

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

HS 45 JOHN LLC,

Case No. 15-10368 (SHL)

Debtor.
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**ORDER CONFIRMING DEBTOR'S CHAPTER 11 PLAN
OF REORGANIZATION AS SUPPLEMENTED AND APPROVING
THE SALE OF REAL PROPERTY AT 45 JOHN STREET, NEW YORK
TO 45 JOHN NY LLC FREE AND CLEAR OF ALL CLAIMS, LIENS,
TAXES AND NON-PERMITTED ENCUMBRANCES**

HS 45 John LLC (the "Debtor"), having filed its Chapter 11 Plan of Reorganization dated November 10, 2015 (ECF #158), as supplemented on December 3, 2015 (ECF #170) and December 4, 2015 (ECF #174) (collectively, the "Plan") in furtherance of a settlement among the Debtor, Chaim Miller, Sam Sprei, SDF81 45 John Street 1 LLC, SDF81 45 John Street 2 LLC, Chun Peter Dong, the 41% Investors, Riverside Abstract LLC, Li Lan Liao and Aiyun Chen that was previously approved by Order of this Court dated November 9, 2015 (ECF #156) (the "Settlement Agreement"); and the Plan being predicated upon the sale (the "Sale") of the property at 45 John Street, New York, NY (Block 78, Lots 1701-1787) (the "Property") to 45 John NY LLC (the "Buyer") pursuant to that certain Asset Purchase Agreement dated as of October 19, 2015 (the "Sale Agreement") for the sum of \$73 million; and the Court having entered an Order on November 12, 2015 (the "Scheduling Order") (ECF #163), *inter alia*, conditionally approving the Debtor's Revised Disclosure Statement dated November 11, 2015 (ECF #160), and scheduling a hearing on confirmation of the Plan for December 9, 2015 (the "Confirmation Hearing"); and the Debtor having transmitted the Plan and Disclosure Statement to all creditors and other parties in interest in compliance with the Scheduling Order, as evidenced by the affidavit of service filed on November 20, 2015 (ECF #165); and the

Objection to the Plan filed by the 41% Investors relating to the consequences of a potential default by Chaim Miller and Sam Sprei with respect to their obligations under the Settlement Agreement having been addressed and resolved at the Confirmation Hearing; and upon consideration of the Certification of Balloting by J. Ted Donovan filed on December 7, 2015 (ECF #178); and upon the proffer made at the Confirmation Hearing in furtherance of the Declaration of Kevin J. Nash dated December 7, 2015 (ECF #179); and based upon the entirety of the record of the Confirmation Hearing;

THE COURT HEREBY FINDS AND DETERMINES¹ that:

A. The Disclosure Statement contains adequate information pursuant to Section 1125 of the Bankruptcy Code and is hereby finally approved.

B. Unanimous acceptances of the Plan by those holders of impaired claims in Class 2 (the SDF Lenders), Class 3 (the 41% Investors) and Class 4 (Chun Peter Dong) who participated in the balloting have been duly received; and the solicitation and tabulation of acceptances has been accomplished in a proper and fair manner satisfactory to this Court.

C. The Sale Agreement was negotiated and entered into between the Debtor and the Buyer in good faith, through arms-length bargaining provisions, such that the Buyer is a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby.

D. Neither the Debtor the Buyer has engaged in any conduct that would cause or permit the Sale Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. The Buyer is not an “insider” of the Debtor, as that term is

¹ This Confirmation Order constitutes the Court’s findings of fact and conclusions of law under Fed. R. Civ. P. 52, as made applicable by Rules 9014 and 7052. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact where appropriate.

defined in section 101 of the Bankruptcy Code, or affiliated with Chaim Miller (“Miller”) or Sam Sprei (“Sprei”), and no common identity of incorporators, directors, or controlling stockholders exists between the Buyer and the Debtor.

E. The sale price is fair and reasonable, is the highest and best offer received, provides a greater recovery to creditors than any alternative, and constitutes reasonably equivalent value and fair consideration.

F. The Debtor has complied with the applicable provisions of Chapter 11 of the Bankruptcy Code.

G. The Debtor has proposed the Plan in good faith and not by any means forbidden by law.

H. All payments made or promised to be made under the Plan have been disclosed to the Court, and are reasonable or, if such payments are to be fixed after confirmation of the Plan, will be subject to the approval of the Court.

I. With respect to each class of claims or interests specified in the Plan, the Plan does not impair such class or, if impaired, such impaired class has accepted the Plan.

J. With respect to claims or a class of priority claims of a kind specified in sections 507(a)(1)–(9) of the Bankruptcy Code, each holder of such claim or a claim of such class will receive, on account of such claim, cash on the effective date of the Plan equal to the allowed amount of such claim from unencumbered funds, if any, unless the holder of such claim has agreed otherwise.

K. All fees payable under section 1930 of title 28, United States Code, have been or will be paid by the Debtor through the closing of the Chapter 11 case.

IT IS HEREBY ORDERED as follows:

1. **Motion to Approve Confirmation is Granted.** The Debtor's motion to approve confirmation of the Plan pursuant to 11 U.S.C. §1129 is granted.

2. **Approval of Sale to 45 John NY LLC.** The Sale of the Property to the Buyer pursuant to the Sale Agreement is approved.

3. **Consummation of Settlement Agreement and Sale Transaction.** Pursuant to sections 105, 363, 365 and 1123 of the Bankruptcy Code, the Debtor's attorney is authorized to execute, deliver and perform all of the obligations of the Debtor and 45 John Lofts LLC as sellers ("Sellers") under and in compliance with the terms of the Sale Agreement and the Settlement Agreement, and to consummate the Sale transaction pursuant to and in accordance with the terms and conditions of the Sale Agreement and this Confirmation Order. Kevin J. Nash, as attorney-in-fact for the Debtor and the authorized signatory for both the Debtor and 45 John Lofts LLC, is further authorized to sign, execute and deliver as an authorized signatory for the Sellers all deeds and additional instruments and documents that may be reasonably necessary or desirable to close and consummate the Settlement Agreement and the Sale Agreement and to take all further actions as may be (a) necessary for the purpose of transferring, granting, conveying and conferring the Property to the Buyer, or (b) necessary or appropriate to the performance of the obligations contemplated by the Sale Agreement, all without further order of the Court.

4. **Exemption from Transfer and Mortgage Taxes; Acceptance of Documents for Filing.** Pursuant to sections 106, 1141 and 1146(a) of the Bankruptcy Code, the creation of any mortgage, deed of trust, or other security interest, the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to the Plan, or the making or delivery of

any deed, mortgage or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, (i) any mortgages, security agreements, deeds or other documents relating to or executed in connection with the mortgage loans made to the Buyer that shall be extended and as contemplated by the Plan, and (ii) any deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, mortgage tax, sales, use or other similar tax. All state, city and local government officials and agents shall forego the collection of any such tax or governmental assessment and shall accept for filing and recordation, without the payment of any such transfer or mortgage tax (including, without limitation, payment of the New York City Real Property Transfer Tax (“RPT”), New York State Transfer Tax and any and all Mortgage Recording Taxes), or government assessment, any instrument or other document issued or transferred pursuant to the Plan, including, without limitation, any mortgage, deed of trust, or other security interest.

5. **Transfer of Property Free and Clear.** Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code and pursuant to the terms of this Confirmation Order, the Property shall be transferred to the Buyer, and upon the Closing, such transfers shall: (a) be valid, legal, binding and effective; (b) vest the Buyer with all right, title and interest of the Sellers in the Property; and (c) be free and clear of all liens, encumbrances, pledges, mortgages, deeds of trust, security interests, claims, charges, options, rights of first refusal, easements, servitudes, proxies, voting trusts or agreements, or transfer restrictions under any agreement (collectively, “Claims and Liens”), except as otherwise provided in the Confirmation Order or in the Sale Agreement or in the instruments pursuant to which property is transferred, and other than usual and customary encumbrances such as utility easements and the like. Any Claims and

Liens that represent interests in the Property shall attach to the net proceeds of the Sale, in the same amount and order of their priority, with the same validity, force and effect which they have against the Property. Following the Closing of the Sale, neither Miller nor Sprei shall interfere with the Buyer's title to or use and enjoyment of the Property.

6. **Miller and Sprei.** In the event that Miller and Sprei fail to comply with all of their obligations under the Settlement Agreement including payment of the accrued interest to SDF81 45 John Street 1 LLC, SDF81 45 John Street 2 LLC (the "SDF Lenders") for the period from September 17, 2015 through November 30, 2015, on or before the Closing of the Sale, then in such event the accrued interest shall be the responsibility of the Debtor to be paid at Closing, whereupon Miller and Sprei shall not be eligible to receive any releases under the Settlement Agreement; and the Debtor Injunction shall continue for the benefit of the Debtor and shall be enforceable by the Debtor only, until such time as Miller and Sprei fulfill all of their obligations under the Settlement Agreement.

7. **Good faith.** The transaction contemplated by the Sale Agreement is undertaken by the Buyer in good faith, as that term is used in Section 363(m) of the Bankruptcy Code. Moreover, neither the Buyer nor the Debtor has engaged in any conduct that would cause or permit the Sale Agreement to be avoided under Section 363(n) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale shall neither affect the validity of the Sale nor the transfer of the Property to the Buyer, free and clear of Claims and Liens, unless such authorization is duly stayed before the Closing of the Sale.

8. **Use of Proceeds at Closing.** Kevin J. Nash, as Disbursing Agent is authorized and empowered to (i) implement the terms of this Confirmation Order; (ii)

consummate the Settlement Agreement; and (iii) effectuate the closing of title to the Property by, without limitation, paying and satisfying from the proceeds of the Sale, once the funds have cleared, and any and all closing costs relating to the Sale, including payment of all distributions contemplated under the Plan and Settlement Agreement.

9. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to implement and effectuate the provisions of the Plan, the Settlement Agreement, the Debtor Injunction, and/or this Confirmation Order, and to resolve any issues or disputes arising in connection therewith.

10. **Binding Nature of Plan.** The Plan shall be binding upon the Debtor and all creditors of the Debtor, whether or not the claim of such creditor is impaired under the Plan, and whether or not such creditor has accepted the Plan. The Plan shall also be binding upon Miller and Sprei, 45 John Lofts LLC, and upon all insiders and equity interests of the Debtor and 45 John Lofts LLC.

11. **Reference to Plan Provisions.** The failure to specifically include or refer to any particular article, section, or provision of the Plan or any related document in this Confirmation Order, shall not diminish or impair the effectiveness of such article, section, or provision, it being the intent of the Court that the Plan and any related documents be confirmed and approved in their entirety.

12. **Post-Confirmation Reports and Fees.** The Debtor shall be responsible to pay all fees owed to the U.S. Trustee under 28 U.S.C. §1930, together with any applicable interest thereon, until a final decree is entered in this case. The Debtor shall file post-confirmation reports and move to close the bankruptcy upon substantial consummation of the Plan.

13. **Waiver of the Stay.** The stays provided in Rules 3020(e), 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure, or any applicable provisions of the Local Rules, are hereby waived, and the effectiveness of this Order or of the consummation of the Sale shall not be stayed unless a separate stay order is entered by this Court or by an appellate court.

14. **Modification of the Dong Injunction.** The Dong Injunction (as such term is defined in the Settlement Agreement is hereby modified and vacated to permit the implementation and consummation of the Dong Settlement (as such term is defined in the Settlement Agreement) among the parties to the Dong Settlement.

Dated: New York, New York
December 22, 2015

/s/ Sean H. Lane
United States Bankruptcy Judge