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

In re:	)	CHAPTER 11
	)	
KG WINDDOWN, LLC, <i>et al.</i> , <sup>1</sup>	)	
	)	CASE NO. 20-11723 (MG)
Debtors.	)	
	)	(Jointly Administered)

**NOTICE OF FILING OF STIPULATION  
REGARDING REVISED PROPOSED ORDER OF DISMISSAL**

**PLEASE TAKE NOTICE** that KG Winddown, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**”), by and through their undersigned counsel submit the proposed *Stipulation Regarding Revised Proposed Order of Dismissal* attached hereto as **Exhibit A**.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number (if any), include: KG Winddown, LLC (8556); KG USA Winddown, LLC (1682); KG III Winddown, LLC (2613); KG LV Winddown, LLC (9805); KG Florida Winddown, LLC (9385); KG Puerto Rico Winddown, LLC (0901); KG AC Winddown, LLC (5082); KG Products Winddown, LLC (0303); KG LI Restaurant Group Winddown, LLC (1623); KG LI Winddown, LLC (1488); KG Franchise Winddown, LLC (0565); KG 60<sup>th</sup> St Holdings Winddown, LLC (9997); KG Broadway Winddown, LLC (4335); KG Hamptons Winddown, LLC (0423) and KG Payroll Winddown, LLC (0807). For the purpose of these chapter 11 cases, the service address for the Debtors is: 12 Penns Trail, Suite 125, Newton, PA 18940.

Dated: June 4, 2021

**ALSTON & BIRD LLP**

By: /s/ William Hao  
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# **Exhibit A**

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SOUTHERN DISTRICT OF NEW YORK**

In re:	)	CHAPTER 11
	)	
KG WINDDOWN, LLC, <i>et al.</i> , <sup>1</sup>	)	
Debtors.	)	CASE NO. 20-11723 (MG)
	)	(Jointly Administered)

**STIPULATION REGARDING REVISED PROPOSED ORDER OF DISMISSAL**

This Stipulation is entered by and between KG Winddown, LLC and its affiliated debtors and debtors in possession (each a “**Debtor**” and collectively, the “**Debtors**” ), the Buyer and the DIP Lenders<sup>2</sup> (the Buyer, DIP Lenders, and Debtors, the “**Parties**”) with respect to the following:

**RECITALS**

**WHEREAS**, on November 12, 2020, the Bankruptcy Court entered the *Final Order: (I) Authorizing The Debtors To Obtain Postpetition Financing; (II) Authorizing The Debtors To Use Cash Collateral; (III) Granting Adequate Protection To The Prepetition Secured Parties; (IV) Granting Liens And Providing Claims With Superpriority Administrative Expense Status; (V) Modifying The Automatic Stay; And (VI) Granting Related Relief* (the “**Final DIP Order**”)

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number (if any), include: KG Winddown, LLC (8556); KG USA Winddown, LLC (1682); KG III Winddown, LLC (2613); KG LV Winddown, LLC (9805); KG Florida Winddown, LLC (9385); KG Puerto Rico Winddown, LLC (0901); KG AC Winddown, LLC (5082); KG Products Winddown, LLC (0303); KG LI Restaurant Group Winddown, LLC (1623); KG LI Winddown, LLC (1488); KG Franchise Winddown, LLC (0565); KG 60<sup>th</sup> St Holdings Winddown, LLC (9997); KG Broadway Winddown, LLC (4335); KG Hamptons Winddown, LLC (0423) and KG Payroll Winddown, LLC (0807). For the purpose of these Chapter 11 Cases, the service address for the Debtors is: 12 Penns Trail, Suite 125, Newton, PA 18940.

<sup>2</sup> The terms Buyer and DIP Lenders shall have the meaning given to those terms in the Asset Purchase Agreement annexed to the *Order (I) Approving Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing Sale of Substantially All Of The Debtors’ Assets Free and Clear Of Liens, Claims, Interests And Encumbrances, (III) Authorizing Assumption And Assignment of Certain Executory Contracts And Leases In Connection Therewith, And (IV) Granting Related Relief* (Docket No. 392).

[Docket No. 304], which also approved a budget for the use of cash collateral and DIP Proceeds during the pendency of the chapter 11 cases (the “**Budget**”);

**WHEREAS**, on December 22, 2020, the Bankruptcy Court entered the *Order (I) Approving Asset Purchase Agreement Among Sellers And Buyer, (II) Authorizing Sale Of Substantially All Of The Debtors’ Assets Free And Clear Of Liens, Claim, Interests And Encumbrances, (III) Authorizing Assumption And Assignment Of Certain Executory Contracts And Leases In Connection Therewith, And (IV) Granting Related Relief* (the “**Sale Order**”) [Docket No. 392];

**WHEREAS**, pursuant to the asset purchase agreement approved pursuant to the Sale Order (the “**APA**”), the Buyer paid to the Debtors \$100,000 to be set aside for distribution to holders of allowed general unsecured claims in the Debtors’ chapter 11 cases (the “**GUC Funds**”);

**WHEREAS**, pursuant to the APA, the Purchase Price included the DIP Credit Bid equal to \$2,000,000 of the outstanding liabilities under the DIP Facility;

**WHEREAS**, prior to the closing of the transactions approved under the Sale Order, the DIP Lenders and the Debtors agreed to a modification of the budget that was previously approved under the Final DIP Order, to increase amounts allocated to pay professional fees and to reduce the total draw from \$3.1 million to \$2.9 million [Docket No. 379-2];

**WHEREAS**, on December 24, 2020, the transactions approved under the Sale Order closed, as set forth in the *Notice of Sale Closing* [Docket No. 396];

**WHEREAS**, pursuant to the Closing Memorandum [Docket No. 396-1], the Buyer, the DIP Lenders, and the Debtors agreed to the allocation of disbursements in connection with the Final DIP Draw as set forth on Schedule 2 to the Closing Memorandum;

**WHEREAS**, as of the Closing, the outstanding principal amounts due under the DIP Facilities were at least [\$900,000] (the “**DIP Deficiency**”);

**WHEREAS**, On February 2, 2021, the Debtors and Buyer executed the following amendments to the TSA: (i) the Interim Beverage Agreement between Long Island Opco IM Rest, LLC and Long Island Restaurant Group, LLC; (ii) the Interim Beverage Management Agreement between Atlantic City IM Rest, LLC and IMNY AC, LLC; (iii) the Use Agreement Between Miami Rest, LLC and IM NY Florida, LLC; and (iv) the Amendment to Transaction Licenses and Permits Use Agreement between Manager IM Rest, LLC and KG Winddown, LLC (collectively, the “**Amended Transition Services Agreements**,” Dkt. No. 438).

**WHEREAS**, on May 14, 2021, the Debtors filed the *Motion For Entry Of Orders (I) Authorizing The Debtors To Make Distributions To Allowed Administrative Expense Claims; (II) Dismissing The Debtors’ Chapter 11 Cases; (III) Establishing Procedures With Respect To Final Fee Applications; (IV) Authorizing The Debtor Entities To Be Dissolved In Accordance With Applicable State Law; and (V) Granting Related Relief* (the “**Dismissal Motion**”) [Docket No. 480];

**WHEREAS**, the Dismissal Motion seeks dismissal of the Debtors’ chapter 11 cases because, among other things, the Debtors do not have sufficient resources to fund a chapter 11 plan of reorganization;

**WHEREAS**, in light of the fact that: (i) the Debtors’ are not in a position to confirm a liquidating plan of reorganization; (ii) the Debtors cannot pay all Allowed Administrative Expenses without further modification of the DIP Budget; (iii) the Debtors cannot pay pre-petition priority claims; (iv) the Debtors’ professionals have incurred fees and expenses in excess of the amounts provided for in the currently approved DIP Budget; and (v) the benefits to all stakeholders

to an efficient resolution of these Chapter 11 cases, the Parties have negotiated and agreed upon: (x) a modification of the DIP Budget to accommodate the funding of the dismissal of these Chapter 11 cases on the terms and provisions set forth below, (y) have agreed on the schedule to govern the distributions to be made from the Debtors' cash as set forth in the Claims Waterfall Schedule annexed hereto as **Exhibit A**, and (z) have agreed to the form of a *Revised Proposed Order Authorizing The Debtors To Make Specified Distributions To Buyer, DIP Lender And Allowed Administrative Claims* [Docket No. ●] (the "**Revised Dismissal Order**").

**ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:**

1. The recitals form an integral part of this Stipulation and are incorporated fully herein.
2. Promptly upon entry of the Revised Dismissal Order, and in accordance with the Claims Waterfall Schedule annexed hereto as **Exhibit A**: (a) the Debtors shall pay the Buyer the \$100,000 GUC Funds; (b) the Debtors shall pay the DIP Lenders \$100,000 on account of the DIP Deficiency; (c) the Debtors shall pay to the Buyer the amounts due to Buyer under the Amended Transition Services Agreements.
3. Buyer acknowledges its obligation pay to the Debtors the applicable fees set forth in paragraph 6(f) of the Amended Transition Services Agreement between (i) Long Island Opco IM Rest, LLC and IM Long Island Restaurant Group, LLC; (ii) Atlantic City IM Rest, LLC and IMNY AC, LLC; and (iii) Miami IM Rest, LLC and IM NY Florida, LLC, subject to the terms and conditions of each of the foregoing Amended Transition Services Agreements, respectively.
4. Subject to the payments specified in paragraph 2 first being made and the obligations specified therein paid in full, and subject to entry of the Revised Dismissal Order, pursuant to the Claims Waterfall Schedule annexed hereto as **Exhibit A**, the DIP Budget is hereby modified to permit final payments to be made in these Chapter 11 cases as follows:

- a. All United States Trustee fees shall be paid in full;
  - b. All Allowed Administrative Expenses, other than Allowed Professional Fees of Alston & Bird LLP, Mackinac Partners, and Omni Agent Solutions, shall be paid in full; and
  - c. Subject to the prior payment in full of all Allowed Administrative Expenses, Allowed Professional Fees of Alston & Bird LLP, Mackinac Partners, and Omni Agent Solutions up to the amounts set forth in the Claims Waterfall Schedule annexed hereto as **Exhibit A**, shall then be paid.
5. This Claims Waterfall Schedule annexed hereto as **Exhibit A** shall be annexed as an exhibit to the Revised Proposed Order and shall be deemed to amend the DIP Budget.
6. The Parties hereby consent to entry of a final order or judgment by this Court with respect to all matters related to, or arising under, this Stipulation.
7. This Stipulation may not be modified absent the prior written consent of the Parties.

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## **Exhibit A**

**IM Debtor Entity**  
**Debtor Liquidation Waterfall**

	Waterfall (v5.28)
<i>Available Cash</i>	
Beginning Cash as of 5/28/21 <sup>(1)</sup>	\$ 1,256,188
Transfer to NewCo as of 5/28/21 <sup>(2)</sup>	(115,915)
Refund of GUC sale proceeds	(100,000)
DIP Payment	(100,000)
<b>Debtor Consolidated Cash Balance</b>	<b>\$ 940,273</b>
<b>Unpaid Pre-petition Wages</b>	<b>\$ -</b>
<i>Remaining Administrative Expenses</i>	
CRO - Mackinac <sup>1</sup>	\$ -
Debtor Counsel - Alston <sup>1</sup>	352,701
Claims Agent	139,060
Investment Banker	-
Goodwin - DIP Fees	-
Keen Summit	-
US Trustee	9,925
Unpaid Tax Claims under Tax Motion	103,555
Unpaid Employee Claims under Wages Motion	50,000
Accrued and Unpaid Admin Expenses	250,033
Restructuring Wind Down Costs	35,000
<b>Total Administrative Claims</b>	<b>\$ 940,273</b>
<b>Proceeds Remaining For Priority Unsecured Claims</b>	<b>\$ -</b>
<i>Pre Petition Claims <sup>(4)</sup></i>	
<i>Priority Tax</i>	
Puerto Rico Sales Tax	\$ 65,369
Other Tax Claims	44,445
<b>Total Priority Tax</b>	<b>\$ 109,815</b>
<b>Proceeds Remaining For Pre-Petition Priority Claims</b>	<b>\$ (109,815)</b>
<i>Other Pre-Petition Priority Claims</i>	
Critical Vendors	\$ -
PACA / PASA	-
<b>Total Other Pre-Petition Priority Claims</b>	<b>\$ -</b>
<b>Proceeds Remaining For Unsecured Claims</b>	<b>\$ (109,815)</b>

(1) The Beginning Cash Balance is at a point in time and subject to daily change based on the transactions running through the debtors operating under the TSA. The beginning cash balance also includes the GUC fund sale proceeds and amounts due to Newco based on a the most recent weekly reconciliation.

(2) Transfer to Newco is the net amount due to Newco based on the weekly reconciliation of cash transactions running through the Debtor entities operating under the TSA.

(3) To the extent that any Administrative Claim(s) (other than Professional Fees) is reduced to an amount lower than listed in the Waterfall, the difference between the listed amount and the reduced amount shall be applied as follows: first, to any Administrative Claim(s) this is allowed in an amount higher than that listed in the Waterfall (other than Professional Fees) so that all such Administrative Claims are paid in full; and the balance, if any, to be paid fifty percent (50%) to the DIP Lenders and fifty percent (50%) to any Professional Fees of Alston & Bird and Mackinac as authorized and approved by order of the Court.

(4) Assumes Debtors' First Omnibus Objection (Dkt. No. 469) is granted in full.