applicable fund documents.

B. Prepetition Funding of the Debtors' Operations

NJLP, as borrower, and all of the Debtors, and certain non-Debtor Affiliates, as guarantors, were parties to the Prepetition Credit Agreement, pursuant to which NJLP borrowed \$193.5 million in term loans (comprising \$73.5 million in new term loans and \$119.1 million in continuing and refinanced existing term loans) and gained access to up to \$56.5 million (subsequently reduced to \$38 million) in revolving credit commitments. SIF was not party to the Prepetition Credit Agreement.

In accordance with the terms of the Prepetition Credit Agreement, NJLP entered into the Swap, a \$97 million notional principal interest rate hedge contract with CALNY that matures February 15, 2012. Under the Swap, the Debtors were obligated to pay a fixed rate of interest and were entitled to receive from CALNY a three-month LIBOR flat rate. On April 7, 2009, CALNY presented NJLP with a Notice of Early Termination, indicating a termination date of April 14, 2009. The termination payment due from NJLP on that date was \$10,192,828, which remained unpaid as of the Petition Date.

**IV. EVENTS LEADING TO CHAPTER 11 FILING<sup>12</sup>**

A. Economic Crisis

The Filing Debtors' businesses were materially impacted by both the financial markets and worldwide economic conditions of 2008 that continued through the first half of 2009. During that time period, the Filing Debtors and their affiliates operated in a very unfavorable global business environment and were forced to cope with the lack of liquidity in the credit markets and declining asset values. These economic circumstances caused a substantial decline in their revenues.

Specifically, the Filing Debtors suffered a significant loss of asset value based on the significant decline of the investments held in the funds they managed. Based on the overall market conditions and the performance of certain funds, the Filing Debtors resigned as manager to certain funds and other funds opted for early termination. The Filing Debtors also experienced significant losses in certain of their CDO funds that were invested in securities impacted by the subprime crisis. Each of these factors impacted the Filing Debtors' asset values and revenues. Due to economic conditions beyond their control, the Filing Debtors were unable to monetize certain investments requiring them to maintain positions in illiquid assets. Decreasing asset values and liquidity constraints significantly strained investor relations.

B. Negotiations with Prepetition Lenders

In February 2009, in response to these financial difficulties, the Filing Debtors engaged Capstone as their financial advisor. Capstone was hired to assist in negotiations with the Agent and the Prepetition Lenders and to analyze various strategic alternatives. When negotiations

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<sup>12</sup> *Article IV of this Disclosure Statement is incorporated verbatim in its entirety from the Trustee's Disclosure Statement. All such incorporations herein are subject to the caveats set forth in Section I.D. hereof.*

commenced, in March 2009, Guggenheim Corporate Funding, LLC (“**Guggenheim**”) was acting as Agent.

In January 2010, while negotiations were ongoing, BDCM, a Prepetition Lender that, prior to January 2010, held a minority debt position under the Prepetition Credit Agreement, increased its holdings to control, for voting purposes, more than 50% percent of the debt under the Prepetition Credit Agreement. In July 2010, BDCF, an affiliate of BDCM, replaced Guggenheim as Agent.

The Debtors and Capstone continued to engage the Agent and Prepetition Lenders in negotiations over a potential restructuring. Ultimately, however, the parties were not able to reach an agreement outside of bankruptcy.

As of the Petition Date, the Debtors were in default under the Prepetition Credit Agreement, and according to the Agent, as of the Petition Date, on account of the obligations under the Prepetition Credit Agreement and the Swap, the Prepetition Lenders were owed (1) outstanding principal indebtedness totaling \$219,512,322.92, (2) accrued interest totaling \$19,630,388.99, and (3) any unpaid costs and expenses incurred by the Agent and the Prepetition Lenders. As of July 26, 2011, the accrued interest totaled approximately \$38.8 million.

## V. HISTORY OF THESE BANKRUPTCY CASES<sup>13</sup>

### A. Entry of the Bidding Procedures Order

On the Petition Date, the Filing Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code.<sup>14</sup> The Chapter 11 Cases are being jointly administered for procedural purposes only. No committee of unsecured creditors has been appointed in the Chapter 11 Cases. Initially, the Filing Debtors operated their business as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. Kaye Scholer LLP (“**Kaye Scholer**”) acted as the Filing Debtors’ counsel pursuant to an order authorizing its retention.

On September 2, 2010, the Filing Debtors filed a motion seeking entry of orders approving bidding procedures and authorizing the sale of substantially all of the Filing Debtors’ assets to a successful bidder (the “**Initial Sale Motion**”).

Among the assets that the Filing Debtors sought to transfer under the Initial Sale Motion were collateral management contracts, some of which contained certain consent requirements for their assignment. The Filing Debtors proposed procedures under the Initial Sale Motion that provided for soliciting the required consents from investors and other related parties. The proposed procedures would, however, deem consent of any solicited party that did not affirmatively accept or reject assignment. On September 13 and 14, 2010, several parties filed

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<sup>13</sup> *Article V of this Disclosure Statement (other than Sections V.S. and V.T. of this Article) is incorporated nearly verbatim in its entirety from the Trustee’s Disclosure Statement. All such incorporates herein are subject to the caveats set forth in Section I.D. hereof.*

<sup>14</sup> As used herein and in the BDCM Plan, Filing Debtors refers to the Debtors and GSC Secondary Interest Fund, LLC.

objections to the Initial Sale Motion, challenging, among other things, the validity of the Filing Debtors' deemed consent procedure.

Also, on September 14, 2010, the Non-Controlling Lender Group<sup>15</sup> filed an objection to the Initial Sale Motion. In their objection, the Non-Controlling Lender Group argued that the expedited sale timeline proposed in the bidding procedures improperly favored the Agent, BDCF, and would chill bidding at the Auction. Additionally, arguing that the ability of the Agent to credit bid would also chill bidding, the Non-Controlling Lender Group asked the Bankruptcy Court to allow the Agent to credit bid at the Auction only at the direction of a majority of the Non-Controlling Lender Group. BDCM filed a response to the Non-Controlling Lender Group's objection, stating that it possessed sole authority, as majority lender, to direct the Agent to credit bid at the Auction pursuant to the Prepetition Credit Agreement.

Ultimately, the Filing Debtors were able to reach a consensus among the objecting parties that deferred or resolved the objections to the proposed bidding procedures. The parties who had challenged the validity of the deemed consent process agreed to defer consideration of the validity of that process to a later date. The Non-Controlling Lenders and Filing Debtors agreed to certain modifications to the originally proposed timetable. As a result, on September 23, 2010, the Bankruptcy Court entered the Bidding Procedures Order, which, among other things, set the Bidding Procedures for the sale, set October 22, 2010 as the bidding deadline, and October 26, 2010 as the Auction date.

#### B. The Initial Bonus Motion

Promptly after the commencement of these Chapter 11 Cases, the Filing Debtors filed a motion ("**Initial Compensation Motion**") for authorization to implement an employee compensation program they established in July 2010 ("**2010 Compensation Program**"). Prior to the Petition Date, the Filing Debtors and Capstone recognized that the Filing Debtors and GSC U.K. would face difficulties retaining their employees once the Filing Debtors filed for bankruptcy because a successful bankruptcy sale would leave the Filing Debtors without any assets to operate in the U.S. or the U.K. and, accordingly, no need to retain their workforce. Moreover, the Filing Debtors were already significantly understaffed, meaning employees would be asked to work longer and harder, but with fewer resources, only to face a potential loss of employment when a sale was completed.

The Filing Debtors operated in an industry in which non-executive employees commonly are paid a significant component of their annual compensation in a year-end bonus. Historically,

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<sup>15</sup> The "**Non-Controlling Lender Group**" is the group of lenders under the Debtors' Prepetition Credit Agreement consisting of: Apidos CDO II Ltd.; Apidos CDO IV Ltd.; Apidos CDO V Ltd.; Archimedes Funding IV (Cayman) Ltd.; Copper River CLO Ltd.; Crédit Agricole Corporate and Investment Bank (fka Calyon); Endurance CLO I, Ltd.; General Electric Capital Corporation; Greenlane CLO Ltd.; Gulf Stream- Compass CLO 2002-I LTD; Gulf Stream-Compass CLO 2003-I LTD; Gulf Stream-Compass CLO 2005-I LTD; Gulf Stream-Compass CLO 2005-II LTD; Jefferies High Yield Trading, LLC; Kennecott Funding Ltd.; Landmark II CDO Limited; Landmark III CDO Limited; Landmark IV CDO Limited; Landmark V CDO Limited; Landmark VI CDO Limited; Landmark VII CDO Limited; Landmark VIII CDO Limited; Latitude CLO I, Ltd.; McDonnell Loan Opportunity Ltd.; Ocean Trails CLO I; Permal Stone Lion Fund Ltd.; Premium Loan Trust I, Ltd.; Sands Point Funding Ltd.; Stone Lion Portfolio L.P.; UBS Loan Finance LLC; UBS AG, Stamford Branch; WG Horizons CLO I, Whitehorse I, Ltd holds; and Whitehorse V, Ltd Holds.

the compensation paid to most of the Filing Debtors' and GSC U.K.'s employees consisted of base salary and a bonus equal to 10% - 240% of the base salary. The Filing Debtors' senior management, Capstone and the Prepetition Lenders recognized that the Filing Debtors and GSC U.K. would not retain their respective workforces through the completion of the chapter 11 sale process unless eligible employees were assured that they would earn the bonus component of their 2010 compensation if they remained employed through the completion of the sale.

Accordingly, in anticipation of the commencement of these cases and the initiation of a sale process, in July 2010 the Filing Debtors instituted the 2010 Compensation Program which (i) fixed the bonus component of the compensation to be paid to eligible employees for the last six months of 2010, (ii) paid approximately 50% of this bonus to eligible employees, and (iii) committed to pay the remaining balance of this bonus (the "**Unpaid 2010 Bonus**") upon the satisfaction of the earliest of (a) the closing of the sale of substantially all of Filing Debtors' assets to one or more buyers, (b) the Filing Debtors' successful emergence from chapter 11, or (c) December 31, 2010.

The Filing Debtors sought Bankruptcy Court approval to implement the 2010 Compensation Program, in a modified fashion, in the Initial Compensation Motion. In response to an objection to the Initial Compensation Motion filed by the U.S. Trustee by and through her counsel, the Filing Debtors excluded two executives, Mr. Alfred Eckert and Mr. Peter Frank, from the program. In addition, two conditions precedent to the payment of the Unpaid 2010 Bonuses were changed: the bonuses were not payable unless the Sale Hearing commenced, and an eligible employee could not be paid the bonus unless a representative of Capstone determined that the employee made an appropriate contribution to the sale process and to the preservation of the Filing Debtors' business.

Pursuant to an order dated December 3, 2010 (the "**December Order**") the Bankruptcy Court approved and authorized the Filing Debtors to implement the 2010 Compensation Program, as modified.

### C. Marketing Process

Prior to and following the Petition Date, Capstone contacted potential bidders and engaged in an extensive marketing campaign to bring parties into the bidding process. In targeting potential bidders, Capstone focused on parties that could make: (i) a bulk bid for all or substantially all of GSC's assets; (ii) a combination bid for some portion of the lots for sale; (iii) a bid on one category of funds managed by GSC (recovery funds, European mezzanine funds, U.S. CLOs, Euro CLOs and ABS CLOs); and (iv) a bid on one or more of the lots or assets. Capstone determined that if each of the Filing Debtors' major groups of assets had multiple bidders, there would be a robust auction maximizing value for the Filing Debtors and their estates. In addition, Capstone's marketing plan was designed to allow the Filing Debtors to utilize lot or combination bids to make "bulk" bids that would facilitate an open and robust auction.

On October 22, 2010, the bid deadline under the Bidding Procedures Order, the Filing Debtors received bids from eleven bidders. After receipt of the bids, Kaye Scholer and Capstone reviewed each bid and determined that all of the bids complied with the Bidding Procedures. In

the days leading up to the auction, Capstone and the Filing Debtors attempted to value the assets preliminarily. They also analyzed each bid based on the modifications made to the form asset purchase agreement and other related documents. In Capstone's preliminary valuation and analysis of the bids, it considered, among other things, the market pricing for the secured debt under the Prepetition Credit Agreement and the projected cash flow for each asset being sold. Based on its initial calculations, Capstone estimated that the value of substantially all of the Filing Debtors' assets could reach approximately \$140 million.

#### D. The Auction

Beginning on October 26, 2010, and concluding in the early morning of October 29, 2010, the Filing Debtors held the Auction for the sale of substantially all of their assets in accordance with the court-approved Bidding Procedures.

Twelve bidders attended at the commencement of the Auction. Representatives of the Non-Controlling Lender Group attended as observers. The Auction was to be conducted in three phases: Phase 1 – bulk bids for all or substantially all of the assets; Phase 2 – bids for combinations of lots or assets; and Phase 3 – individual bids for specific lots or assets.

The first phase of the Auction ended on October 26, 2010, with only one bulk bid for substantially all of GSC's assets, from BDCM, for \$5 million in cash. The Filing Debtors' professionals then commenced the combination phase of the Auction, which included several bidders and various combinations of lots or assets. The combination phase lasted into the evening on October 26, 2010, and continued on October 27, 2010.

During the second day of the Auction, Capstone determined that the best way to increase overall bids was to allow bidding consortiums. Because this would require bidders to combine their bids, Capstone approached the representatives of the Non-Controlling Lender Group and explained to them that, while this change in the bidding process could increase the overall bids, it would also permit BDCM and the Agent to develop a joint bid (and that there could be risks to the Non-Controlling Lender Group arising from such a joint bid). After several hours of discussions with the representatives of the Non-Controlling Lender Group, including their counsel and financial advisors, the Non-Controlling Lender Group agreed, in a writing drafted primarily by the Non-Controlling Lender Group's advisors, to permit joint bidding, including by BDCM and the Agent, and provided written consent to these modifications to the auction process.

Thereafter, the Auction procedures were modified as follows: (i) all bidders would receive information on the highest bids received on every lot and combination, in sealed envelopes; (ii) all bidders would be allowed to speak to other bidders and combine bids to maximize value; (iii) all bidders would be allowed in the auction room; and (iv) Capstone and Kaye Scholer would suggest bid configurations to assist bidder teams to maximize value.

In the first round of bidding under the modified procedures, the Filing Debtors received eight bids from a total of nine bidders. Thereafter, four additional rounds of bidding were conducted. A fifth and final round was conducted with sealed bids. Under the sealed bid procedures, all bids would be submitted in closed envelopes and the highest qualified bid at the

end of the round would be declared the winner. This would require bidders to make their best offer, and it was intended to drive the price even higher.

In the final round, Saratoga Partners, L.P. placed a bid that the Filing Debtors valued at \$175.8 million. Sankaty placed a bid that the Filing Debtors valued at \$193.7 million. BDCM and the Agent submitted a joint bid that the Filing Debtors determined was the highest and best bid for the assets in the amount of \$235 million, composed of \$5 million cash, a \$6 million note, and a credit bid of \$224 million (the “**Initial Winning Bid**”). As such, the Initial Winning Bid was at least \$40 million higher than the second highest bid received in the final round. On October 31, 2010, the Debtors executed the Initial APA with BDCM’s affiliate, GSC Acquisition Partners, LLC (the “**Initial Purchaser**”).

E. The Consent Process

After the conclusion of the Auction and entry into the Initial APA, the Filing Debtors commenced the Consent Solicitation Process. On November 2, 2010, the Filing Debtors filed and served notices to each counterparty to an executory contract which the Debtors proposed to assume and assign to the Initial Purchaser. These notices set forth, among other things, the “cure” payments to which the Filing Debtors believed such counterparties were entitled under section 365 of the Bankruptcy Code. From November 3, 2010 through November 17, 2010, the Filing Debtors solicited the consent of relevant noteholders, preferred shareholders, investors, issuers, trustees, paying agents, insurers, listing agents, corporate administrative service providers, and other parties in interest known to the Filing Debtors by delivering to them a “Notice of Consent Solicitation.”

F. The Initial Proposed Sale

The Filing Debtors filed a copy of the Initial APA and the Initial Sale Order on November 18, 2010. The hearing to consider approval of the sale was scheduled for December 6, 2010.

On November 23, 2010, the Non-Controlling Lender Group filed its objection to the Initial Sale Order, arguing, among other things, that Black Diamond’s successful joint bid improperly diverted the Prepetition Lenders’ recoveries to BDCM, and that the joint bid constituted collusive bidding. In particular, the Non-Controlling Lender Group contested the allocation of assets between the Agent and BDCM included as part of the Initial Winning Bid.

BDCM filed a response on November 29, 2010, in which it argued, among other things, that the Non-Controlling Lender Group was improperly attempting to litigate an intercreditor dispute before the Bankruptcy Court.

Other objections to the entry of the Initial Sale Order were filed on November 30, 2010 by UBS A.G., London Branch; Barclays Bank PLC; Royal Bank of Scotland PLC; Unicredit Bank AG; Landesbank Baden-Wurtemberg; London Branch, CapitalSource Finance LLC and CapitalSource CF LLC; and Credit Agricole Corporate and Investment Bank (collectively, the “**Objecting Investors**”). The Objecting Investors argued against the proposed non-consensual assumption and assignment to the Initial Purchaser of certain collateral management contracts for funds in which they held interests.

G. Amendment to the Initial APA

On December 3, 2010, the Debtors entered into an amendment to the Initial APA with the Initial Purchaser (“**Amendment No. 1**”). Amendment No. 1, among other things, (i) increased the amount of the note consideration from \$6 million to \$6.7 million, (ii) added the Debtors’ interest in GSC U.K. to the list of assets to be acquired in connection with the sale, and (iii) clarified BDCM’s entitlement to \$5.2 million of the \$6 million in cash distributions received by the Debtors in connection with certain transferred contracts between the date of entry into the Initial APA and November 30, 2010.

H. The Option Agreement

The day following the filing of Amendment No. 1, on December 4, 2010, BDCM and Alfred Eckert, the Chairman and Chief Executive Officer of the Debtors, entered into an option agreement (the “**Option Agreement**”) pursuant to which, for \$500,000, BDCM purchased an option, with an exercise price of \$1.5 million, to acquire from Mr. Eckert: (i) a potential \$2 million unsecured claim held by Mr. Eckert against the Filing Debtors; and (ii) certain of Mr. Eckert’s equity interests in the Debtors.<sup>16</sup>

I. Hearing on the Initial Sale Order

The hearing on the Initial Sale Order<sup>17</sup> (the “**Sale Hearing**”) was scheduled to take place on December 6, 2010. On that day, the Non-Controlling Lender Group argued that the Sale Hearing should not go forward due to recent developments, including the disclosure of Amendment No. 1 and the Option Agreement and the limited time available to review documents that had been produced in response to certain discovery requests. After listening to arguments from the Filing Debtors, Black Diamond and the Non-Controlling Lender Group, the Bankruptcy Court agreed to adjourn the Sale Hearing for one week.

During the December 6 hearing, the Bankruptcy Court entertained discussion of the objections that had been filed by the Objecting Investors. The parties stated on the record that the Objecting Investors’ objections had been resolved because the Filing Debtors agreed not to assign the Objecting Investors’ collateral management contracts in connection with the Initial APA.

On December 12, 2010, the Non-Controlling Lender Group filed a supplemental objection to the Initial Sale Order, which asserted that Amendment No. 1 was essentially a

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<sup>16</sup> On or about September 29, 2011, BDCM and Mr. Eckert entered into an Asset Purchase Agreement, in replacement of the Option Agreement, under which BDCM has agreed to purchase the same assets covered by the Option Agreement and certain additional assets for an agreed purchase price of \$1,000,000. The Asset Purchase Agreement, inter alia, permits BDCM, pending the closing of the transaction, to direct the vote with respect to the purchased assets, including Mr. Eckert’s unsecured claim against the Debtors. Mr. Eckert has since filed for bankruptcy protection and a motion to approve the sale of assets to BDCM is currently pending in that proceeding. On October 14, 2011, the Chapter 11 Trustee filed an objection to that motion.

<sup>17</sup> BDCM believes the Chapter 11 Trustee is referring to the hearing on the motion to authorize consummation of the transactions under the Initial APA.



\$700,000 private sale of the U.K. business to Black Diamond and a \$5.2 million settlement of a \$6 million dispute entered into as consideration for the Option Agreement.

On December 13, 2010, the Sale Hearing was again scheduled to take place before the Bankruptcy Court. Prior to the commencement of the hearing, Kaye Scholer provided the Bankruptcy Court with a status report regarding recent discovery and settlement discussions and stated that the Debtors were not prepared to go forward with the hearing at that time. At the conclusion of the proceeding, the parties were scheduled to appear again before the Bankruptcy Court on December 21, 2010.

J. Appointment of the Chapter 11 Trustee

On December 20, 2010, the Non-Controlling Lender Group filed a motion for the appointment of a chapter 11 trustee (the “**Trustee Motion**”), arguing, among other things, that appointment of a trustee was warranted based on alleged fiduciary conflicts arising from dealings between Black Diamond and the Filing Debtors’ senior management (i.e., Alfred Eckert and Peter Frank). The Filing Debtors and BDCM each filed an objection to the Trustee Motion, on December 21, 2010, disputing the allegations in the Trustee Motion. On December 22, 2010, the Bankruptcy Court conducted an evidentiary hearing on the Trustee Motion. At the conclusion of the hearing, the Bankruptcy Court took the matter under advisement. Following the hearing, the Debtors stated that they no longer intended to support the proposed sale transaction and sent a notice of termination of the Initial APA to Black Diamond.

The Bankruptcy Court held a hearing on the Trustee Motion on January 5, 2011, and issued a bench ruling in which it found cause under section 1104(a)(2) of the Bankruptcy Code for the immediate appointment of a chapter 11 trustee, and directed the appointment of a chapter 11 trustee. Thereafter, on January 7, 2011, the U.S. Trustee, by and through her counsel, filed a Notice of Appointment of James L. Garrity, Jr. On the same day, the Bankruptcy Court entered an order approving the appointment of Mr. Garrity as Chapter 11 Trustee.

After his appointment, the Chapter 11 Trustee assumed control of the Debtors’ businesses (which he continued to manage and operate in the ordinary course). The Chapter 11 Trustee also began a comprehensive review and analysis of the events leading up to his appointment.

K. Cessna Finance Moves to Lift the Stay

On January 31, 2007, Cessna Finance Corporation (“**Cessna**”) made a secured loan to GSC Group to finance GSC Group’s purchase of a 6.25% undivided property interest in a 2007 Bombardier BD-100-1A10 Challenger 300 aircraft, Serial No. 20128, FAA Reg. No. N529FX. GSC Group defaulted on its obligations to make the monthly payment that fell due on June 30, 2010 and each month thereafter. On December 17, 2010, Cessna filed a motion for relief from the automatic stay, requesting that the Bankruptcy Court vacate the automatic stay of 11 U.S.C. §362(a) to allow Cessna to exercise its contractual and state law remedies. On March 2, 2011, the Bankruptcy Court entered an order granting Cessna’s motion for relief from the automatic stay.

L. The Bar Date Order

On March 11, 2011, the Chapter 11 Trustee filed an application for an order establishing a deadline for filing of proofs of claim. On March 18, 2011, the Bankruptcy Court entered the Bar Date Order, which set April 25, 2011 at 5:00 p.m. (prevailing Eastern Time) as the deadline for certain creditors to file Claims against any of the Filing Debtors.

M. Employee Bonus Program

Shortly after his appointment, the Chapter 11 Trustee recognized that there was an immediate need to pay retention bonuses, but he determined that he was not authorized to pay the Unpaid 2010 Bonus under the terms of the December Order. Specifically, the December Order required the commencement of the Sale Hearing as one of the conditions precedent to the payment of the Unpaid 2010 Bonuses. The Chapter 11 Trustee, however, reviewed the record and formed the belief that the Sale Hearing did not commence on December 6, 2010 or at any subsequent time.

Accordingly, On March 8, 2011, based on his belief that it was necessary to seek authority to pay the Unpaid 2010 Bonus and make other retention payments to GSC's employees, the Chapter 11 Trustee filed a motion (the "**Retention Bonus Motion**") to approve a retention bonus program for certain of GSC's employees. The motion argued that the retention bonus program was needed because: (i) additional payments were necessary to maintain competitive and historically consistent compensation packages; (ii) the continued retention of the covered employees was essential to the operation of the Filing Debtors and preservation of value of the estates; and (iii) payment of the Unpaid 2010 Bonuses and additional bonuses for 2011 service was fair and equitable. The Chapter 11 Trustee, therefore, requested that he be authorized to pay to certain employees (a) their Unpaid 2010 Bonus immediately; (b) a discretionary bonus payment on April 30, 2011 (the "**April Bonus Payment**"); and (c) a discretionary final bonus payment on the date of the closing of any transaction involving the sale or reorganization of all or substantially all of the Filing Debtors' assets (the "**Final Bonus Payment**"). Payment of the April and Final Bonus Payments was subject to the Estates having funds sufficient to make payment, and the Chapter 11 Trustee's determination that an eligible employee had made an appropriate contribution to the Filing Debtors' sale process and was employed and in good standing on the relevant payment date. Mr. Eckert and Mr. Frank were excluded from this the Retention Bonus Motion.

On March 25, 2011, the Bankruptcy Court entered an order granting the Retention Bonus Motion. On March 3, 2011, The Filing Debtors paid the Unpaid 2010 Bonus in an aggregate amount of \$802,500. Of that amount, \$252,500 was for the benefit of employees of GSC U.K. On May 13, 2011, the Filing Debtors paid the April Bonus Payment in an aggregate amount of \$1,106,667.00. Of that amount, \$416,667.00 was for the benefit of employees of GSC U.K. Final Bonus Payments for U.S. employees totaling \$1,464,602.00 were made on August 17, 2011. Final Bonus Payments for employees of GSC U.K. in an amount of \$295,699.00 are expected to be paid on August 25, 2011.

N. The Frank Bonus Motion

Although Peter Frank had been excluded from the Retention Bonus Motion, the Chapter 11 Trustee believed that it was in the best interest of the Estates to establish an incentive bonus program for Mr. Frank, so that he would continue to work toward a successful resolution of the Chapter 11 Cases. Accordingly, on May 17, 2011, The Chapter 11 Trustee filed a motion seeking to pay Mr. Frank a bonus subject to (i) consummation of a sale or reorganization of substantially all of the Filing Debtors' assets, and (ii) the Chapter 11 Trustee's determination in his reasonable discretion that Mr. Frank substantially contributed to any such favorable outcome. The United States Trustee objected to the motion, but, following negotiations with the Chapter 11 Trustee, agreed to a proposed form of order that satisfied her concerns. On July 7, 2011, the Bankruptcy Court entered the order authorizing the implementation of the bonus program as a retention bonus for Mr. Frank's benefit.

O. Non-Controlling Lender Group's Plan of Reorganization

On April 25, 2011, the Non-Controlling Lender Group filed a joint chapter 11 plan for the Debtors (the "**NCLG Plan**"); a related disclosure statement (the "**NCLG Disclosure Statement**"); and a motion seeking, among other things, approval of the NCLG Disclosure Statement, approval of solicitation materials and procedures, and the scheduling of a confirmation hearing (the "**Disclosure Statement Motion**"). The NCLG Plan was self-styled as an "equitable and economic mechanism for resolving" the Chapter 11 Cases as it would "avoid the disenfranchisement of creditors and the significant tax liabilities that would result from a sale of the Debtors' Core Assets under section 363(b) of the Bankruptcy Code." The NCLG Plan was structured to transfer virtually all of the Debtors' value to the Prepetition Lenders and leave no recovery for unsecured creditors. Indeed, it was premised on the assumptions that (i) "the Claims of the Prepetition Lenders are secured by a lien on and security interest in substantially all of the assets of the Consolidated Debtors" and (ii) because the aggregate value of the Collateral securing the Claims of the Prepetition Lenders is less than the amount of such Claims, the Prepetition Lenders' Claims are undersecured, and because the Consolidated Debtors own virtually no property other than that which is pledged as Collateral to secure the Prepetition Lender Secured Claims, no General Unsecured Creditor has any realizable economic interest in the estates of the Consolidated Debtors." A hearing on the approval of the Disclosure Statement Motion was scheduled for May 25, 2011.

On May 23, 2011, the Chapter 11 Trustee, the Agent, and BDCM each filed an objection to the Disclosure Statement Motion. The Chapter 11 Trustee's objection requested, in part, that the hearing be adjourned due to his role as an independent fiduciary and recent developments in the case. In particular, he argued that he was appointed after all three major players in these cases — the Filing Debtors, the Minority Lenders, and BDCM asked that an independent third party assume responsibility for the Filing Debtors' strategic decisions. To that end, the Chapter 11 Trustee advised the Bankruptcy Court that he had negotiated the terms of transactions (discussed further below) that would provide for the sale of substantially all of the assets of the Debtors to BDCM and the other lenders under the Prepetition Credit Agreement. The Bankruptcy Court agreed to adjourn the hearing on the Disclosure Statement Motion and directed the Chapter 11 Trustee to file his sale motion. The Bankruptcy Court advised the parties that prior to any hearing on a motion put forth by the Chapter 11 Trustee seeking approval of a

sale, an interim hearing would need to be held to determine whether such a sale was in the proper exercise of the Chapter 11 Trustee's business judgment and if consideration of such a sale should proceed in lieu of the Bankruptcy Court's consideration of the NCLG Plan.

P. The Chapter 11 Trustee's Investigations

Following his appointment, the Chapter 11 Trustee and his counsel conducted a detailed examination of the events and circumstances leading to the Trustee Motion. This process involved extensive discussions with Capstone, the Filing Debtors' senior management, Black Diamond, the Non-Controlling Lender Group, and several other parties in interest, as well as certain bidders from the Auction. As necessary and appropriate, the Chapter 11 Trustee's counsel also worked with Kaye Scholer to obtain information about the case. The Chapter 11 Trustee also actively investigated all of the assertions and allegations raised by the Non-Controlling Lender Group.

As a result of these extensive discussions, negotiations, and investigations, the Chapter 11 Trustee negotiated an amendment to APA 1 and reaffirmed that agreement for the sale of substantially all of the Debtors' assets to an affiliate of the Initial Purchaser, GSC Acquisition Holdings, LLC (the "**Designated Purchaser**") on May 23, 2011. The Chapter 11 Trustee also entered into APA 2 with the Designated Purchaser for the sale of certain of the Debtors' remaining assets in exchange for a credit bid by the Agent for the remaining amount of the secured claims of the Prepetition Lenders. In entering into these transactions, the Chapter 11 Trustee believed that they would result in a greater benefit to the Filing Debtors' estates and stakeholders than any available alternative.

Q. The Purchase Agreements and the Chapter 11 Trustee's Sale Motion

SECTION V.Q OF THE DISCLOSURE STATEMENT IS INCORPORATED VERBATIM IN ITS ENTIRETY FROM THE TRUSTEE'S DISCLOSURE STATEMENT TO AVOID CONFUSION. ALL SUCH INCORPORATIONS HEREIN ARE SUBJECT TO THE CAVEAT SET FORTH IN SECTION I.D HEREOF. NOTHING IN THIS SECTION V.Q SHALL BE DEEMED A CONSENT TO ANY MODIFICATION OF THE OPERATIVE DOCUMENTS DESCRIBED IN THIS DISCLOSURE STATEMENT AND NOTHING STATED HEREIN SHALL HAVE ANY BEARING ON THE INTERPRETATION OF SUCH OPERATIVE DOCUMENTS.

On June 8, 2011, the Chapter 11 Trustee filed a motion for the authority to sell substantially all of the Debtors' assets to the Designated Purchaser pursuant to the Purchase Agreements, APA 1 and APA 2 and their related documents (the "**Sale Motion**"). The Purchase Agreements provided for the sale of the Acquired Assets (as defined in the Purchase Agreements), which consisted, primarily, of the management contracts from which the Debtors derived most of their revenue, as well as certain other assets owned, held, or used in the Debtors' investment management business, including debt and equity interests in partnerships, limited liability companies and investment vehicles to which the Debtors (or their non-debtor affiliates) provided investment management services or in which they served as general partner, limited partner, member or other similar roles.

APA 1 covered substantially all of the Debtors' investment and investment management assets, including GSC Group's 100% equity ownership of SIF, and reflected the results of the auction process conducted pursuant to the Bidding Procedures Order. At the conclusion of the auction, the Debtors had entered into the Initial APA. The Initial APA was subsequently amended by Amendment No. 1. During his appointment, the Chapter 11 Trustee negotiated further favorable amendments by a supplemental letter dated May 23, 2011 (the "**Side Letter**"). The consideration provided to the Debtors under APA 1 included: (i) a \$224 million credit bid by the Agent; (ii) a \$6.7 million promissory note; (iii) \$5 million cash; and (iv) the assumption of certain liabilities.

Among the more important improvements obtained by the Chapter 11 Trustee was the obligation of the Designated Purchaser to execute and deliver the Tax Indemnification Agreement at closing. The Tax Indemnification Agreement protects the Debtors' estates from certain taxes that may be assessed in connection with the consummation of the Purchase Agreements. The Tax Indemnification Agreement also effectively backstops a significant recovery for unsecured creditors by shielding certain of the Estates' assets from potential tax liabilities.

The Side Letter also provided protections for the Non-Controlling Lender Group. Specifically, it memorialized that in any resulting sale order the rights of the Non-Controlling Lender Group would be fully and unconditionally reserved with respect to any future state court litigation concerning the propriety of the Agent's actions in connection with the Auction, the transaction contemplated by the Purchase Agreements, and any allocation of the Acquired Assets as between BDCM and the lenders under the Prepetition Credit Agreement.

The consideration received under APA 1 would not satisfy all of the Debtors' obligations to the Prepetition Lenders. Accordingly, the Chapter 11 Trustee proposed to enter into APA 2 to satisfy the Debtors' remaining obligations under the Prepetition Loan Documents. Under APA 2, the Chapter 11 Trustee would sell those remaining assets not sold under APA 1, other than: (i) approximately \$18.6 million of cash, (ii) certain causes of action, (iii) certain key-man life insurance policies, and (iv) certain miscellaneous assets (collectively, the "**Estate Assets**") in exchange for a credit bid by the Agent in the amount of the Debtors' remaining obligations to the Prepetition Lenders. The retention of the Estate Assets would ensure that the estates retained amounts to fund the administrative expenses of the estates through the conclusion of these chapter 11 cases and certain assets to be liquidated in order to fund additional potential distributions to unsecured creditors.

On July 1, 2011, the Non-Controlling Lender Group filed an objection to the Sale Motion, arguing, among other things, that the allocation that would result from consummating the transactions contemplated by the Purchase Agreements would significantly harm the Prepetition Lenders. The Bankruptcy Court held evidentiary hearings on July 6 and July 7, 2011 to determine whether the Chapter 11 Trustee exercised the proper business judgment in putting forth the Sale Motion, and to consider the Sale Motion itself. Following the conclusion of the July 6, 2011 hearing, the Bankruptcy Court ruled that the Chapter 11 Trustee had demonstrated the requisite business judgment and the following day issued a Minutes Order [Docket No. 659] stating that the Chapter 11 Trustee could go forward with a hearing on the Sale Motion in lieu of consideration of the NCLG Plan and the NCLG Disclosure Statement. The Bankruptcy Court

conducted a hearing on the Sale Motion on July 7, 2011 and on July 11, 2011, entered an order approving the Sale Motion (the “**Sale Order**”). The Bankruptcy Court also filed an opinion in support of its decision with respect to the Sale Order on July 18, 2011 [Docket No. 648]. On July 13, 2011, the Non-Controlling Lender Group filed a notice of appeal of the Sale Order to the United States District Court for the Southern District of New York (the “**District Court**”)(as discussed below, the appeal has been withdrawn).

On July 19, 2011, the Non-Controlling Lender Group filed a motion with the District Court seeking to expedite the timeline for the group’s appeal of the Sale Order. In addition to this motion for an expedited appeal, on July 20, 2011, the Non-Controlling Lender Group filed an amended complaint in the state court action styled as *Crédit Agricole Corporate and Investment Bank New York Branch, et al. v. Black Diamond Commercial Finance, L.L.C., et al.*, captioned as Index No. 651989/2010 (Sup. Ct. N.Y. Co.), which was pending before the Supreme Court for the State of New York (the “**State Court**”). The amended complaint included a new cause of action that sought to enjoin Black Diamond from consummating the transactions approved by the Bankruptcy Court’s Sale Order. The Trustee objected to the Non-Controlling Lender Group’s motion for an expedited appeal and Black Diamond, along with the other state court defendants, sought to remove the new cause of action in the amended State Court complaint to federal court.

Pursuant to Black Diamond’s request, the State Court removed the amended complaint to the District Court, which then automatically referred the proceeding to the Bankruptcy Court. On July 22, 2011, the Bankruptcy Court held a hearing on the amended complaint and remanded it back to the State Court, while stating that any relief being sought by the Non-Controlling Lender Group that would be in violation of the protections afforded to the Filing Debtors pursuant to the Bankruptcy Code’s automatic stay would be void ab initio. Also on July 22, 2011, the District court conducted a hearing on the Non-Controlling Lender Group’s motion for an expedited appeal, after which the District Court denied the motion and held that the appeal would proceed on a non-expedited basis.

Upon the Bankruptcy Court’s ruling that the amended complaint should be remanded to the State Court, the Non-Controlling Lender Group sought emergency relief from the State Court to temporarily prohibit Black Diamond from consummating a transaction with the Debtors. At the conclusion of a July 25, 2011 hearing on the matter, the State Court denied the Non-Controlling Lender Group’s request for emergency relief, and scheduled the matter for a full hearing on August 12, 2011 at which the State Court again denied the relief sought by the Non-Controlling Lender Group.

On July 26, 2011, the Debtors consummated the transactions contemplated by the Purchase Agreements. In conjunction with the closing, the Agent delivered a payoff letter memorializing the full and complete satisfaction of all of the Debtors’ obligations under the Prepetition Credit Documents, as contemplated by the Purchase Agreements.

On September 12, 2011, the Chapter 11 Trustee and the Non-Controlling Lender Group entered into a stipulation whereby the Non-Controlling Lender Group agreed to withdraw its appeal of the Sale Order with prejudice. The stipulation was so ordered by the District Court on

September 13, 2011, and a copy of the stipulation was filed with the District Court on September 14, 2011.

R. Litigation Against the Debtors

1. SEC Settlement

On January 13, 2011, the SEC staff informed the Chapter 11 Trustee and his counsel that it was considering bringing charges against NJLP for material misstatements and omissions in connection with the marketing of the Squared CDO 2007-1 CDO (“**Squared**”). The Chapter 11 Trustee and his counsel engaged in extensive arms-length negotiations with the SEC staff regarding the resolution of the SEC’s claims and agreed to resolve the matter consensually, subject to approval by the Bankruptcy Court.

The SEC and NJLP entered into a settlement, which was approved by the Bankruptcy Court on August 10, 2011, by which the SEC will enter an administrative Cease-and-Desist Order that resolves all of its claims and fully satisfies the relief it is seeking against NJLP. The Order finds the following: while acting as the collateral manager to Squared, NJLP failed to ensure that investors were adequately informed that Magnetar Capital, LLC (“**Magnetar**”), a hedge fund with economic interests adverse to investors in Squared, played a significant role in the portfolio selection process. The marketing materials for Squared represented that the investment portfolio of CDO securities was selected by NJLP, without disclosing the role played by Magnetar. Squared, which priced on April 19, 2007 and closed on May 11, 2007, declared an event of default on January 18, 2008. As a result, its investors lost most, if not all, of their principal.

The Cease-and-Desist Order finds that a result of the negligent conduct described in the Cease-and-Desist Order, NJLP violated Section 206(2) of the Investment Advisers Act, Sections 17(a)(2) and (3) of the Securities Act, Section 204(a) of the Advisers Act and Rule 204-2(a)(7) thereunder, and orders that NJLP cease-and-desist from “committing or causing violations and any future violations of Section 17(a)(2) and (3) of the Securities Act and Sections 204 and 206(2) of the Advisers Act and Rule 204-2 promulgated thereunder.” The Cease-and-Desist Order does not impose any monetary sanctions on NJLP.

2. FINRA Arbitration

On April 4, 2008, the Detroit Police and Firemen’s Retirement Fund (the “**Detroit Fund**”), filed a complaint alleging, among other things, that the named defendants, which including NJLP, made certain misrepresentations in connection with the Detroit Fund’s investments in certain CDO funds previously affiliated with or managed by the Filing Debtors (the “**CDO Funds**”). By court order dated August 22, 2008, affirmed by the Michigan Court of Appeals in May 2010, separate motions of all defendants to dismiss the action were granted on the grounds that the issues raised in the Detroit Fund’s complaint are subject to arbitration under a pre-existing agreement between the Detroit Fund and co-defendant Citigroup Global Markets, Inc. (as successor to Smith Barney). In May 2010, the Detroit Fund commenced a FINRA arbitration against certain of the defendants named in the state court action, including NJLP. The arbitration, similar to the state court action, is based on allegations that certain

misrepresentations were made to the Detroit Fund in connection with its investments in the CDO Funds. The Detroit Fund's investments in the CDO Funds totaled approximately \$40 million.

NJLP may be insured against losses incurred in connection with the litigation under a Private Equity Fund and Management Liability Policy (“**Policy**”) issued by AIG to named fund managers “Greenwich Street Capital Partners”, debtor NJ Inc., and NJLP as well as certain named funds and general partners of funds managed by NJLP. The Policy provides \$10 million in coverage, and NJLP may also be insured by four excess carriers, for a total of \$50 million of coverage. To the best of the Chapter 11 Trustee’s knowledge, AIG and the excess carriers were notified of the Detroit Fund's potential claims, and no other claims potentially covered by the Policy or excess policies have been filed or noticed.

### 3. Action by Cobalt Management

In September, 2007, Cobalt Management, Inc. and certain affiliates (collectively, “**Cobalt**”), investors in GSC Capital Corp., predecessor of 2008 Asset Holding Corp. (“**GSCCC**”), a real estate investment trust managed by NJLP, commenced an action against GSCCC, NJLP and GSC Group in New York Supreme Court, New York County. The twice-amended complaint charges that all three defendants are liable for breach of a registration rights agreement entered into by GSCCC in connection with its June 2005 private placement of equity interests, a portion of which was purchased by Cobalt. In January 2009, the New York Supreme Court, New York County granted a motion to dismiss with regard to NJLP and GSC Group. Following the dismissal, Cobalt appealed to the New York Supreme Court Appellate Division, First Department. The appeal was argued in December 2009. The ruling on the appeal is stayed while NJLP and GSC Group remain in chapter 11.

#### S. Rejection of the Chapter 11 Trustee’s Plan & Vote Disqualification/Designation Efforts

Only “Class 3” general unsecured claims were entitled to vote to accept or reject the Trustee’s Plan. If the Chapter 11 Trustee did not receive accepting Class votes in the amount and number required under the Bankruptcy Code, the Chapter 11 Trustee would not be able to confirm the Trustee’s Plan. The deadline for Class 3 general unsecured claim holders to submit their votes was November 8, 2011.

On November 3, 2011, BDCM filed its *Motion to Exclude Certain Purported Claims for Voting Purposes* [Docket No. 919] (the “**Initial Disqualification Motion**”), seeking to exclude certain votes that had been submitted in support of the Trustee’s Plan. The November 8, 2011 voting deadline passed without any resolution of the Initial Disqualification Motion. Indeed, on December 1, 2011, BDCM filed a supplement to the Initial Disqualification Motion in which it identified certain additional claims that it asserted should have been excluded for voting purposes and also described 13 claims filed by U.S. Bank National Association that BDCM argued were incorrectly consolidated as one single claim for voting purposes [Docket No. 1006] (together with the Initial Disqualification Motion, the “**Disqualification Motions**”). The Chapter 11 Trustee objected to the relief sought in the Disqualification Motions, asserting that the challenged votes had been tabulated in accordance with the Bankruptcy Court approved voting procedures set forth in the Trustee’s Disclosure Statement Order. Regardless of the



outcome of the Disqualification Motions, however, the Chapter 11 Trustee did not obtain the requisite majority in amount of accepting Class 3 votes necessary for it to be able to proceed with confirmation of its chapter 11 plan.

Faced with an unconfirmable plan, on November 23, 2011, the Chapter 11 Trustee filed a motion seeking to designate (*i.e.*, disqualify) the Class 3 rejecting votes cast by Black Diamond, certain employee-creditors and certain other general unsecured creditors who the Chapter 11 Trustee contended were improperly solicited by Black Diamond to vote to reject the Trustee's Plan [Docket No. 971] (the "**Designation Motion**"). BDCM objected to the Chapter 11 Trustee's motion asserting that the Chapter 11 Trustee's claims were without merit and that none of the challenged votes should be designated [Docket No. 1030]. The hearing on the Designation Motion and the Disqualification Motions ultimately was set for December 14, 2011.

T. Achieving the Agreed Stipulated Order & its Material Terms

At the December 14, 2011 hearing, BDCM and the Chapter 11 Trustee agreed in principle to a settlement that resolved the motions, addressed certain other issues and paved the way for BDCM to proceed with its plan with the support of the Chapter 11 Trustee. This settlement was later memorialized in the *Stipulation and Order Between the Chapter 11 Trustee and Black Diamond Capital Management, L.L.C. Regarding Settlement of Designation and Disqualification Motions* (the "**Agreed Stipulated Order**"), which the Bankruptcy Court approved on December 20, 2011 [Docket No. 1049].

The Agreed Stipulated Order contains the following material terms:

- **Withdrawal of Motions.** BDCM and the Chapter 11 Trustee agreed to mutually deem to be withdrawn, respectively, the Disqualification Motions and the Designation Motion;
- **Support of BDCM Plan.** The Trustee agreed that it would support solicitation and confirmation of BDCM's Plan as long as it, among other things, (a) remains consistent with the terms of the Agreed Stipulated Order, (b) is not amended in such a way that adversely impacts the amount or timing of distribution to unsecured creditors, and (c) has been confirmed and become effective on or before March 31, 2012;
- **Adjournment of the Trustee's Plan.** The Trustee has agreed to adjourn any consideration by the Bankruptcy Court of confirmation of its plan and has agreed not to consummate its plan prior to the earlier of the Bankruptcy Court denies BDCM's Plan or April 1, 2012;

- ***Tabulation of Certain Votes.*** Ballots submitted by certain entities controlled by BDCM were revised to now be votes to accept the Trustee's Plan. Moreover, BDCM agreed to request that U.S. Bank National Association amend its 13 ballots rejecting the Trustee's Plan to accept the Trustee's Plan;
- ***Administrative Claim Payment.*** BDCM agreed to transfer to the Chapter 11 Trustee \$1 million to pay certain fees and expenses of the professionals retained in these chapter 11 cases, and the Chapter 11 Trustee, the Debtors and the Liquidating Trustee are not required to repay any portion of this amount;
- ***Escrow Fund / LoC.*** To satisfy any Straddle Tax<sup>18</sup> that the Chapter 11 Trustee believes may be incurred by the Debtors if a chapter 11 plan as to the Debtors does not become effective by the end of 2011, BDCM has agreed to fund \$4 million in Escrow Funds or through a Straddle Tax Letter of Credit. The amount of the Escrow Funds (or Straddle Tax Letter of Credit) may be reduced, from time to time, by the portion of any cash distributions made by the Debtors, the Liquidating Trust or the Liquidating Trustee that would be attributable to the claims held by general unsecured creditors electing the Equity Option, and to the extent such amounts are deposited with the Escrow Agent, they shall be held in accordance with the terms of the Agreed Stipulated Order and/or any separate escrow agreement entered in accordance with the Agreed Stipulated Order terms as may be approved by the Chapter 11 Trustee or the Liquidating Trustee, as applicable;
- ***Indemnification for Straddle Tax.*** Black Diamond and the Designated Purchaser shall indemnify and hold harmless the Debtors, the Chapter 11 Trustee, the Liquidating Trust or Liquidating Trustee (and their respective successors and permitted assignees) for any claim or liability whatsoever for any Straddle Tax, shall be indemnified by, with any payment of such indemnification to be paid (a) to come first from the escrow fund or letter of credit, (b) to be paid, second, by the Designated Purchaser and, third, by BDCM, and (c) not to exceed, in the aggregate \$4 million; and
- ***Objections to Claims.*** Black Diamond may file objections to claims (other than the claim of Eric Snyder) for voting and allowance purposes and the Chapter 11 Trustee has agreed (a) not to oppose these objections and (b) that it will have the right to pursue any objections to claims (other than the claims of 888 Seventh Avenue LLC and David Robins) for allowance purposes only.

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<sup>18</sup> "Straddle Tax" means any amount of federal, state or local tax liability (including interest and penalties), including any liability arising from payments to the Debtors under the Agreed Stipulated Order, for which one or more Debtors or the Liquidating Trust is liable, that would not have been payable by such Debtors or Liquidating Trust if the Trustee's Plan had been consummated in 2011.

## VI. SUMMARY OF BDCM'S JOINT CHAPTER 11 PLAN

**CLASSES 1 AND 2 ARE UNIMPAIRED UNDER THE PLAN AND HOLDERS OF CLAIMS IN CLASS 1 AND CLASS 2 ARE CONCLUSIVELY PRESUMED TO HAVE ACCEPTED THE PLAN PURSUANT TO SECTION 1126(f) OF THE BANKRUPTCY CODE. THEREFORE, HOLDERS OF CLAIMS IN CLASS 1 AND CLASS 2 ARE NOT ENTITLED TO VOTE ON THE PLAN.**

A Chapter 11 plan also may specify that certain classes will not receive any distribution of property or retain any claim against or interest in a debtor. Such classes are deemed to reject the plan, and need not be solicited to vote on the plan. **HOLDERS OF REMAINING EQUITY INTERESTS IN CLASS 5 WILL RECEIVE NO DISTRIBUTION NOR RETAIN ANY PROPERTY UNDER THE PLAN AND ARE CONCLUSIVELY PRESUMED TO HAVE REJECTED THE PLAN PURSUANT TO SECTION 1126(g) OF THE BANKRUPTCY CODE. THEREFORE, NO BALLOT IS ENCLOSED FOR HOLDERS OF EQUITY INTERESTS IN CLASS 5.**

Under section 1124 of the Bankruptcy Code, a class of claims is "impaired" if under a plan unless the plan (a) leaves unaltered the legal, equitable and contractual rights of each holder of a claim in such class; or (b) provides, among other things, for cure of existing defaults and reinstatement of the maturity of claims in such class. **CLASSES 3 AND 4 ARE IMPAIRED UNDER THE PLAN AND HOLDERS OF CLAIMS IN CLASS 3 AND INTERESTS IN CLASS 4 ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN, SUBJECT TO APPLICABLE LIMITATIONS AS MAY BE ORDERED BY THE BANKRUPTCY COURT. BALLOTS ARE BEING FURNISHED HEREWITH TO HOLDERS OF CLAIMS IN CLASS 3 AND INTERESTS IN CLASS 4.**

### A. Classification and Treatment of Claims and Equity Interests

Under the Plan, Claims are classified and/or treated as discussed below.

#### 1. Administrative Claims (Unclassified)

*Description.* Administrative Claims are post-petition claims that were incurred as actual and necessary costs or expenses of preserving the Debtors' Estates during the Chapter 11 Cases. All Administrative Claims are subject to review, reconciliation, and possibly, objection (including by BDCM). The Chapter 11 Trustee estimated in the Trustee's Disclosure Statement that upon information and belief, following the claims reconciliation and objection process, Allowed Administrative Claims will total between \$4 million and \$6 million in the aggregate.

*Treatment.* Each Holder of an Allowed Administrative Claim will receive from the Reorganized Debtors, in full satisfaction and discharge thereof, Cash equal to the unpaid amount of such Allowed Administrative Claim (except to the extent that such Holder agrees to less favorable treatment thereof) either on, or as soon as practicable after (but in any event not later than five Business Days after), the latest of (a) the Effective Date; (b) the date on which such Administrative Claim becomes Allowed; (c) the date on which such Administrative Claim becomes due and payable; and (d) such other date as mutually may be agreed to by such Holder, the Liquidating Trustee, BDCM, or the Reorganized Debtors, as the case may be.

Notwithstanding the foregoing, any Allowed Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto.

Except for (a) professionals requesting compensation or reimbursement for Professional Fees; (b) UST Fees; and (c) Holders of Administrative Claims who were required to file proofs of such Administrative Claims incurred on or before August 31, 2011 in accordance with the Initial Administrative Claims Bar Date Order, requests for payment of Administrative Claims must be made and billed no later than 90 days after the Effective Date. **Holders of Administrative Claims who are required to file a request for payment of such Claims and who do not file such requests by the Plan Administrative Claims Bar Date shall be forever barred from asserting such Claims against the Debtors, the Reorganized Debtors, the Liquidating Trust, or their property, and the Holder thereof shall be enjoined from commencing or continuing any action to collect, offset or otherwise recover such Administrative Claim.**

2. Priority Tax Claims (Unclassified)

*Description.* A Priority Tax Claim is an unsecured claim by a taxing authority to the extent entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code.

*Treatment.* Each Holder of an Allowed Priority Tax Claim will receive, in full satisfaction and discharge thereof, Up-Front Option Plan Cash and Combination Option Plan Cash equal to the unpaid amount of such Allowed Priority Tax Claim (except to the extent that such Holder agrees to less favorable treatment thereof) either on, or as soon as practicable after (but in any event not later than five Business Days after), the latest of (a) the Effective Date; (b) the date on which such Priority Tax Claim becomes Allowed; (c) the date on which such Priority Tax Claim becomes due and payable; and (d) such other date as mutually may be agreed to by such Holder and the Chapter 11 Trustee, the Liquidating Trustee or Reorganized Debtors, as the case may be; *provided, however*, that the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be, will be authorized, at their option, and in lieu of payment in full of an Allowed Priority Tax Claim, to make deferred Cash payments on account thereof in the manner and to the extent permitted under section 1129(a)(9)(C) of the Bankruptcy Code.

3. Professional Fees

*Description.* Professional Fees are fees and other compensation, including reimbursement of expenses, allowed to (i) the Chapter 11 Trustee; (ii) professionals employed under sections 327, 328, or 1103 of the Bankruptcy Code pursuant to sections 330, 331 or 1103(a) of the Bankruptcy Code; and (iii) any Person or Entity making a claim for compensation or reimbursement of expenses under section 503(b) of the Bankruptcy Code.

*Treatment.* The Chapter 11 Trustee and each Professional requesting compensation pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code for services rendered in connection with the Chapter 11 Cases prior to the Confirmation Date will be required to file an

application for allowance of final compensation and reimbursement of expenses on or before the 60th day following the Effective Date. Without limiting the foregoing, the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors may pay the charges incurred by the Debtors or the Chapter 11 Trustee on and after the Confirmation Date for any Professional's fees, disbursements, expenses or related support services, without application to, or approval by, the Bankruptcy Court. Pursuant to the Agreed Stipulated Order, Black Diamond may object to the allowance of those fees and expenses incurred by Professionals after July 26, 2011, but only to the extent that the allowed fees and expenses incurred by Professionals after July 26, 2011 would exceed \$8 million in the aggregate if such objections were sustained. Black Diamond has waived its rights to receive any substantial contribution award that would be payable from or otherwise affect or impact the distributions to be made by the Liquidating Trust.

4. United States Trustee Fees

*Description.* UST Fees are all fees payable pursuant to section 1930 of title 28 of the United States Code or accrued interest thereon arising under section 3717 of title 31 of the United States Code.

*Treatment.* To the extent required by applicable law, the Debtors, the Liquidating Trustee and the Reorganized Debtors, as applicable, shall pay all UST Fees on all disbursements, including, to the extent required by applicable law, Plan payments and disbursements in and outside the ordinary course of the Debtors' business, until the entry of a Final Decree, dismissal of the Chapter 11 Cases, or conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

5. Class 1 – Secured Claims (Unimpaired)

*Description.* A Secured Claim is any Claim that constitutes a secured claim under section 506(a) of the Bankruptcy Code. Class 1 consists of all remaining Secured Claims asserted against the Debtors. BDCM believes that there will not be any Allowed Secured Claims.

*Voting.* Class 1 is not Impaired. Holders of Secured Claims are conclusively presumed to accept the Plan.

*Treatment.* Each Holder of an Allowed Secured Claim will receive either (A) payment in full in Plan Cash on the latest of (i) the Effective Date; (ii) the date on which such Secured Claim becomes Allowed; (iii) the date on which such Secured Claim otherwise is due and payable; or (iv) such other date as mutually may be agreed to by and between such Holder and the Chapter 11 Trustee, the Liquidating Trustee, BDCM or the Reorganized Debtors, as the case may be or (B) its collateral.

6. Class 2 – Other Priority Claims (Unimpaired)

*Description.* An Other Priority Claim is a Claim to the extent entitled to priority in payment pursuant to section 507(a) of the Bankruptcy Code other than an Administrative Claim or a Priority Tax Claim. BDCM estimates that there will not be any Allowed Other Priority Claims.

*Voting.* Class 2 is not Impaired. Holders of Other Priority Claims are conclusively presumed to accept the Plan.

*Treatment.* Each Holder of an Allowed Other Priority Claim will receive Plan Cash in an amount sufficient to leave unaltered the legal, equitable and contractual rights to which such Claim entitles such Holder on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (A) the Effective Date; (B) the date on which such Other Priority Claim becomes Allowed; (C) the date on which such Other Priority Claim otherwise is due and payable; and (D) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee, BDCM or the Reorganized Debtors, as the case may be.

7. *Class 3 – General Unsecured Claims (Impaired)*

*Description.* A General Unsecured Claim is any Claim that is not an Administrative Claim, Priority Tax Claim, Other Priority Claim, Secured Claim or based upon Equity Interests in the Debtors. BDCM is currently undertaking an independent review of all scheduled and filed General Unsecured Claims. Such review is ongoing. Accordingly, for purposes of this Disclosure Statement, BDCM has adopted the estimate the Chapter 11 Trustee provided in the Trustee's Disclosure Statement that General Unsecured Claims will total between \$12 million and \$15 million in the aggregate (See Trustee's Disclosure Statement at VI(A)(6)).

*Voting.* Class 3 is Impaired. Holders of General Unsecured Claims are entitled to vote.

*Treatment.* Each Holder of an Allowed General Unsecured Claim shall be permitted to elect the Up-front Cash Option, the Combination Cash Option or the Equity Option.

Subject to Section 7.4 of the Plan, if such Holder elects the Up-front Cash Option, such Holder shall receive its Up-Front Cash Distribution Share, on or as soon as practicable after, the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee, BDCM or the Reorganized Debtors, as the case may be.

Subject to Section 7.4 of the Plan, if such Holder elects the Combination Cash Option, such Holder shall receive (A) its Combination Cash Distribution Share and (B) its Pro Rata Share of Trust Units, in each case, on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee, BDCM or the Reorganized Debtors, as the case may be.

Subject to Section 7.4 of the Plan, if such Holder elects the Equity Option, such Holder shall receive:

(A) one share of Reorganized GSC Group Series B Preferred Stock with a liquidation preference equal to the lesser of (i) the face amount of such Holder's Allowed General Unsecured Claim and (ii) a pro rata portion of 80% of the net asset value of Reorganized GSC Group as of the Effective Date; and

(B) such Holder's Equity Distribution Share of Reorganized GSC Group Convertible Class B Common Stock. The Reorganized GSC Group Convertible Class B Common Stock will comprise between 33% and 49%, at BDCM's discretion, of the common stock of Reorganized GSC Group (and 24.9% of the voting power) and will be convertible upon majority vote of the holders of such Reorganized GSC Group Convertible Class B Common Stock on a one-for-one basis to shares of Reorganized GSC Group Class C Common Stock, which will, upon exercise of such conversion, comprise 49% of the common stock of Reorganized GSC Group (and hold 49% of the voting rights).

If a Holder of a General Unsecured Claim, whether Disputed or Allowed, does not elect either the Up-front Cash Option, the Combination Cash Option or the Equity Option on or before the Voting Deadline, such Holder will be deemed to have elected the Up-front Cash Option. Holders of Allowed General Unsecured Claims arising on account of executory contracts or unexpired leases that are rejected pursuant to Section 6.2 of the BDCM Plan will have the opportunity to elect the Up-front Cash Option, the Combination Cash Option, or the Equity Option in accordance with Section 6.3 of the BDCM Plan.

With respect to any Holder of a General Unsecured Claim who elects the Equity Option, Reorganized GSC Group shall be entitled to (A) the Combination Cash Distribution Share and (B) the Pro Rata Share of Trust Units that such Holder would have received had such Holder elected the Combination Cash Option.

#### 8. Class 4 – Preferred Equity Interests in the Debtors (Impaired)

*Description.* Preferred Equity Interests are all outstanding ownership interests, whether or not certificated, in common stock of Debtor GSC Group, Inc., which interests are comprised of Class A, Class B and Class C common stock.

*Voting.* Class 4 is Impaired. Holders of Preferred Equity Interests are entitled to vote to accept or reject the Plan.

*Treatment.* On the Effective Date, all Preferred Equity Interests shall be cancelled and extinguished, and Holders of Preferred Equity Interests shall be issued Reorganized GSC Group Class A Common Stock, according to the Pro Rata Share of Preferred Equity Interests they held, equal to between 51% and 67%, at BDCM's discretion, of total Reorganized GSC Group Common Stock (with 75.1% of voting rights unless and until the conversion of the Reorganized GSC Group Convertible Class B Common Stock to Reorganized GSC Group Class C Common Stock, at which time the voting rights of such existing Common Equity Interests would be diluted to 51%) as a result of the issuance of the Reorganized GSC Group Convertible Class C Common Stock.

9. Class 5 – Remaining Equity Interests in the Debtors (Impaired)

*Description.* Remaining Equity Interests are, with respect to Debtor GSC Group, Inc., all outstanding ownership interests, whether or not certificated, including any interest evidenced by common or preferred stock, warrant, membership interest, option or other right to purchase or otherwise receive any ownership interest in any of the Debtors, or any right to payment or compensation based upon any such interest, whether or not such interest is owned by the Holder of such right to payment or compensation, minus the Common Equity Interests.

*Voting.* Class 5 is Impaired. Holders of Remaining Equity Interests are conclusively deemed to reject the Plan.

*Treatment.* Holders of Remaining Equity Interests shall not receive or retain any property or interest in property on account of such Remaining Equity Interests. On the Effective Date, all Remaining Equity Interests shall be cancelled, extinguished and discharged.

B. Means for Implementation of the Plan

1. Formation of the Liquidating Trust

Notwithstanding the general release of the Chapter 11 Trustee from his duties and obligations in these Chapter 11 Cases, if any Professional retained in these Chapter 11 Cases (or any person or entity affiliated with any Professional retained in these Chapter 11 Cases) is appointed as Liquidating Trustee, the Chapter 11 Trustee shall retain the right to review and approve any fees of such Professional incurred before the Effective Date.

On the Effective Date, the Liquidating Trust shall be formed pursuant to the Liquidating Trust Agreement. Confirmation of the Plan shall constitute the appointment of the Liquidating Trustee by the Bankruptcy Court as the representative of the Estates, subject to the Liquidating Trust Agreement, for all purposes. The Liquidating Trustee shall sign the Liquidating Trust Agreement and accept the Residual Estate Assets, including the Liquidating Trust Cash, the Disputed Priority Claims Reserve Amount and the Disputed General Unsecured Claims Cash Reserve Amount, to be transferred to the Liquidating Trust pursuant to Section 5.4 of the Plan on behalf of the beneficiaries thereof, and the Liquidating Trust will then be deemed created and effective without any further action of the Chapter 11 Trustee, the Debtors or the employees, officers, directors, members, partners or shareholders of the Debtors. On the Effective Date, the Chapter 11 Trustee's rights and obligations with respect to the Escrow Funds or the Straddle Tax Letter of Credit, as applicable, shall be transferred to the Liquidating Trust. The Liquidating Trust shall be established for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidating Trust. The beneficiaries of the Liquidating Trust shall be bound by the Liquidating Trust Agreement.

The Liquidating Trust is intended to be classified for U.S. federal income tax purposes as a "liquidating trust" within the meaning of U.S. Treasury Regulation section 301.7701-4(d), and the Plan, the Liquidating Trust and the Disclosure Statement are intended to comply with the advance-ruling guidelines contained in Rev. Proc. 94-45, 1994-2 C.B. 684, although no advance ruling will be sought for the Liquidating Trust. The Liquidating Trust will be treated as a grantor



trust for U.S. federal income tax purposes, all of the assets of which are deemed owned by the Holders of General Unsecured Claims pursuant to Tax Code sections 671 through 677 (or successor provisions). The Liquidating Trustee will file all returns for the Liquidating Trust as a grantor trust pursuant to U.S. Treasury Regulation section 1.671-4(a) (or successor provisions).

The transfers by the GSC Group or its subsidiaries of assets to the Liquidating Trust will be treated for all federal income tax purposes as a transfer of such assets directly to Reorganized GSC Group and the Holders of General Unsecured Claims who have elected the Combination Cash Option at the time of the creation of the Liquidating Trust, followed by the immediate transfer by Reorganized GSC Group and the Holders of General Unsecured Claims of such assets to the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust. Reorganized GSC Group and Holders of General Unsecured Claims who have elected the Combination Cash Option will be treated as the grantors and direct owners of a specified undivided interest in the assets held by the Liquidating Trust for all U.S. federal income tax purposes (such assets will have a tax basis equal to their fair market value on the date transferred to the Liquidating Trust). The Liquidating Trustee shall determine the valuations of the transferred property, such valuations will be used for all U.S. federal income tax purposes, and Reorganized GSC Group and all Holders of General Unsecured Claims who have elected the Combination Cash Option shall be bound by such valuations.

The Liquidating Trustee shall provide to Reorganized GSC Group and the Holders of General Unsecured Claims who have elected the Combination Cash Option an annual statement that will list items of income, deduction and credit applicable to the Liquidating Trust in the taxable year. The statement also will clearly specify the portion of the total items that is attributed to (a) Reorganized GSC Group and (b) each Holder of a General Unsecured Claim who has elected the Combination Cash Option. The character of items of income, deduction and credit to any General Unsecured Creditor who has elected the Combination Cash Option, and the ability of such General Unsecured Creditor who has elected the Combination Cash Option to benefit from any deduction or losses will depend on the particular situation of such General Unsecured Creditor. In addition, the character of items of income, deduction and credit to Reorganized GSC Group and the ability of Reorganized GSC Group to benefit from any deduction or losses will depend on the particular situation of Reorganized GSC Group. Reorganized GSC Group and each General Unsecured Creditor who has elected the Combination Cash Option shall pay any tax imposed by any governmental unit on its portion of the income of the Liquidating Trust. The Liquidating Trustee, however, will comply with all withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements.

The Liquidating Trust shall terminate five years from the Effective Date. If warranted by the facts and circumstances and subject to the approval of the Bankruptcy Court upon a finding that an early termination of the Liquidating Trust is appropriate or that an extension of the term of the Liquidating Trust is necessary to the liquidating purpose of the Liquidating Trust, the term of the Liquidating Trust may be terminated early or may be extended for a finite term based on the particular facts and circumstances. For any extension, Bankruptcy Court approval must be obtained within six months of the beginning of the extended term.

Until all of the beneficial interests in the Liquidating Trust can be distributed to the Holders in accordance with the terms of the Plan, the Disputed General Unsecured Claims Cash Reserve will be treated as owning a portion of the assets in the Liquidating Trust. Distributions from the Disputed General Unsecured Claims Cash Reserve will be made to Holders of Disputed Claims in accordance with the Cash Option elected by such Holder when such Claims are subsequently Allowed and will be retained or paid to other beneficiaries when Disputed Claims are subsequently Disallowed. Distributions from the Disputed General Unsecured Claims Cash Reserve will be made to Reorganized GSC Group when Disputed General Unsecured Claims held by Holders that have elected the Equity Option are subsequently Allowed. The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed General Unsecured Claims Cash Reserve and shall pay the federal, state and local income taxes attributable to the Disputed General Unsecured Claims Cash Reserve, based on the items of income, deduction, credit or loss allocable thereto.

2. Management of the Reorganized Debtors

On the Effective Date, the Reorganized Debtors' management will revert to the management of the Debtors in place prior to the appointment of the Chapter 11 Trustee in January 2011, as supplemented by Reorganized GSC Group in consultation with BDCM. Such management will conduct all operations and administer the Plan, other than those duties delegated under the terms hereof to the Liquidating Trustee. On the Effective Date, the Chapter 11 Trustee shall be relieved of his duties and obligations to the estate under the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules, including, but not limited to, any obligation to file a final report pursuant to Local Bankruptcy Rule 3022-1, or otherwise; *provided, however*, that the Chapter 11 Trustee's rights under the Plan, in general, and specifically, the right of the Chapter 11 Trustee and the Chapter 11 Trustee's professionals to seek and prosecute claims for compensation in accordance with Section 3.3 of the Plan, as well as the Chapter 11 Trustee's right to object to the allowance of Professional Fees, shall be fully preserved. Notwithstanding the general release of the Chapter 11 Trustee from his duties and obligations in these Chapter 11 Cases provided for in this section, if any Professional retained in these Chapter 11 Cases (or any person affiliated with any Professional in these Chapter 11 Cases) is appointed as Liquidating Trustee, the Chapter 11 Trustee shall retain the right to review and approve any fees of such Professional uncured on or prior to the Effective Date.

3. Reorganized Debtors

As described above, on the Effective Date, (i) 100% of the Equity Interests in GSC Group, Inc. and the Preferred Equity Interests shall be cancelled and (ii) Reorganized GSC Group shall distribute, or cause to be distributed, the Reorganized GSC Group Class A Common Stock and the Reorganized GSC Group Convertible Class B Common Stock and the Reorganized GSC Group Preferred Stock.

On the Effective Date, 100% of the Equity Interests in the Debtors other than GSC Group, Inc., and other than the Preferred Equity Interests shall remain outstanding and shall remain as presently classified. Upon entry of the Confirmation Order, SIF's chapter 11 cases shall be dismissed and closed without need for any further Court or other action or approval.

On the Effective Date, the certificate of incorporation of Reorganized GSC Group shall be amended in its entirety in substantially the form contained in the Plan Supplement to, among other things, permit the Reorganized Debtors to increase the number of authorized voting shares, and to establish the rights, preferences, privileges and other terms of each of the Reorganized GSC Group Class A Common Stock, the Reorganized Convertible Class B Common Stock, Reorganized GSC Group Class C Common Stock and Reorganized GSC Group Preferred Stock.

On the Effective Date, the Management Contracts, and the Residual Plan Cash shall remain the assets of Reorganized GSC Group, and the Residual Estate Assets shall be transferred to the Liquidating Trust pursuant to Section 5.4 of the Plan.

On the Effective Date, the Reorganized Debtors shall establish the Disputed General Unsecured Claims Equity Reserve.

Notwithstanding any other provision of the Plan, (i) the Reorganized Debtors shall remain liable for the obligations of the Sellers to the Designated Purchaser under the Tax Indemnification Agreement, and (ii) for purposes of all calculations of Residual Cash required under the Tax Indemnification Agreement the Reorganized Debtors shall be considered a consolidated entity.

4. Capitalization of the Liquidating Trust

On the Effective Date, the Residual Estate Assets, including the Liquidating Trust Cash, the Disputed Priority Claims Reserve Amount and the Disputed General Unsecured Claims Cash Reserve Amount shall be transferred to the Liquidating Trust. All transfers and contributions made pursuant to Section 5.4 of the Plan shall be made free and clear of all Claims, Liens, and Equity Interests, and all setoff and recoupment rights, except as otherwise specifically provided in the Plan or in the Confirmation Order. The Liquidating Trustee and the Liquidating Trust are appointed pursuant to the Plan as successor trustees to the Chapter 11 Trustee for purposes of the Letter of Credit.

Consistent with the terms of the Purchase Agreements, on the Effective Date, all remaining liabilities and obligations of the Debtors, including post-closing obligations of the Sellers under the Purchase Agreements, other than those rights and obligations under the Management Contracts, shall be transferred to the Liquidating Trust; provided, however, that the Indemnified Liabilities shall remain with Reorganized Debtors and be payable from the proceeds of the Letter of Credit and Tax Indemnification Agreement. Without limiting the foregoing, the Liquidating Trustee shall be responsible for the transfer to the Designated Purchaser of any Causes of Action acquired under the Purchase Agreements or any other assets to be transferred on a post-closing basis.

5. Initial Distribution of Trust Units

On the Effective Date, or as soon as practicable thereafter, Reorganized GSC Group and Holders of Allowed General Unsecured Claims who have elected the Combination Cash Option will receive their Pro-Rata Share of an initial distribution of Trust Units from the Liquidating Trustee. The Reserved Trust Units will be issued but held in reserve on account of estimated Disputed General Unsecured Claims held by Holders who have elected the Combination Cash

Option and, for the benefit of Reorganized GSC Group estimated Disputed General Unsecured Claims held by Holders who have elected the Equity Option.

6. Compromise of Controversies

In consideration for the distributions and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and controversies resolved under the Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019.

7. Corporate Action

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, including, but not limited to, (i) the adoption of the organizational documents for the Reorganized Debtors; (ii) the issuance of the Reorganized Debtors Stock; and (iii) all other actions contemplated by the Plan. All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or Reorganized Debtors in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action or notice by the Debtors, the Chapter 11 Trustee, the Liquidating Trustee, Holders of Equity Interests in the Debtors or directors and officers of the Debtors or the Reorganized Debtors. Upon the Effective Date, the appropriate officers and directors of Reorganized Debtors shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the Plan (or necessary or desirable to effect the transactions contemplated by the Plan) in the name of an on behalf of the Reorganized Debtors. The authorizations and approvals contemplated in this Section 5.3 of the Plan shall be effective notwithstanding any requirements under any applicable non- bankruptcy law.

8. Post Effective Date Governance

The Reorganized Debtors shall enter into such agreements and amend their corporate governance documents to the extent necessary to implement the terms and conditions of the Plan. Without limiting the generality of the foregoing, as of the Effective Date, each of the Reorganized Debtors shall be governed by their respective Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws.

After the Effective Date, each Reorganized Debtor may amend and restate its certificate of incorporation and other constituent documents as permitted by the laws of its respective states, provinces, or countries of formation and its respective charters and bylaws

9. Transfer of Post-Petition Agreements

As of the Effective Date, the Liquidating Trust shall be deemed successor in interest to the Debtors and Chapter 11 Trustee and any rights and obligations under any agreements the Debtors entered into post-petition remaining in effect as of the Effective Date, including, without

limitation, the Purchase Agreements, the Services Agreement and the Transition Services Agreement, shall be transferred to the Liquidating Trust.

10. *Rights Under Tax Indemnification Agreement*

Except for the amendments to the Tax Indemnification Agreement set forth in the definition of "Tax Indemnification Agreement" in Section 1.1 of the Plan, nothing in the Plan or the Confirmation Order shall alter or amend the rights of the parties under the Tax Indemnification Agreement

11. *Straddle Tax Provisions*

The Escrow Funds may not be used and no draw may be made under the Straddle Tax Letter of Credit other than to pay any amount of Straddle Tax. The Escrow Agent shall be entitled to hold the Escrow Funds or the Straddle Tax Letter of Credit shall remain outstanding until the earlier of the closing of the Chapter 11 Cases or such other date as provided for in the Agreed Stipulated Order. When that date has occurred, the Escrow Funds shall be returned to Black Diamond or the Straddle Tax Letter of Credit will be cancelled. In addition, at any time prior to the expiration of such period, the Chapter 11 Trustee (prior to the Effective Date) or the Liquidating Trustee (on or after the Effective Date) shall, upon being advised by a reputable accounting firm retained by such party that no Straddle Tax is payable by the Debtors, return the Escrow Funds to Black Diamond or terminate its right to draw under the Straddle Tax Letter of Credit. The Straddle Tax Filing Party shall be entitled to use the Escrow Funds or draw under the Straddle Tax Letter of Credit to pay any Straddle Tax for which the Designated Purchaser and Black Diamond are providing an indemnification pursuant to the Agreed Stipulated Order. In the event of any direct conflict between the terms of the Agreed Stipulated Order and Section 5.11 of the Plan, the terms of the Agreed Stipulated Order shall govern and control.

12. *BDCM Loan*

Confirmation shall be deemed approval of the BDCM Loan (including any and all transactions contemplated thereby, and all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities and expenses provided for therein) and authorization for the Debtors or Reorganized Debtors, as applicable, to enter into and execute any agreement evidencing the BDCM Loan and such other documents as may be required or appropriate to effectuate the treatment afforded to such lenders thereto. The Reorganized Debtors may use the BDCM Loan for any purpose permitted thereunder. Upon the date the BDCM Loan closes, the Debtors and the Reorganized Debtors are authorized to execute and deliver any agreement evidencing the BDCM Loan and perform their obligations thereunder, and such agreement shall constitute the legal, valid and binding obligations of the Reorganized Debtors which are parties thereto, enforceable in accordance with their respective terms, and no obligation, payment, transfer or grant of security under such agreement (or any other documents as may be required or appropriate to effectuate the treatment afforded to the BDCM Loan lenders) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law or subject to any defense, reduction, recoupment, setoff or counterclaim.

The Debtors and the Reorganized Debtors, as applicable, and any other Entities granting any Liens and security interests to secure the obligations under the BDCM Loan are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary or desirable to establish and further evidence perfection of such liens and security interests under the provisions of any applicable federal, state, provincial or other law (whether domestic or foreign) (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such liens and security interests to third parties.

13. Restructuring Transactions

On or after the Confirmation Date, the Debtors or the Reorganized Debtors, as applicable, may take any and all actions as described in, approved by, contemplated by, necessary or appropriate to effectuate the Plan and preserve the intended benefits thereunder without need of any further court, corporate, partnership or other approval, including, without limitation: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, liquidation, dissolution or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any property, right, liability, duty or obligation on terms consistent with the terms of the Plan; (c) the effecting of any transaction or transfer of interests with respect to any of the Debtors; (d) the filing of appropriate certificates of incorporation, merger or consolidation with the appropriate governmental authorities pursuant to applicable law; (e) making any filings or recordings that may be required by applicable law in connection with any of the transactions approved by, contemplated by or necessary or appropriate to effectuate the Plan and preserve the intended benefits thereunder; and (f) all other actions that the Debtors or the Reorganized Debtor determine are necessary or appropriate.

14. Distributions from the Liquidating Trust

To the extent that, on or as soon as practicable after the Effective Date, Cash distributable to Holders of Allowed General Unsecured Claims who elected the Up-front Cash Option is less than \$6.6 million, in the aggregate, because the Chapter 11 Trustee, in his discretion, withheld from such distribution funds to be used for administration of the Liquidating Trust, any Cash later available for distribution on account of the Trust Units shall be paid first to Holders of Allowed General Unsecured Claims who elected the Up-front Cash Option up to a maximum aggregate amount of \$6.6 million and, in the event that after such payment, there is remaining Cash, Holders of Allowed General Unsecured Claims who elected the Combination Cash Option and Reorganized GSC Group (on account of Allowed General Unsecured Claims whose Holders elected the Equity Option instead of the Combination Cash Option) shall receive their Pro Rata Share of such remaining Cash.

C. Treatment of Executory Contracts and Unexpired Leases

1. Assumption of Management Contracts

All Management Contracts shall be deemed to be assumed on the Effective Date.

2. Rejection of Executory Contracts and Unexpired Leases

All executory contracts and unexpired leases that have not been assumed, assumed and assigned, or rejected prior to the Confirmation Date, or for which a motion is not pending for assumption, assumption and assignment, or rejection as of the Confirmation Date, will be deemed rejected as of the Confirmation Date; provided, however, that any executory contract or unexpired lease that the Debtors have moved to assume or assume and assign prior to the Confirmation Date, or that BDCM has specifically identified herein or in the Plan Supplement as a contract to be assumed and assigned, shall not be deemed rejected. To the extent that any contract (including any contracts effectuating the novation of any collateral management agreement or any other contract) has not been rejected or assumed by the Debtors and the Chapter 11 Trustee because such contract is no longer executory, the Debtors, the Reorganized Debtors, the Liquidating Trust and the Liquidating Trustee shall have no liability with respect to such contract on and after the Effective Date.

3. Claims Based on Rejection of Executory Contracts or Unexpired Leases

All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases as of the Confirmation Date, if any, must be Filed within 14 days after the Confirmation Date. Any Claim arising from the rejection of an executory contract or unexpired lease for which proof of such Claim is not Filed within such time period shall forever be barred from assertion against the Debtors, the Estates and their property, the Liquidating Trust or the Reorganized Debtors unless otherwise ordered by the Bankruptcy Court. Any Allowed Claim arising from the rejection of executory contracts or unexpired leases for which proof of such Claim timely has been Filed shall be, and shall be treated as, an Allowed General Unsecured Claim under the terms hereof, subject to any limitation under section 502(b) of the Bankruptcy Code or otherwise. Any Holder of General Unsecured Claims arising on account of executory contracts or unexpired leases that are rejected pursuant to Section 6.2 herein shall have until seven days after the Confirmation Date to elect to receive a distribution under the Up-front Cash Option, the Combination Cash Option, or the Equity Option on account of such Claims (to the extent such Claims are Allowed), provided that if no such election is made (or if more than one option is selected), such Holder will be deemed to have elected the Up-front Cash Option on account of such Claims.

D. Provisions Governing Distributions Under the Plan

1. General Distribution Provisions

Except as otherwise provided in the Plan, any distribution to be made hereunder shall be made on the Effective Date, or as soon as practicable thereafter. Any payment or act required to be made or done hereunder on a day that is not a Business Day shall be made on the next succeeding Business Day.

Notwithstanding anything to the contrary, distributions to Holders of Allowed Claims and Equity Interests shall be made to Holders of record as of the Confirmation Date. The Debtors or Reorganized Debtors, as applicable, shall have the authority to (i) enter into agreements with one or more Distribution Agents to facilitate distributions hereunder (and any Distribution Agent engaged by the Debtors or Reorganized Debtors shall be entitled, as directed by the Reorganized Debtors, to make those distributions that pursuant to the Plan the Reorganized Debtors would otherwise have made) and (ii) make (or cause any Distribution Agent to make) distributions of any shares of Reorganized GSC Group Stock through the facilities of The Depository Trust Company (or its successors or assigns). The Reorganized Debtors shall make (or cause a Distribution Agent to make) distributions (other than any distribution of Trust Units) to any Holder of a Claim or Equity Interest who is entitled to distribution under the Plan and whose Claim or Equity Interest is Allowed on or before the Effective Date. The Reorganized Debtors shall also make (or cause a Distribution Agent to make) distributions to any Holder of a General Unsecured Claim who elected the Equity Option and whose Claims become Allowed after the Effective Date and any Holder of a Preferred Equity Interest whose Equity Interest becomes Allowed after the Effective Date. The Liquidating Trustee shall make Cash distributions in accordance with the Plan to any Holder of a General Unsecured Claim who elected a Cash Option and whose Claim becomes Allowed after the Effective Date. The Liquidating Trustee shall also (i) make distributions to Holders of Secured Claims, Priority Tax Claims, or Other Priority Claims whose Claims become Allowed after the Effective Date and (ii) distribute Trust Units to (a) Reorganized GSC Group and (b) any Holder of General Unsecured Claims who elected the Combination Cash Option whenever such Holder's General Unsecured Claims become Allowed. Distributions made on account of Claims or Equity Interests that became Allowed on or before the Effective Date shall take into account an estimated amount (as agreed by the Chapter 11 Trustee and BDCM) of Disputed Claims that may later become Allowed Claims. Except as otherwise provided in the Plan, Holders of Claims or Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. On the Effective Date, all certificates or other instruments evidencing the Preferred Equity Interests shall be deemed surrendered to the Reorganized Debtors.

BDCM anticipates that the Plan will be confirmed and go effective within fifty days after the approval of this Disclosure Statement, which timing may be affected by the status of the Trustee's Plan. On or shortly after the Effective Date, the Holders of Allowed General Unsecured Claims electing the Up-front Cash Option will receive a portion of the \$6.6 million of Up-Front Option Plan Cash available for distribution to unsecured creditors, less the amount of cash used to pay Allowed Unsecured Claims senior in priority, such as Priority Tax Claims. Holders of General Unsecured Claims electing the Combination Cash Option will receive a portion of the \$5.6 million of Combination Option Plan Cash available for distribution to unsecured creditors, less the amount of cash used to pay Allowed Unsecured Claims senior in priority, such as Priority Tax Claims, and a portion of the Trust Units on or shortly after the Effective Date. Holders of General Unsecured Claims electing the Equity Option will receive their share of Reorganized GSC Group Series B Preferred Stock and their Equity Distribution Share of Reorganized GSC Group Convertible Class B Common Stock on or shortly after the Effective Date.



2. Establishment of Disputed General Unsecured Claims Reserves

On the Effective Date or as soon thereafter as is practicable (but in no event later than five Business Days thereafter), the Reorganized Debtors, in consultation with the Liquidating Trustee and BDCM, shall establish (a) the Disputed General Unsecured Claims Cash Reserve and Reserved Trust Units required to be set aside on account of Disputed General Unsecured Claims held by Holders who elected the Cash Options and Reorganized GSC Group's right to the Cash and Trust Units that would otherwise have been allocable to any Holder of General Unsecured Claims who elected the Equity Option had such Holder instead elected the Combination Cash Option, and the Liquidating Trustee shall maintain the Disputed General Unsecured Claims Cash Reserve and the Reserved Trust Units; and (b) the number of shares of Reorganized GSC Group Stock required to be set aside on account of Disputed General Unsecured Claims held by Holders who elected the Equity Option and such Disputed General Unsecured Claims Equity Reserve shall be maintained by the Reorganized Debtors.

3. Establishment of Disputed Priority Claims Reserve

On the Effective Date or as soon thereafter as is practicable, the Reorganized Debtors shall establish, in consultation with the Liquidating Trustee and BDCM, the Disputed Priority Claims Reserve for any Up-front Option Plan Cash or Combination Option Plan Cash, as applicable, required to be set aside on account of Disputed Priority Tax Claims and Disputed Other Priority Claims in the amount of the Disputed Priority Claims Reserve Amount. The Disputed Priority Claims Reserve shall be maintained by the Liquidating Trustee

4. Liquidating Trust, Reorganized Debtors, Disputed Unsecured Claims Reserve, and Disputed Priority Claims Reserve Distributions

(a) Periodically, the Liquidating Trustee or the Reorganized Debtors, as the case may be, may make ratable distributions of the Liquidating Trust's available Cash and Reserved Trust Units, or the Reorganized Debtors' Reorganized GSC Group Stock, to the respective Disputed General Unsecured Claims Reserves for the benefit of Holders of Disputed Claims. If a Disputed General Unsecured Claim (including claims pursuant to Section 6.2 of the Plan) becomes Allowed, the Liquidating Trustee or the Distribution Agent, as the case may be, shall make, as applicable, either a (i) Catch-Up Up-front Cash Distribution, (ii) a Catch-Up Combination Cash Distribution or (iii) a Catch-Up Equity Distribution. If a Disputed Priority Tax Claim becomes Allowed, the Liquidating Trustee shall make distributions from the Disputed Priority Claims Reserve to the Holder thereof in accordance with Section 3.2 of the Plan. If a Disputed Other Priority Claim becomes Allowed, the Liquidating Trustee shall make distributions from the Disputed Priority Claims Reserve to the Holder thereof in accordance with Section 4.2(b) of the Plan. Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the relevant parties no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Equity Interest until all such disputes in connection with such Disputed Claim or Equity Interest have been resolved by settlement or Final Order.

(b) If a Disputed General Unsecured Claim, or portion thereof, is Disallowed, (i) the Liquidating Trustee shall distribute to or for the benefit of Reorganized GSC Group and the Holders of all then Allowed General Unsecured Claims that have elected one of the Cash

Options their Pro-Rata Share of the Up-Front Option Plan Cash or Combination Option Plan Cash and Reserved Trust Units, as the case may be, allocable to such Disallowed General Unsecured Claim or (ii) the Reorganized Debtors or the Distribution Agent, as applicable, shall distribute to or for the benefit of all the Holders of all then Allowed General Unsecured Claims that have elected the Equity Option their Equity Distribution Share of the Reorganized GSC Group Stock allocable to such Disallowed General Unsecured Claim, in each case, on such date as the Liquidating Trustee shall deem to be reasonable. If a Disputed Priority Tax Claim or Disputed Other Priority Tax, or portion thereof, is Disallowed, the Liquidating Trustee shall transfer the Plan Cash allocable to such Disallowed Priority Tax Claim or Other Priority Claim to the Disputed General Unsecured Claim Cash Reserve for the benefit of the Holders of Allowed General Unsecured Claims who have elected one of the Cash Options, to be distributed to such Holders in their Pro-Rata Share, on such date as the Liquidating Trustee shall deem to be reasonable.

5. *Delivery of Distributions and Undeliverable or Unclaimed Distributions*

*General.* Any distribution to be made hereunder to a Holder of an Allowed Claim shall be made to the address of such Holder as set forth in the books and records of the Debtors or their agents, or in a letter of transmittal, unless the Debtors have been notified in writing of a change of address, including by the Filing of a proof of claim by such Holder that contains an address for such Holder that is different from the address reflected on such books and records or letter of transmittal.

*Undeliverable Distributions.* In the event that any distribution or notice provided in connection with the Chapter 11 Cases to any Holder of an Allowed Claim is returned to the Liquidating Trustee or the Reorganized Debtors (or the Distribution Agent, as applicable) as undeliverable or otherwise is unclaimed, the Liquidating Trustee and the Reorganized Debtors (or the Distribution Agent, as applicable) shall make no further distribution to such Holder unless and until the Liquidating Trustee and the Reorganized Debtors (or the Distribution Agent, as applicable) are notified in writing of such Holder's then current address. On, or as soon as practicable after, the date on which a previously undeliverable or unclaimed distribution becomes deliverable and claimed, the Liquidating Trustee or the Reorganized Debtors (or the Distribution Agent, as applicable) shall make such distribution without interest thereon. Any Holder of an Allowed Claim that fails to assert a Claim hereunder for an undeliverable or unclaimed distribution within 180 days after the Effective Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall forever be barred and enjoined from asserting such Claim against any of the Debtors, the Estates, or the Reorganized Debtors or their property. Any Cash amounts in respect of undeliverable or unclaimed distributions for which a Claim is not made within such 180-day period shall be forfeited to the Liquidating Trustee. Nothing contained herein shall require, or be construed to require, the Debtors, the Reorganized Debtors, the Distribution Agent or the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

6. *Setoff and Recoupment*

In the event the Debtors have a claim of any nature whatsoever against a Holder of a Claim, the Debtors, the Reorganized Debtors or the Liquidating Trustee may, but are not

required to, setoff against such Holder's Claim (and any distributions or other rights to receive property arising out of such Claim under the Plan), the Debtors' claim against such Holder, subject to the provisions of section 553 of the Bankruptcy Code and other applicable law. Neither the failure to setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtors, the Reorganized Debtors or the Liquidating Trustee of any Claims that the Debtors, the Reorganized Debtors or the Liquidating Trustee have against the Holder of such Claim, all of which are preserved. Nothing contained or omitted from the Plan shall limit, adversely affect, or otherwise impair any rights of setoff or recoupment the Debtors, the Reorganized Debtors or the Liquidating Trustee may possess, as against third parties.

7. Manner of Payment Under Plan

The Liquidating Trustee, the Reorganized Debtors, and the Distribution Agent shall be authorized to make any Cash payment required to be made hereunder by check or wire transfer, each in their discretion.

E. Procedures for Resolving Disputed Claims

1. Prosecution of Objections to Claims

After the Effective Date, (i) the Reorganized Debtors shall have the authority to file, withdraw or litigate to judgment objections to Claims and Equity Interests, and shall be permitted to settle or compromise any such Disputed Claim or Equity Interest without need of approval of the Bankruptcy Court, (ii) the Liquidating Trustee shall have the authority to file, withdraw or litigate to judgment objections to Claims (other than the claims of 888 Seventh Avenue LLC or David Robbins) and (iii) BDCM (subject to the limitations set forth in the Agreed Stipulated Order) shall have the authority to object to Administrative Claims and General Unsecured Claims that elected the Combination Cash Option or the Equity Option. Each of the Liquidating Trustee and the Reorganized Debtors shall be permitted to settle or compromise any Disputed Claim or Equity Interest to which it objected without need of approval of the Bankruptcy Court; *provided, however*, that if more than one such party has objected, both parties shall be required to approve any such settlement or compromise..

2. Estimation of Claims

Before or after the Effective Date, the Reorganized Debtors, the Chapter 11 Trustee (prior to the Effective Date), or the Liquidating Trustee (on or after the Effective Date), as the case may be, shall be permitted, at any time, to request that the Bankruptcy Court estimate, pursuant to section 502(c) of the Bankruptcy Code, any contingent or unliquidated Claim that the Reorganized Debtors or the Liquidating Trustee, as the case may be, is entitled to object to under Section 8.1 of the Plan, regardless of whether the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be, previously had objected to such Claim or whether the Bankruptcy Court had ruled on such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during any litigation concerning any objection to such Claim, including during the pendency of any appeal relating to such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on

such Claim, as determined by the Bankruptcy Court. If such estimated amount constitutes a maximum limitation on the amount of such Claim, the Chapter 11 Trustee (before the Effective Date) and the Liquidating Trustee (on or after the Effective Date), as the case may be, may elect to pursue any supplemental proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

3. Payments and Distributions on Disputed Claims

Notwithstanding any other provision to the contrary herein, no payments or distributions shall be made hereunder with respect to all or any portion of any Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by Final Order, and such Disputed Claim has become an Allowed Claim. In no event shall a Disputed Claim be Allowed in an amount in excess of its filed amount.

F. Conditions Precedent to Plan's Confirmation and Effective Date

The Effective Date cannot occur unless and until each of the following conditions has occurred or has been waived by BDCM:

1. the Confirmation Order shall have become a Final Order;
2. all other documents and agreements necessary to implement the terms of the Plan, including the Liquidating Trust Agreement, have been executed and delivered;
3. there exists sufficient Cash to pay Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Other Priority Claims, other than Claims assumed by the Liquidating Trust or the Reorganized Debtors, and to fund the Disputed Priority Claims Reserve;
4. all UST Fees payable prior to the Effective Date shall have been paid;
5. all other actions necessary to implement the terms of the Plan shall have been taken; and
6. the BDCM Loan shall have closed in accordance with its terms.

G. Effect of Confirmation

The Plan shall be binding upon and inure to the benefit of the Debtors, the Chapter 11 Trustee, BDCM, all current and former Holders of Claims and Equity Interests, and their respective successors and assigns.

1. Preservation of All Causes of Action

Except as otherwise provided in the Plan (including, but not limited to, subparagraph (b) of Section 10.2 of the Plan), in a final and non-appealable order of the Bankruptcy Court, or in any contract, instrument, release or agreement entered into in connection with the Plan, in accordance with the provisions of the Bankruptcy Code (including but not limited to section 1123(b) of the Bankruptcy Code), on and after the Effective Date, the Liquidating Trustee shall be vested with, retain, and may exclusively enforce and prosecute any Causes of Action that the Debtors or the Estates may have against any Person or Entity that has not been released pursuant to Section 10.5 of the Plan, including, but not limited to, the Avoidance Actions and the Director and Officer Causes of Action. The Liquidating Trustee may pursue such retained Causes of Action in accordance with the best interests of the creditors of the Debtors, the Estates, the Liquidating Trust or the Reorganized Debtors. Without further order of the Bankruptcy Court, the Liquidating Trustee shall be substituted as the party in interest in all adversary proceedings pending on the Effective Date. Notwithstanding anything to the contrary herein, no distribution shall be made to the Holder of any Claim, including by way of setoff or recoupment by such claimant, if the Debtors, the Chapter 11 Trustee or the Liquidating Trustee, as applicable, have taken action to recover, or given notice to the applicable party of intent to take such action, on a Cause of Action against the Holder of such Claim (or the direct or indirect transferor of such Holder), until such Cause of Action is resolved.

From and after July 26, 2012, pursuant to the terms of APA 2, all Causes of Action of, or belonging to, the Estates with respect to which the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors has not commenced an adversary proceeding, lawsuit or similar legal proceeding, settled or released such Cause of Action, or formally asserted a right of set-off, shall be transferred to the Designated Purchaser. Without further order of the Bankruptcy Court, the Designated Purchaser, or its designee, shall have the exclusive right to enforce and prosecute any such Cause of Action.

2. Discharge of Claims & Interests

Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in this Plan or in the Confirmation Order, confirmation of this Plan discharges and releases, effective as of the Confirmation Date (but subject to the occurrence of the Effective Date), the Debtors, the Reorganized Debtors and the Estates from all Claims and Causes of Action, whether known or unknown, and from liabilities of, liens on, obligations of, rights against, and Equity Interests in the Debtors or any of their assets or properties; and, further, a Holder of any Claim or Equity Interest discharged herein may not on account of such Claim or Equity Interest seek to receive any payment or other treatment from, or seek recourse against the Debtors, the Liquidating Trustee, the Liquidating Trust, or the Reorganized Debtors or their respective property, except as otherwise expressly provided in the Plan.

3. Liquidating Trust as Successor

The Liquidating Trust shall be the successor to the Debtors, the Chapter 11 Trustee and the Estates for the purposes of sections 1123, 1129 and 1145 of the Bankruptcy Code and with

respect to all pending Causes of Action and other litigation-related matters of, or belonging to, the Estates preserved and vested with the Liquidating Trust pursuant and subject to Section 10.2 herein, including but not limited to the Avoidance Actions and the Director and Officer Causes of Action. The Liquidating Trust shall succeed to the attorney-client privilege of the Debtors, the Chapter 11 Trustee and the Estates with respect to such Causes of Action and other litigation-related matters of, or belonging to, the Estates, and the Liquidating Trustee may waive the attorney-client privilege with respect to any such Cause of Action or other litigation-related matter of, or belonging to, the Estates, or portion thereof, in the Liquidating Trustee's discretion.

After the Effective Date, the Liquidating Trustee shall have the exclusive authority and standing to file, prosecute, withdraw, settle or compromise, without the approval of the Bankruptcy Court, those Causes of Action of, or belonging to, the Estates preserved and vested with the Liquidating Trust pursuant and subject to Section 10.2 of the Plan.

#### 4. Releases

**Releases By the Debtors.** For good and valuable consideration, the adequacy of which is shall be confirmed by the Plan, upon the Effective Date, the Debtors and Reorganized Debtors (collectively, the "*Debtor Releasing Parties*") shall be deemed forever to release, waive and discharge any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date or thereafter arising, in law, at equity, whether for tort, contract, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to the Debtors, the chapter 11 cases, the Disclosure Statement, the Plan or the solicitation of votes on the Plan that such Debtor Releasing Parties would have been legally entitled to assert (whether individually or collectively) or that any Holder of a Claim or Equity Interest or other entity would have been legally entitled to assert for or on behalf of the Debtors, their Estates or the Reorganized Debtors (whether directly or derivatively) against any of 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 before the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, the Plan or the Disclosure Statement, and that could have been asserted by or on behalf of the Debtors, the Chapter 11 Trustee or the Estates against any of the Released Parties; provided, however, that the foregoing provisions of the release under the Plan shall not operate to waive or release (i) any Causes of Action expressly set forth in and preserved by the Plan; (ii) any Causes of Action arising from gross negligence, fraud or willful misconduct as determined by final order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (iii) the rights of such Debtor Releasing Parties to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to final order of the Bankruptcy Court, including without limitation the Purchase Agreements. The release under the Plan shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any person, and

the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to the release under the Plan. Nothing in the Plan shall limit the liability of the Professionals of the Debtors, the Chapter 11 Trustee or BDCM to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility, N.Y. Comp. Codes R. & Regs. tit. 22 section 1200 Rule 1.8(h)(1) (2009), and any other statutes, rules or regulations dealing with professional conduct to which such professionals are subject. As to the United States, its agencies, departments or agents, nothing in the Plan shall discharge, extinguish, release or otherwise preclude any valid right of setoff or recoupment. Nothing herein shall enjoin the United States from initiating or continuing any criminal, police or regulatory action against the Debtors or the Reorganized Debtors.

*Releases By Holders of Claims.* Upon the Effective Date, each Holder of a Claim or Equity Interest (collectively, the “*Non-Debtor Releasing Parties*” and together with the Debtor Releasing Parties, the “*Releasing Parties*”), in consideration for the obligations of the Debtors, the Reorganized Debtors and the other Released Parties under the Plan and the Cash and other contracts, instruments, releases, agreements or documents to be delivered in connection with the Plan, shall be deemed forever to release, waive and discharge any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date or thereafter arising, in law, at equity, whether for tort, contract, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to the Debtors, the chapter 11 cases, the Disclosure Statement, the Plan or the solicitation of votes on the Plan that such Non-Debtor Releasing Parties would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties (other than the rights to enforce the obligations of the Debtors, the Reorganized Debtors, the Chapter 11 Trustee, the Liquidating Trust or the Liquidating Trustee under the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered in connection with the Plan), 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 before the Effective Date in any way relating to the Debtors, the Chapter 11 Trustee, the Chapter 11 Cases, the Plan or the Disclosure Statement against any of the Released Parties; provided, however, that the provisions of the release under the Plan shall not operate to waive or release (i) any Causes of Action expressly set forth in and preserved by the Plan or the Plan Supplement; (ii) any Causes of Action arising from gross negligence, fraud or willful misconduct as determined by final order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (iii) the rights of such Non-Debtor Releasing Party to enforce the Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with the Plan or assumed pursuant to the Plan or assumed pursuant to final order of the Bankruptcy Court. The release under the Plan shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the

vote, consent, authorization or approval of any person and the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this release.

*Standards Applicable to Releases.* The Plan provides for releases of certain claims against non-Debtors in consideration of services provided to the estates. The non-Debtor released parties are: (i) James L. Garrity, Jr. in his capacity as Chapter 11 Trustee; (ii) Shearman & Sterling LLP; (iii) Kaye Scholer, LLP; (iv) Capstone Advisory Group, LLC; (v) Epiq Bankruptcy Solutions, LLC; and (vi) Ernst & Young LLP. The releases are given by (i) the Debtors; (ii) all holders of Claims and Interests against the Debtors who vote to accept the Plan (or who are deemed to have accepted the Plan); and (iii) to the greatest extent permitted under applicable law, any holder of a Claim or Interest against the Plan Debtors who does not vote to accept the Plan. The released claims are any and all claims or causes of action, including without limitation those in connection with, related to, or arising out of the Plan and Debtors' Chapter 11 Cases.

The United States Court of Appeals for the Second Circuit has determined that releases of non-debtors may be approved as part of a chapter 11 plan if there are "unusual circumstances" that render the release terms important to the success of the plan. *Deutsche Bank AG, London Branch 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-debtors when: (i) the estate received substantial consideration; (ii) the enjoined claims were channeled to a settlement fund rather than extinguished; (iii) the enjoined claims would indirectly impact the reorganization by way of indemnity or contribution; (iv) the plan otherwise provided for the full payment of the enjoined claims; and (v) the affected creditors consent to the release. *Id.* at 142.

Before a determination can be made as to whether releases are appropriate as warranted by "unusual circumstances," the United States Court of Appeals for the Second Circuit has concluded that there is a threshold jurisdictional inquiry as to whether the Bankruptcy Court has subject matter jurisdiction to grant such releases. *In re Johns-Manville Corp.*, 517 F.3d 52, 65 (2d Cir. 2008), *rev'd on other grounds, Travelers Indemnity Co. v. Bailey*, 129 S. Ct. 2195 (2009); *see also In re Dreier LLP*, 429 B.R. 112, 132 (Bankr. S.D.N.Y. 2010) (stating that *Manville* remains the law of the Second Circuit and that a court must first make a jurisdictional inquiry before considering whether there are "unusual circumstances" justifying releases); *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" a debtor's reorganization. *Dreier*, 429 B.R. at 132.

Here, all of the released claims would "directly and adversely impact" the administration of the Debtors' estates. Each of the Released Parties would have a potential claim for indemnification and contribution against the Debtors for any liabilities incurred on such claims, as well as any expenses incurred to defend against such claims. Because all Holders of Allowed Claims will receive distributions under the Plan, the Debtors similarly



would have to at least partially satisfy indemnification and contribution claims. The ultimate effect of doing so would be to reduce the recovery for other Claim Holders. The Debtors' estates therefore would be directly and adversely impacted if the released claims were pursued. Therefore, the Bankruptcy Court has jurisdiction to approve them as part of the Plan.

The circumstances of the Debtors' Chapter 11 Cases are unique and BDCM believes they satisfy the *Metromedia* requirements. The Plan allows for the Debtors to satisfy all Secured Claims, Administrative Claims, Priority Tax Claims and Other Priority Claims in full and provides for a substantial recovery for Holders of Allowed General Unsecured Claims. Because the Released Parties have provided substantial consideration to the estates and their claims would potentially reduce the recoveries to other creditors, the releases are appropriate under the *Metromedia* decision and other case.

5. *Exculpation and Limitation of Liability*

None of the Released Parties shall have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or Equity Interest, or any other party in interest in the Chapter 11 Cases, or any of their respective agents, employees, representatives, financial advisors, attorneys or agents acting in such capacity, or affiliates, or any of their successors or assigns, for any act or omission arising on or after the Petition Date in connection with, relating to or arising out of, the Chapter 11 Cases, formulation, negotiation or implementation of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the solicitation of acceptances of the Plan, the pursuit of confirmation of the Plan, the confirmation of the Plan, the administration of the Plan or the property to be distributed under the Plan, except for their gross negligence, willful misconduct, fraud or criminal conduct as determined by a final order entered by a court of competent jurisdiction. Without limiting the generality of the exculpation and limitation of liability provisions of the Plan, the Released Parties shall, in all respects, be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Notwithstanding anything to the contrary contained herein or in the Plan, for the avoidance of doubt, any and all claims or objections that may be asserted against any Professionals in connection with their requests for Professional Fees incurred through the Effective Date are expressly reserved hereunder, provided that any such objections made by Black Diamond are subject to paragraph 12 of the Agreed Stipulated Order.

6. *Injunction*

All Entities who have held, hold or may hold Claims or Equity Interests and all other parties in interest in the Chapter 11 Cases, along with their respective current and former employees, agents, officers, directors, principals and affiliates, permanently shall be enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors; (ii) enforcing,

attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against the Debtors; (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors; or (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors or against the property or interests in property of the Debtors, on account of such Claims or Equity Interests; *provided, however*, that nothing contained in the Plan shall preclude such Entities from exercising their rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases, indentures and other agreements and documents delivered under or in connection with the Plan.

Upon entry of the Confirmation Order, all Holders of Claims and Equity Interests and their respective current and former employees, agents, officers, directors, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan. Each Holder of an Allowed Claim, by accepting distributions pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in Section 10.7 of the Plan.

7. Limitation on Release and Exculpation Provisions

Notwithstanding any other provision in the Plan or any order or opinion issued by the Court related thereto, including but not limited to Sections 10.5, 10.6 and 10.7 herein, nothing contained herein, in the Confirmation Order, or in any other order or opinion of this Court related to the Plan or the Confirmation Order shall alter, conflict with, or in any manner derogate from the provisions of the Sale Order. Without in any way limiting the generality of the foregoing, the rights, remedies, causes of action and claims of the Agent, the Prepetition Lenders and their Affiliates inter se in the State Court Proceeding or otherwise are preserved and shall not be released, enjoined or limited in any respect by the Plan or the Confirmation Order. Furthermore, notwithstanding any other provision in the Plan, the Confirmation Order, or any other order or opinion of this Court related to the Plan or the Confirmation Order, including but not limited to Sections 10.5, 10.6 and 10.7 hereof, nothing in the Plan, the Confirmation Order or any other order or opinion issued by the Court related to the Plan or the Confirmation Order shall constitute a finding by this Court of any kind regarding (i) any Prepetition Lender or its Representatives with respect to its or its Representatives' respective rights, remedies, causes of action and claims vis-à-vis any other Prepetition Lender or its Representatives under the Prepetition Credit Agreement or the Prepetition Loan Documents or any other party to the State Court Proceeding or (ii) any action or transaction that is the subject of the State Court Proceeding. Nothing in the Plan, including this paragraph, shall limit the efficacy of Paragraph K of the Sale Order in these chapter 11 proceedings, the State Court Proceeding, or any other proceeding

8. Term of Bankruptcy Injunction or Stays

All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence as of the Confirmation Date, shall remain in full force and effect until the Effective Date.

Solely as it relates to the Plan and the transactions approved thereby, each counterparty to a Management Contract, or third party to such Management Contract (and, for the avoidance of doubt, their successors and assigns) shall, as of the Effective Date, be forever barred from asserting any claim, objection or taking any action with regard to the retention by the Reorganized Debtors of all of their rights with respect to the Management Contracts. upon or as a result of the assumption and retention thereof by the applicable Reorganized Debtor.

H. Administrative Provisions

1. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date or anything to the contrary in the Plan or the Plan Supplement, the Bankruptcy Court shall retain exclusive jurisdiction over all matters related to the Plan, the Confirmation Order, the Liquidating Trust Agreement, the Tax Indemnification Agreement and the Chapter 11 Cases to the fullest extent permitted by law, including without limitation such jurisdiction as is necessary to ensure that the purposes and intent of the Plan are carried out, including for the following specific purposes:

- a. To hear and determine any applications or motions pending on the Effective Date for the rejection, assumption or assumption and assignment of any executory contract and to hear and determine the allowance or disallowance of Claims resulting therefrom;
- b. To hear and determine any motion, adversary proceeding, application, contested matter or other litigated matter arising in or related to the Chapter 11 Cases pending on or commenced after the Confirmation Date;
- c. To ensure that distributions to Holders of Allowed Claims are accomplished as provided herein;
- d. To hear and determine objections to Claims, including ruling on any and all motions to estimate Claims;
- e. To allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Interests;
- f. To enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
- g. To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity 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 carry out the purposes and effects thereof;
- i. To hear and determine any and all applications for allowances and payment of Professional Fees and the reasonableness of Professional Fees authorized to be paid or reimbursed under the Bankruptcy Code for the Plan for periods ending on or before the Effective Date;
- j. To hear and determine disputes arising in connection with the interpretation, implementation or enforcement of the Plan, the Liquidating Trust Agreement, the Confirmation Order, the Tax Indemnification Agreement, the Letter of Credit, any transactions or payments contemplated hereby, or any agreement, instrument, or other document governing or relating to any of the foregoing;
- k. To take any action and issue such orders as may be necessary to construe, enforce, implement, execute and consummate the Plan or maintain the integrity of the Plan following consummation of the Plan;
- l. To hear and determine other matters and for such other purposes as may be provided in the Confirmation Order;
- m. To hear and determine all matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code filed, or to be filed, with respect to tax returns for any and all applicable periods);
- n. To issue such orders in aid of execution of the Plan as may be authorized by section 1142 of the Bankruptcy Code;
- o. To adjudicate all claims or controversies to a security or ownership interest in the Estate Assets or in any proceeds thereof;
- p. To resolve any cases, controversies, suits or disputes with respect to the releases, injunctions and other provisions contained in Article X hereof and to enter such orders as may be necessary or appropriate to implement such release, injunctions or other provisions;
- q. To consider and act on the compromise and settlement of any Claim against or Cause of Action by or against a Debtor, the Chapter 11 Trustee,

the Liquidating Trustee or the Reorganized Debtors arising under or in connection with the Plan;

- r. To hear and determine any Director and Officer Causes of Action or Avoidance Actions brought by the Liquidating Trustee or the Reorganized Debtors;
- s. To hear and determine any request by the Liquidating Trustee or the Reorganized Debtors for discovery pursuant to Bankruptcy Rule 2004 or otherwise;
- t. To determine such other matters or proceedings as may be provided for under the Bankruptcy Code, the Bankruptcy Rules, other applicable law, the Plan or in any order or orders of the Bankruptcy Court, including but not limited to the Confirmation Order or any order which may arise in connection with the Plan or the Confirmation Order;
- u. To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code;
- v. To recover all Estate Assets and property of the Debtors' Estates wherever located; and
- w. To enter a Final Decree closing the Chapter 11 Cases.

2. Governing Law

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law, rule or regulation is applicable, or to the extent that an exhibit or supplement to the Plan provides otherwise, the Plan will be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws thereof that would require application of the law of another jurisdiction.

3. Severability

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law, rule or regulation is applicable, or to the extent that an exhibit or supplement to the Plan provides otherwise, the Plan shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws thereof that would require application of the law of another jurisdiction.

## VII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following is a discussion of certain significant U.S. federal income tax considerations of the Plan to GSC Group and its subsidiaries, to Holders of General Unsecured Claims (“**General Unsecured Creditors**”) and to Holders of Preferred Equity Interests (“**Preferred Stockholders**”) under the Internal Revenue Code of 1986, as amended (the “**Tax Code**”). This general description does not discuss all aspects of U.S. federal income taxation that may be

relevant to General Unsecured Creditors and Preferred Stockholders in light of their investment circumstances, or to certain types of General Unsecured Creditors and Preferred Stockholders subject to special treatment under the U.S. federal income tax laws (for example, banks, dealers and traders in securities, financial institutions, governmental authorities or agencies, insurance companies, pass-through entities, tax-exempt organizations, trusts, small business investment companies, regulated investment companies, non-U.S. corporations and individuals who are not citizens or residents of the United States for U.S. tax purposes, Claim Holders related to the Debtors, and Holders holding, or who will hold, Claims, Interests, or Reorganized GSC Group Stock or Trust Units, as part of a hedge, straddle, conversion or constructive sale transaction) and does not discuss any aspect of state, local or non-U.S. taxation. Nor does it purport to address any transactions or agreements that are not part of the Plan. This discussion also does not address the U.S. federal income tax consequences to (i) Holders whose Claims are entitled to reinstatement or payment in full in cash or are otherwise unimpaired under the Plan or (ii) Holders whose Claims are extinguished without distribution in exchange therefor. This discussion (i) is limited to General Unsecured Creditors and Preferred Stockholders who hold the Claims or preferred stock as “capital assets” (generally property held for investment) within the meaning of Section 1221 of the Tax Code and will hold the Reorganized GSC Group Stock as capital assets and (ii) assumes that the debt obligation(s) underlying each Allowed Claim is property treated as debt (rather than equity) of the Debtor(s) the Holder has the Allowed Claim against. This discussion is based upon laws, regulations, rulings and decisions now in effect and upon proposed regulations all of which are subject to change (possibly with retroactive effect) by legislation, administrative action or judicial decision. Moreover, substantial uncertainties, resulting from the lack of a definitive judicial or administrative authority and interpretation, apply to various tax aspects of the transactions discussed herein. No ruling has been or will be sought from the Internal Revenue Service (“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. EACH GENERAL UNSECURED CREDITOR AND PREFERRED STOCKHOLDER IS URGED TO CONSULT ITS OWN TAX ADVISOR FOR THE TAX CONSEQUENCES PARTICULAR TO IT FROM THE IMPLEMENTATION OF THE PLAN.

A. IRS Circular 230 Disclosure

TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, YOU ARE HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF UNITED STATES FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A TAXPAYER UNDER THE INTERNAL REVENUE CODE, (B) ANY SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN AND (C) TAXPAYERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

B. Tax Consequences to GSC Group

References below to the tax consequences to GSC Group include those attributable to the direct operations of GSC Group and those attributable to the subsidiaries, partnerships and disregarded entities in which GSC Group holds equity interests.

Pursuant to APA 1 and APA 2, GSC Group and certain of its subsidiaries sold substantially all of their assets to the Designated Purchaser. Under the Tax Indemnification Agreement, GSC Group and certain of its subsidiaries are indemnified against certain taxes that may result from the sale, subject to the conditions and limitations set forth therein. One such limitation is the requirement that, in certain circumstances in which total cash held by GSC Group exceeds the amount designated in the Tax Indemnification Agreement, GSC Group and its subsidiaries will be responsible for a certain portion of tax liabilities, and such liabilities will not be indemnified.

C. Cancellation of Indebtedness and Reduction of Tax Attributes

GSC Group generally should recognize cancellation of indebtedness income (“**CODI**”) to the extent the fair market value of any property (including cash, the Reorganized GSC Group Stock and the assets transferred pursuant to APA 1 and APA 2) received by its creditors is less than the sum of (a) the adjusted issue prices of the debt exchanged for such property or otherwise cancelled and (b) the amount of any unpaid accrued interest on such debt (except to the extent GSC Group’s payment of such interest would give rise to a tax deduction).

Under Section 108 of the Tax Code, CODI recognized by a debtor will be excluded from gross income if the debt is discharged 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 plan approved by the court (the “**Bankruptcy Exception**”).

Under Section 108(b) of the Tax Code, a debtor that excludes CODI from gross income under the Bankruptcy Exception generally must reduce certain tax attributes by the amount of the excluded CODI. Attributes subject to reduction include net operating losses (“**NOLs**”), NOL carryforwards, capital loss carryforwards and certain other losses, credits and carryforwards (collectively, “**Loss Tax Attributes**”), and the debtor’s tax basis in its assets (including equity of subsidiaries). A debtor’s tax basis in its assets generally may not be reduced below the amount of liabilities remaining immediately after the discharge of indebtedness. If the amount of a debtor’s excluded CODI exceeds the amount of attribute reduction resulting from the application of the foregoing rules, certain other tax attributes of the consolidated group may also be subject to reduction. 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 Section 108(b)(5) of the Tax Code (the “**Section 108(b)(5) Election**”) to reduce its basis in its depreciable property first. If a debtor makes a Section 108(b)(5) Election, the limitation on reducing the debtor’s basis in its assets below the amount of its remaining liabilities does not apply.

According to the Chapter 11 Trustee, GSC Group currently expects to have a capital loss carryover to its 2011 taxable year, but has not determined yet (i) whether it has a NOL for 2010

or (ii) if it does, whether it would carry back such NOL or waive the carryback. BDCM has not yet determined whether GSC Group will generate a NOL and/or capital losses in 2011 or will use any NOL or capital loss carryforwards in 2011.

D. Section 382 Limitation

Under Section 382 of the Tax Code, if a corporation or a consolidated group of corporations with Loss Tax Attributes (a “**Loss Corporation**”) undergoes an “ownership change,” the amount of its pre-change Loss Tax Attributes that may be utilized to offset taxable income generally will be subject to an annual limitation in the post-change period. Such limitation may also apply to subsequently recognized “built-in” losses, *i.e.*, losses economically accrued but unrecognized as of the date of the ownership change. Subject to the special bankruptcy rules discussed below, the annual limitation for a corporation that undergoes an ownership change would generally be equal to the product of (i) the value of the Loss Corporation’s outstanding stock immediately prior to the ownership change (with certain adjustments) and (ii) the “long-term tax-exempt rate” in effect for the month in which the ownership change occurs (which is, for example, 3.55% for December 2011). However, if the Loss Corporation does not continue its historic business or use a significant portion of its business assets in a new business for two years after the ownership change, the annual limitation would be zero. If the Loss Corporation has a “net unrealized built-in gain” (a “**NUBIG**”), generally meaning that, immediately before an ownership change, the fair market value of its assets exceeds the aggregate tax basis of its assets, then the limitation described above is generally increased for the first five years after the change date by the amount of recognized built-in gain during a post-change year (but not cumulatively to exceed the NUBIG).

In general, an “ownership change” occurs if the percentage of the value of the Loss Corporation’s stock owned by one or more direct or indirect 5% shareholders (as specially defined for purposes of Section 382 of the Tax Code) has increased by more than fifty (50) percentage points over the lowest percentage of that value owned by such 5% shareholders at any time during a three-year (or shorter period if certain conditions are met) testing period (the “**50% Change Requirement**”). In addition, if a 50%-or-greater shareholder of the Loss Corporation claims a worthless stock deduction with respect to its stock in the Loss Corporation for a taxable year, the Loss Corporation is treated as undergoing an ownership change on the first day of the following taxable year (“**50% Shareholder Worthless Stock Deduction**”).

The Debtors do not expect that the stock issuance pursuant to the Plan will trigger an “ownership change” in GSC Group because only between 33% and 49%, at BDCM’s discretion, of the value of the Reorganized GSC Group Stock will be issued to the General Unsecured Creditors. However, such conclusion is not free from doubt, and the IRS could conclude otherwise.

The Reorganized GSC Group Common Stock will be subject to transfer restrictions designed to prevent a post-Effective Date “ownership change” of Reorganized GSC Group. No such transfer restrictions currently exist with respect to GSC Group stock. However, there can be no assurances that these restrictions will prevent an ownership change from occurring in the future.



If a 50% Shareholder Worthless Stock Deduction were to occur in respect of GSC Group stock for 2011 or an earlier tax year, GSC Group would undergo an ownership change on January 1 of the next year at which time the value of the GSC Group stock would have been or would be very low or perhaps zero. In such event, the special Section 382(l)(6) rule described below would not apply, and GSC Group's applicable Section 382 limitation would be very low or perhaps zero.

If the issuance of the Reorganized GSC Group Stock pursuant to the Plan is determined to result in an "ownership change" of GSC Group, a special rule may apply in determining Reorganized GSC Group's ability to utilize Loss Tax Attributes attributable to tax periods preceding the Effective Date in post-Effective Date tax periods.

Under Section 382(l)(6) of the Tax Code, the amount of the annual limitation following an ownership change generally will be equal to the product of the applicable long-term tax-exempt rate and the fair value of the debtor's outstanding stock immediately *after* the bankruptcy reorganization (and thus considers any increase in value resulting from any surrender or cancellation of creditors' claims in the bankruptcy), provided such value may not exceed the value of the debtor's gross assets immediately before the ownership change, subject to certain adjustments. This special Section 382(l)(6) annual limitation differs from the ordinary Section 382 annual limitation that generally requires the fair value of a debtor corporation that undergoes an ownership change to be determined *before* the events giving rise to the change.

If Section 382(l)(6) were to apply, GSC Group's Loss Tax Attributes remaining after reduction for excluded CODI will be subject to an annual limitation generally equal to the product of the long-term tax-exempt rate for the month of the Effective Date and the value of Reorganized GSC Group's Stock outstanding immediately after consummation of the Plan, prior to giving effect to any NUBIG.

#### E. Alternative Minimum Tax

In general, an alternative minimum tax ("AMT") is imposed on a corporation's alternative minimum taxable income ("AMTI") at a 20% rate to the extent such tax exceeds the corporation's regular federal income tax for the year. AMTI is generally equal to regular taxable income with certain adjustments. For purposes of computing AMTI, certain tax deductions and other beneficial allowances are modified or eliminated. For example, except for alternative tax NOLs generated in certain years, which can offset 100% of a corporation's AMTI, only 90% of a corporation's AMTI may be offset by available alternative tax NOL carryforwards. The effect of this rule could cause Reorganized GSC Group to owe federal and state income tax on taxable income in future years even if NOL carryforwards are available to offset that taxable income. Additionally, under Section 56(g)(4)(G) of the Tax Code, an ownership change (as discussed above) that occurs with respect to a corporation having a net unrealized built-in loss in its assets will cause, for AMT purposes, the adjusted basis of each asset of the corporation immediately after the ownership change to be equal to its proportionate share (determined on the basis of respective fair market values) of the fair market value of the assets of the corporation, as determined under Section 382(h) of the Tax Code, immediately before the ownership change, the effect of which may increase the amount of AMT owed by Reorganized GSC Group.

F. Tax Consequences of Receipt of Trust Units by Reorganized GSC Group

See discussion above in Section VI.B.1. herein (“*Formation of the Liquidating Trust*”), -4 (“*Capitalization of the Liquidating Trust*”), and -5 (“*Initial Distribution of Trust Units*”) for details about the tax consequences of the receipt of any Trust Units by Reorganized GSC Group.

G. Tax Consequences to General Unsecured Creditors

1. *Exchange of Claim for Cash, Trust Units or Reorganized GSC Group Stock*

General Unsecured Creditors will generally recognize gain or loss in an amount equal to the difference between (i) the amount of cash received pursuant to the Up-front Cash Option, or the amount of cash and the fair market value of the Trust Units received pursuant to the Combination Cash Option, or the fair market value of the Reorganized GSC Group Stock received pursuant to the Equity Option, and (ii) the General Unsecured Creditor’s adjusted tax basis in its Claim. Because the ultimate amount of cash to be received by a General Unsecured Creditor pursuant to the Up-front Cash Option or the Combination Cash Option will not be determinable until all Disputed Claims have been settled, withdrawn, or determined by Final Order, it appears that a General Unsecured Creditor that elects the Up-front Cash Option or the Combination Cash Option should recognize additional or offsetting gain or loss if, and to the extent that, the aggregate amount of cash ultimately received by such General Unsecured Creditor pursuant to the Up-front Cash Option or the aggregate amount of cash ultimately received and the fair market value of the Trust units received by such General Unsecured Creditor pursuant to the Combination Cash Option is greater than or less than the amount used in initially determining gain or loss. Subject to the discussion below, any gain or loss recognized will be a capital gain or loss. Any such capital gain or loss will be long-term capital gain or loss if the General Unsecured Creditor has held its Claim for more than one year. A General Unsecured Creditor, however, will recognize ordinary income to the extent a portion of the cash, Trust Units or Reorganized GSC Group Stock is allocable to accrued but unpaid interest on its Claims and, to the extent attributable to accrued market discount, as discussed in the next two paragraphs. A General Unsecured Creditor will have a fair market value tax basis in the Reorganized GSC Group Stock or Trust Units received by such General Unsecured Creditor and its holding period in such stock or Trust Units should begin on the day after the Effective Date.

In the case of a General Unsecured Creditor that acquired its Claims at a market discount (unless the amount of such market discount was a *de minimis* amount, in which case market discount is disregarded), any gain recognized upon the sale of the Claims will be ordinary income to the extent of the market discount that accrued during the period such General Unsecured Creditor held such Claim, unless the General Unsecured Creditor previously had elected to include such accrued market discount in the General Unsecured Creditor’s income on a current basis. In general, a Claim will have accrued market discount if such Claim was acquired after its original issuance at a discount to its adjusted issue price.

Furthermore, to the extent a portion of the cash or Reorganized GSC Group Stock received by the General Unsecured Creditor is allocable to accrued but unpaid interest on its Claim, if the General Unsecured Creditor had not previously included such accrued interest in

income, it will recognize ordinary taxable income with respect to such interest payment; and if the General Unsecured Creditor had previously included such accrued interest in income, it will recognize ordinary income or loss equal to the difference between the General Unsecured Creditor's basis in such interest (*i.e.*, the amount of such accrued interest recognized as income by such General Unsecured Creditor) and the amount of the payment.

There is general uncertainty regarding the extent to which the receipt of cash or other property should be treated as attributable to unpaid accrued interest. The Plan provides that cash or property distributed pursuant to the Plan will first be allocable to the principal amount of a Holder's Claim and then, to the extent necessary, to any unpaid accrued interest thereon. The IRS, however, could take a contrary position.

If a General Unsecured Claim were considered to be a "security" for federal income tax purposes, then a General Unsecured Creditor that elects the Equity Option might not have to recognize all or a part of its gain and would not be entitled to recognize a loss on the exchange of its Claim. The test of whether a debt obligation is a security involves an overall evaluation of the nature of the obligation, with the term of the obligation usually regarded as one of the most significant factors. Debt obligations with a term of five years or less generally have not qualified as securities, whereas debt obligations with a term of ten years or more generally have qualified as securities. In light of the short term nature of the General Unsecured Claims, it does not appear that such Claims constitute a security for tax purposes.

## 2. Trust Units

*Formation.* Although not free from doubt, it appears that each Holder of a General Unsecured Claim that receives a Trust Unit in the Liquidating Trust will be treated for U.S. federal income tax purposes as directly receiving, and as a direct owner of, its respective share of the Residual Estate Assets (consistent with its economic rights in the Liquidating Trust) in a taxable transaction. Pursuant to the Plan, the Liquidation Trustee will in good faith value the assets transferred to the Liquidating Trust and all parties to the Liquidating Trust must consistently use such valuation for all U.S. federal income tax purposes. See discussion above in Section VI.B.1. herein ("*Formation of the Liquidating Trust*"), -.4 ("*Capitalization of the Liquidating Trust*"), and -.5 ("*Initial Distribution of Trust Units*") for additional discussion of this issue.

*Cash Distributions.* A Holder's share of any proceeds received by the Liquidating Trust should not be included, for U.S. federal income tax purposes, in the Holder's amount realized in respect of its Allowed General Unsecured Claim, but should be separately treated as amounts realized in respect of such Holder's ownership interest in the underlying assets of the Liquidating Trust.

## 3. Reorganized GSC Group Stock

*Cash Distributions.* A Holder of Reorganized GSC Group Stock generally will be required to include in gross income as ordinary dividend income the amount of any cash distributions paid on the Stock to the extent such distributions are paid out of Reorganized GSC Group's current or accumulated earnings and profits as determined for federal income tax

purposes. Distributions not treated as dividends for federal income tax purposes will constitute a return of capital and will first be applied against and reduce a Holder's adjusted tax basis in the applicable Reorganized GSC Group Stock, but not below zero. Any excess amount will be treated as gain from a sale or exchange of such Stock. Holders that are treated as corporations for federal income tax purposes may be entitled to a dividends received deduction with respect to distributions out of earnings and profits.

*Increases in Liquidation Preference on the Reorganized GSC Group Preferred Stock.* Although the matter is not free from doubt, it does not appear that the increase in the Liquidation Preference on the Reorganized GSC Group Preferred Stock will give rise to a taxable dividend even if Reorganized GSC Group has current or accumulated earnings and profits. See discussion below in "*—Redemption Premium*" for additional discussion of this issue.

*Redemption Premium.* Under Section 305 of the Tax Code and related Treasury Regulations, if the redemption price of redeemable preferred stock exceeds its issue price by more than a de minimis amount, the difference ("*Redemption Premium*") may be taxable as a constructive distribution taken into account generally in the same manner as original issue discount ("**OID**") would be taken into account were the preferred stock treated as a debt instrument for federal income tax purposes (the "*Accrual Rule*"). Any such constructive distribution would generally be subject to the same rules generally applicable to cash distributions. However, the *Accrual Rule* should only apply to a Holder that is a "*related party*" to Reorganized GSC Group for these purposes and only if the redemption right is considered to be more likely than not to be exercised. A *Redemption Premium* could exist with respect to the Reorganized GSC Group Preferred Stock if (i) the fair market value of the Preferred Stock (which should establish its issue price) is less than its liquidation preference by more than a de minimis amount or (ii) the increase in liquidation preference that occurs with respect to unpaid dividends is treated as a "*disguised*" redemption premium. If the IRS were to successfully contend that a Holder of the Reorganized GSC Group Preferred Stock is subject to the *Accrual Rule*, such Holder would be required to include the amount of the *Redemption Premium* in gross income on an annual basis under a constant yield accrual method, regardless of its regular method of tax accounting, in advance of the receipt of cash attributable to such income, to the extent that Reorganized GSC Group has current or accumulated earnings and profits.

*Redemption.* A redemption of shares of the Reorganized GSC Group Preferred Stock will be a taxable event. If such redemption is treated as a sale or exchange, a Holder will generally recognize long-term capital gain or loss (provided such shares have a holding period in excess of one year) equal to the difference between the amount of cash received and the Holder's adjusted tax basis in the shares of Preferred Stock redeemed (except to the extent that any cash received is attributable to accrued but unpaid dividends on the Preferred Stock that have been declared by Reorganized GSC Group, which generally will be subject to the rules discussed in the paragraph "*—Cash Distributions*" above). A redemption will be treated as a sale for exchange if the redemption:

- results in a "*complete redemption*" of the Holder's stock interest in Reorganized GSC Group under Section 302(b)(3) of the Tax Code;

- is a “substantially disproportionate” redemption with respect to the Holder under Section 302(b)(2) of the Tax Code; or
- is “not essentially equivalent to a dividend” with respect to the Holder under Section 302(b)(1) of the Tax Code.

In determining whether any of these tests has been met, a Holder must take into account not only shares of Reorganized GSC Group’s Stock that it actually owns, but also shares of Reorganized GSC Group’s Stock that it constructively owns within the meaning of Section 318 of the Tax Code.

A redemption will be treated as “not essentially equivalent to a dividend” if it results in a “meaningful reduction” in the Holder’s stock interest in Reorganized GSC Group, which will depend on the Holder’s particular facts and circumstances at such time. If as a result of the redemption, a Holder whose relative stock interest in Reorganized GSC Group is minimal and who exercises no control over corporate affairs suffers a reduction in its proportionate interest in Reorganized GSC Group (including any stock constructively owned), the Holder should generally be regarded as having suffered a meaningful reduction in its interest in Reorganized GSC Group.

Satisfaction of the “complete redemption” and “substantially disproportionate” exceptions is dependent upon compliance with the respective objective tests set forth in Section 302(b)(3) and Section 302(b)(2) of the Tax Code. A redemption will result in a “complete redemption” if either (i) all of the stock of Reorganized GSC Group actually and constructively owned by the Holder is exchanged in the redemption or (ii) all of the stock of Reorganized GSC Group actually owned by the Holder is exchanged in the redemption and the Holder is eligible to waive, and effectively waives, the attribution of stock of Reorganized GSC Group constructively owned by the Holder in accordance with the procedures described in Section 302(c)(2) of the Tax Code. A redemption will be “substantially disproportionate” if (i) the percentage of the outstanding voting stock of Reorganized GSC Group actually and constructively owned by the Holder immediately following the redemption (treating shares of Reorganized GSC Group Preferred Stock exchanged in the redemption as not outstanding) is less than 80% of the percentage of the outstanding voting stock of Reorganized GSC Group actually and constructively owned by the Holder immediately before the redemption (treating shares of Reorganized GSC Group Preferred Stock exchanged in the redemption as outstanding) (the “**80% Requirement**”), (ii) the 80% Requirement is also met with respect to the Reorganized GSC Group Common Stock based on the value of such common stock and (iii) immediately following the redemption the Holder owns less than 50% of the total combined voting power of Reorganized GSC Group.

If the redemption does not constitute a sale or exchange, the receipt of cash by such Holder will be treated as a distribution. For the federal income tax consequences of receipt of a distribution, see the paragraph “—*Cash Distributions*” above. If a redemption is treated as a distribution, a Holder’s tax basis in the shares of Reorganized GSC Group Preferred Stock redeemed should be added to its basis in other shares of Reorganized GSC Group Stock actually or constructively owned.

*Sale or Other Taxable Disposition.* A Holder of Reorganized GSC Group Stock will recognize gain or loss upon the sale or other taxable disposition of such Stock equal to the difference between the amount realized upon the disposition and the Holder's adjusted tax basis in such Stock. Subject to the recapture rules under Section 108(e)(7) of the Tax Code, any such gain or loss generally will be capital gain or loss, and will be long-term capital gain or loss if the Holder has held the Reorganized GSC Group Stock for more than one year as of the date of disposition. Under the Section 108(e)(7) recapture rules, a Holder may be required to treat gain recognized on the taxable disposition of the Reorganized GSC Group Stock as ordinary income if the Holder took a bad debt deduction with respect to its General Unsecured Claim or recognized an ordinary loss on the exchange of the General Unsecured Claim for Reorganized GSC Group Stock.

H. Tax Consequences to Preferred Stockholders

It is not believed that Preferred Stockholders will recognize any gain or loss as a result of the consummation of the transactions pursuant to the Plan.

I. Disputed General Unsecured Claims Reserves.

Distributions from the Disputed General Unsecured Claims Reserves will be made to Holders of Disputed Claims when such Claims are subsequently Allowed and will be retained or distributed to other Creditors when Disputed Claims are subsequently Disallowed.

Although the matter is not free from doubt, Holders of Disputed Claims should not recognize gain or loss prior to the receipt of consideration in exchange for their Claim, but should recognize gain or loss in an amount equal to: (i) the amount of cash and the fair market value of any Trust Units or Reorganized GSC Group Stock distributed to such Holder less (ii) the adjusted tax basis of its Claim, subject to the discussion in Section VII.E., above. However, it is possible that such Holders may be required to recognize the fair market value of such Holder's allocable share of the applicable Disputed General Unsecured Claim Reserve's assets, as an amount received for purposes of computing gain or loss, either on the Effective Date or the date such Holder's Claim becomes an Allowed Claim.

The tax treatment of the Disputed General Unsecured Claims Reserves is unclear. Holders of Claims should consult their tax advisors as to the tax consequences to them of the establishment of the Disputed General Unsecured Claims Reserves, any income thereon, and any distributions therefrom.

J. Information Reporting and Backup Withholding

The Reorganized Debtors (or other payor) may be obligated to furnish information to the IRS regarding the consideration received by Holders (other than corporations and other exempt Holders) pursuant to the Plan. In addition, the Reorganized Debtors will be required to report annually to the IRS with respect to each Holder (other than corporations and other exempt Holders) the amount of dividends paid (or deemed paid) on the Reorganized GSC Group Stock, and the amount of any tax withheld from payment thereof.

Under certain circumstances, a Creditor may be subject to backup withholding at the rate of 28% with respect to “reportable payments,” including consideration received pursuant to the Plan, dividends paid on the Reorganized GSC Group Stock and the proceeds received on the sale or other disposition of the Reorganized GSC Group Stock. GSC Group (or other payor) will be required to deduct and withhold the prescribed amount if (i) the Creditor fails to furnish a taxpayer identification number (“TIN”) to GSC Group (or other payor) in the manner required, (ii) the IRS notifies GSC Group or (other payor) that the TIN furnished by the Creditor is incorrect, (iii) there has been a failure of the Creditor to certify under penalty of perjury that the Creditor is not subject to withholding or (iv) the Creditor is notified by the IRS that such Creditor failed to report properly payments of interest and dividends and the IRS has notified GSC Group (or other payor) that such Creditor is subject to backup withholding.

Backup withholding is not an additional tax. Any amount withheld from a payment to a Creditor under the backup withholding rules is allowable as a credit against such Creditor’s U.S. federal income tax liability (and may entitle such holder to a refund), provided that the required information is furnished to the IRS. Certain persons are exempt from backup withholding, including corporations and certain financial institutions. Creditors should consult their tax advisors as to their qualification for exemption from backup withholding and the procedure for obtaining such exemption.

THE FOREGOING DISCUSSION OF FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. EACH HOLDER SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN DESCRIBED HEREIN. NEITHER THE PROPONENTS NOR THEIR PROFESSIONALS WILL HAVE ANY LIABILITY TO ANY PERSON OR HOLDER ARISING FROM OR RELATED TO THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN OR THE FOREGOING DISCUSSION.

## **VIII. CERTAIN RISK FACTORS AND OTHER CONSIDERATIONS**

### **A. Certain Bankruptcy Law Considerations**

#### **1. Failure to Receive Requisite Acceptances of the Plan**

Classes 3 and 4 are the only Classes that are entitled to vote to accept or reject the Plan. If Classes 3 and 4 do not accept the Plan, BDCM will not be able to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code because no Impaired Class will have voted in favor of the Plan as required by section 1129(a)(10) of the Bankruptcy Code.

Further, if Classes 3 and 4 do not accept the Plan, BDCM may seek to accomplish a plan under an alternative structure or the Debtors may be required to liquidate their Estates under chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of any alternative chapter 11 plan or liquidation under chapter 7 would be similar to or as favorable to Creditors as those proposed in the Plan.

2. Failure to Confirm the Plan

Even if Classes 3 and 4 accept the Plan, the Plan may not be confirmed by the Bankruptcy Court, which, as a court of equity exercising substantial discretion, may decide not to confirm the Plan. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan of reorganization and requires, among other things, (i) that confirmation of the Plan not be followed by liquidation or a need for further financial reorganization of the Debtors, unless the Plan provides for such liquidation or a need for further financial reorganization, (ii) that the value of distributions to dissenting Holders not be less than the value of distributions to such Holders if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, and (iii) the Plan and BDCM as the plan proponent otherwise comply with the applicable provisions of the Bankruptcy Code.

Although BDCM believes that the Plan will meet all applicable tests, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Additionally, the solicitation of votes from impaired creditors to accept the Plan must comply with section 1125 of the Bankruptcy Code and the applicable Bankruptcy Rules with respect to the length of the solicitation period and the adequacy of the information contained in the Disclosure Statement. Although BDCM believes that the solicitation of votes from Impaired Creditors to accept the Plan will comply with section 1125 of the Bankruptcy Code and the applicable Bankruptcy Rules, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

3. Failure to Consummate the Plan

Pursuant to section 9.2 of the Plan, the conditions to consummation of the Plan include that the Confirmation Order shall have become a Final Order, as well as consummation of certain transactions to implement the Plan. As of the date of this Disclosure Statement, there can be no assurances that these or the other conditions to consummation of the Plan 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. Further, if the Plan is not confirmed and consummated on or before March 31, 2012, the Trustee may pursue confirmation and consummation of the Trustee's Plan, which may delay or potentially foreclose BDCM's ability to confirm and consummate the Plan.

4. Delays of Confirmation or the Effective Date

Any delays of either Confirmation or the Effective Date of the Plan could result in, among other things, increased administrative costs. Additionally, negative effects of delay of either Confirmation or the Effective Date could endanger the ability of BDCM to consummate the Plan and/or creditors' aggregate recoveries.

B. Risks Related to the Reorganized GSC Group Stock

1. Transfer and Voting Restrictions

Pursuant to the Plan or the charter of Reorganized GSC Group, as applicable, will limit the voting rights of each holder of the Reorganized GSC Group Convertible Class B Common Stock in respect of its shares of Reorganized GSC Group Convertible Class B Common Stock



and all other voting securities held by such holder to no more than 24.9% of the total voting power of all common equity holders of Reorganized GSC Group except for any holder that establishes to the satisfaction of GSC Group's board, prior to the Effective Date, that such holder controls 25% or more of the voting power of all outstanding equity securities of Reorganized GSC Group as of and immediately after the Effective Date. Additionally, the Reorganized GSC Group Convertible Class B Common Stock will be subject to restrictions on transfer as described in the paragraph below. The voting limitations and transfer restrictions are intended to prevent any person who is not a holder of at least 25% of the total voting power in GSC Manager prior to the Effective Date from holding 25% or more of such voting power following the issuance of the Reorganized GSC Group Class B Convertible Common Stock. There can be no assurance that these restrictions will prevent the occurrence of a change of control or deemed change of control, among other things, in connection with applicable securities laws and rules.

Although the transfer restrictions and voting limitations described in this Disclosure Statement are intended as protective measures to preserve certain potential tax attributes of the Debtors and to prevent the occurrence of an "assignment" of the Management Contracts for purposes of the securities laws, the transfer restrictions and voting limitations may have the effect of impeding or discouraging a merger, tender offer or proxy contest, even if such a transaction may be favorable to the interests of some or all of the stockholders of Reorganized GSC Group. This effect might prevent holders of securities in Reorganized GSC Group from realizing an opportunity to sell all or a portion of their securities in Reorganized GSC Group at a premium above market prices or from selling them at all. Additionally, the voting limitations may restrict the ability of a holder of voting securities in Reorganized GSC Group from voting all of such holder's shares. Such transfer restrictions and voting limitations may delay the assumption of control, or the exercise of voting control, by a holder of a large block of the voting securities in Reorganized GSC Group and the removal of incumbent directors and management, even if such removal may be beneficial to some or all of the holders of securities in Reorganized GSC Group.

2. *Small Number of Holders Will Control the Reorganized Debtors*

Consummation of the Plan is likely to result in a small number of holders owning a significant percentage of the shares of outstanding Reorganized GSC Stock. Among other things, these holders likely will exercise a controlling influence over the business and affairs of the Reorganized Debtors and have the power to elect directors and approve material corporate transactions or the sale of all or substantially all of the Reorganized Debtors' assets. Holders of General Unsecured Claims should consider these issues when determining whether or not to elect the Equity Option.

3. *Unlisted Shares*

The Debtors do not currently intend to apply for listing of the shares of Reorganized GSC Group Stock on any securities exchange or for quotation of such securities on any automated dealer quotation system. An active trading market may not develop for the shares of Reorganized GSC Group Stock. If an active public trading market for the shares of Reorganized GSC Group Stock does not develop or is not maintained, the market price and liquidity of such securities is likely to be adversely affected and Holders may not be able to sell such securities at

desired times and prices or at all. If any shares of Reorganized GSC Group Stock are traded after their issuance, they may trade at a discount from the price at which such securities were acquired.

The liquidity of the trading market, if any, and future trading prices of the shares of Reorganized GSC Group Stock will depend on and may be adversely affected by unfavorable changes in many factors, including, without limitation:

- prevailing interest rates, increases in which may have an adverse effect on the share price of the Reorganized GSC Group Stock;
- the Reorganized Debtors' business, financial condition, results of operations, prospects and credit quality;
- the market for similar securities and the overall securities market; and
- general economic and financial market conditions, including commodity prices.

Many of these factors are beyond the Debtors' control. Historically, the market for equity securities has been volatile. Market volatility could materially and adversely affect the shares of Reorganized GSC Group Stock, regardless of the Reorganized Debtors' business, financial condition, results of operations, prospects or credit quality.

4. No Public Reporting

Upon emergence from chapter 11, Reorganized GSC Group will not be required to file periodic reports with the SEC and therefore only limited information will be publically available. Because only limited information will be publically available, there may be a limited market for shares of Reorganized GSC Group Stock and the lack of an active trading market may adversely affect the market price and liquidity of such shares.

C. Additional Risk Factors

1. Actual Claim Amounts

Any Claims estimates set forth herein are based on various assumptions. The actual amounts of Allowed Claims may differ, potentially significantly, from those estimates should one or more underlying assumptions prove to be incorrect. Such differences may adversely affect the percentage recovery to Holders of such Allowed Claims under the Plan.

2. Delayed Distributions on Trust Units

Holders of General Unsecured Claims who elect the Combination Cash Option will receive (in addition to their Combination Cash Distribution Share) Trust Units. Distributions on account of the Trust Units may be delayed. It is uncertain when or if the Liquidating Trustee will be able to liquidate any of the Residual Estate Assets and, therefore, no assurances can be given as to the amount or timing of any distributions on account of the Trust Units. Moreover,

under the existing Tax Indemnification Agreement, unresolved tax liabilities trigger limitations in the Tax Indemnification Agreement that limit the ability of the Liquidating Trust to make distributions above specified levels prior to the resolution of all such outstanding tax liabilities and related obligations. The period by which the resolution of all such outstanding tax liabilities and related obligations will be completed is uncertain at this time.

3. Tax Consequences of the Plan

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. There can be no assurance that the IRS will not challenge the tax reporting positions that GSC Group will take or that a court would not sustain such a challenge. See “Certain Federal Income Consequences of the Plan” for a detailed discussion of the tax consequences of the Plan to GSC Group and Holders of General Unsecured Claims and Preferred Equity Interests.

4. Other Risk Factors

As described in this Disclosure Statement, other factors may prevent the successful consummation of BDCM’s Plan or the Reorganized Debtors’ post-emergence operations, including the potential risks that (i) the BDCM Loan may not close, (ii) certain key members of management may no longer be able to continue in their management roles due to death or other mishaps, and (iii) the Reorganized Debtors are unable to continue to maintain the Management Contracts.

**IX. CONFIRMATION AND CONSUMMATION OF THE PLAN**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:

A. Solicitation of Votes

In accordance with sections 1126 and 1129 of the Bankruptcy Code, the Claims in Class 3 and Equity Interests in Class 4 of the Plan are Impaired, and the Holders of Allowed Claims and Equity Interests in each of these Classes are entitled to vote to accept or reject the Plan. Holders of Claims in Class 1 (Secured Claims) and Class 2 (Other Priority Claims) are unimpaired and therefore conclusively presumed to accept the Plan. The Remaining Equity Interests in each of the Debtors are fully impaired and therefore conclusively presumed to have rejected the Plan.

As to the classes of Claims and Equity Interests entitled to vote on a plan, the Bankruptcy Code defines acceptance of a plan by a class of creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of the Claims of that class that have timely voted to accept or reject a plan. The Bankruptcy Code defines acceptance of a plan by a class of interests as acceptance by holders of at least two-thirds in dollar amount of the interests of that class that have timely voted to accept or reject a plan. A vote may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. Any creditor in an impaired Class (i) whose Claim or Equity Interest has been listed by the Debtors in the schedules filed with the Bankruptcy Court (provided that such Claim or Equity

Interest has not been scheduled as disputed, contingent or unliquidated) or (ii) who filed a proof of claim or interest on or before the bar date, as applicable, or any proof of claim filed within any other applicable period of limitations or with leave of the Bankruptcy Court, which Claim or Interest is not the subject of an objection or request for estimation, is entitled to vote on the Plan.

B. The Confirmation Hearing

The Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a confirmation hearing. The Confirmation Hearing in respect of the Plan will be held on **February 14, 2012, commencing at 2:00 p.m. prevailing Eastern Time**, before the Honorable Arthur J. Gonzalez, Chief United States Bankruptcy Judge, at the United States District Court for the Southern District of New York, Room 523, One Bowling Green, New York, New York 10004. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to confirmation must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or amount and description of the Equity Interest held by the objector. Any such objection must be filed with the Bankruptcy Court and served in accordance with the Case Management Order dated September 3, 2010, on or before **February 10, 2012 at 4:00 p.m. prevailing Eastern Time**. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

C. Confirmation

At the Confirmation Hearing, the Bankruptcy Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for confirmation of a plan are that the plan is (i) feasible, (ii) in the “best interests” of creditors and stockholders that are impaired under the plan, and (iii) accepted by all impaired classes of Claims and equity interests or, if rejected by an impaired class, that the plan “does not discriminate unfairly” and is “fair and equitable” as to such class.

1. Acceptance

The Claims in Class 1 and Class 2 are Unimpaired and are conclusively deemed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Claims in Class 3 and Equity Interests in Class 4 are impaired under the Plan and are entitled to vote to accept or reject the Plan. Remaining Equity Interests in Class 5 are receiving no distributions under the Plan and, therefore, are conclusively presumed to have voted to reject the Plan. Remaining Equity Interests are impaired under the Plan and are conclusively presumed to have voted to reject the Plan.

If either Class 3 or Class 4 rejects the Plan by the requisite statutory majority provided in section 1126(c) of the Bankruptcy Code, BDCM reserves the right to amend the Plan in accordance with Section 9.4 of the Plan or undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code or both. The determination as to whether to seek confirmation of the Plan under such circumstances will be announced before or at the Confirmation Hearing.

2. Feasibility

The Bankruptcy Code permits a plan to be confirmed if it is not likely to be followed by liquidation or the need for further financial reorganization. This is the “feasibility” test that must be determined by the Bankruptcy Court.

BDCM believes that, with the combined proceeds of the BDCM Loan, net present value of the income of the Management Contracts is estimated to be approximately \$2-3 million after expenses and available cash on-hand, the Reorganized Debtors will be able to make all payments required pursuant to the Plan, satisfy obligations to perform under assumed contracts, meet all obligations and continue in operation after the Effective Date as management deems appropriate, thereby satisfying the Bankruptcy Code’s “feasibility” test .

3. Best Interests Test

Even if the Plan is accepted by all holders of Claims entitled to vote on the Plan, the Bankruptcy Code requires that the Bankruptcy Court, as a condition to confirming the Plan, find that the Plan is in the best interests of all holders of Claims and Equity Interests that are Impaired by the Plan and that have not accepted the Plan. The “best interests” test, as set forth in section 1129(a)(7) of the Bankruptcy Code, requires the Bankruptcy Court to find either that each member of an Impaired Class of Claims or Equity Interests has accepted the Plan or that the Plan will provide any such member who has not accepted the Plan with a recovery of property of a value, as of the Effective Date of the Plan, that is not less than the amount that such member would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date.

The amount of liquidation value available to each Impaired Class of Claims and Equity Interests if the Debtors were liquidated under chapter 7, the Bankruptcy Court would be reduced by the costs and expenses of liquidation, as well as by other administrative expenses and costs of both the chapter 7 cases and the Chapter 11 Cases. Costs of a liquidation of the Debtors under chapter 7 of the Bankruptcy Code would include the compensation of a chapter 7 trustee, as well as of counsel and other professionals retained by the trustee, asset disposition expenses, all unpaid expenses incurred by the Chapter 11 Trustee in the Chapter 11 Cases (such as compensation of attorneys, financial advisors, and accountants) that are allowed in the chapter 7 cases, litigation costs and Claims arising during the pendency of the Chapter 11 Cases. The liquidation itself would trigger certain priority payments that otherwise would not be due in the ordinary course of business. Those priority Claims would be paid in full from the liquidation proceeds before the balance would be made available to pay other Claims or to make any distribution in respect of Equity Interests.

In a chapter 7 liquidation, the proceeds of the BDCM Loan would not be available to Holders of Allowed Claims. In addition, the Tax Indemnification Agreement may preclude any cash distributions to Holders of Allowed Claims for several years. Accordingly, after consulting with their advisors and considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Cases, BDCM believes that Holders of Allowed Claims or Equity Interests in each Class will receive a recovery as a

result of the confirmation of the Plan that is not less than such Holder would receive pursuant to the liquidation of the Debtors under chapter 7.

Under BDCM's Plan, Holders of Preferred Equity Interests will retain 51% of Reorganized GSC Group Common Stock (with 75.1% of voting rights unless and until the conversion of the Reorganized GSC Group Convertible Class B Common Stock to Reorganized GSC Group Class C Common Stock, at which time the voting rights of such existing Preferred Equity Interests would be diluted to 51%), while Holders of Remaining Equity interests will not retain their shares or other interests. The above distribution to Holders of Preferred Equity Interests is an essential element of the Plan. Absent continuity of stock ownership and voting rights, the Debtors might not be able to retain the Management Contracts, and would likely lose certain tax loss attributes that may potentially be preserved, both of which are vital to the creation of value in the stock of Reorganized GSC Group. If such the continuity of equity and voting rights are not retained through the reorganization, the Equity Option would have no value for unsecured creditors. Furthermore, in the event of a chapter 7 liquidation or an alternative plan, such as the Trustee's Plan, Holders of Preferred Equity Interests and Holders of Remaining Equity Interests do not retain any value, and thereby receive no less favorable treatment under his Plan than any other scenario, including a chapter 7 liquidation.

4. *Unfair Discrimination and Fair and Equitable Tests*

To obtain nonconsensual confirmation of the Plan, BDCM must demonstrate to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to each impaired, nonaccepting Class. The Bankruptcy Code provides a non-exclusive definition of the phrase "fair and equitable." The Bankruptcy Code establishes the following "cram down" test for equity holders:

Either (i) each holder of an equity interest will receive or retain under the plan property of a value equal to the greater of the fixed liquidation preference to which such holder is entitled, or the fixed redemption price to which such holder is entitled or the value of the interest or (ii) the holder of an interest that is junior to the nonaccepting class will not receive or retain any property under the plan.

A chapter 11 plan does not "discriminate unfairly" with respect to a nonaccepting class if the value of distributions to the nonaccepting 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 nonaccepting class.

D. *Consummation*

The Plan will be consummated on the Effective Date. The Effective Date of the Plan will occur on the first Business Day on which the conditions precedent to the effectiveness of the Plan, as set forth in Section 9.2 of the Plan, have been satisfied or waived by the Debtors pursuant to Section 9.3 of the Plan. For a more detailed discussion of the conditions precedent to the Plan and the consequences of the failure to meet such conditions, see Section VI.F— "Conditions Precedent to Plan's Confirmation and Effective Date" of this Disclosure Statement.

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

### **A. Liquidation Under Chapter 7 of the Bankruptcy Code**

The Debtors could be liquidated under chapter 7 of the Bankruptcy Code. BDCM believes that liquidation under chapter 7 of the Bankruptcy Code would result in lower distributions being made to creditors entitled to received a distribution under the Plan because of: (i) additional administrative expenses attendant to the appointment of a chapter 7 trustee and the trustee's employment of attorneys and other professionals; and (ii) the likelihood that the Debtors' assets would have to be sold or disposed of in a less orderly fashion.

### **B. Alternative Plan(s) of Reorganization**

BDCM believes that not only does the Plan fairly adjust the rights of various Classes of Claims, but also that the Plan provides superior recoveries to Holders of Claims in Class 3 and Equity Interests in Class 4 over any alternative capable of rational consideration (such as a chapter 7 liquidation), thus enabling many stakeholders to maximize their returns.

### **C. Dismissal of the Chapter 11 Cases**

Dismissal of the Chapter 11 Cases would have the effect of restoring (or attempting to restore) the Debtors' remaining creditors to the status quo. Upon dismissal of the Chapter 11 Cases, the Debtors would lose the protection of the Bankruptcy Code, thereby requiring, at the very least, an extensive and time consuming process of negotiation with creditors, and possibly resulting in costly and protracted litigation in various jurisdictions. Dismissal of the Chapter 11 Cases may also permit certain unsecured creditors to obtain and enforce judgments against the Debtors. BDCM believes these actions could lead ultimately to the liquidation of the Debtors under chapter 7 of the Bankruptcy Code. Therefore, BDCM believes that dismissal of the Chapter 11 Cases is not a viable alternative to the Plan.

## **XI. CONCLUSION AND RECOMMENDATION**

BDCM believes that the Plan is in the best interests of all Holders of Claims and Equity Interests and urges the Holders of Impaired Claims in Class 3 and Equity Interests in Class 4 to vote to accept the Plan and to evidence such acceptance by returning their ballots to the solicitation agent at the address set forth in Section I.B of this Disclosure Statement so that they will be actually received **on or before 4:00 p.m., prevailing Eastern Time, on February 6, 2012.**

Dated: New York, New York  
January 12, 2012

Respectfully submitted,

**BLACK DIAMOND CAPITAL  
MANAGEMENT, L.L.C.**

By: /s/ Stephen H. Deckoff

Name: Stephen H. Deckoff

Title: Managing Principal



**EXHIBIT A**

**PLAN**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

<b>In re:</b>	)	
	)	<b>Chapter 11</b>
<b>GSC GROUP, Inc., et al.,<sup>1</sup></b>	)	
	)	<b>Case No. 10-14653 (AJG)</b>
	)	
<b>Debtors.</b>	)	<b>(Jointly Administered)</b>
	)	

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**BLACK DIAMOND CAPITAL MANAGEMENT, L.L.C.’S FOURTH AMENDED JOINT  
CHAPTER 11 PLAN FOR GSC GROUP, INC. AND ITS AFFILIATED DEBTORS**

KIRKLAND & ELLIS LLP  
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Chicago, Illinois 60654  
Telephone: (312) 862-2000

Counsel to Black Diamond Capital Management,  
L.L.C.

Dated: January 12, 2012

---

<sup>1</sup> The Filing Debtors along with the last four digits of each Filing Debtor’s federal tax identification number are GSC Group, Inc. (6382), GSCP, LLC (6520), GSC Active Partners, Inc. (4896), GSCP (NJ) Inc. (3944), GSCP (NJ) Holdings, L.P. (0940), GSCP (NJ), L.P. (0785), and GSC Secondary Interest Fund, LLC (6477).

**This Plan has no relationship to the *Chapter 11 Trustee’s Modified Joint Chapter 11 Plan for GSC Group, Inc. and its Affiliated Debtors Other Than GSC Secondary Interest Fund, LLC [Docket No. 981] (the “Trustee’s Plan”). Any voting solicitation or other matters relating to the Trustee’s Plan or the disclosure statement accompanying the Trustee’s Plan are unrelated to this Plan.***

**TABLE OF CONTENTS**

Page

**ARTICLE I**

**DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME**

Section 1.1	Defined Terms .....	1
Section 1.2	Rules of Interpretation and Computation of Time .....	15

**ARTICLE II**

**RESOLUTION OF INTER-DEBTOR ISSUES**

Section 2.1	Substantive Consolidation of Debtors for Purposes of Voting, Confirmation and Distribution .....	15
-------------	---	----

**ARTICLE III**

**UNCLASSIFIED CLAIMS**

Section 3.1	Administrative Claims .....	16
Section 3.2	Priority Tax Claims .....	16
Section 3.3	Professional Fees .....	17
Section 3.4	United States Trustee Statutory Fees .....	17

**ARTICLE IV**

**CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

Section 4.1	Classification .....	17
Section 4.2	Treatment and Voting Rights of Claims and Equity Interests .....	18
Section 4.3	Cram Down .....	21

**ARTICLE V**

**MEANS FOR IMPLEMENTATION OF THIS PLAN**

Section 5.1	Formation of the Liquidating Trust .....	21
Section 5.2	Reorganized Debtors .....	23
Section 5.3	Management of the Reorganized Debtors .....	23
Section 5.4	Capitalization of the Liquidating Trust .....	24
Section 5.5	Initial Distribution of Trust Units .....	24
Section 5.6	Compromise of Controversies .....	24
Section 5.7	Corporate Action .....	24
Section 5.8	Post-Effective Date Governance .....	25

Section 5.9	Transfer of Post-Petition Agreements.....	25
Section 5.10	Rights Under Tax Indemnification Agreement.....	25
Section 5.11	Straddle Tax Provisions .....	25
Section 5.12	BDCM Loan.....	26
Section 5.13	Restructuring Transactions .....	26
Section 5.14	Distributions from the Liquidating Trust.....	27

## ARTICLE VI

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Section 6.1	Assumption of Management Contracts.....	27
Section 6.2	Rejection of Executory Contracts and Unexpired Leases.....	27
Section 6.3	Claims Based on Rejection of Executory Contracts or Unexpired Leases .....	28

## ARTICLE VII

### PROVISIONS GOVERNING DISTRIBUTIONS

Section 7.1	General Distribution Provisions.....	28
Section 7.2	Establishment of Disputed General Unsecured Claims Reserves.....	29
Section 7.3	Establishment of Disputed Priority Claims Reserve.....	29
Section 7.4	Liquidating Trust, Reorganized Debtors, Distribution Agent, Disputed Unsecured Claims Reserves and Disputed Priority Claims Reserve Distributions.....	29
Section 7.5	Delivery of Distributions and Undeliverable or Unclaimed Distributions .....	30
Section 7.6	Setoff and Recoupment.....	31
Section 7.7	Manner of Payment Under Plan.....	31

## ARTICLE VIII

### PROCEDURES FOR RESOLVING DISPUTED CLAIMS

Section 8.1	Prosecution of Objections to Claims.....	31
Section 8.2	Estimation of Claims.....	32
Section 8.3	Payments and Distributions on Disputed Claims.....	32

## ARTICLE IX

### CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE

Section 9.1	Conditions Precedent to Confirmation.....	32
Section 9.2	Conditions Precedent to the Effective Date .....	33
Section 9.3	Waiver of Conditions .....	33
Section 9.4	Modification of Plan .....	33
Section 9.5	Effect of Withdrawal or Revocation .....	33
Section 9.6	Reservation of Rights.....	34

Section 9.7 Substantial Consummation of Plan.....34

ARTICLE X

EFFECT OF PLAN CONFIRMATION

Section 10.1 Binding Effect.....34  
Section 10.2 Preservation of All Causes of Action.....34  
Section 10.3 Discharge of Claims & Interests.....35  
Section 10.4 Liquidating Trust as Successor .....35  
Section 10.5 **Releases** .....35  
Section 10.6 **Exculpation and Limitation of Liability** .....37  
Section 10.7 **Injunction**.....38  
Section 10.8 Term of Bankruptcy Injunction or Stays .....39  
Section 10.9 Limitation on Release and Exculpation Provisions .....39

ARTICLE XI

RETENTION OF JURISDICTION

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 12.1 Payment of Statutory Fees .....41  
Section 12.2 Reports .....42  
Section 12.3 Governing Law .....42  
Section 12.4 Severability .....42  
Section 12.5 Inconsistency.....42  
Section 12.6 Exemption from Transfer Taxes .....43  
Section 12.7 Filing of Additional Documents .....43  
Section 12.8 Service of Documents .....43  
Section 12.9 Schedules and Exhibits .....43  
Section 12.10 No Prejudice.....44  
Section 12.11 Allocation of Payments.....44

**BLACK DIAMOND CAPITAL MANAGEMENT, L.L.C.’S FOURTH AMENDED JOINT  
CHAPTER 11 PLAN FOR GSC GROUP, INC. AND ITS AFFILIATED DEBTORS**

BDCM, as affiliate of the Designated Purchaser of the assets of the estates of GSC Group, Inc., GSCP, LLC, GSCP (NJ), L.P., GSC Active Partners, Inc., GSCP (NJ), Inc., GSCP (NJ) Holdings, L.P. and GSC Secondary Interest Fund, LLC, debtors in the above-captioned cases, hereby respectfully proposes the following fourth amended joint chapter 11 plan for the Debtors (this or the “Plan”). The only Entities entitled to vote on this Plan are the Holders of General Unsecured Claims in Class 3 and Holders of Preferred Equity Interests in Class 4. Prior to voting to accept or reject this Plan, such Holders are encouraged to read this Plan, the accompanying Disclosure Statement, and their respective exhibits and schedules, in their entirety. No materials other than this Plan, the Disclosure Statement, and their respective exhibits and schedules have been authorized by the BDCM for use in soliciting acceptances or rejections of this Plan.

**ARTICLE I**

**DEFINED TERMS, RULES OF INTERPRETATION AND COMPUTATION OF TIME**

Section 1.1 *Defined Terms*

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form in this Plan and the Disclosure Statement:

“Administrative Claim” means any Claim against any Debtor for costs and expenses of administration under section 503(b) or 507(b) of the Bankruptcy Code, including for: (i) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estates and operating the businesses of the Debtors; (ii) compensation for services and reimbursement of expenses under section 330(a) or 331 of the Bankruptcy Code, including Professional Fees; and (iii) any indebtedness or obligations incurred or assumed by the Debtors during the Chapter 11 Cases. For the avoidance of doubt, UST Fees are not Administrative Claims, and the Debtors, Reorganized Debtors, or Liquidating Trustee, as applicable, shall pay such UST Fees pursuant to Section 3.4 herein.

“Administrative Claim Payment” means a cash payment to the Chapter 11 Trustee from Black Diamond in the amount of \$1 million to pay allowed administrative claims of the Chapter 11 Trustee, Shearman & Sterling LLP, Capstone Advisory Group, LLC, Ernst & Young LLP, Togut Segal & Segal LLP, Epiq Bankruptcy Solutions, LLC and any other retained professional, as set forth in the Agreed Stipulated Order.

“Agent” means the administrative agent and collateral agent under the operative loan and security documents relating to the Prepetition Credit Agreement.

“Agreed Stipulated Order” means the *Stipulation and Order Between the Chapter 11 Trustee and Black Diamond Capital Management, L.L.C. Regarding Settlement of Designation and Disqualification Motions*, by and between the Chapter 11 Trustee, BDCM, and the Designated Purchaser, as approved by the Bankruptcy Court on December 20, 2011 [Docket No. 1049].

“Allowed” means, with respect to any Claim, such Claim or portion thereof: (i) as to which no objection or request for estimation has been Filed, no litigation has commenced, and the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be, otherwise has assented to the validity thereof (and as to which a proof of claim has been properly and timely Filed to the extent required by this Plan, the Bankruptcy Code, the Bankruptcy Rules or any order of the Bankruptcy Court); (ii) as to which any objection or request for estimation that has been Filed has been settled, waived or withdrawn with prejudice or otherwise denied by a Final Order; or (iii) that is allowed (a) pursuant to the terms of a Final Order, (b) pursuant to the terms of an agreement by and between the Holder of such Claim and the Chapter 11 Trustee, the Liquidating Trustee, or the Reorganized Debtors, as the case may be, or (c) under the terms of this Plan. The following claims are Allowed: (i) claim of Eric Snyder as set forth on the Debtors’ schedules of assets and liabilities filed September 15, 2010; and (ii) any fee or other compensation awarded by the Bankruptcy Court to the Chapter 11 Trustee on account of his participation in these cases.

“Amended and Restated Bylaws” means the amended, restated or new bylaws adopted pursuant to the Plan by each Reorganized Debtor, as applicable,, substantially in the form included in the Plan Supplement.

“Amended and Restated Certificate of Incorporation” means the amended, restated or new certificate of incorporation, partnership agreement or other organizational document adopted pursuant to the Plan by each Reorganized Debtor, substantially in the form included in the Plan Supplement.

“AP Holdings” means non-debtor GSC Active Partners Holdings, L.P.

“AP Inc.” means Debtor GSC Active Partners, Inc.

“APA 1” means that certain Asset Purchase Agreement dated October 31, 2010 by and among the GSC Acquisition Partners LLC, GSCP (NJ), L.P., GSCP (NJ) Holdings, L.P., GSCP (NJ), Inc., GSC Group, Inc. and GSCP, LLC (as amended by Amendment No. 1 to Asset Purchase Agreement dated December 3, 2010 and as further supplemented and amended by the Side Letter.)

“APA 2” means that certain Asset Purchase Agreement by and among GSC Acquisition Holdings LLC, GSCP (NJ), L.P., GSCP (NJ) Holdings, L.P., GSCP (NJ), Inc., GSC Group, Inc. and GSCP, LLC dated as of May 23, 2011.

“Auction” means the auction held from October 26 to October 29, 2010 for the sale of substantially all of the Debtors assets in accordance with the court-approved Bidding Procedures.

“Avoidance Actions” means all Causes of Action of, or belonging to, the Estates arising under chapter 5 of the Bankruptcy Code.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., as in effect on the Petition Date, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases.



“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York, or such other court having jurisdiction over the Chapter 11 Cases or any proceeding within, or appeal of an order entered in, the Chapter 11 Cases.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms or the local rules of the Bankruptcy Court, together with any amendments made thereto subsequent to the Petition Date, to the extent that any such amendments are applicable to the Chapter 11 Cases.

“BDCF” means Black Diamond Commercial Finance, L.L.C.

“BDCM” means Black Diamond Capital Management, L.L.C.

“BDCM Loan” means a loan by BDCM to the Reorganized Debtors on the Effective Date in the amount equal to the excess of the amount necessary to satisfy in full the Debtors’ obligations for payment of, or establishment of reserves for, Up-Front Option Plan Cash and Combination Option Plan Cash to creditors electing the Up-front Cash Option and Combination Cash Option, respectively, over Remaining Plan Cash available at the time such payments are required to be made, which loan shall be on terms and conditions consistent in all material respects with Exhibit B, including (i) 6 year maturity, (ii) interest at 5% per annum, and (iii) payable in full prior to any distribution to any equity holder in the Reorganized GSC Group.

“Bidding Procedures” means the bid and auction procedures approved under the Bidding Procedures Order.

“Bidding Procedures Order” means the order entered by the Bankruptcy Court approving the Bidding Procedures, entered on September 23, 2010 [Docket No. 134].

“Black Diamond” means, collectively, BDCM, BDCF and their respective affiliates.

“Business Day” means any day, other than a Saturday, Sunday or a “legal holiday” (as such term is defined in Bankruptcy Rule 9006(a)).

“CALNY” means Calyon New York Branch.

“Capstone” means Capstone Advisory Group, LLC.

“Cash” means the lawful currency of the United States of America and equivalents thereof.

“Cash Options” means the Up-front Cash Option and the Combination Cash Option.

“Catch-Up Combination Cash Distribution” means a distribution of (i) Cash from the Disputed General Unsecured Claims Cash Reserve and (ii) Reserved Trust Units, to (a) the Holder of a Disputed General Unsecured Claim that has elected the Combination Cash Option and that becomes an Allowed General Unsecured Claim equal to the distributions such Holder would have received if such Allowed General Unsecured Claim had been allowed prior to such date or (b) Reorganized GSC Group on account of a Disputed General Unsecured Claim that

elected the Equity Option equal to the distributions that the Holder of such Claim would have received if such Holder had elected the Combination Cash Option and if such Allowed General Unsecured Claim had been allowed prior to such date.

“Catch-Up Equity Distribution” means a distribution of Reorganized GSC Group Convertible Class B Common Stock from the Disputed General Unsecured Claims Equity Reserve to the Holder of a Disputed General Unsecured Claim that has elected the Equity Option and that becomes an Allowed General Unsecured Claim equal to the distributions such Holder would have received if such Allowed General Unsecured Claim had been allowed prior to such date.

“Catch-Up Up-front Cash Distribution” means a distribution of Cash from the Disputed General Unsecured Claims Cash Reserve to the Holder of a Disputed General Unsecured Claim that has elected or been deemed to elect the Up-front Cash Option and that becomes an Allowed General Unsecured Claim equal to the distributions such Holder would have received if such Allowed General Unsecured Claim had been allowed prior to such date.

“Causes of Action” means all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, rights to legal remedies, rights to equitable remedies, rights to payment and claims, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances and trespasses, whether known or unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or indirectly or derivatively, in law, equity or otherwise.

“Chapter 11 Cases” means the jointly administered cases under chapter 11 of the Bankruptcy Code commenced by the Filing Debtors in the Bankruptcy Court.

“Chapter 11 Trustee” means James L. Garrity, Jr., in his capacity as chapter 11 trustee of the Estates, or his duly appointed successor.

“Claim” means a claim as defined in section 101(5) of the Bankruptcy Code against any Debtor, whether or not asserted.

“Class” means a class of Claims or Equity Interests as set forth in Article IV hereof.

“Combination Cash Distribution Share” means, for any Holder of an Allowed General Unsecured Claim who elects or is deemed to elect the Combination Cash Option, its Pro Rata Share of Combination Option Plan Cash.

“Combination Cash Option” means the election or deemed election by a Holder of a General Unsecured Claim to accept (i) Combination Option Plan Cash and (ii) Trust Units in exchange for its claim pursuant to the terms set forth in Section 4.2.

“Combination Option Plan Cash” means Remaining Plan Cash, plus \$1.0 million proceeds of the BDCM Loan.

“Common Equity Interests” means all outstanding ownership interests in common stock of Debtor GSC Group, Inc., which interests are comprised of Class A, Class B and Class C common stock.

“Confirmation Date” means the date upon which the Confirmation Order is entered.

“Confirmation Hearing” means the hearing to be held by the Bankruptcy Court to consider confirmation of this Plan pursuant to section 1128 of the Bankruptcy Code.

“Confirmation Order” means the order of the Bankruptcy Court confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

“Consent Solicitation Process” means the consent solicitation process authorized under the Bidding Procedures Order.

“Debtors” means, collectively, GSC Group, Inc., GSCP, LLC, GSC Active Partners, Inc., GSCP (NJ) Inc., GSCP (NJ) Holdings, L.P. and GSCP (NJ), L.P.

“Designated Purchaser” means GSC Acquisition Holdings LLC.

“Director and Officer Causes of Action” means all Causes of Action of, or belonging to, the Estates, against any current or former directors or officers of the Filing Debtors arising prior to or during the Chapter 11 Cases related to the sale of the Debtors’ assets or for breach of fiduciary duties.

“Disallowed” means, with respect to any Claim, such Claim or portion thereof that has been disallowed or expunged by a Final Order.

“Disclosure Statement” means the written disclosure statement that relates to this Plan, as the same may be amended, supplemented, revised or modified from time to time, as approved by the Bankruptcy Court, including without limitation all exhibits, appendices and schedules annexed thereto.

“Disputed” means any Claim or portion thereof: (i) as to which the Chapter 11 Trustee, the Liquidating Trustee, BDCM or the Reorganized Debtors has filed an objection or request for estimation, which objection has not been withdrawn or determined by a Final Order; (ii) that is subject to any right of setoff or recoupment; or (iii) that otherwise is disputed by the Chapter 11 Trustee, the Liquidating Trustee, BDCM or the Reorganized Debtors.

“Disputed General Unsecured Claims Cash Reserve” means the reserve related to the Cash Options established pursuant to Section 7.2 of this Plan.

“Disputed General Unsecured Claims Cash Reserve Amount” means the portion of the Remaining Plan Cash in an amount necessary to cover the aggregate Estimated Claim Amounts of those General Unsecured Claims that have elected one of the Cash Options and that are Disputed as of the Effective Date.

“Disputed General Unsecured Claims Equity Reserve” means the reserve related to the Equity Option established pursuant to Section 5.2 of this Plan.

“Disputed General Unsecured Claims Equity Reserve Amount” means the portion of the Reorganized GSC Group Stock in an amount necessary to cover the aggregate Estimated Claim Amounts of those General Unsecured Claims that have elected the Equity Option and that are Disputed as of the Effective Date.

“Disputed General Unsecured Claims Reserves” means the Disputed General Unsecured Claims Cash Reserve and the Disputed General Unsecured Claims Equity Reserve.

“Disputed Priority Claims Reserve” means the reserve established pursuant to Section 7.3 of this Plan.

“Disputed Priority Claims Reserve Amount” means the portion of the Up-front Option Plan Cash and the Combination Option Plan Cash, in an amount necessary to cover the aggregate Estimated Claim Amounts of those Priority Tax Claims and Other Priority Claims that are Disputed as of the Effective Date.

“Distribution Agent” means the Entity or Entities chosen by the Debtors or the Reorganized Debtors, as applicable, and BDCM, to make or facilitate distributions pursuant to this Plan other than any distributions that are to be made by the Liquidating Trustee under this Plan.

“Effective Date” means the Business Day on which all conditions specified in Article IX have been satisfied or waived in accordance with Section 9.3.

“Entity” means an “entity” as defined in section 101(15) of the Bankruptcy Code.

“Equity Distribution Share” means, for any Holder of an Allowed General Unsecured Claim who elects the Equity Option, an amount of Reorganized GSC Convertible Class B Common Stock to be determined by multiplying the total number of shares of Reorganized GSC Convertible Class B Common Stock to be issued and outstanding immediately following the issuance of all shares of Reorganized GSC Convertible Class B Common Stock by a fraction, the numerator of which is the amount of such Holder’s Allowed General Unsecured Claim and the denominator of which shall be the aggregate amount of all Allowed General Unsecured Claims for which the Holders elected the Equity Option, including the claim of such Holder.

“Equity Interests” means all outstanding ownership interests, whether or not certificated, including any interest evidenced by common or preferred stock, warrant, membership interest, option or other right to purchase or otherwise receive any ownership interest in any of the Debtors, or any right to payment or compensation based upon any such interest, whether or not such interest is owned by the Holder of such right to payment or compensation.

“Equity Option” means the affirmative election by a Holder of a General Unsecured Claim to accept its Equity Distribution Share, in exchange for its claim, pursuant to the terms of Section 4.2 hereof.

“Escrow Agent” means the law firm or other escrow agent selected by the Chapter 11 Trustee and Black Diamond.

“Escrow Funds” means the cash payment in the amount of \$4 million made pursuant to the Agreed Stipulated Order by Black Diamond to the Escrow Agent which is to be used exclusively for payment of the Straddle Tax as set forth in the Agreed Stipulated Order and Section 5.11 herein. The amount of the Escrow Funds may be reduced, from time to time, by the portion of any cash distributions made by the Debtors, the Liquidating Trust or the Liquidating Trustee that would be attributable to the claims held by general unsecured creditors who elect the Equity Option, and to the extent such amounts are deposited with the Escrow Agent, they shall be held in accordance with the terms of the Agreed Stipulated Order and/or any separate escrow agreement entered in accordance with the Agreed Stipulated Order terms as may be approved by the Chapter 11 Trustee or the Liquidating Trustee, as applicable.

“Estate Assets” means those assets (including any tangible or intangible property rights, privileges or immunities of any kind whatsoever) remaining in the Estates following the consummation of APA 1 and APA 2, including those set forth as “Excluded Assets” on Schedule 2.2 to APA 2 (and all proceeds received from such assets), and any contractual or other rights under the Letter of Credit and the Sale Transaction Documents. Notwithstanding the foregoing, the Estate Assets shall not include the rights and obligations of the Sellers under the Tax Indemnification Agreement.

“Estates” means the estates of the Debtors created pursuant to section 541 of the Bankruptcy Code upon the commencement of the Chapter 11 Cases.

“Estimated Claim Amount” means the lesser of (i) the filed amount of a Disputed Claim as asserted by the Holder of such Claim; (ii) the estimated maximum amount of a Disputed Claim that could become Allowed as agreed to by the Holder of such Claim, BDCM and the Chapter 11 Trustee prior to the Effective Date or the Liquidating Trustee following the Effective Date; or (iii) the maximum estimated amount of a Disputed Claim that could become Allowed as determined by the Bankruptcy Court pursuant to section 502 of the Bankruptcy Code.

“File”, “Filed” or “Filing” means file, filed or filing with the Bankruptcy Court (or agent thereof) in connection with the Chapter 11 Cases.

“Filing Debtors” means the Debtors and SIF.

“Final Decree” means the decree contemplated under Bankruptcy Rule 3022.

“Final Order” means an order or judgment entered by the Bankruptcy Court: (i) that has not been reversed, stayed, modified, amended or revoked, and as to which (a) any right to appeal or seek certiorari, review, reargument, stay or rehearing has been waived or (b) the time to appeal or seek certiorari, review, reargument, stay or rehearing has expired and no appeal or petition for certiorari, review, reargument, stay or rehearing is pending; or (ii) as to which an appeal has been taken or petition for certiorari, review, reargument, stay or rehearing has been Filed and (a) such appeal or petition for certiorari, review, reargument, stay or rehearing has been resolved by the highest court to which the order or judgment was appealed or from which certiorari, review, reargument, stay or rehearing was sought and (b) the time to appeal further or

seek certiorari, further review, reargument, stay or rehearing has expired and no such further appeal or petition for certiorari, further review, reargument, stay or rehearing is pending; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code, Rule 59 or 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be Filed with respect to such order or judgment.

“General Bar Date Order” means the Order Establishing Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof entered by the Bankruptcy Court on March 18 , 2011 [Docket No. 442 ].

“General Unsecured Claim” means all Claims that are not Administrative Claims, Priority Tax Claims, Other Priority Claims, Secured Claims, Intercompany Claims or based upon Equity Interests.

“GSC Group” means Debtor GSC Group, Inc.

“GSCP LLC” means Debtor GSCP, LLC.

“GSC U.K.” means GSC Group Limited.

“Guarantor Sellers” means the Sellers other than NJLP.

“Holder” means the beneficial holder of any Claim or Equity Interest.

“Holdings LP” means Debtor GSCP (NJ) Holdings, LP.

“Impaired” means with respect to each Claim or Equity Interest, such Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Indemnified Liabilities” means tax liabilities in an amount not greater than the amount of liabilities that can be satisfied by Reorganized Debtors by the proceeds of the Tax Indemnification Agreement or the Letter of Credit.

“Initial Administrative Claims Bar Date Order” means the Order Establishing a Deadline and Procedures for Filing Certain Administrative Claims and Approving the Form and Manner of Notice Thereof entered by the Bankruptcy Court on September 14, 2011 [Docket No. 776].

“Initial APA” means that certain Asset Purchase Agreement, dated October 31, 2010, among the Sellers and the GSC Acquisition Partners LLC.

“Initial Sale Order” means the initial proposed sale order authorizing consummation of the transactions under the Initial APA.

“Intercompany Claims” means all Claims held by any Debtor against any other Debtor including but not limited to the Intercompany Subrogation Claims and the NJLP Intercompany Claims.

“Intercompany Subrogation Claims” means the subrogation Claims of the Guarantor Sellers against NJLP resulting from their sale of assets under APA 1 and APA 2 to the Designated Purchaser in satisfaction of their obligations as guarantors of NJLP’s obligations under the Prepetition Credit Agreement.

“Letter of Credit” means the certain letter of credit dated July 26, 2011, issued by JPMorgan Chase Bank, N.A. in favor of James L. Garrity, Jr. as trustee on behalf of GSCP (NJ), L.P., GSCP (NJ) Holdings, L.P., GSCP (NJ), Inc., GSC Group, Inc., and GSCP, LLC, and any replacement letter of credit issued in lieu thereof.

“Lien” means a mortgage, a pledge, a judgment lien, an attachment, a security interest, or other encumbrance on any Estate Assets, whether voluntary or involuntary, which is valid, perfected, and enforceable under applicable non-bankruptcy laws as of the Confirmation Date.

“Life Insurance Policies” means AXA Equitable Policy Nos. 156 232 880, 156 232 882, 156 232 883, 156 232 885, and 156 232 890 issued for the benefit of certain Debtors.

“Liquidating Trust” means the trust created by the Liquidating Trust Agreement.

“Liquidating Trust Agreement” means the instrument governing the Liquidating Trust, in substantially the form Filed as part of the Plan Supplement, as the same may be amended, supplemented or modified from time to time.

“Liquidating Trust Cash” means all Cash remaining in the Estates after all distributions and payments required to be made on or before the Effective Date in accordance with this Plan have been made.

“Liquidating Trustee” means RJM1, LLC or its successor as trustee, designated by the Liquidating Trust Agreement, retained as of the Effective Date as the employee or fiduciary responsible for implementing the applicable provisions of this Plan and administering the Liquidating Trust in accordance with this Plan, the Tax Indemnification Agreement, and the Liquidating Trust Agreement and any successor appointed as provided in the Liquidating Trust Agreement.

“Local Bankruptcy Rules” means the Local Bankruptcy Rules for the Southern District of New York.

“Management Contracts” means the collateral management agreements listed on Exhibit A hereto.

“NJ Inc.” means Debtor GSCP (NJ), Inc.

“NJLP” means Debtor GSCP (NJ) L.P.

“NJLP Intercompany Claims” means the Claims of NJLP against the Guarantor Sellers on account of intercompany loans extended by NJLP to the Guarantor Sellers.

“Non-Controlling Lender Group” means the Non-Controlling Lender Group as defined in the Sale Order.

“Other Priority Claim” means a Claim under section 507(a) of the Bankruptcy Code that is not an Administrative Claim or a Priority Tax Claim.

“Person” means a person as defined in section 101(41) of the Bankruptcy Code.

“Petition Date” means August 31, 2010.

“Plan” means this joint chapter 11 plan with respect to the Debtors, either in its present form or as may be amended, supplemented or modified from time to time and consistent with the Agreed Stipulated Order, including the Plan Supplement and all annexes, appendices, attachments, exhibits and/or schedules hereto or to the Plan Supplement, all of which are incorporated herein by reference.

“Plan Administrative Claims Bar Date” means the date that is 90 days after the Effective Date.

“Plan Cash” means Cash in the aggregate amount of \$4.6 million or less as determined by the Chapter 11 Trustee in his discretion, to be distributed to (a) any Holders of Allowed Priority Tax Claims in accordance with Section 3.2; (b) any Holders of Allowed Secured Claims in accordance with Section 4.2(a); (c) any Holders of Allowed Other Priority Claims in accordance with Section 4.2(b); (d) any Holders of Allowed General Unsecured Claims who elect or are deemed to elect the Up-front Cash Option or the Combination Cash Option in accordance with Section 4.2(c); (e) the Disputed Priority Claims Reserve in accordance with Section 7.3; and (f) the Disputed General Unsecured Claims Cash Reserve in accordance with Section 7.4.

“Plan Documents” means the agreements, documents and instruments to be entered into as of the Effective Date as contemplated by, and in furtherance of, this Plan.

“Plan Supplement” means the compilation of documents and exhibits Filed not later than ten days prior to the Voting Deadline, as such documents and exhibits may be altered, amended, modified or supplemented from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules and the terms hereof.

“Preferred Equity Interests” means the Preferred Units issued by Debtor GSCP (NJ) L.P. pursuant to the Fourth Amended and Restated Agreement of Limited Partnership of GSCP (NJ) L.P. dated as of October 1, 2006.

“Prepetition Credit Agreement” means that certain Fourth Amended and Restated Credit Agreement, dated as of February 28, 2007, among GSCP (NJ), L.P., as borrower, GSCP (NJ) Holdings, L.P., GSC Group, Inc., GSCP, Inc., GSC Group Limited and GSCP, LLC, as guarantors, the lenders party thereto from time to time, and the Agent, as amended.

“Prepetition Lenders” means the financial institutions who are or were parties to the Prepetition Credit Agreement and their successors and assigns.



“Prepetition Loan Documents” means the Prepetition Credit Agreement together with any security agreements, guarantees or any ancillary documents related thereto.

“Priority Tax Claim” means a Claim under Bankruptcy Code section 507(a)(8).

“Professional Fees” means the compensation and reimbursement of expenses allowed to (i) Professionals pursuant to sections 330, 331 or 1103(a) of the Bankruptcy Code or (ii) any Person or Entity making a claim for compensation or reimbursement of expenses under section 503(b) of the Bankruptcy Code.

“Professionals” means (a) all professionals employed in the Chapter 11 Cases pursuant to sections 327, 328, or 1103 of the Bankruptcy Code or otherwise and (b) all professionals or other entities seeking compensation or reimbursement of expenses in connection with the Chapter 11 Cases pursuant to section 503(b)(4) of the Bankruptcy Code.

“Pro-Rata Share” means, with respect to any distribution on account of any Allowed Claim or Allowed Interest in any Class, a distribution equal in amount to the ratio (expressed as a percentage) that the amount of such Allowed Claim bears to the aggregate amount of all Claims, other than Disallowed Claims, in such Class.

“Purchase Agreements” means APA 1, APA 2 and all related ancillary documents.

“Released Parties” means collectively the Chapter 11 Trustee, the Debtors, the Reorganized Debtors, the Estates, Black Diamond, the Liquidating Trust, the Liquidating Trustee and their respective Professionals.

“Remaining Equity Interests” means, with respect to Debtor GSC Group, Inc. the Equity Interests minus the Preferred Equity Interests.

“Remaining Plan Cash” means the Plan Cash remaining following distributions of Plan Cash to (a) any Holders of Allowed Priority Tax Claims in accordance with Section 3.2; (b) any Holders of Allowed Secured Claims in accordance with Section 4.2(a); (c) any Holders of Allowed Other Priority Claims in accordance with Section 4.2(b); and (d) the Disputed Priority Claims Reserve in accordance with Section 7.3.

“Reorganized Debtors” means the Debtors, as reorganized pursuant to this Plan, or any successor thereto, by merger, consolidation or otherwise, on or after the Effective Date.

“Reorganized GSC Group Common Stock” means Reorganized GSC Group Class A Common Stock, Reorganized GSC Group Convertible Class B Common Stock, and Reorganized GSC Group Class C Common Stock.

“Reorganized GSC Group Class A Common Stock” means a new class of stock to be authorized prior to the Effective Date, which will comprise between 51% and 67%, at BDCM’s discretion, of the Reorganized GSC Group Common Stock and share the same powers, preferences and rights as the Class A, Class B, and Class C common stock of Debtor GSC Group, Inc.

“Reorganized GSC Group Convertible Class B Common Stock” means a new class of common stock to be authorized prior to the Effective Date, which will comprise between 33% and 49%, at BDCM’s discretion, of the Reorganized GSC Group Common Stock and share the same powers, preferences and rights as the Reorganized GSC Group Class A Common Stock, except that on all matters submitted to a vote of the shareholders of the Reorganized GSC Group, every Holder of Reorganized GSC Group Convertible Class B Common Stock shall be entitled to cast a fractional vote per share so that the total votes for which Reorganized GSC Group Convertible Class B Common Stockholders are eligible to vote shall equal 24.9% of all votes that may be cast at such time by all classes of Reorganized GSC Group Common Stock eligible to vote. The terms of Reorganized GSC Group Convertible Class B Common Stock are set forth in more detail on Exhibit C hereto.

“Reorganized GSC Group Class C Common Stock” means a new class of common stock to be authorized prior to the Effective Date, which will, upon conversion of the Reorganized GSC Group Convertible Class B Common Stock, share the same powers, preferences and rights as the Reorganized GSC Group Class A Common Stock.

“Reorganized GSC Group Preferred Stock” shall mean Reorganized GSC Group Series A Preferred Stock and Reorganized GSC Group Series B Preferred Stock.

“Reorganized GSC Group Series A Preferred Stock” shall have the terms and conditions set forth on Exhibit C hereto.

“Reorganized GSC Group Series B Preferred Stock” shall have the terms and conditions set forth on Exhibit C hereto.

“Reorganized GSC Group Stock” means Reorganized GSC Group Preferred Stock and Reorganized GSC Group Common Stock.

“Reorganized GSC Group” means GSC Group, Inc., as reorganized pursuant to this Plan.

“Reserved Trust Units” means those Trust Units in an amount necessary to cover (i) the aggregate Estimated Claim Amounts of (i) those General Unsecured Claims that have elected the Combination Cash Option and that are Disputed, and (ii) those General Unsecured Claims that have elected the Equity Option and that are Disputed.

“Residual Estate Assets” means: (i) all of the Estate Assets other than the Management Contracts and the Residual Plan Cash; and (ii) the rights of the Chapter 11 Trustee to distributions from the Escrow Funds or the Straddle Tax Letter of Credit.

“Residual Plan Cash” means the Pro-Rata Share of the Remaining Plan Cash allocable to Holders of Allowed General Unsecured Claims that have elected the Equity Option.

“Sale Order” means the Order entered by Chief Judge Gonzalez on July 11, 2011 (I) Authorizing Sale of Assets and Assignment of Executory Contracts Pursuant to Certain Asset Purchase Agreements and Related Documents; (II) Authorizing the Payment of *De Minimis* Prepetition Franchise Taxes; and (III) Granting Related Relief [Docket No. 668].

“SEC” means the Securities and Exchange Commission.

“Secured Claim” means a Claim against any Debtor that is secured by a Lien on, or security interest in, property of such Debtor, which value shall be determined as provided in sections 506(a) or 553 of the Bankruptcy Code.

“Sellers” means GSCP (NJ), L.P., GSCP (NJ) Holdings, L.P., GSCP (NJ), Inc., GSC Group, Inc. and GSCP, LLC.

“Services Agreement” means that certain services agreement dated July 26, 2011 between GSCP (NJ) L.P. and GSC Acquisition Holdings, LLC.

“Side Letter” means that certain letter agreement dated May 23, 2011 between GSC Acquisition Holdings LLC and the Sellers.

“SIF” means GSC Secondary Interest Fund, LLC.

“Straddle Tax” means any amount of federal, state or local tax liability (including interest and penalties), including any liability arising from payments to the Debtors under the Agreed Stipulated Order, for which one or more Debtors or the Liquidating Trust is liable, that would not have been payable by such Debtors or Liquidating Trust if the Trustee’s Plan had been consummated in 2011.

“Straddle Tax Filing Party” means, prior to the Effective Date, the Chapter 11 Trustee (on behalf of the Debtors) or, on or after the Effective Date, the Reorganized Debtors entitled to file a tax return reflecting any Straddle Tax.

“Straddle Tax Indemnified Party” means each of the Debtors, the Chapter 11 Trustee, the Liquidating Trustee, the Liquidating Trust and their respective successors and permitted assignees indemnified by Black Diamond and the Designated Purchaser for any claim or liability whatsoever for any Straddle Tax as set forth in Section 5.11 herein.

“Straddle Tax Letter of Credit” means, at Black Diamond’s option, in lieu of the Escrow Funds, a letter of credit in the amount of \$4 million to be used exclusively for payment of the Straddle Tax as set forth in the Agreed Stipulated Order and Section 5.11 herein. The amount of the Straddle Tax Letter of Credit shall be reduced, from time to time, by the portion of any cash distributions made by the Debtors or the Reorganized Debtors, as applicable, or the Liquidating Trust or Liquidating Trustee, as applicable, that would be attributable to the claims held by Holders of General Unsecured Claims who elect the Equity Option.

“State Court Proceeding” means that certain action in the New York Supreme Court, County of New York styled Credit Agricole Corporate and Investment Bank New York Branch, *et al.* v. Black Diamond Commercial Finance, L.L.C., *et al.*, captioned at Index No. 651989/2010 (Sup. Ct. N.Y. Co.).

“Swap” means the \$97 million notional principal interest rate hedge contract with CALNY entered into in accordance with the terms of the Prepetition Credit Agreement.

“Tax Code” means the Internal Revenue Code of 1986, as amended in effect of the date hereof.

“Tax Indemnification Agreement” means that certain agreement dated July 26, 2011 by and among the Sellers, the Chapter 11 Trustee and the GSC Acquisition Holdings LLC, as amended by this Plan (i) to increase the aggregate permitted amount of the Designated Prepetition Unsecured Creditors Distribution (as defined in the Tax Indemnification Agreement) from \$4.6 million to up to \$6.6 million and (ii) such that the reference to \$7 million in section 4.6(e) of the Tax Indemnification Agreement shall be deemed to be amended to \$8 million and that such amount shall be available for the winddown of the estate and that it shall not be included in the calculation of “Residual Cash” as defined in the Tax Indemnification Agreement.

“Transition Services Agreement” means that certain agreement dated July 26, 2011 among GSCP (NJ) L.P., GSCP (NJ) Holdings, L.P., GSCP (NJ), Inc., GSC Group, Inc., and GSCP, LLC and GSC Acquisition Holdings LLC.

“Trust Units” means interests in the Liquidating Trust distributed to (i) Holders of General Unsecured Claims who have elected the Combination Cash Option pursuant to Section 4.2 of this Plan, and (ii) Reorganized GSC Group on account of those interests in the Liquidating Trust that would have been allocable to Holders of General Unsecured Claims who have elected the Equity Option had they instead elected the Combination Cash Option.

“Trustee’s Plan” means the *Chapter 11 Trustee’s Modified Joint Chapter 11 Plan for GSC Group, Inc. and its Affiliated Debtors Other Than GSC Secondary Interest Fund, LLC* [Docket No. 981].

“Up-front Cash Distribution Share” means, for any Holder of an Allowed General Unsecured Claim who elects or is deemed to elect the Up-front Cash Option, its Pro Rata Share of Up-front Option Plan Cash.

“Up-front Cash Option” means the election or deemed election by a Holder of a General Unsecured Claim to accept Up-front Option Plan Cash in exchange for its claim pursuant to the terms set forth in Section 4.2.

“Up-front Option Plan Cash” means Remaining Plan Cash, plus \$2.0 million of proceeds of the BDCM Loan.

“U.S. Trustee” means the United States Trustee for Region 2.

“Unimpaired” means, with respect to any Claim or Equity Interest, such Claim or Equity Interest that is not Impaired.

“UST Fees” means all fees payable pursuant to section 1930 of title 28 of the United States Code or accrued interest thereon arising under section 3717 of title 31 of the United States Code.

“Voting Deadline” means the date established by an order of the Bankruptcy Court as the deadline for the return of ballots accepting or rejecting this Plan.

Section 1.2 *Rules of Interpretation and Computation of Time*

(a) For purposes of this Plan: (i) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (ii) any reference in this Plan to a contract, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that such document substantially shall be in such form or substantially on such terms and conditions; (iii) any reference in this Plan to an existing document or exhibit Filed, or to be Filed, shall mean such document or exhibit, as it may have been or may be amended, modified or supplemented; (iv) unless otherwise specified, all references in this Plan to sections, articles and exhibits are references to sections, articles and exhibits of or to this Plan; (v) the words “herein” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan; (vi) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (vii) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (viii) any term used in capitalized form in this Plan that is not defined in this Plan but is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

(b) In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**ARTICLE II**

**RESOLUTION OF INTER-DEBTOR ISSUES**

Section 2.1 *Substantive Consolidation of Debtors for Purposes of Voting, Confirmation and Distribution*

(a) This Plan contemplates the substantive consolidation of the Debtors solely for purposes of voting, confirmation, and making distributions to the Holders of Allowed Claims against the Debtors under this Plan. On the Effective Date, and solely for purposes of voting, confirmation, and making distributions to the Holders of Allowed Claims against the Debtors under this Plan, the following shall take place in the following order: (i) the Intercompany Subrogation Claims shall be setoff against the NJLP Intercompany Claims such that the NJLP Intercompany Claims are reduced by an amount equal to the fair market value of the assets sold by the Guarantor Sellers pursuant to APA 1 and APA 2 and immediately following such setoffs, all Intercompany Claims shall be deemed eliminated, canceled, released and of no further effect; (ii) all guarantees of any Debtor of the payment, performance or collection of another Debtor with respect to Claims against such Debtor shall be eliminated and cancelled and Claims on account thereof shall be released and of no further effect; and (iii) any single obligation of multiple Debtors shall be treated as a single obligation in the Debtors’ Estates.

(b) Notwithstanding the substantive consolidation of the Debtors for the purposes set forth in Section 2.1(a), each Debtor shall calculate and pay UST Fees in respect of all disbursements, including disbursements in and outside of the ordinary course of business, until

the entry of a Final Decree in the Chapter 11 Cases, dismissal of the Chapter 11 Cases, or conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

(c) The substantive consolidation of the Debtors for the limited purposes set forth in Section 2.1(a) shall not affect (i) the legal or organizational structure of the Debtors or (ii) the assertion of or defenses to any Causes of Action.

(d) The substantive consolidation of the Debtors for the limited purposes set forth in Section 2.1(a) shall not give rise to the creation of Causes of Action to the extent such Causes of Action do not exist prior to the substantive consolidation.

### ARTICLE III

#### UNCLASSIFIED CLAIMS

##### Section 3.1 *Administrative Claims*

Except for: (a) professionals requesting compensation or reimbursement for Professional Fees; (b) UST Fees; and (c) Holders of Administrative Claims who were required to file proofs of such Administrative Claims incurred on or before August 31, 2011 in accordance with the Initial Administrative Claims Bar Date Order, requests for payment of Administrative Claims must be made and billed no later than 90 days after the Effective Date. **Holders of Administrative Claims who are required to file a request for payment of such Claims and who do not file such requests by the Plan Administrative Claims Bar Date shall be forever barred from asserting such Claims against the Debtors, the Reorganized Debtors, the Liquidating Trust or their property, and the Holder thereof shall be enjoined from commencing or continuing any action to collect, offset or otherwise recover such Administrative Claim.**

Each Holder of an Allowed Administrative Claim shall receive from the Reorganized Debtors, in full satisfaction and discharge thereof, Cash equal to the unpaid amount of such Allowed Administrative Claim (except to the extent that such Holder agrees to less favorable treatment thereof) either on, or as soon as practicable after, the latest of (a) the Effective Date; (b) the date on which such Administrative Claim becomes Allowed; (c) the date on which such Administrative Claim becomes due and payable; and (d) such other date as mutually may be agreed to by such Holder, the Liquidating Trustee, or the Reorganized Debtors, as the case may be. Notwithstanding the foregoing, any Allowed Administrative Claim based on a liability incurred by a Debtor in the ordinary course of business during the Chapter 11 Cases may be paid in the ordinary course of business in accordance with the terms and conditions of any agreement relating thereto.

##### Section 3.2 *Priority Tax Claims*

Each Holder of an Allowed Priority Tax Claim shall receive, in full satisfaction and discharge thereof, Plan Cash equal to the unpaid amount of such Allowed Priority Tax Claim (except to the extent that such Holder agrees to less favorable treatment thereof) either on, or as soon as practicable after, the latest of (a) the Effective Date; (b) the date on which such Priority Tax Claim becomes Allowed; (c) the date on which such Priority Tax Claim becomes due and

payable; and (d) such other date as mutually may be agreed to by such Holder and the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be; *provided, however*, that the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be, shall be authorized, at their option, and in lieu of payment in full of an Allowed Priority Tax Claim, to make deferred Cash payments on account thereof in the manner and to the extent permitted under section 1129(a)(9)(C) of the Bankruptcy Code.

### Section 3.3 *Professional Fees*

The Chapter 11 Trustee and each Professional requesting compensation pursuant to sections 330, 331 or 503(b) of the Bankruptcy Code for services rendered in connection with the Chapter 11 Cases prior to the Confirmation Date shall File an application for allowance of final compensation and reimbursement of expenses in the Chapter 11 Cases on or before the 60th day following the Effective Date. Without limiting the foregoing, the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors may pay the charges incurred by the Debtors or the Chapter 11 Trustee on and after the Confirmation Date for any Professional's fees, disbursements, expenses or related support services, without application to, or approval by, the Bankruptcy Court.

Black Diamond has waived its rights to receive any substantial contribution award that would be payable from or otherwise affect or impact the distributions to be made by the Liquidating Trust.

### Section 3.4 *United States Trustee Statutory Fees*

To the extent required by applicable law, the Debtors, the Liquidating Trustee and the Reorganized Debtors, as applicable, shall pay all UST Fees on all disbursements, including, to the extent required by applicable law, Plan payments and disbursements in and outside the ordinary course of the Debtors' business, until the entry of a Final Decree, dismissal of the Chapter 11 Cases, or conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

## **ARTICLE IV**

### **CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

#### Section 4.1 *Classification*

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including for purposes of voting, confirmation and distribution pursuant to this Plan and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that such Claim or Equity Interest qualifies within the description of such Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest has not been paid or otherwise settled prior to the Effective Date.

Claims (except for Administrative Claims and Priority Tax Claims, which are not required to be classified pursuant to section 1123(a)(1) of the Bankruptcy Code) are classified as follows:

- (a) Class 1—Secured Claims
- (b) Class 2—Other Priority Claims
- (c) Class 3—General Unsecured Claims
- (d) Class 4 – Preferred Equity Interests
- (e) Class 5—Remaining Equity Interests

Section 4.2 *Treatment and Voting Rights of Claims and Equity Interests*

- (a) Class 1—Secured Claims
  - (i) *Treatment:* Each Holder of an Allowed Secured Claim shall receive either (A) payment in full in Plan Cash on the latest of (I) the Effective Date; (II) the date on which such Secured Claim becomes Allowed; (III) the date on which such Secured Claim otherwise is due and payable; or (IV) such other date as mutually may be agreed to by and between such Holder and the Chapter 11 Trustee, the Liquidating Trustee, or the Reorganized Debtors, as the case may be; or (B) its collateral.
  - (ii) *Voting:* Class 1 is Unimpaired. Holders of Secured Claims are presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.
- (b) Class 2—Other Priority Claims
  - (i) *Treatment:* Each Holder of an Allowed Other Priority Claim shall receive Plan Cash in an amount sufficient to pay the Claim in full or otherwise leave unaltered the legal, equitable and contractual rights to which such Claim entitles such Holder on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (A) the Effective Date; (B) the date on which such Other Priority Claim becomes Allowed; (C) the date on which such Other Priority Claim otherwise is due and payable; and (D) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee, or the Reorganized Debtors, as the case may be.
  - (ii) *Voting:* Class 2 is Unimpaired. Holders of Other Priority Claims are presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.



(c) Class 3—General Unsecured Claims

- (i) *Treatment:* Each Holder of an Allowed General Unsecured Claim shall be permitted to elect the Up-front Cash Option, the Combination Cash Option, or the Equity Option.

Subject to Section 7.4, if such Holder elects the Up-front Cash Option, such Holder shall receive its Up-front Cash Distribution Share, on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee, or the Reorganized Debtors, as the case may be.

Subject to Section 7.4, if such Holder elects the Combination Cash Option, such Holder shall receive (A) its Combination Cash Distribution Share and (B) its Pro Rata Share of Trust Units, in each case, on or as soon as practicable after (but in any event not later than five Business Days after), the latest of (I) the Effective Date; (II) the date on which such General Unsecured Claim becomes Allowed; (III) the date on which such General Unsecured Claim otherwise is due and payable; and (IV) such other date as mutually may be agreed to by and among such Holder and the Chapter 11 Trustee, the Liquidating Trustee, or the Reorganized Debtors, as the case may be.

Subject to Section 7.4, if such Holder elects the Equity Option, such Holder shall receive:

(A) one share of Reorganized GSC Group Series B Preferred Stock with a liquidation preference equal to the lesser of (i) the face amount of such Holder's Allowed General Unsecured Claim and (ii) a pro rata portion of 80% of the net asset value of Reorganized GSC Group as of the Effective Date; and

(B) such Holder's Equity Distribution Share of Reorganized GSC Convertible Class B Common Stock. The Reorganized GSC Group B Common Stock will comprise between 33% and 49%, at BDCM's discretion, of the common stock of Reorganized GSC Group (and 24.9% of the voting power) and will be convertible upon majority vote of the holders of such Reorganized GSC Group Convertible Class B Common Stock on a one-for-one basis to shares of Reorganized GSC Group Class C Common Stock, which will, upon exercise of such conversion, comprise 49% of the common stock of Reorganized GSC Group (and hold 49% of the voting rights).

If a Holder of a General Unsecured Claim, whether Disputed or Allowed, does not elect either the Up-front Cash Option, the Combination Cash Option or the Equity Option on or before the Voting Deadline, such Holder will be deemed to have elected the Up-front Cash Option. Holders of Allowed General Unsecured Claims arising on account of executory contracts or unexpired leases that are rejected pursuant to Section 6.2 herein will have the opportunity to elect the Up-front Cash Option, the Combination Cash Option, or the Equity Option in accordance with Section 6.3 of this Plan.

With respect to any Holder of a General Unsecured Claim who elects the Equity Option, Reorganized GSC Group shall be entitled to (A) the Combination Cash Distribution Share and (B) the Pro Rata Share of Trust Units that such Holder would have received had such Holder elected the Combination Cash Option.

- (ii) *Voting:* Class 3 is Impaired. Holders of General Unsecured Claims are entitled to vote to accept or reject this Plan.
  
- (d) Class 4 — Preferred Equity Interests
  - (i) *Treatment:* On the Effective Date, all Preferred Equity Interests shall be cancelled and extinguished and Holders of Preferred Equity Interests shall be issued Reorganized GSC Group Class A Common Stock, according to the Pro Rata Share of Preferred Equity Interests they held, equal to between 51% and 67%, at BDCM's discretion, of total Reorganized GSC Group Common Stock (with 75.1% of voting rights subject to conversion of the Reorganized GSC Group Convertible Class B Common Stock to Reorganized GSC Group Class C Common Stock, at which time the voting rights of such existing Common Equity Interests would be diluted to 51%) as a result of the issuance of the Reorganized GSC Group Class C Common Stock.
  - (ii) *Voting:* Class 4 is Impaired. Holders of Preferred Equity Interests are entitled to vote to accept or reject this Plan.
  
- (e) Class 5 — Remaining Equity Interests
  - (i) *Treatment:* Holders of Remaining Equity Interests shall not receive or retain any property or interest in property on account of such Remaining Equity Interests. On the Effective Date, all Remaining Equity Interests shall be cancelled, extinguished and discharged.
  - (ii) *Voting:* Class 5 is Impaired. Holders of Remaining Equity Interests are deemed to reject this Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

Section 4.3 *Cram Down*

With respect to Class 5 (Remaining Equity Interests), BDCM shall request that the Bankruptcy Court confirm this Plan pursuant to section 1129(b) of the Bankruptcy Code as Class 5 is deemed to reject this Plan.

**ARTICLE V**

**MEANS FOR IMPLEMENTATION OF THIS PLAN**

Section 5.1 *Formation of the Liquidating Trust*

Notwithstanding the general release of the Chapter 11 Trustee from his duties and obligations in these Chapter 11 Cases, if any Professional retained in these Chapter 11 Cases (or any person or entity affiliated with any Professional retained in these Chapter 11 Cases) is appointed as Liquidating Trustee, the Chapter 11 Trustee shall retain the right to review and approve any fees of such Professional incurred before the Effective Date.

On the Effective Date, the Liquidating Trust shall be formed pursuant to the Liquidating Trust Agreement. Confirmation of the Plan shall constitute the appointment of the Liquidating Trustee by the Bankruptcy Court as the representative of the Estates, subject to the Liquidating Trust Agreement, for all purposes. The Liquidating Trustee shall sign the Liquidating Trust Agreement and accept the Residual Estate Assets, including the Liquidating Trust Cash, the Disputed Priority Claims Reserve Amount and the Disputed General Unsecured Claims Cash Reserve Amount, to be transferred to the Liquidating Trust pursuant to Section 5.4 of the Plan on behalf of the beneficiaries thereof, and the Liquidating Trust will then be deemed created and effective without any further action of the Chapter 11 Trustee, the Debtors or the employees, officers, directors, members, partners or shareholders of the Debtors. On the Effective Date, the Chapter 11 Trustee's rights and obligations with respect to the Escrow Funds or the Straddle Tax Letter of Credit, as applicable, shall be transferred to the Liquidating Trust. The Liquidating Trust shall be established for the primary purpose of liquidating the assets transferred to it with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the purpose of the Liquidating Trust. The beneficiaries of the Liquidating Trust shall be bound by the Liquidating Trust Agreement.

The Liquidating Trust is intended to be classified for U.S. federal income tax purposes as a "liquidating trust" within the meaning of U.S. Treasury Regulation section 301.7701-4(d), and the Plan, the Liquidating Trust and the Disclosure Statement are intended to comply with the advance-ruling guidelines contained in Rev. Proc. 94-45, 1994-2 C.B. 684, although no advance ruling will be sought for the Liquidating Trust. The Liquidating Trust will be treated as a grantor trust for U.S. federal income tax purposes, all of the assets of which are deemed owned by the Holders of General Unsecured Claims pursuant to Tax Code sections 671 through 677 (or successor provisions). The Liquidating Trustee will file all returns for the Liquidating Trust as a grantor trust pursuant to U.S. Treasury Regulation section 1.671-4(a) (or successor provisions).

The transfers by the GSC Group or its subsidiaries of assets to the Liquidating Trust will be treated for all federal income tax purposes as a transfer of such assets directly to Reorganized

GSC Group and the Holders of General Unsecured Claims who have elected the Combination Cash Option at the time of the creation of the Liquidating Trust, followed by the immediate transfer by Reorganized GSC Group and the Holders of General Unsecured Claims of such assets to the Liquidating Trust in exchange for beneficial interests in the Liquidating Trust. Reorganized GSC Group and Holders of General Unsecured Claims who have elected the Combination Cash Option will be treated as the grantors and direct owners of a specified undivided interest in the assets held by the Liquidating Trust for all U.S. federal income tax purposes (such assets will have a tax basis equal to their fair market value on the date transferred to the Liquidating Trust). The Liquidating Trustee shall determine the valuations of the transferred property, such valuations will be used for all U.S. federal income tax purposes, and Reorganized GSC Group and all Holders of General Unsecured Claims who have elected the Combination Cash Option shall be bound by such valuations.

The Liquidating Trustee shall provide to Reorganized GSC Group and the Holders of General Unsecured Claims who have elected the Combination Cash Option an annual statement that will list items of income, deduction and credit applicable to the Liquidating Trust in the taxable year. The statement also will clearly specify the portion of the total items that is attributed to (a) Reorganized GSC Group and (b) each Holder of a General Unsecured Claim who has elected the Combination Cash Option. The character of items of income, deduction and credit to any General Unsecured Creditor who has elected the Combination Cash Option, and the ability of such General Unsecured Creditor who has elected the Combination Cash Option to benefit from any deduction or losses will depend on the particular situation of such General Unsecured Creditor. In addition, the character of items of income, deduction and credit to Reorganized GSC Group and the ability of Reorganized GSC Group to benefit from any deduction or losses will depend on the particular situation of Reorganized GSC Group. Reorganized GSC Group and each General Unsecured Creditor who has elected the Combination Cash Option shall pay any tax imposed by any governmental unit on its portion of the income of the Liquidating Trust. The Liquidating Trustee, however, will comply with all withholding and reporting requirements imposed on it by any governmental unit, and all distributions pursuant to the Plan will be subject to such withholding and reporting requirements.

The Liquidating Trust shall terminate five years from the Effective Date. If warranted by the facts and circumstances and subject to the approval of the Bankruptcy Court upon a finding that an early termination of the Liquidating Trust is appropriate or that an extension of the term of the Liquidating Trust is necessary to the liquidating purpose of the Liquidating Trust, the term of the Liquidating Trust may be terminated early or may be extended for a finite term based on the particular facts and circumstances. For any extension, Bankruptcy Court approval must be obtained within six months of the beginning of the extended term.

Until all of the beneficial interests in the Liquidating Trust can be distributed to the Holders in accordance with the terms of the Plan, the Disputed General Unsecured Claims Cash Reserve will be treated as owning a portion of the assets in the Liquidating Trust. Distributions from the Disputed General Unsecured Claims Cash Reserve will be made to Holders of Disputed Claims in accordance with the Cash Option elected by such Holder when such Claims are subsequently Allowed and will be retained or paid to other beneficiaries when Disputed Claims are subsequently Disallowed. Distributions from the Disputed General Unsecured Claims Cash Reserve will be made to Reorganized GSC Group when Disputed General Unsecured Claims

held by Holders that have elected the Equity Option are subsequently Allowed. The Liquidating Trust shall file all income tax returns with respect to any income attributable to the Disputed General Unsecured Claims Cash Reserve and shall pay the federal, state and local income taxes attributable to the Disputed General Unsecured Claims Cash Reserve, based on the items of income, deduction, credit or loss allocable thereto.

### Section 5.2 *Reorganized Debtors*

On the Effective Date, (i) 100% of the Equity Interests in GSC Group, Inc. and the Preferred Equity Interests shall be cancelled, and (ii) Reorganized GSC Group shall distribute, or cause to be distributed, the Reorganized GSC Group Class A Common Stock, the Reorganized GSC Group Convertible Class B Common Stock, and the Reorganized GSC Group Preferred Stock.

On the Effective Date, 100% of the Equity Interests in the Debtors other than GSC Group, Inc. and other than the Preferred Equity Interests shall remain outstanding and shall remain as presently classified. Upon entry of the Confirmation Order, SIF's chapter 11 cases shall be dismissed and closed without need for any further Court or other action or approval.

On the Effective Date, the certificate of incorporation of the Reorganized GSC Group shall be amended in its entirety in substantially the form contained in the Plan Supplement to, among other things, permit the Reorganized Debtors to increase the number of authorized shares, and to establish the rights, preferences, privileges and other terms of each of the Reorganized GSC Group Class A Common Stock, the Reorganized GSC Group Convertible Class B Common Stock, the Reorganized GSC Group Class C Common Stock and Reorganized GSC Group Preferred Stock.

On the Effective Date, the Management Contracts and the Residual Plan Cash shall remain the assets of Reorganized GSC Group and the Residual Estate Assets shall be transferred to the Liquidating Trust pursuant to Section 5.4.

On the Effective Date, the Reorganized Debtors shall establish the Disputed General Unsecured Claims Equity Reserve.

### Section 5.3 *Management of the Reorganized Debtors*

On the Effective Date, the Reorganized Debtors' management will revert to the management of the Debtors in place prior to the appointment of the Chapter 11 Trustee in January 2011, as supplemented by Reorganized GSC Group in consultation with BDCM. Such management will conduct all operations and administer the Plan, other than those duties delegated under the terms hereof to the Liquidating Trustee. On the Effective Date, the Chapter 11 Trustee shall be relieved of his duties and obligations to the estate under the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules, including, but not limited to, any obligation to file a final report pursuant to Local Bankruptcy Rule 3022-1, or otherwise; *provided, however*, that the Chapter 11 Trustee's rights under the Plan, in general, and specifically, the right of the Chapter 11 Trustee and the Chapter 11 Trustee's professionals to seek and prosecute claims for compensation in accordance with Section 3.3 hereof, as well as the Chapter 11 Trustee's right to object to the allowance of Professional Fees, shall be fully

preserved. Notwithstanding the general release of the Chapter 11 Trustee from his duties and obligations in these Chapter 11 Cases provided for in this section, if any Professional retained in these Chapter 11 Cases (or any person affiliated with any Professional in these Chapter 11 Cases) is appointed as Liquidating Trustee, the Chapter 11 Trustee shall retain the right to review and approve any fees of such Professional uncured on or prior to the Effective Date.

#### Section 5.4 *Capitalization of the Liquidating Trust*

On the Effective Date, the Residual Estate Assets, including the Liquidating Trust Cash, the Disputed Priority Claims Reserve Amount and the Disputed General Unsecured Claims Cash Reserve Amount shall be transferred to the Liquidating Trust. All transfers and contributions made pursuant to this Section 5.4 shall be made free and clear of all Claims, Liens, and Equity Interests, and all setoff and recoupment rights, except as otherwise specifically provided in this Plan or in the Confirmation Order. The Liquidating Trustee and the Liquidating Trust are hereby appointed as successor trustees to the Chapter 11 Trustee for purposes of the Letter of Credit.

Consistent with the terms of the Purchase Agreements, on the Effective Date, all remaining liabilities and obligations of the Debtors, including post-closing obligations of the Sellers under the Purchase Agreements, other than those rights and obligations under the Management Contracts, shall be transferred to the Liquidating Trust; provided, however, that the Indemnified Liabilities shall remain with Reorganized Debtors and be payable from the proceeds of the Letter of Credit and Tax Indemnification Agreement. Without limiting the foregoing, the Liquidating Trustee shall be responsible for the transfer to the Designated Purchaser of any Causes of Action acquired under the Purchase Agreements or any other assets to be transferred on a post-closing basis.

#### Section 5.5 *Initial Distribution of Trust Units*

On the Effective Date, or as soon as practicable thereafter, Reorganized GSC Group and Holders of Allowed General Unsecured Claims who have elected the Combination Cash Option will receive their Pro-Rata Share of an initial distribution of Trust Units from the Liquidating Trustee. The Reserved Trust Units will be issued but held in reserve on account of estimated Disputed General Unsecured Claims held by Holders who have elected the Combination Cash Option and, for the benefit of Reorganized GSC Group estimated Disputed General Unsecured Claims held by Holders who have elected the Equity Option.

#### Section 5.6 *Compromise of Controversies*

In consideration for the distributions and other benefits provided under this Plan, the provisions of this Plan constitute a good faith compromise and settlement of all Claims and controversies resolved under this Plan, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under Bankruptcy Rule 9019.

#### Section 5.7 *Corporate Action*

Upon the Effective Date, by virtue of the solicitation of votes in favor of this Plan and entry of the Confirmation Order, all actions contemplated by the Plan shall be deemed authorized

and approved in all respects, including, but not limited to, (i) the adoption of the organizational documents for the Reorganized Debtors; (ii) the issuance of the Reorganized Debtors Stock; and (iii) all other actions contemplated by the Plan. All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or Reorganized Debtors in connection with the Plan, shall be deemed to have occurred and shall be in effect, without any requirement of further action or notice by the Debtors, the Chapter 11 Trustee, the Liquidating Trustee, Holders of Equity Interests in the Debtors or directors and officers of the Debtors or the Reorganized Debtors. Upon the Effective Date, the appropriate officers and directors of Reorganized Debtors shall be authorized and directed to issue, execute and deliver the agreements, documents, securities and instruments contemplated by this Plan (or necessary or desirable to effect the transactions contemplated by this Plan) in the name of an on behalf of the Reorganized Debtors. The authorizations and approvals contemplated in this Section 5.6 shall be effective notwithstanding any requirements under any applicable non-bankruptcy law.

#### Section 5.8 *Post-Effective Date Governance*

The Reorganized Debtors shall enter into such agreements and amend their corporate governance documents to the extent necessary to implement the terms and conditions of the Plan. Without limiting the generality of the foregoing, as of the Effective Date, each of the Reorganized Debtors shall be governed by their respective Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws.

After the Effective Date, each Reorganized Debtor may amend and restate its certificate of incorporation and other constituent documents as permitted by the laws of its respective states, provinces, or countries of formation and its respective charters and bylaws.

#### Section 5.9 *Transfer of Post-Petition Agreements*

As of the Effective Date, the Liquidating Trust shall be deemed successor in interest to the Debtors and Chapter 11 Trustee and any rights and obligations under any agreements the Debtors entered into post-petition remaining in effect as of the Effective Date, including, without limitation, the Purchase Agreements, the Services Agreement and the Transition Services Agreement shall be transferred to the Liquidating Trust.

#### Section 5.10 *Rights Under Tax Indemnification Agreement*

Except for the amendments to the Tax Indemnification Agreement set forth in the definition of "Tax Indemnification Agreement" in Section 1.1 herein, nothing in the Plan or the Confirmation Order shall alter or amend the rights of the parties under the Tax Indemnification Agreement.

#### Section 5.11 *Straddle Tax Provisions*

The Escrow Funds may not be used and no draw may be made under the Straddle Tax Letter of Credit other than to pay any amount of Straddle Tax. The Escrow Agent shall be entitled to hold the Escrow Funds or the Straddle Tax Letter of Credit shall remain outstanding until the earlier of the closing of the Chapter 11 Cases or such other date as provided for in the

Agreed Stipulated Order. When that date has occurred, the Escrow Funds shall be returned to Black Diamond or the Straddle Tax Letter of Credit will be cancelled. In addition, at any time prior to the expiration of such period, the Chapter 11 Trustee (prior to the Effective Date) or the Liquidating Trustee (on or after the Effective Date) shall, upon being advised by a reputable accounting firm retained by such party that no Straddle Tax is payable by the Debtors, return the Escrow Funds to Black Diamond or terminate its right to draw under the Straddle Tax Letter of Credit. The Straddle Tax Filing Party shall be entitled to use the Escrow Funds or draw under the Straddle Tax Letter of Credit to pay any Straddle Tax for which the Designated Purchaser and Black Diamond are providing an indemnification pursuant to the Agreed Stipulated Order. In the event of any direct conflict between the terms of the Agreed Stipulated Order and this Section 5.11, the terms of the Agreed Stipulated Order shall govern and control.

#### Section 5.12 *BDCM Loan*

Confirmation shall be deemed approval of the BDCM Loan (including any and all transactions contemplated thereby, and all actions to be taken, undertakings to be made and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities and expenses provided for therein) and authorization for the Debtors or Reorganized Debtors, as applicable, to enter into and execute any agreement evidencing the BDCM Loan and such other documents as may be required or appropriate to effectuate the treatment afforded to such lenders thereto. The Reorganized Debtors may use the BDCM Loan for any purpose permitted thereunder. Upon the date the BDCM Loan closes, the Debtors and the Reorganized Debtors are authorized to execute and deliver any agreement evidencing the BDCM Loan and perform their obligations thereunder, and such agreement shall constitute the legal, valid and binding obligations of the Reorganized Debtors which are parties thereto, enforceable in accordance with their respective terms, and no obligation, payment, transfer or grant of security under such agreement (or any other documents as may be required or appropriate to effectuate the treatment afforded to the BDCM Loan lenders) shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law or subject to any defense, reduction, recoupment, setoff or counterclaim.

The Debtors and the Reorganized Debtors, as applicable, and any other Entities granting any Liens and security interests to secure the obligations under the BDCM Loan are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary or desirable to establish and further evidence perfection of such liens and security interests under the provisions of any applicable federal, state, provincial or other law (whether domestic or foreign) (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order and any such filings, recordings, approvals and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such liens and security interests to third parties.

#### Section 5.13 *Restructuring Transactions*

On or after the Confirmation Date, the Debtors or the Reorganized Debtors, as applicable, may take any and all actions as described in, approved by, contemplated by, necessary or appropriate to effectuate the Plan and preserve the intended benefits thereunder without need of



any further court, corporate or other approval, including, without limitation: (a) the execution and delivery of appropriate agreements or other documents of merger, consolidation, liquidation, dissolution or reorganization containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any property, right, liability, duty or obligation on terms consistent with the terms of the Plan; (c) the effecting of any transaction or transfer of interests with respect to any of the Debtors; (d) the filing of appropriate certificates of incorporation, merger or consolidation with the appropriate governmental authorities pursuant to applicable law; (e) making any filings or recordings that may be required by applicable law in connection with any of the transactions approved by, contemplated by or necessary or appropriate to effectuate the Plan and preserve the intended benefits thereunder; and (f) all other actions that the Debtors or the Reorganized Debtor determine are necessary or appropriate.

#### Section 5.14 *Distributions from the Liquidating Trust*

To the extent that, on or as soon as practicable after the Effective Date, Cash distributable to Holders of Allowed General Unsecured Claims who elected the Up-front Cash Option is less than \$6.6 million, in the aggregate, because the Chapter 11 Trustee, in his discretion, withheld from such distribution funds to be used for administration of the Liquidating Trust, any Cash later available for distribution on account of the Trust Units shall be paid first to Holders of Allowed General Unsecured Claims who elected the Up-front Cash Option up to a maximum aggregate amount of \$6.6 million and, in the event that after such payment, there is remaining Cash, Holders of Allowed General Unsecured Claims who elected the Combination Cash Option and Reorganized GSC Group (on account of Allowed General Unsecured Claims whose Holders elected the Equity Option instead of the Combination Cash Option) shall receive their Pro Rata Share of such remaining Cash.

## ARTICLE VI

### TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

#### Section 6.1 *Assumption of Management Contracts*

All Management Contracts shall be deemed to be assumed on the Effective Date.

#### Section 6.2 *Rejection of Executory Contracts and Unexpired Leases*

All executory contracts and unexpired leases that have not been assumed, assumed and assigned, or rejected prior to the Confirmation Date, or for which a motion is not pending for assumption, assumption and assignment, or rejection as of the Confirmation Date, will be deemed rejected as of the Confirmation Date; *provided, however*, that any executory contract or unexpired lease that the Debtors have moved to assume or assume and assign prior to the Confirmation Date, or that BDCM has specifically identified herein or in the Plan Supplement as a contract to be assumed and assigned, shall not be deemed rejected. To the extent that any contract (including any contracts effectuating the novation of any collateral management agreement or any other contract) has not been rejected or assumed by the Debtors and the

Chapter 11 Trustee because such contract is no longer executory, the Debtors, the Reorganized Debtors, the Liquidating Trust and the Liquidating Trustee shall have no liability with respect to such contract on and after the Effective Date.

**Section 6.3** *Claims Based on Rejection of Executory Contracts or Unexpired Leases*

All proofs of claim with respect to Claims arising from the rejection of executory contracts or unexpired leases as of the Confirmation Date, if any, must be Filed within 30 days after the Confirmation Date. Any Claim arising from the rejection of an executory contract or unexpired lease for which proof of such Claim is not Filed within such time period shall forever be barred from assertion against the Debtors, the Estates and their property, the Liquidating Trust or the Reorganized Debtors unless otherwise ordered by the Bankruptcy Court. Any Allowed Claim arising from the rejection of executory contracts or unexpired leases for which proof of such Claim timely has been Filed shall be, and shall be treated as, an Allowed General Unsecured Claim under the terms hereof, subject to any limitation under section 502(b) of the Bankruptcy Code or otherwise. Any Holder of General Unsecured Claims arising on account of executory contracts or unexpired leases that are rejected pursuant to Section 6.2 herein shall have until seven days after the Confirmation Date to elect to receive a distribution under the Up-front Cash Option, the Combination Cash Option, or the Equity Option on account of such Claims (to the extent such Claims are Allowed), provided that if no such election is made (or if more than one option is selected), such Holder will be deemed to have elected the Up-front Cash Option on account of such Claims.

**ARTICLE VII**

**PROVISIONS GOVERNING DISTRIBUTIONS**

**Section 7.1** *General Distribution Provisions*

Except as otherwise provided in this Plan, any distribution to be made hereunder shall be made on the Effective Date, or as soon as practicable thereafter (but in no event later than five Business Days thereafter). Any payment or act required to be made or done hereunder on a day that is not a Business Day shall be made on the next succeeding Business Day.

Notwithstanding anything to the contrary, distributions to Holders of Allowed Claims and Equity Interests shall be made to Holders of record as of the Confirmation Date. The Debtors or Reorganized Debtors, as applicable, shall have the authority to (i) enter into agreements with one or more Distribution Agents to facilitate distributions hereunder (and any Distribution Agent engaged by the Debtors or Reorganized Debtors shall be entitled, as directed by the Reorganized Debtors, to make those distributions that pursuant to the Plan the Reorganized Debtors would otherwise have made) and (ii) make (or cause any Distribution Agent to make) distributions of any shares of Reorganized GSC Group Stock through the facilities of The Depository Trust Company (or its successors or assigns). The Reorganized Debtors shall make (or cause a Distribution Agent to make) distributions (other than any distribution of Trust Units) to any Holder of a Claim or Equity Interest who is entitled to distribution under the Plan and whose Claim or Equity Interest is Allowed on or before the Effective Date. The Reorganized Debtors shall also make (or cause a Distribution Agent to make) distributions to any Holder of a General

Unsecured Claim who elected the Equity Option and whose Claims become Allowed after the Effective Date and any Holder of a Preferred Equity Interest whose Equity Interest becomes Allowed after the Effective Date. The Liquidating Trustee shall make Cash distributions in accordance with the Plan to any Holder of a General Unsecured Claim who elected a Cash Option and whose Claim becomes Allowed after the Effective Date. The Liquidating Trustee shall also (i) make distributions to Holders of Secured Claims, Priority Tax Claims, or Other Priority Claims whose Claims become Allowed after the Effective Date and (ii) distribute Trust Units to (a) Reorganized GSC Group and (b) any Holder of General Unsecured Claims who elected the Combination Cash Option whenever such Holder's General Unsecured Claims become Allowed. Distributions made on account of Claims or Equity Interests that became Allowed on or before the Effective Date shall take into account an estimated amount (as agreed by the Chapter 11 Trustee and BDCM) of Disputed Claims that may later become Allowed Claims. Except as otherwise provided in the Plan, Holders of Claims or Equity Interests shall not be entitled to interest, dividends or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. On the Effective Date, all certificates or other instruments evidencing the Preferred Equity Interests shall be deemed surrendered to the Reorganized Debtors

#### Section 7.2 *Establishment of Disputed General Unsecured Claims Reserves*

On the Effective Date or as soon thereafter as is practicable (but in no event later than five Business Days thereafter), the Reorganized Debtors, in consultation with the Liquidating Trustee and BDCM, shall establish (a) the Disputed General Unsecured Claims Cash Reserve and Reserved Trust Units required to be set aside on account of Disputed General Unsecured Claims held by Holders who elected the Cash Options and Reorganized GSC Group's right to the Cash and Trust Units that would otherwise have been allocable to any Holder of General Unsecured Claims who elected the Equity Option had such Holder instead elected the Combination Cash Option, and the Liquidating Trustee shall maintain the Disputed General Unsecured Claims Cash Reserve and the Reserved Trust Units; and (b) the number of shares of Reorganized GSC Group Stock required to be set aside on account of Disputed General Unsecured Claims held by Holders who elected the Equity Option and such Disputed General Unsecured Claims Equity Reserve shall be maintained by the Reorganized Debtors.

#### Section 7.3 *Establishment of Disputed Priority Claims Reserve*

On the Effective Date or as soon thereafter as is practicable, the Reorganized Debtors shall establish, in consultation with the Liquidating Trustee and BDCM, the Disputed Priority Claims Reserve for any Up-front Option Plan Cash or Combination Option Plan Cash, as applicable, required to be set aside on account of Disputed Priority Tax Claims and Disputed Other Priority Claims in the amount of the Disputed Priority Claims Reserve Amount. The Disputed Priority Claims Reserve shall be maintained by the Liquidating Trustee.

#### Section 7.4 *Liquidating Trust, Reorganized Debtors, Distribution Agent, Disputed Unsecured Claims Reserves and Disputed Priority Claims Reserve Distributions*

(a) Periodically, the Liquidating Trustee or the Reorganized Debtors, as the case may be, may make ratable distributions of the Liquidating Trust's available Cash and Reserved Trust

Units, or the Reorganized Debtors' Reorganized GSC Group Stock, to the respective Disputed General Unsecured Claims Reserves for the benefit of Holders of Disputed Claims. If a Disputed General Unsecured Claim (including claims pursuant to Section 6.2 herein) becomes Allowed, the Liquidating Trustee or the Distribution Agent, as the case may be, shall make, as applicable, either a (i) Catch-Up Up-front Cash Distribution, (ii) a Catch-Up Combination Cash Distribution or (iii) a Catch-Up Equity Distribution. If a Disputed Priority Tax Claim becomes Allowed, the Liquidating Trustee shall make distributions from the Disputed Priority Claims Reserve to the Holder thereof in accordance with Section 3.2. If a Disputed Other Priority Claim becomes Allowed, the Liquidating Trustee shall make distributions from the Disputed Priority Claims Reserve to the Holder thereof in accordance with Section 4.2(b). Notwithstanding any provision otherwise in the Plan and except as otherwise agreed to by the relevant parties no partial payments and no partial distributions shall be made with respect to a Disputed Claim or Equity Interest until all such disputes in connection with such Disputed Claim or Equity Interest have been resolved by settlement or Final Order.

(b) If a Disputed General Unsecured Claim, or portion thereof, is Disallowed, (i) the Liquidating Trustee shall distribute to or for the benefit of Reorganized GSC Group and the Holders of all then Allowed General Unsecured Claims that have elected one of the Cash Options their Pro-Rata Share of the Up-Front Option Plan Cash or Combination Option Plan Cash and Reserved Trust Units, as the case may be, allocable to such Disallowed General Unsecured Claim or (ii) the Reorganized Debtors or the Distribution Agent, as applicable, shall distribute to or for the benefit of all the Holders of all then Allowed General Unsecured Claims that have elected the Equity Option their Equity Distribution Share of the Reorganized GSC Group Stock allocable to such Disallowed General Unsecured Claim, in each case, on such date as the Liquidating Trustee shall deem to be reasonable. If a Disputed Priority Tax Claim or Disputed Other Priority Tax, or portion thereof, is Disallowed, the Liquidating Trustee shall transfer the Plan Cash allocable to such Disallowed Priority Tax Claim or Other Priority Claim to the Disputed General Unsecured Claim Cash Reserve for the benefit of the Holders of Allowed General Unsecured Claims who have elected one of the Cash Options, to be distributed to such Holders in their Pro-Rata Share, on such date as the Liquidating Trustee shall deem to be reasonable.

#### Section 7.5 *Delivery of Distributions and Undeliverable or Unclaimed Distributions*

(a) *General.* Any distribution to be made hereunder to a Holder of an Allowed Claim shall be made to the address of such Holder as set forth in the books and records of the Debtors or their agents, or in a letter of transmittal, unless the Debtors have been notified in writing of a change of address, including by the Filing of a proof of claim by such Holder that contains an address for such Holder that is different from the address reflected on such books and records or letter of transmittal.

(b) *Undeliverable Distributions.* In the event that any distribution or notice provided in connection with the Chapter 11 Cases to any Holder of an Allowed Claim is returned to the Liquidating Trustee or the Reorganized Debtors (or the Distribution Agent, as applicable) as undeliverable or otherwise is unclaimed, the Liquidating Trustee and the Reorganized Debtors (or the Distribution Agent, as applicable) shall make no further distribution to such Holder unless and until the Liquidating Trustee and the Reorganized Debtors (or the Distribution Agent, as

applicable) are notified in writing of such Holder's then current address. On, or as soon as practicable after, the date on which a previously undeliverable or unclaimed distribution becomes deliverable and claimed, the Liquidating Trustee or the Reorganized Debtors (or the Distribution Agent, as applicable) shall make such distribution without interest thereon. Any Holder of an Allowed Claim that fails to assert a Claim hereunder for an undeliverable or unclaimed distribution within 180 days after the Effective Date shall be deemed to have forfeited its Claim for such undeliverable or unclaimed distribution and shall forever be barred and enjoined from asserting such Claim against any of the Debtors, the Estates, or the Reorganized Debtors or their property. Any Cash amounts in respect of undeliverable or unclaimed distributions for which a Claim is not made within such 180-day period shall be forfeited to the Liquidating Trustee. Nothing contained herein shall require, or be construed to require, the Debtors, the Reorganized Debtors, the Distribution Agent or the Liquidating Trustee to attempt to locate any Holder of an Allowed Claim.

#### Section 7.6 *Setoff and Recoupment*

In the event the Debtors have a claim of any nature whatsoever against a Holder of a Claim, the Debtors, the Reorganized Debtors, or the Liquidating Trustee may, but are not required to, setoff against such Holder's Claim (and any distributions or other rights to receive property arising out of such Claim under this Plan), the Debtors' claim against such Holder, subject to the provisions of section 553 of the Bankruptcy Code and other applicable law. Neither the failure to setoff nor the allowance of any Claim under this Plan shall constitute a waiver or release by the Debtors, the Reorganized Debtors, or the Liquidating Trustee of any Claims that the Debtors, the Reorganized Debtors or the Liquidating Trustee have against the Holder of such Claim, all of which are preserved. Nothing contained or omitted from this Plan shall limit, adversely affect, or otherwise impair any rights of setoff or recoupment the Debtors, the Reorganized Debtors or the Liquidating Trustee may possess, as against third parties.

#### Section 7.7 *Manner of Payment Under Plan*

The Liquidating Trustee, the Reorganized Debtors, and the Distribution Agent shall be authorized to make any Cash payment required to be made hereunder by check or wire transfer, each in their discretion.

### **ARTICLE VIII**

#### **PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

#### Section 8.1 *Prosecution of Objections to Claims*

After the Effective Date, (i) the Reorganized Debtors shall have the authority to file, withdraw or litigate to judgment objections to Claims and Equity Interests, and shall be permitted to settle or compromise any such Disputed Claim or Equity Interest without need of approval of the Bankruptcy Court, (ii) the Liquidating Trustee shall have the authority to file, withdraw or litigate to judgment objections to Claims (other than the claims of 888 Seventh Avenue LLC or David Robbins) and (iii) BDCM (subject to the limitations set forth in the Agreed Stipulated Order) shall have the authority to object to Administrative Claims and General

Unsecured Claims that elected the Combination Cash Option or the Equity Option. Each of the Liquidating Trustee and the Reorganized Debtors shall be permitted to settle or compromise any Disputed Claim or Equity Interest to which it objected without need of approval of the Bankruptcy Court; *provided, however*, that if more than one such party has objected, both parties shall be required to approve any such settlement or compromise.

#### Section 8.2 *Estimation of Claims*

Before or after the Effective Date, the Reorganized Debtors, the Chapter 11 Trustee (prior to the Effective Date) or the Liquidating Trustee (on or after the Effective Date), as the case may be, shall be permitted, at any time, to request that the Bankruptcy Court estimate, pursuant to section 502(c) of the Bankruptcy Code, any contingent or unliquidated Claim that the Reorganized Debtors or the Liquidating Trustee, as the case may be, is entitled to object to under Section 8.1 herein, regardless of whether the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors, as the case may be, previously had objected to such Claim or whether the Bankruptcy Court had ruled on such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during any litigation concerning any objection to such Claim, including during the pendency of any appeal relating to such objection. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If such estimated amount constitutes a maximum limitation on the amount of such Claim, the Chapter 11 Trustee (before the Effective Date) and the Liquidating Trustee (on or after the Effective Date), as the case may be, may elect to pursue any supplemental proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn or resolved by any mechanism approved by the Bankruptcy Court.

#### Section 8.3 *Payments and Distributions on Disputed Claims*

Notwithstanding any other provision to the contrary herein, no payments or distributions shall be made hereunder with respect to all or any portion of any Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by Final Order, and such Disputed Claim has become an Allowed Claim. In no event shall a Disputed Claim be Allowed in an amount in excess of its filed amount.

### **ARTICLE IX**

#### **CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE**

#### Section 9.1 *Conditions Precedent to Confirmation*

The Confirmation Order shall not be entered unless and until such Confirmation Order is in form and substance reasonably satisfactory to BDCM and the Chapter 11 Trustee. It shall be a condition to confirmation of this Plan that all provisions, terms and conditions in this Plan shall

have been approved in the Confirmation Order or waived pursuant to the provisions of Section 9.3 below.

#### Section 9.2 *Conditions Precedent to the Effective Date*

The Effective Date shall not occur unless and until each of the following conditions has occurred or has been waived in accordance with the terms herein:

- (a) the Confirmation Order shall have become a Final Order;
- (b) all other documents and agreements necessary to implement the terms of this Plan, including the Liquidating Trust Agreement, have been executed and delivered;
- (c) there exists sufficient Cash to pay Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, and Allowed Other Priority Claims, other than Claims assumed by the Liquidating Trust or the Reorganized Debtors, and to fund the Disputed Priority Claims Reserve;
- (d) all UST Fees payable prior to the Effective Date shall have been paid;
- (e) all other actions necessary to implement the terms of this Plan shall have been taken; and
- (f) the BDCM Loan shall have closed in accordance with its terms.

#### Section 9.3 *Waiver of Conditions*

Any condition set forth in this Article IX may be waived, in whole or in part, at any time by BDCM.

#### Section 9.4 *Modification of Plan*

BDCM shall be permitted to amend, supplement or modify this Plan at any time, subject to the restrictions and requirements under section 1127 of the Bankruptcy Code and the Agreed Stipulated Order.

#### Section 9.5 *Effect of Withdrawal or Revocation*

BDCM reserves the right to revoke or withdraw this Plan at any time prior to the Confirmation Date. If this Plan is so revoked or withdrawn, or if the Effective Date fails to occur, then this Plan shall be deemed null and void in its entirety, and of no force or effect. In such event, nothing contained herein shall be deemed to constitute a waiver or release of any Claim against or Equity Interest in any Debtor or any other Entity, or to prejudice in any manner, in any further proceedings involving any Debtor, the rights of any Debtor or any other Entity.

Section 9.6 *Reservation of Rights*

This Plan shall have no force or effect unless and until the Confirmation Order is entered after the Effective Date occurs. Prior to the Effective Date, none of the Filing of this Plan, any statement or provision contained in this Plan, or action taken by the Debtors or BDCM with respect to this Plan shall be, or shall be deemed to be, an admission or waiver of any rights of any Debtor or any other party with respect to any Claims or Equity Interests or any other matter.

Section 9.7 *Substantial Consummation of Plan*

Substantial consummation of this Plan under Bankruptcy Code section 1101(2) shall be deemed to occur on the Effective Date.

**ARTICLE X**

**EFFECT OF PLAN CONFIRMATION**

Section 10.1 *Binding Effect*

This Plan shall be binding upon and inure to the benefit of the Debtors, the Chapter 11 Trustee, BDCM, all current and former Holders of Claims and Equity Interests, and their respective successors and assigns.

Section 10.2 *Preservation of All Causes of Action*

(a) Except as otherwise provided in this Plan (including, but not limited to, subparagraph (b) of this Section 10.2), in a final and non-appealable order of the Bankruptcy Court, or in any contract, instrument, release or agreement entered into in connection with this Plan, in accordance with the provisions of the Bankruptcy Code (including but not limited to section 1123(b) of the Bankruptcy Code), on and after the Effective Date, the Liquidating Trustee shall be vested with, retain, and may exclusively enforce and prosecute any Causes of Action that the Debtors or the Estates may have against any Person or Entity that has not been released pursuant to Section 10.5 herein, including, but not limited to, the Avoidance Actions and the Director and Officer Causes of Action. The Liquidating Trustee may pursue such retained Causes of Action in accordance with the best interests of the creditors of the Debtors, the Estates, the Liquidating Trust or the Reorganized Debtors. Without further order of the Bankruptcy Court, the Liquidating Trustee shall be substituted as the party in interest in all adversary proceedings pending on the Effective Date. Notwithstanding anything to the contrary herein, no distribution shall be made to the Holder of any Claim, including by way of setoff or recoupment by such claimant, if the Debtors, the Chapter 11 Trustee (prior to the Effective Date) or the Liquidating Trustee (on and after the Effective Date), as applicable, have taken action to recover, or given notice to the applicable party of intent to take such action, on a Cause of Action against the Holder of such Claim (or the direct or indirect transferor of such Holder), until such Cause of Action is resolved.

(b) From and after July 26, 2012, pursuant to the terms of APA 2, all Causes of Action of, or belonging to, the Estates with respect to which the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors has not commenced an adversary proceeding,



lawsuit or similar legal proceeding, settled or released such Cause of Action, or formally asserted a right of set-off, shall be transferred to the Designated Purchaser. Without further order of the Bankruptcy Court, the Designated Purchaser, or its designee, shall have the exclusive right to enforce and prosecute any such Cause of Action.

### Section 10.3 *Discharge of Claims & Interests*

Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, except as otherwise specifically provided in this Plan or in the Confirmation Order, confirmation of this Plan discharges and releases, effective as of the Confirmation Date (but subject to the occurrence of the Effective Date), the Debtors, the Reorganized Debtors and the Estates from all Claims and Causes of Action, whether known or unknown, and from liabilities of, liens on, obligations of, rights against, and Equity Interests in the Debtors or any of their assets or properties; and, further, a Holder of any Claim or Equity Interest discharged herein may not on account of such Claim or Equity Interest seek to receive any payment or other treatment from, or seek recourse against the Debtors, the Liquidating Trustee, the Liquidating Trust or the Reorganized Debtors or their respective property, except as otherwise expressly provided in this Plan.

### Section 10.4 *Liquidating Trust as Successor*

The Liquidating Trust shall be the successor to the Debtors, the Chapter 11 Trustee and the Estates for the purposes of sections 1123, 1129 and 1145 of the Bankruptcy Code and with respect to all pending Causes of Action and other litigation-related matters of, or belonging to, the Estates preserved and vested with the Liquidating Trust pursuant and subject to Section 10.2 herein, including but not limited to the Avoidance Actions and the Director and Officer Causes of Action. The Liquidating Trust shall succeed to the attorney-client privilege of the Debtors, the Chapter 11 Trustee and the Estates with respect to such Causes of Action and other litigation-related matters of, or belonging to, the Estates, and the Liquidating Trustee may waive the attorney-client privilege with respect to any such Cause of Action or other litigation-related matter of, or belonging to, the Estates, or portion thereof, in the Liquidating Trustee's discretion. After the Effective Date, the Liquidating Trustee shall have the exclusive authority and standing to file, prosecute, withdraw, settle or compromise, without the approval of the Bankruptcy Court, those Causes of Action of, or belonging to, the Estates preserved and vested with the Liquidating Trust pursuant and subject to Section 10.2 herein.

### Section 10.5 *Releases*

(a) ***Releases By the Debtors.*** For good and valuable consideration, the adequacy of which is hereby confirmed, upon the Effective Date, the Debtors and Reorganized Debtors (collectively, the "*Debtor Releasing Parties*") shall be deemed forever to release, waive and discharge any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date or thereafter arising, in law, at equity, whether for tort, contract, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior to or on the Effective Date arising from or related in any way in whole or in part to the

Debtors, the chapter 11 cases, the Disclosure Statement, this Plan or the solicitation of votes on this Plan that such Debtor Releasing Parties would have been legally entitled to assert (whether individually or collectively) or that any Holder of a Claim or Equity Interest or other entity would have been legally entitled to assert for or on behalf of the Debtors, their Estates or the Reorganized Debtors (whether directly or derivatively) against any of 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 before the Effective Date in any way relating to the Debtors, the Chapter 11 Cases, this Plan or the Disclosure Statement, and that could have been asserted by or on behalf of the Debtors, the Chapter 11 Trustee or the Estates against any of the Released Parties; provided, however, that the foregoing provisions of this release shall not operate to waive or release (i) any Causes of Action expressly set forth in and preserved by this Plan; (ii) any Causes of Action arising from gross negligence, fraud or willful misconduct as determined by final order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (iii) the rights of such Debtor Releasing Parties to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this plan or assumed pursuant to this Plan or assumed pursuant to final order of the Bankruptcy Court, including without limitation the Purchase Agreements. The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any person and the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this release. Nothing in this Plan shall limit the liability of the Professionals of the Debtors, the Chapter 11 Trustee or the Reorganized Debtors to their respective clients pursuant to DR 6-102 of the Code of Professional Responsibility, N.Y. Comp. Codes R. & Regs. tit. 22 section 1299 Rule 1.8(h)(1)(2011), and any other statutes, rules or regulations dealing with professional conduct to which such professionals are subject. As to the United States, its agencies, departments or agents, nothing in this Plan shall discharge, extinguish, release or otherwise preclude any valid right of setoff or recoupment. Nothing herein shall enjoin the United States from initiating or continuing any criminal, police or regulatory action against the Debtors or the Reorganized Debtors.

(b) *Releases By Holders of Claims.* Upon the Effective Date, each Holder of a Claim or Equity Interest (collectively, the “*Non-Debtor Releasing Parties*” and together with the Debtor Releasing Parties, the “*Releasing Parties*”), in consideration for the obligations of the Debtors, the Reorganized Debtors and the other Released Parties under this Plan and the Cash and other contracts, instruments, releases, agreements or documents to be delivered in connection with this Plan, shall be deemed forever to release, waive and discharge any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing as of the Effective Date or thereafter arising, in law, at equity, whether for tort, contract, or otherwise, based in whole or in part upon any act or omission, transaction, or other occurrence or circumstances existing or taking place prior

to or on the Effective Date arising from or related in any way in whole or in part to the Debtors, the chapter 11 cases, the Disclosure Statement, this Plan or the solicitation of votes on this Plan that such Non-Debtor Releasing Parties would have been legally entitled to assert (whether individually or collectively) against any of the Released Parties (other than the rights to enforce the obligations of the Debtors, the Reorganized Debtors, the Chapter 11 Trustee, the Liquidating Trust or the Liquidating Trustee under this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered in connection with this Plan), 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 before the Effective Date in any way relating to the Debtors, the Chapter 11 Trustee, the Chapter 11 Cases, this Plan or the Disclosure Statement against any of the Released Parties; provided, however, that the foregoing provisions of this release shall not operate to waive or release (i) any Causes of Action expressly set forth in and preserved by this Plan or the Plan Supplement; (ii) any Causes of Action arising from gross negligence, fraud or willful misconduct as determined by final order of the Bankruptcy Court or any other court of competent jurisdiction; and/or (iii) the rights of such Non-Debtor Releasing Party to enforce this Plan and the contracts, instruments, releases, indentures, and other agreements or documents delivered under or in connection with this Plan or assumed pursuant to this Plan or assumed pursuant to final order of the Bankruptcy Court. The foregoing release shall be effective as of the Effective Date without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any person and the Confirmation Order will permanently enjoin the commencement or prosecution by any person or entity, whether directly, derivatively or otherwise, of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities released pursuant to this release.

Notwithstanding anything to the contrary contained herein, for the avoidance of doubt, any and all claims or objections that may be asserted against any Professionals in connection with their requests for Professional Fees incurred through the Effective Date are expressly reserved hereunder.

#### Section 10.6 *Exculpation and Limitation of Liability*

None of the Released Parties shall have or incur any liability to, or be subject to any right of action by, any Holder of a Claim or Equity Interest, or any other party in interest in the Chapter 11 Cases, or any of their respective agents, employees, representatives, financial advisors, attorneys or agents acting in such capacity, or affiliates, or any of their successors or assigns, for any act or omission arising on or after the Petition Date in connection with, relating to or arising out of, the Chapter 11 Cases, formulation, negotiation or implementation of this Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with this Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with or in contemplation of the restructuring of the Debtors, the solicitation of acceptances of this Plan, the pursuit of confirmation of this Plan, the confirmation of this Plan, the administration of this Plan or the property to be distributed under this Plan,

except for their gross negligence, willful misconduct, fraud or criminal conduct as determined by a final order entered by a court of competent jurisdiction. Without limiting the generality of the foregoing, the Released Parties shall, in all respects, be entitled to rely reasonably upon the advice of counsel with respect to their duties and responsibilities under this Plan.

Notwithstanding anything to the contrary contained herein, for the avoidance of doubt, any and all claims or objections that may be asserted against any Professionals in connection with their requests for Professional Fees incurred through the Effective Date are expressly reserved hereunder, provided that any such objections made by Black Diamond are subject to paragraph 12 of the Agreed Stipulated Order.

#### Section 10.7 *Injunction*

(a) *General.* All Entities who have held, hold or may hold Claims or Equity Interests and all other parties in interest in the Chapter 11 Cases, along with their respective current and former employees, agents, officers, directors, principals and affiliates, permanently are enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors; (ii) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against the Debtors; (iii) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors; or (iv) asserting any right of setoff, subrogation or recoupment of any kind against any obligation due from the Debtors or against the property or interests in property of the Debtors, on account of such Claims or Equity Interests; *provided, however,* that nothing contained herein shall preclude such Entities from exercising their rights pursuant to and consistent with the terms hereof and the contracts, instruments, releases, indentures and other agreements and documents delivered under or in connection with this Plan. As to the United States, its agencies, departments or agents, nothing in this Plan or the Confirmation Order shall discharge, extinguish, release or otherwise preclude any valid right of setoff or recoupment. Nothing herein shall enjoin the United States its agencies, departments or agents, from initiating or continuing any criminal, police or regulatory action against the Debtors.

(b) *Injunction Against Interference With Plan.* Upon entry of the Confirmation Order, all Holders of Claims and Equity Interests and their respective current and former employees, agents, officers, directors, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan. Each Holder of an Allowed Claim, by accepting distributions pursuant to this Plan, shall be deemed to have consented to the injunction provisions set forth in this Section 10.7.

Notwithstanding anything to the contrary contained herein, for the avoidance of doubt, any and all claims or objections that may be asserted against any Professionals in connection with their requests for Professional Fees incurred through the Effective Date are expressly reserved hereunder.

Section 10.8 *Term of Bankruptcy Injunction or Stays*

All injunctions or stays provided for in the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence as of the Confirmation Date, shall remain in full force and effect until the Effective Date.

Section 10.9 *Limitation on Release and Exculpation Provisions*

Notwithstanding any other provision in this Plan or any order or opinion issued by the Court related thereto, including but not limited to Sections 10.5, 10.6 and 10.7 herein, nothing contained herein, in the Confirmation Order, or in any other order or opinion of this Court related to the Plan or the Confirmation Order shall alter, conflict with, or in any manner derogate from the provisions of the Sale Order. Without in any way limiting the generality of the foregoing, the rights, remedies, causes of action and claims of the Agent, the Prepetition Lenders and their Affiliates inter se in the State Court Proceeding or otherwise are preserved and shall not be released, enjoined or limited in any respect by the Plan or the Confirmation Order. Furthermore, notwithstanding any other provision in this Plan, the Confirmation Order, or any other order or opinion of this Court related to the Plan or the Confirmation Order, including but not limited to Sections 10.5, 10.6 and 10.7 hereof, nothing in the Plan, the Confirmation Order or any other order or opinion issued by the Court related to the Plan or the Confirmation Order shall constitute a finding by this Court of any kind regarding (i) any Prepetition Lender or its Representatives with respect to its or its Representatives' respective rights, remedies, causes of action and claims vis-à-vis any other Prepetition Lender or its Representatives under the Prepetition Credit Agreement or the Prepetition Loan Documents or any other party to the State Court Proceeding or (ii) any action or transaction that is the subject of the State Court Proceeding. Nothing in the Plan, including this paragraph, shall limit the efficacy of Paragraph K of the Sale Order in these chapter 11 proceedings, the State Court Proceeding, or any other proceeding.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date or anything to the contrary in this Plan or the Plan Supplement, the Bankruptcy Court shall retain exclusive jurisdiction over all matters related to this Plan, the Confirmation Order, the Liquidating Trust Agreement, the Tax Indemnification Agreement and the Chapter 11 Cases to the fullest extent permitted by law, including without limitation such jurisdiction as is necessary to ensure that the purposes and intent of this Plan are carried out, including for the following specific purposes:

(a) To hear and determine any applications or motions pending on the Effective Date for the rejection, assumption or assumption and assignment of any executory contract and to hear and determine the allowance or disallowance of Claims resulting therefrom;

(b) To hear and determine any motion, adversary proceeding, application, contested matter or other litigated matter arising in or related to the Chapter 11 Cases pending on or commenced after the Confirmation Date;

(c) To ensure that distributions to Holders of Allowed Claims are accomplished as provided herein;

(d) To hear and determine objections to Claims, including ruling on any and all motions to estimate Claims;

(e) To allow, disallow, determine, liquidate, classify, estimate or establish the priority, secured or unsecured status of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of Claims or Equity Interests;

(f) To enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;

(g) To issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person or Entity 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, the Disclosure Statement, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary carry out the purposes and effects thereof;

(i) To hear and determine any and all applications for allowances and payment of Professional Fees and the reasonableness of Professional Fees authorized to be paid or reimbursed under the Bankruptcy Code for this Plan for periods ending on or before the Effective Date;

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

(k) To take any action and issue such orders as may be necessary to construe, enforce, implement, execute and consummate this Plan or maintain the integrity of this Plan following consummation of this Plan;

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

(m) To hear and determine all matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code (including any requests for expedited determinations under section 505(b) of the Bankruptcy Code filed, or to be filed, with respect to tax returns for any and all applicable periods);

(n) To issue such orders in aid of execution of this Plan as may be authorized by section 1142 of the Bankruptcy Code;

(o) To adjudicate all claims or controversies to a security or ownership interest in the Estate Assets or in any proceeds thereof;

(p) To resolve any cases, controversies, suits or disputes with respect to the releases, injunctions and other provisions contained in Article X hereof and to enter such orders as may be necessary or appropriate to implement such release, injunctions or other provisions;

(q) To consider and act on the compromise and settlement of any Claim against or Cause of Action by or against a Debtor, the Chapter 11 Trustee, the Liquidating Trustee or the Reorganized Debtors arising under or in connection with this Plan;

(r) To hear and determine any Director and Officer Causes of Action or Avoidance Actions brought by the Liquidating Trustee or the Reorganized Debtors;

(s) To hear and determine any request by the Liquidating Trustee or the Reorganized Debtors for discovery pursuant to Bankruptcy Rule 2004 or otherwise;

(t) To determine such other matters or proceedings as may be provided for under the Bankruptcy Code, the Bankruptcy Rules, other applicable law, this Plan or in any order or orders of the Bankruptcy Court, including but not limited to the Confirmation Order or any order which may arise in connection with this Plan or the Confirmation Order;

(u) To hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code;

(v) To recover all Estate Assets and property of the Debtors' Estates wherever located; and

(w) To enter a Final Decree closing the Chapter 11 Cases.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

#### **Section 12.1 *Payment of Statutory Fees***

All fees due and payable under section 1930 of title 28 and section 2717 of title 31 of the United States Code, as of the Confirmation Date and as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on or before the Effective Date. Until the entry of a Final Decree closing the Chapter 11 Cases, dismissal of the Chapter 11 Cases, or conversion of

the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, the Reorganized Debtors shall pay all fees due and payable under section 1930 of title 28 and section 3717 of title 31 of the United States Code.

#### Section 12.2 *Reports*

Until the entry of a Final Decree closing the Chapter 11 Cases, dismissal of the Chapter 11 Cases, or conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, the Reorganized Debtors shall comply with any requisite reporting requirements established pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or the U.S. Trustee's chapter 11 operating guidelines.

Consistent with Section 5.3 herein, upon the Effective Date, the Chapter 11 Trustee shall be relieved of his duties and obligations to the estate under the Bankruptcy Code, Bankruptcy Rules and Local Bankruptcy Rules; provided, however, that the Chapter 11 Trustee shall not be relieved of his obligation to file a final report or a report of his investigations under section 1106 of the Bankruptcy Code.

#### Section 12.3 *Governing Law*

Except to the extent that the Bankruptcy Code, the Bankruptcy Rules or other federal law, rule or regulation is applicable, or to the extent that an exhibit or supplement to this Plan provides otherwise, this Plan shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflict of laws thereof that would require application of the law of another jurisdiction.

#### Section 12.4 *Severability*

If, prior to the entry of the Confirmation Order, any term or provision of this Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of BDCM, shall have the power to alter and interpret such term or provision to render 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 so altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remaining terms and provisions of this Plan shall remain in full force and effect and shall 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.

#### Section 12.5 *Inconsistency*

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



Section 12.6 *Exemption from Transfer Taxes*

Pursuant to section 1146(a) of the Bankruptcy Code (a) the issuance of the Reorganized Debtors Stock, (b) the creation of any mortgage, deed of trust, lien, pledge, or other security interest, (c) the making or assignment of or surrender of any lease or sublease, or (d) the making of or delivery of any deed or other instrument of transfer under, in furtherance of, or in connection with this Plan, and any merger agreements, agreements of restructuring, disposition, liquidation or dissolution, any deeds, bills of sale, transfers of tangible property, or assignments executed in connection with any disposition of assets contemplated by this Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use or other similar tax.

Section 12.7 *Filing of Additional Documents*

BDCM shall File such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

Section 12.8 *Service of Documents*

(a) All notices, requests and demands to or upon BDCM to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered (or, in the case of notice by facsimile transmission, when received and telephonically confirmed) addressed as follows:

Black Diamond Capital Management, L.L.C.  
One Sound Shore Drive, Suite 200  
Greenwich, CT 06830  
Telephone: 203-552-0888  
Facsimile: 203-621-3316  
Attn: Samuel Goldfarb, General Counsel

(b) All notices, requests and demands to or upon the Reorganized Debtors to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered (or, in the case of notice by facsimile transmission, when received and telephonically confirmed) addressed as set forth in the Confirmation Order.

(c) All notices, requests and demands to or upon the Liquidating Trustee to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered (or, in the case of notice by facsimile transmission, when received and telephonically confirmed) addressed as set forth in the Liquidating Trust Agreement.

Section 12.9 *Schedules and Exhibits*

All exhibits and schedules to this Plan, including, but not limited to the Plan Supplement, are incorporated into and are a part of this Plan as if fully set forth herein.

Section 12.10 *No Prejudice*

If the Confirmation Order is vacated or the Effective Date has not occurred within one year after the Confirmation Date, then (a) the Confirmation Order shall be vacated, (b) this Plan shall be null and void in all respects, (c) no distributions under this Plan shall be made, (d) the Debtors and all Holders of Claims and Equity Interests shall be restored to the status quo ante as of the day immediately preceding the Confirmation Date and (e) nothing contained in this Plan or the Disclosure Statement shall: (i) be deemed to constitute a waiver or release of any Claims against, or Equity Interests in, the Debtors; (ii) prejudice in any manner the rights of BDCM or the Debtors; or (iii) constitute an admission, acknowledgment, offer or undertaking by the Debtors or BDCM in any respect.

Section 12.11 *Allocation of Payments*

To the extent that any Allowed Claim entitled to distribution hereunder comprises indebtedness and accrued but unpaid interest thereon, such distribution shall, for all income tax purposes, be allocated to the principal amount of such Claim first, and then, to the extent that the consideration exceeds such principal amount, to the portion of such Claim representing accrued but unpaid interest.

Dated: January 12, 2012

Respectfully submitted,

**BLACK DIAMOND CAPITAL  
MANAGEMENT, L.L.C.**

By: /s/ Stephen H. Deckoff

Name: Stephen H. Deckoff

Title: Managing Principal

**Exhibit A**

**Management Contracts**

1. Collateral Management Agreement, dated October 6, 2006, between GSC ABS CDO 2006-4u, Ltd. and GSCP (NJ), L.P.
2. Collateral Management Agreement, dated November 28, 2006, between Cetus ABS CDO 2006-3, Ltd. and GSCP (NJ), L.P.
3. Collateral Management Agreement, dated December 15, 2006, among GSC European CDO I-R S.A., GSCP (NJ), L.P. and BNP Paribas Trust Corporation UK Limited and Deed of Amendment to the Collateral Management Agreement, dated February 1, 2007.
4. Collateral Management Agreement, dated June 29, 2005, among GSC European CDO II S.A., GSCP (NJ), L.P. and BNP Paribas Trust Corporation UK Limited.
5. Collateral Management Agreement, dated January 18, 2007, between GSC ABS Funding CDO 2006-3g, Ltd., and GSCP (NJ), L.P.

**Exhibit B**

**BDCM Loan Term Sheet**

SUMMARY OF CERTAIN TERMS  
SENIOR CREDIT FACILITY

Unless otherwise defined herein, capitalized terms used herein are used as defined in the Black Diamond Capital Management Fourth Amended Joint Chapter 11 Plan for GSC Group, Inc. and its Affiliated Debtors to which this Summary is appended (“Plan”)

- Borrower: GSC Group, Inc. (the “Borrower” and together with its affiliated debtors in the Bankruptcy Case, the “Debtors”).
- Total Facility: Term loan facility (the “Credit Facility”) in an aggregate principal amount of up to \$2,000,000 million.
- Use of Proceeds: The proceeds of loans under the Credit Facility shall be utilized to satisfy the obligations of Debtors under the Plan to make distributions to holders of allowed Priority Tax Claims, allowed Secured Claims, allowed Other Priority Claims and allowed General Unsecured Claims (collectively, the “Allowed Claims”) and the Disputed General Unsecured Claims Cash Reserve, in each case in accordance with the terms of the Plan.
- Maturity: The final maturity of the Credit Facility shall be 6 years from the Closing Date (the “Revolving Loan Maturity Date”). Upon the Revolving Loan Maturity Date, at the election of Borrower, the balance of the Credit Facility, including principal, accrued interest and interest that has been paid-in-kind, may be converted into Reorganized GSC Group Series A Preferred Stock, as described in Exhibit C below.
- Availability: The Credit Facility may be drawn to fund Allowed Claims as they come due pursuant to the terms of the Plan following the payment of Allowed Claims from Plan Cash (as defined in the Plan).
- Lender: BDCM and/or an Affiliate (collectively, the “Lenders”).
- Guarantees: Each present and future direct and indirect subsidiary of the Borrower (each, a “Guarantor” and, collectively, the “Guarantors”) that is not a “controlled foreign corporation” (“CFC”) for income tax purposes or owned by a CFC shall be required to provide an unconditional guaranty of all amounts owing under the Credit Facility (the “Guaranties”). Such guarantees shall be in form and substance satisfactory to the Lenders. All guarantees shall be guarantees of payment and not of collection.
- The Guaranties shall contain terms and conditions satisfactory to the Lenders and customary for loans of this type.

Security: All amounts owing under the Credit Facility (and all obligations under the Guaranties) will be secured by (i) a first priority perfected security interest in all stock, equity interests and promissory notes owned by the Borrower and the Guarantors and (ii) a first priority perfected security interest in all other tangible and intangible assets (including receivables, contract rights, securities, patents, trademarks, other intellectual property, inventory, equipment, real estate and leasehold interests) owned by the Borrower and each Guarantor; provided that a pledge of the voting stock of a CFC shall be limited to 65% of such stock.

All documentation (collectively referred to herein as the "Security Agreements") evidencing the security required pursuant to the immediately preceding paragraph shall be in form and substance satisfactory to the Lenders, and shall effectively create first priority security interests in the property purported to be covered thereby, with such exceptions as are acceptable to the Lenders in their reasonable discretion.

Voluntary Prepayments: Voluntary prepayments may be made at any time on three business days' notice, without premium.

Interest Rate: The Credit Facility shall bear interest at 5% per annum.

Interest on the Credit Facility shall be payable monthly in arrears on the last business day of each month. Interest will also be payable at the time of repayment in full of the Loan and at Maturity. All interest and fees shall be based on a 360-day year and the actual days elapsed.

At the election of the Borrower, interest may be paid-in-kind for the term of the loan.

Default Interest: Upon a default, all principal, interest and other amounts owing shall bear interest at a rate per annum equal to 2% above the applicable non-default rate. Such interest shall be payable on demand.

Assignments and Participations: The Borrower may not assign its rights or obligations under the Credit Facility. Any Lender may assign, and may sell participations in, its rights and obligations under the Credit Facility, subject to (x) the consent of BDCM, (y) in the case of participations, to customary restrictions on the voting rights of the participants, and (z) in the case of assignments, to such limitations as may be established by BDCM. The Credit Facility shall provide for a mechanism that allows for each assignee to become a direct

signatory to the Credit Facility and will relieve the assigning Lender of its obligations with respect to the assigned portion of its commitment.

Documentation:

Governing Law:

The Lenders' commitments are subject to the negotiation, execution and delivery of definitive financing agreements (and related security documentation, guarantees, etc.) consistent with the terms of this Term Sheet, in each case prepared by counsel to the Lenders (including, without limitation, as to the terms, conditions, representations, covenants and events of default contained therein). All documentation (except security documentation that the Lenders determine should be governed by local law) shall be governed by the internal laws of the State of New York.

Commitment

Termination:

The commitments hereunder shall terminate on [ ] unless definitive documentation with respect to the Credit Facility has been executed and delivered and the Plan has been confirmed as of such date.

Conditions

Precedent:

Those conditions precedent that are usual and customary for these types of facilities, and such additional conditions precedent as are appropriate under the circumstances. Without limiting the foregoing, the following conditions shall apply:

- (i) The Plan shall have been approved by all necessary parties and confirmed by the court in the Bankruptcy Case.
- (ii) After giving effect to the consummation of the Plan, the Borrower and its subsidiaries shall not have any outstanding preferred equity, indebtedness or contingent liabilities, except for (i) indebtedness incurred pursuant to the Credit Facility, (ii) Reorganized Debtor Preferred Stock and (iii) other indebtedness which may be approved by the Lenders (in their sole discretion) ("Existing Indebtedness"). If any Existing Indebtedness is permitted to be outstanding after giving effect to the Plan, all terms and conditions thereof shall be required to be reasonably satisfactory to the Lenders in their sole discretion.
- (iii) All necessary governmental (domestic and foreign), Bankruptcy Court and third party orders, approvals and consents in connection with the Plan and otherwise referred to herein shall have been obtained and remain in effect, and all applicable waiting periods shall have expired without any action being taken by any competent authority which, in the judgment of the Lenders, restrains, prevents, or imposes materially adverse conditions upon, the consummation of the Plan or otherwise referred to herein. Additionally, there shall not exist any

judgment, order, injunction or other restraint prohibiting or imposing materially adverse conditions upon the Plan or the Senior Financing.

- (iv) All agreements relating to, and the corporate and capital structure of, the Borrower and its subsidiaries, and all organizational documents of the Borrower and its subsidiaries, in each case as the same will exist after giving effect to the consummation of the Plan, shall be satisfactory to the Lenders.
- (v) After giving effect to the Plan and the indebtedness incurred in connection with the Credit Facility, there shall be no conflict with, or default under, any agreement of the Borrower and its subsidiaries, subject to such exceptions as may be agreed upon.
- (vi) The Guaranties and Security Agreements required hereunder shall have been executed and delivered in form, scope and substance reasonably satisfactory to the Lenders, and the Lenders shall have a first priority perfected security interest in all assets of the Borrower and its subsidiaries.
- (vii) The documents (and related orders of the Bankruptcy Court) relating to the Debtors shall contain terms and provisions acceptable to Lenders in their sole discretion.
- (viii) The Plan shall have been confirmed by a final order entered by the Bankruptcy Court (the "Sale Order"), in form and substance acceptable to the Lenders in their sole discretion, and which has not been stayed by the Bankruptcy Court or by any other court having jurisdiction to issue any such stay.
- (ix) All representations and warranties shall be true and correct on and as of the date of the borrowing (although any representations and warranties which expressly relate to a given date or period shall be required to be true and correct as of the respective date or for the respective period, as the case may be), before and after giving effect to such borrowing and to the application of the proceeds therefrom, as though made on and as of such date.
- (x) No event of default under the Credit Facility or event which with the giving of notice or lapse of time or both would be an event of default under the Senior Credit Facility, shall have occurred and be continuing, or would result from such borrowing.



Representations  
and Warranties:

Those representations and warranties, which are usual and customary for these types of facilities, and such additional representations and warranties as are appropriate under the circumstances.

Covenants:

Those covenants usual and customary for these types of facilities, and such additional covenants as are appropriate under the circumstances (with customary exceptions to be agreed upon). Although the covenants have not yet been specifically determined, we anticipate that the other covenants shall in any event include, but not be limited to:

- (i) Prohibitions against dividends or other distributions with respect to any equity of the Borrower.
- (ii) Limitations on other indebtedness (including contingent liabilities and seller notes).
- (iii) Limitations on mergers, acquisitions, joint ventures, partnerships and acquisitions and dispositions of assets.
- (iv) Limitations on voluntary prepayments of other indebtedness and amendments thereto, and amendments to organizational documents and other material agreements.
- (v) Limitations on transactions with affiliates and formation of subsidiaries.
- (vi) Limitations on (x) investments (including joint ventures) and (y) use of cash and Cash Equivalents at any time the Credit Facility is outstanding.
- (vii) Limitations on liens.
- (viii) Limitations on capital expenditures.
- (ix) Financial reporting, notice of environmental, ERISA- related matters and material litigation and visitation and inspection rights.
- (x) Compliance with laws, including environmental and ERISA.
- (xi) Payment of taxes and other liabilities.
- (xii) Limitation on changes in nature of business.
- (xiii) Use of proceeds.
- (xiv) Prohibitions on direct or indirect change of control.

Events of Default: Those events of default usual and customary for these types of facilities, and such additional events of default as are appropriate under the circumstances, including, without limitation, a change of control (to be defined to the reasonable satisfaction of the Lenders) of the Borrower or any of its subsidiaries.

Indemnification: The documentation for the Credit Facility will contain customary indemnities for the Lenders (other than as a result of the Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable decision).

**Exhibit C**

Summary Principal Terms of Series A Preferred Stock, Series B Preferred Stock,  
Convertible Class B Common Stock and Class C Common Stock

**Series A Preferred Stock**

- |                        |   |
|------------------------|---|
| Name of Security       | <ul style="list-style-type: none"><li>• Series A Cumulative Preferred Stock (the “Series A Preferred Stock”).</li></ul>   |
| Ranking                | <ul style="list-style-type: none"><li>• The Series A Preferred Stock shall rank senior in all liquidation and dividends to all of the Company’s Series B Preferred Stock and common stock.</li></ul>  |
| Dividends              | <ul style="list-style-type: none"><li>• Holders of Series A Preferred Stock shall be entitled to receive, when declared by the Company’s board of directors (the “Board”) or a duly authorized committee thereof and out of legally available funds, cumulative quarterly dividends at an annual rate of 10% on the Liquidation Preference thereof.</li><li>• Dividends will accrue on a daily basis from the date such shares are issued, shall compound quarterly calculated on the basis of a 360-day year of twelve 30-day months, and shall be payable in arrears on the 25<sup>th</sup> day of January, April, July and October of each year.</li><li>• Dividends are payable in cash or, at the election of the Board, by increasing the Liquidation Preference in an amount equal to the unpaid dividend, or unpaid portion thereof. If any dividend is not paid in full and in cash on the applicable dividend payment date, the Board shall be deemed to have elected to make payment of such dividend, or unpaid portion thereof, by causing an amount equal to the unpaid dividend, or portion thereof, to be added to the Liquidation Preference.</li><li>• No dividends, share repurchases or other distributions may be declared, made or paid on any common stock or other junior security of the Company nor may any common stock or other junior security of the Company be redeemed, purchased or otherwise acquired for any consideration by the Company until redemption of the Series A Preferred Stock (other than for cashless option exercises and other typical carveouts).</li></ul> |
| Liquidation Preference | <ul style="list-style-type: none"><li>• Upon a liquidation, dissolution or winding up of the Company, subject to the payment or provision for payment of the debts and other liabilities of the Company, each share of Series A Preferred</li></ul>   |

Stock shall be entitled to receive, out of the remaining assets of the Company available for distribution to its stockholders, an amount equal to the Liquidation Preference thereof, before any distribution shall be made to the holders of Series B Preferred Stock, common stock or any other junior security of the Company.

- The “Liquidation Preference” shall be an amount equal to the amount of the Credit Facility, including all principal and interest, including PIK’d interest, thereupon, as of the Revolving Loan Maturity Date.

All shares of Series A Preferred Stock will receive their respective Liquidation Preferences on a pari passu basis. If the liquidation payments on all shares of Series A Preferred Stock cannot be paid in full, then the available funds shall be distributed ratably among the holders of the Series A Preferred Stock.

Redemption

- The Company will have the option to redeem all or any of the Series A Preferred Stock for cash at any time upon at least 30 but not more than 60 days’ notice.
- If less than all shares of Series A Preferred Stock are to be redeemed, such redemption will be ratably among the holders of Series A Preferred Stock.

Payment Default

- In the event the Company fails to comply with any of its payment obligations under the terms of the Series A Preferred Stock (subject to a reasonable cure period to be determined), holders of Series A Preferred Stock as a class will have the right to elect one director to the Board, and such director shall be entitled to serve for so long as such default remains uncured or unwaived. For purposes hereof, the payment of dividends through an increase in Liquidation Preference, as provided above, shall not be considered a failure by the Company to comply with its payment obligations under the terms of the Series A Preferred Stock.

Voting; Amendments;  
Waivers

- Holders of Series A Preferred Stock, in their capacity as such, shall have no voting rights except as required by law, or as noted below.
- Non-economic amendments/waivers to the Series A Preferred Stock will require majority approval.

Economic amendments/waivers to the Series A Preferred Stock will require 100% approval.

**Series B Preferred Stock**

- |                        |   |
|------------------------|---|
| Name of Security       | <ul style="list-style-type: none"><li>• Series B Cumulative Preferred Stock (the “Series B Preferred Stock”).</li></ul>   |
| Ranking                | <ul style="list-style-type: none"><li>• The Series B Preferred Stock shall rank senior in all liquidation and dividends to all of the Company’s common stock, but junior to the Company’s Series A Preferred Stock.</li></ul>   |
| Dividends              | <ul style="list-style-type: none"><li>• Holders of Series B Preferred Stock shall be entitled to receive, when declared by the Board or a duly authorized committee thereof and out of legally available funds, cumulative quarterly dividends at an annual rate of 5% on the Liquidation Preference thereof.</li><li>• Dividends will accrue on a daily basis from the date such shares are issued, shall compound quarterly calculated on the basis of a 360-day year of twelve 30-day months, and shall be payable in arrears on the 25<sup>th</sup> day of January, April, July and October of each year.</li><li>• Dividends are payable in cash or, at the election of the Board, by increasing the Liquidation Preference in an amount equal to the unpaid dividend, or unpaid portion thereof. If any dividend is not paid in full and in cash on the applicable dividend payment date, the Board shall be deemed to have elected to make payment of such dividend, or unpaid portion thereof, by causing an amount equal to the unpaid dividend, or portion thereof, to be added to the Liquidation Preference.</li><li>• No dividends, share repurchases or other distributions may be declared, made or paid on any common stock or other junior security of the Company nor may any common stock or other junior security of the Company be redeemed, purchased or otherwise acquired for any consideration by the Company until redemption of the Series B Preferred Stock (other than for cashless option exercises and other typical carveouts).</li></ul> |
| Liquidation Preference | <ul style="list-style-type: none"><li>• Upon a liquidation, dissolution or winding up of the Company, subject to the payment or provision for payment of the debts and other liabilities of the Company, each share of Series B Preferred Stock shall be entitled to receive, out of the remaining assets of the Company available for distribution to its stockholders, an amount equal to the Liquidation Preference thereof, before any distribution shall be made to the holders of common stock or any</li></ul>   |

other junior security of the Company.

- The “Liquidation Preference” shall be an amount equal to the lesser of (i) the face amount of the applicable stockholder’s Allowed General Unsecured Claim and (ii) a pro rata portion of 80% of the Company’s net asset value as of the Effective Date of the Black Diamond Capital Management Joint Chapter 11 Plan of Reorganization for the Company (“Effective Date”), which net asset value will be determined by third-party valuation within 120 days after the Effective Date.
- All shares of Series B Preferred Stock will receive their respective Liquidation Preferences on a pari passu basis. If the liquidation payments on all shares of Series B Preferred Stock cannot be paid in full, then the available funds shall be distributed ratably among the holders of the Series B Preferred Stock.

Redemption

- The Company will have the option to redeem all or any of the Series B Preferred Stock for cash at any time upon at least 30 but not more than 60 days’ notice.
- If less than all shares of Series B Preferred Stock are to be redeemed, such redemption will be ratable among the holders of Series B Preferred Stock.

Payment Default

- In the event the Company fails to comply with any of its payment obligations under the terms of the Series B Preferred Stock (subject to a reasonable cure period to be determined), holders of Series B Preferred Stock as a class will have the right to elect one director to the Board, and such director shall be entitled to serve for so long as such default remains uncured or unwaived. For purposes hereof, the payment of dividends through an increase in Liquidation Preference, as provided above, shall not be considered a failure by the Company to comply with its payment obligations under the terms of the Series B Preferred Stock.

Voting; Amendments;  
Waivers

- Holders of Series B Preferred Stock, in their capacity as such, shall have no voting rights except as required by law, or as noted below.
- Non-economic amendments/waivers to the Series B Preferred Stock will require majority approval.
- Economic amendments/waivers to the Series B Preferred Stock will require 100% approval.

**Convertible Class B Common Stock**

- |                  |   |
|------------------|---|
| Name of Security | <ul style="list-style-type: none"><li>• Convertible Class B Common Stock</li></ul>  |
| Voting           | <ul style="list-style-type: none"><li>• Subject to the limitations described under “Transfer Restrictions” and “Voting Restrictions” below, each share of Convertible Class B Common Stock will be entitled to a fractional vote per share such that the total votes represented by the shares of Convertible Class B Common Stock issued to Unsecured Creditors shall equal 24.9% of all votes that may be cast by holders of Common Stock eligible to vote.</li><li>• By comparison, subject to the limitations described under “Transfer Restrictions” and “Voting Restrictions” below, but otherwise consistent with the existing terms of such securities, each share of Class A Common Stock will be entitled to 3 votes per share. Collectively, the Class A Common Stock, the Convertible Class B Common Stock and the Class C Common Stock comprise the Company’s “Common Stock.”</li><li>• Except as required by law, all shares of Common Stock shall vote together as a single class and their votes shall be counted and totaled together on all matters submitted to a vote of the stockholders of the Company.</li></ul> |
| Economic Rights  | <ul style="list-style-type: none"><li>• All shares of Common Stock, regardless of class or series, will have pari passu economic rights.</li><li>• Notwithstanding the foregoing, dividends or distributions payable in Common Stock will be payable to holders of Convertible Class B Common Stock in respect thereof in additional shares of Convertible Class B Common Stock.</li></ul>  |
| Conversion       | <ul style="list-style-type: none"><li>• At the election of the Board in its sole discretion at any time after having obtained the affirmative vote or written consent of holders of at least 51% of the Class A Common Stock, each share of Convertible Class B Common Stock will be converted into one share of Class A Common Stock.</li><li>• At the election of a majority of the outstanding shares of the Convertible Class B Common Stock, each share of Convertible Class B Common Stock will be converted into one share of Class C Common Stock (the “Class B Conversion”).</li></ul>   |

## Transfer Restrictions

- Transfer Restrictions Generally. The transfer restrictions generally will restrict any direct or indirect transfer of Common Stock if the effect could, in the judgment of the Board, reasonably be expected to result in either:
  1. an “ownership change” of the Company within the meaning of Section 382 of the Internal Revenue Code (an “NOL Event”); or
  2. an “assignment” of any investment advisory contract to which the Company or any of its subsidiaries is a party within the meaning of the Investment Advisers Act of 1940, the Investment Company Act of 1940, the related rules promulgated under either such statute and/or interpretations of such statutes or rules by the staff of the Securities and Exchange Commission (an “Assignment Event”); provided that following the occurrence of a Class B Conversion, transfers or prospective transfers will no longer be restricted solely due to the potential to result in an Assignment Event.

Complicated rules of constructive ownership, aggregation, segregation, combination and other stock ownership rules arising under the Internal Revenue Code, and similarly complicated rules regarding the determination of direct or indirect power to vote stock arising under federal securities laws, will determine whether any proposed or purported transfer could result in an NOL Event or an Assignment Event. Accordingly, the term “transfer” will be defined broadly to include all direct or indirect transfers of economic and/or voting rights in respect of Common Stock, including transfers that result from the transfer of interests in other entities that own Common Stock.

The transfer restrictions will include the right of the Board to require a proposed transferee, as a condition to registration of a transfer of Common Stock, to provide to the Board all information reasonably requested regarding such person’s direct and indirect ownership of Common Stock. The transfer restrictions may result in the delay or refusal of certain requested transfers of Common Stock, and could result in prohibiting ownership (thus requiring dispositions) of stock of the Company as a result of a change in the relationship between two or more persons or entities, or of a transfer of an interest in an entity other than the Company.

- Consequences of Prohibited Transfers. Upon adoption of the transfer restrictions, any direct or indirect transfer attempted in violation of the restrictions would be void as of the date of the



purported transfer as to the purported transferee (or, in the case of an indirect transfer, the ownership of the direct owner of Common Stock would terminate simultaneously with the transfer), and the purported transferee (or in the case of any indirect transfer, the direct owner) would not be recognized as the owner of the shares owned in violation of the restrictions for any purpose, including for purposes of voting and receiving dividends or other distributions in respect of such stock. Shares of Common Stock acquired in violation of the transfer restrictions are referred to herein as “Excess Stock.”

In addition to the purported transfer being void as of the date of the purported transfer, the Board may, but shall not be obligated to, require the purported transferee to transfer the Excess Stock to the Company’s agent along with any dividends or other distributions paid with respect to such Excess Stock. The Company’s agent would thereafter be required to sell such Excess Stock in an arms’ length transaction (or series of transactions) that would not constitute a violation under the transfer restrictions. The net proceeds of the sale, together with any other distributions with respect to such Excess Stock received by the Company’s agent, after deduction of all costs incurred by the agent, will be distributed first to the purported transferee in an amount, if any, equal to the cost (or in the case of gift, inheritance or similar transfer, the fair market value of the Excess Stock on the date of the violative transfer) incurred by the purported transferee to acquire such Excess Stock, and the balance of the proceeds, if any, will be distributed to a charitable beneficiary. If the Excess Stock is sold by the purported transferee, such person will be treated as having sold the Excess Stock on behalf of the Company’s agent, and will be required to remit all proceeds to the agent (except to the extent the Company grants written permission to the purported transferee to retain an amount not to exceed the amount such person otherwise would have been entitled to retain had the Company’s agent sold such shares).

In addition, the Board may, but shall not be obligated to, redeem any Excess Stock for the fair market value thereof, as such value may be determined by the Board in good faith.

Any stockholder who knowingly violates the transfer restrictions will be liable for any and all damages suffered by the Company as a result of such violation, including damages resulting from an NOL Event or (if such transfer occurred prior to the occurrence of a Class B Conversion) an Assignment Event.

- Modification and Waiver of Transfer Restrictions. The Board will

have the discretion to approve a transfer of stock that would otherwise violate the transfer restrictions. As a condition to granting an exemption from the transfer restrictions, the Board may require an opinion of counsel (the cost of which will be borne by the transferor and/or the transferee) that the transfer will not result in an NOL Event or (if such transfer is to occur prior to the occurrence of a Class B Conversion) an Assignment Event. The Board may establish, modify, amend or rescind by-laws, regulations and procedures for purposes of determining whether any transfer of stock of the Company could reasonably be expected to result in either an NOL Event or an Assignment Event.

#### Voting Restrictions

- As an additional protection against an Assignment Event, in the event that any holder of equity securities of the Company acquires, directly or indirectly, beneficial voting power in excess of 24.9% of the voting power of all outstanding equity securities of the Company without the express consent of the Board, then, notwithstanding the rights, preferences and privileges otherwise represented by such equity securities, such holder shall be entitled to cast not more than 24.9% of the votes cast on any matter submitted to a vote of the stockholders of the Company. The foregoing restrictions will not apply to any holder that establishes to the Board's satisfaction, prior to the Effective Time, that such holder controls 25% or more of the voting power of all outstanding equity securities of the Company as of and immediately after the Effective Time; provided that such voting restrictions shall terminate upon the occurrence of a Class B Conversion.
- The Board will have the discretion to waive the voting restrictions with respect to a holder of equity securities. As a condition to granting an exemption from the voting restrictions, the Board may require an opinion of counsel (the cost of which will be borne by the transferor and/or the transferee) that the grant of such waiver will not result in an Assignment Event.

### Class C Common Stock

- |                       |   |
|-----------------------|---|
| Name of Security      | <ul style="list-style-type: none"><li>• Class C Common Stock</li></ul>  |
| Voting                | <ul style="list-style-type: none"><li>• Subject to the limitations described under “Transfer Restrictions” and “Voting Restrictions” below, each share of Class C Common Stock will be entitled to a number of votes per share such that the total votes represented by the shares of Class C Common Stock issued upon conversion of the shares of the Convertible Class B Common Stock shall equal 49% of all votes that may be cast by holders of Common Stock eligible to vote.</li><li>• By comparison, subject to the limitations described under “Transfer Restrictions” and “Voting Restrictions” below, but otherwise consistent with the existing terms of such securities, each share of Class A Common Stock will be entitled to 3 votes per share.</li><li>• Except as required by law, all shares of Common Stock shall vote together as a single class and their votes shall be counted and totaled together on all matters submitted to a vote of the stockholders of the Company.</li></ul> |
| Economic Rights       | <ul style="list-style-type: none"><li>• All shares of Common Stock, regardless of class or series, will have pari passu economic rights.</li><li>• Notwithstanding the foregoing, dividends or distributions payable in Common Stock will be payable to holders of Class C Common Stock in respect thereof in additional shares of Class C Common Stock.</li></ul>  |
| Conversion            | <ul style="list-style-type: none"><li>• At the election of the Board in its sole discretion at any time after having obtained the affirmative vote or written consent of holders of at least 51% of the Class A Common Stock, each share of Convertible Class C Common Stock will be converted into one share of Class A Common Stock.</li></ul>  |
| Transfer Restrictions | <ul style="list-style-type: none"><li>• <u>See “Transfer Restrictions” under summary of terms for the Convertible Class B Common Stock above.</u></li></ul>   |
| Voting Restrictions   | <ul style="list-style-type: none"><li>• <u>See “Transfer Restrictions” under summary of terms for the Convertible Class B Common Stock above.</u></li></ul>   |