

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Style Definition: Normal

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In re:

Chapter 11

1567 YORK LLC,

Case No. 17-11953 (MKV)

Debtor.
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**AMENDED DISCLOSURE STATEMENT PURSUANT TO
SECTION 1125 OF THE BANKRUPTCY CODE**

1567 York, LLC (the "Debtor") hereby submits this Amended Disclosure Statement (the "Disclosure Statement"), pursuant to §1125 of Title 11, United States Code (the "Bankruptcy Code"), in support of with the Debtor's Chapter 11 amended plan of reorganization dated August 9 September 19, 2017 (ECF #17#) (the "Plan").

I. OVERVIEW

A. Goals of the Plan. The Plan is designed to implement the Debtor's strategy to close on a pending contract of sale to purchase of two adjoining parcels of real property located at 1567 and 1571 York Avenue, New York, New York (collectively, the "Property") for a total purchase price of \$16,600,000 (the "Purchase Price"). The sale is memorialized by a contract of sale dated December 13, 2016 (the "Contract") with JGD Papoutsis LLC as seller (the "Seller"). The Contract is annexed to the Plan as Exhibit "A".

The Contract fixed an initial closing date of June 30, 2017. The Debtor obtained a short extension of the closing to July 17, 2017, and thereafter requested a further extension to close from the Seller. Unable to obtain the Seller's agreement, the Debtor sought Chapter 11 relief on July 16, 2017 to attempt to utilize the sixty (60) day extension period provided by §108(b)(1) of the Bankruptcy Code.

~~The~~ This sixty (60) day period ended on September 14, 2017 and presented a formidable challenge for the Debtor, due to the need to complete pending negotiations with investors and lenders.

With the deadline of September 14, 2017 looming, the Debtor successfully negotiated with the Seller to obtain a further extension of the closing date from September 14, 2017 to October 31, 2017 (time of the essence). This agreement came about following extensive negotiations and the filing of an adversary proceeding to enforce an alleged oral agreement among counsel to extend the closing which the Seller initially refused to sign.

The extension has been memorialized in a stipulation of settlement (denominated as the Extension Settlement under the Plan). The Extension Settlement has been served upon all creditors and is currently noticed for Bankruptcy Court approval on October 10, 2017. If approved, the Extension Settlement resolves the adversary proceeding and paves the way for a closing.

Based upon the Extension Settlement, the Debtor has updated and amended its plan and disclosure statement to reference the new October 31, 2017 closing date and other evolving events in the case. Indeed, with the benefit of the added time, the Debtor is even more confident that it will be able to close prior to October 31, 2017, although the Debtor's negotiations with potential investors and lenders are still intends to proceed with a closing. Accordingly, with the deadline approaching ongoing. Nevertheless, in anticipation of successful completion of all negotiations, the Debtor has filed the Plan providing for the to reference, *inter alia*, the extended closing date of October 31, 2017, and provide for the assumption of the Contract pursuant to Section 365(a) of the Bankruptcy Code. The Plan also provides that the Debtor shall either assume the Contract alone or in conjunction with an assignment to

~~a joint venture with other investors. Under any scenario, however, the balance of the Purchase Price shall be paid in full to the Seller at Closing.~~

~~The final and exact structure of the acquisition is still under negotiation and likely will include mortgage financing of \$15.0 million from Castellan Capital (defined as the ~~ö~~ and approval of related Exit Facility~~ö~~ under the Plan). The Debtor intends to file supplements to the Plan and this Disclosure Statement as events continue to unfold. The supplements will provide creditors Financing.~~

~~As with additional information on the status of financing and investor contributions. In the interim, however, the Debtor has filed the Plan and its original plan, the Debtor has sought preliminary approval of the Amended Disclosure Statement so that a combined hearing to consider final approval of the Disclosure Statement in the hope that a and confirmation hearing of the Plan can be concluded prior to ~~September 14, 2016, which is the deadline to close under Section 108(b) of the Bankruptcy Code~~October 31, 2017.~~

B. Approval of this Disclosure Statement.

Pursuant to 11 U.S.C. §105(d)(2)(B), this Disclosure Statement has been conditionally approved by the Bankruptcy Court as containing adequate information within the meaning of 11 U.S.C. §1125 necessary for creditors to (i) evaluate the Plan; and (ii) determine whether to accept or reject the Plan. Final approval of the Disclosure Statement will be sought by the Debtor in conjunction with confirmation of the Plan. The Court's preliminary approval of the Disclosure Statement is conditional, and creditors have the right to object to either final approval of the Disclosure Statement, or confirmation of the Plan.

C. Confirmation of the Plan.

The Bankruptcy Court has scheduled a combined hearing to consider both final approval of this Disclosure Statement and confirmation of the Plan on the same day and time, to wit, ~~September 14, October~~, 2017 at 10:00 a.m., Eastern Daylight Time.

The most critical aspect of the Plan and Confirmation Hearing is the proposed assumption of the Contract, and potential assignment to a joint venture, as well as approval of Exit Financing. To protect against the possibility that confirmation may be delayed beyond the ~~September 14, October 31~~, 2017 deadline, the Debtor reserves the right to file separate motions for assumption of the Contract and approval of the Exit Financing, so that the Contract can close even in the absence of confirmation, and thereby forsake the opportunity for transfer tax exemptions.

The combined hearing will be conducted by the Honorable May Kay Vyskocil in the United States Bankruptcy Court, One Bowling Green, Courtroom 501, New York, NY 10004 on ~~September 14, October~~, 2017 at 10:00 a.m. At the combined hearing, the Debtor shall request that the Bankruptcy Court approve, among other things, (i) assumption ~~(and potential assignment)~~ of the Contract; (ii) Exit Financing; and (iii) confirmed of the Plan pursuant to Section 1129(a) of the Bankruptcy Code. The Debtor believes that it will be ready to close prior to ~~September 14, 2017 despite the Seller's skepticism~~ ~~October 31, 2017~~.

Any creditor or party in interest may object to final approval of the Disclosure Statement or confirmation of the Plan. The Bankruptcy Court has directed that objections, if any, shall be

filed with Bankruptcy Court (with a courtesy copy to the Hon. Mary Kay Vyskocil) and served upon counsel to the Debtor, Goldberg Weprin Finkel Goldstein LLP, Attn: Kevin J. Nash, 1501 Broadway, 22nd Floor, New York, New York 10036, on or before ~~September 8~~, October, 2017 at 5:00 p.m. prevailing Eastern time.

D. Voting and Objections

Because the Plan provides for full payment to the holders of allowed claims, creditors are not technically impaired. The Debtor, however, expects opposition from the Seller, which has questioned the Debtor's motives, and challenged the Debtor's good faith in seeking Chapter 11 and invoking the provisions of 11 U.S.C. §108(b).

Besides the Seller, any other creditor may also object to confirmation of the Plan, or object to final approval of the Disclosure Statement. To lodge objections, a creditor must file a written submission with the Clerk of the Bankruptcy Court, through the Court's ECF System and serve same upon (i) Goldberg Weprin Finkel Goldstein LLP, 1501 Broadway, 22nd Floor, New York, New York 10036, attention: Kevin J. Nash, Esq.; and (ii) Office of the US Trustee, 201 Varick St., Ste. 1006, New York, NY 10014, Attn: Paul Schwartzberg, Esq.; so as to be received on or before ~~September 8~~, October, 2017 at 5:00 p.m., prevailing Eastern time.

E. Disclaimer. The Bankruptcy Court's conditional approval of this Disclosure Statement does not constitute an endorsement of the Plan. No representations other than those explicitly set forth in this Disclosure Statement are authorized concerning the terms of the Plan.

This Disclosure Statement contains summaries of certain provisions of the Plan, certain statutory provisions, certain events in the case and certain financial information. Although the

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Debtor believes that the Disclosure Statement is accurate, the terms of the Plan govern, and creditors are advised to review the Plan in its entirety.

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II. EVENTS LEADING UP TO THE BANKRUPTCY FILING

The lead-up to Chapter 11 is not complicated, and was predicated upon the Debtor's inability to obtain a negotiated extension of the time to close from the Seller. As noted above, the Debtor is under contract to purchase the Property for a total purchase price of \$16,600,000.

The Property is the site of two residential apartment buildings occupied by residential and commercial tenants. The proposed acquisition is being done in connection with an anticipated larger development involving neighboring properties. Thus, the acquisition involves new investors, joint venture partners, and prospective mortgage lenders.

As the initial June 30, 2017 closing date approached, the Debtor requested an extension of time to close. It was agreed that the June 30, 2017 closing would be adjourned for a reasonable period of time, only to find that the Seller limited the extension until July 17, 2017, despite possible Seller misrepresentations concerning: (i) discrepancies in filings with HPD relating to the number of residential units in each building; and (ii) improper designation of certain apartments as being fair market rentals. Issues over possible misrepresentations under the Contract, however, were subsequently waived by the Debtor as part of the Extension Settlement.

The Debtor's follow-up efforts to obtain a further extension of the July 17 closing date were unsuccessful. In the face of the time pressures, the Debtor filed a Chapter 11 petition on July 16, 2017, thereby staying the declaration of a default by the Seller and providing an extension of the closing deadline for sixty (60) days pursuant to Section 108(b)(1) of the Bankruptcy Code.

III. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE

Cognizant of the short window of opportunity, the Debtor ~~is attempting to move~~ has moved expeditiously to meet ~~the 60-day deadline~~ its deadlines. Administratively, the Debtor has obtained an order establishing a Bar Date of September 8, 2017, ~~and~~ The Debtor filed the Plan's initial plan on August 9, 2017.

~~Despite potential financial benefits to proceeding, together with a sale under a confirmed plan, the Seller continues to resist an extension to close, and has moved disclosure statement. To shorten the confirmation process, the Debtor previously filed a motion for preliminary approval of the disclosure statement and a combined hearing on confirmation. This motion was granted by Order dated August 23, 2017, together with an Order shortening the notice period and fixing the combined hearing for September 14, 2017, to coincide with the extended closing deadline.~~

~~In the meantime, the Seller moved to dismiss the Chapter 11 case on bad faith grounds (ECF #4). The Debtor has successfully opposed this motion, ~~and contends that it has not acted in bad faith, but rather utilized the statutory rights afforded to it by the Bankruptcy Code to move forward toward a closing on the Contract. Accordingly, the Debtor has filed opposition to which was denied by Order dated August 17, 2017 (ECF #22).~~~~

~~As events unfolded, the hearing on the dismissal motion (ECF #16) and will vigorously contest the same reignited negotiations between the Seller and the Debtor over a potential extension. The Debtor believed that the parties' attorneys reached agreement on the terms of an extension, including payment of an extension fee of \$150,000, replacement of a rent reserve of \$50,000 and other accommodations. Then, at the last minute, after the terms were set, the Seller~~

~~renege~~ and declined to execute the stipulation, which has been revised and updated by Seller's own counsel that morning.

~~In the interim, the Debtor has sought out mortgage financing and~~In response, the Debtor commenced an adversary proceeding to enforce the oral agreement between the parties, or otherwise hold the Seller in default of the Contract. The Debtor also made a tender of the \$150,000 extension fee and the \$50,000 replenishment of a rent escrow. Upon reviewing the complaint and verifying receipt of the tender, the Seller reconsidered its position, and the parties recommenced discussions on the extension. The language of the stipulation was finalized after further negotiations, and the Extension Settlement was executed by the parties and filed with the Court on September 13, 2017. The Debtor has noticed the Extension Settlement for Bankruptcy Court approval on October 10, 2017.

The Debtor has since updated and amended the plan and disclosure statement to bring them current with unfolding events, as it continues to seek out investors and lenders. The previously scheduled confirmation hearing has been adjourned to the current date of October 2017.

~~Prior to September 14, 2017, the Debtor~~ received a Letter of Interest from Castellan Capital to consider a \$15.0 million mortgage loan. ~~A copy of the Letter of Interest is annexed hereto as Exhibit "A." Castellan Capital was recommended~~Since the extension, the Debtor has expanded its discussions to the Debtor by Meridian Capital, and appears capable of include other

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~~lenders, primarily Ladder Capital, which has emerged as the leading candidate to make a mortgage loan at closing the transaction prior to September 14, 2017.⁺~~

In addition to mortgage financing, the Debtor ~~has identified several likely investors to infuse the required \$8 million of equity. These likely~~ is also in communication with potential investors include: Joseph Banda, and Josh Koplewitz, Max Koshkerman, Alan Luke, David Spitzer, Joe Teitelbaum and Cheskie Weisz. Negotiations with investors are ongoing, but the Debtor is proceeding on dual tracks with a keen awareness of the September 14, 2017 deadline. ~~has emerged as the leading investor based upon anticipated capital contribution of at least \$5 million.~~

⁺ ~~While Castellan Capital was introduced to the Debtor independently, the undersigned counsel for the Debtor coincidentally represents Castellan Capital in other matters.~~

Additionally it is also noteworthy that individuals affiliated with the Debtor closed on the acquisition of the adjoining parcel at 453 East 83rd Street, New York, NY on September 14, 2017, which gives greater impetus to completing this transaction.

III. THE PLAN

Pursuant to Section 1122 of the Bankruptcy Code, the Plan divides creditors and interests into separate classes according to whether or not the claims are secured, and their priority status under the Bankruptcy Code. In this case, the Plan creates five separate classes, as set forth in the following chart:

Class	Designation	Impaired
Class 1	Allowed Administration Claims	No
Class 2	Allowed Cure Claim of the Seller, if any, arising out of the assumption of the Contract	No
Class 3	Allowed Priority Tax Claims	No
Class 4	Allowed Unsecured Claims	No
Class 5	Equity Interests of the Debtor and Reorganized Debtor	No

A. Implementation of the Plan

3.1 The Plan is predicated on the purchase of the Property in accordance with the Contract. ~~Thus, albeit subject to the extended closing date of October 31, 2017. Accordingly, for purposes of Confirmation, the Debtor is hereby moving under the Plan provides for the assumption of to assume~~ the Contract pursuant to §§365(a) and §1123(b)(2) of the Bankruptcy Code. ~~A closing on~~ Following Confirmation of the Plan and entry of the Confirmation Order, the parties shall proceed to a Closing in accordance with the Contract. The Closing shall take place on or prior to September 14, 2017, unless the Seller agrees to a no later date beyond that than October 31, 2017 (time, which is highly unlikely, of the essence).

At the Closing, the Debtor shall pay the balance of the Purchase Price. It is anticipated that the funding for the acquisition will come from the Exit Facility ~~to be provided by Castellan Capital²~~ and capital contributions from the investors. Copies of actual loan documents, or a summary thereof, will be filed by the Debtor prior to the confirmation hearing.

Out of an abundance of caution, the Debtor reserves the right to file a companion motion (the "Assumption Motion") to assume the Contract under §365(a) of the Bankruptcy Code. The Assumption Motion will be heard contemporaneously with Confirmation of this Plan as necessary, so the Acquisition can proceed even if Confirmation is delayed beyond October 31, 2017.

The Debtor shall request that the Confirmation Order provide, *inter alia*, for ~~either~~ the assumption of the Contract (or assumption and assignment of the Contract to ~~a joint venture~~ the Debtor's designee) with a direction that the Seller is required to convey title to the Property to the Debtor (or ~~joint venture as applicable~~ its designee) in accordance with the Contract (except as modified by the Extension Settlement) and otherwise free and clear of all liens, claims, taxes and non-permitted encumbrances. All Bankruptcy Court Orders relating to the ~~acquisition of the Property~~ Acquisition shall be effective immediately with a waiver of any stays under the Bankruptcy Rules, including under Bankruptcy Rules 3020(e), 4001(a)(3) and 6004(h).

B. Debtor's Authority to Proceed With Exit Facility

The Plan also seeks Bankruptcy Court approval to proceed simultaneously with the proposed Exit Facility ~~of \$15.0 million.~~ The Exit Facility shall constitute a first priority mortgage lien against the Property following the Closing. ~~By virtue of Confirmation of the Plan~~

² ~~The Debtor is continuing to seek other sources of financing, although Castellan Capital is the~~

Because negotiations are ongoing, the Debtor shall ~~be authorized to file a summary of specific terms of the Exit Facility prior to borrow \$15.0 million to complete the purchase of the Property and close under the Contract Confirmation Hearing as a supplement to the Plan.~~ The closing on the Exit Facility shall occur simultaneously with a closing on the ~~acquisition of the Property Acquisition (likewise prior to October 31, 2017),~~ with the net proceeds of the Exit Facility, ~~as augmented by other capital,~~ to be used: (i) to pay the balance of the Purchase Price under the Contract including all allowed adjustments; and (ii) pay all Allowed Claims of Creditors, Professional Fees, and U.S. Trustee Fees.

Also out of an abundance of caution, the Debtor reserves the right to file a second companion motion seeking to approve the Exit Facility under §364 of the Bankruptcy Code (i.e. the "Financing Motion").

The first priority mortgage liens granted in furtherance of the Exit Facility shall survive Confirmation of the Plan and shall be fully binding and enforceable against the Debtor or the Debtor following Confirmation (i.e. the "Reorganized Debtor"), as the case may be.

~~most likely candidate.~~

C. Treatment of Claims

Class 1 – Administrative Claims

Professional Fees.

All Professionals who are entitled to compensation and reimbursement of expenses pursuant to §§330 and 331 of the Bankruptcy Code shall file written applications for allowance thereof on notice to Creditors and other parties-in-interest. The amounts awarded to Professionals for Professional Fees shall be paid in full on the Effective Date, or such later time as a particular fee application(s) is heard and ruled upon the Bankruptcy Court. The Debtor projects professional fees of approximately \$100,000.

Other Administrative Claims.

The holders of any other Administrative Claims shall be paid in the ordinary course of business or on the Effective Date hereof. The Debtor does not project that there will be any significant Administrative Claims other than Professional Fees.

Class 2 – Claim of the Seller.

The allowed Claim of the Seller representing the balance of approximately \$16.0 million on the Purchase Price shall be paid at Closing from the proceeds of the Exit Facility and/or other capital raised ~~from investors by the Debtor~~ investors individually or in connection with a joint venture to be formed.

Class 3 – Priority Claims

All Allowed Priority Claims shall be paid in full on the Effective Date from the proceeds of the Exit Facility or other capital raised ~~from investors by the Debtor~~ investors individually or in connection with a joint venture to be formed. The Debtor does not anticipate that any significant tax debt is owed.

Class 4 – General Unsecured Claims

All Allowed Class 4 General Unsecured Claims shall be paid in full on the Effective Date from the proceeds of the Exit Facility or other capital raised ~~from investors by the Debtor~~ investors individually or in connection with a joint venture to be formed. The Debtor projects total unsecured debt of approximately \$640,000, representing broker commissions, title and legal fees incurred and to be incurred in connection with the closing of the transaction.

Class 5 – Membership Interests

The precise holders of the Class 5 Equity Interests are still under discussion among the ~~group of various~~ potential investors ~~listed above~~. A final listing of the equity holders will be filed by the Debtor prior to the confirmation hearing, ~~with Josh Koplewitz likely acting as the lead principal of the Debtor going forward.~~

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D. Conditions Precedent To Confirmation Of Plan

The Plan is conditioned upon entry of an order(s) approving assumption of the Contract and related Exit Facility either before or in conjunction with Confirmation of the Plan.

E. Exemption For Transfer And Mortgage Taxes

The acquisition of the Property and related Exit Facility shall be exempt from the payment of transfer taxes and mortgage recording taxes under 11 U.S.C. §1146(a), since the issuance and delivery of a deed and a mortgage in connection with the Exit Facility are both instruments of transfer in furtherance of, and in connection with, Confirmation of the Plan.

F. Retention of Jurisdiction

The Bankruptcy Court shall retain jurisdiction over the Debtor's bankruptcy case, the Contract, Acquisition and Property following confirmation to consider or address the following matters: (a) any modification of the Plan under §1127 of the Bankruptcy Code; (b) to hear and determine all controversies, suits and disputes that may arise in connection with the interpretation or enforcement of the Contract, Plan, Acquisition or the Property; (c) to determine all objections and adversary proceedings that are pending on the Effective Date; (d) to hear and determine all requests and applications for compensation and/or reimbursement of expenses which may be filed

by Professionals; (e) to consider and act on any compromise or settlement of any claims involving the Debtor's estate; (f) to consider and act on such other matters as may be consistent with the Plan and aid in its implementation; and (g) to issue such order as may be necessary or appropriate for the consummation of the Plan.

V. BASIC REQUIREMENTS FOR CONFIRMATION OF THE PLAN

Section 1129(a) of the Bankruptcy Code lists a number of findings that need to be made prior to Confirmation. One of the prerequisites to confirmation, found in Section 1129(a)(11) of the Bankruptcy Code, requires that the Debtor demonstrate the ability to close on the sale, fund the Plan, and establish that confirmation is not likely to be followed by the need for further financial reorganization or restructuring. The total amount necessary to complete the sale transaction (and pay creditors) is projected to be approximately \$16,760,000 (\$16,000,000 + \$760,000), including brokerage, subject to final reconciliation, as set forth in the following Chart:

Payee	Payment
Seller - JGD Papoutsis LLC (Balance due)	\$16,000,000
Projected Professional Fees and Expenses of the Debtor's Counsel	\$100,000
U.S. Trustee Quarterly Fees	\$20,000
Priority Claims (If any)	\$0
Unsecured Claims (Subject to reconciliation and potential objection)*	\$640,000
Equity Interests	N/A
Total:	\$16,760,000

* This amount includes the \$450,000 contingent brokerage fee of Hillel Spinner

The Debtor will be prepared to demonstrate sufficient cash to close at the confirmation hearing.

VI. CONCLUSION

The Debtor believes the Plan should be confirmed, and hopefully, the purchase and mortgage transactions contemplated by the Plan will find unanimous support from all concerned.

Dated: New York, New York

~~August 15~~ September 19, 2017

1567 York LLC

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