

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
(Eastern Division)

In re:  
YAKH LLC,  
  
Debtor.

Chapter 11  
Case No. 16-12304-FJB

Small Business Case under Chapter 11

**DISCLOSURE STATEMENT WITH RESPECT TO  
CHAPTER 11 TRUSTEE'S  
PLAN OF REORGANIZATION OF YAKH LLC**

Dated: April 11, 2017

YAKH LLC

By: /s/John J. Aquino  
John J. Aquino, Chapter 11 trustee

## I. INTRODUCTION

John J. Aquino (the “Trustee” or the “Plan Proponent”) , the duly appointed Chapter 11 trustee of YAKH LLC (the “Debtor”) hereby submits this disclosure statement (the “Disclosure Statement”) in the Debtor’s small business Chapter 11 case. This Disclosure Statement contains information about the Debtor and describes the *Chapter 11 Trustee’s Plan Of Reorganization of YAKH LLC* (the “Plan”) filed by the Trustee on April 11, 2017. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A.

**YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THE PLAN AND THIS DISCLOSURE STATEMENT CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.**

The proposed distributions under the Plan are discussed at pages 7-8 of this Disclosure Statement.

### Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why the Trustee believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

### A. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

#### 1. *Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on \_\_\_\_\_, at \_\_\_\_\_, in Courtroom 3, 12<sup>th</sup> Floor, United States Bankruptcy Court, John W. McCormack Post Office & Courthouse, 5 Post Office Square, Boston, MA 02109.

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to John J. Aquino, Chapter 11 trustee, 240 Lewis Wharf, Boston, MA 02110. See section IV.A. below for a discussion of voting eligibility requirements.

Your ballot must be received by \_\_\_\_\_, 2017 or it will not be counted.

3. *Deadline For Objecting to the Adequacy of Disclosure and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon John J. Aquino, Chapter 11 trustee, 240 Lewis Wharf, Boston, MA 02110 no later than \_\_\_\_\_, 2017.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact John J. Aquino, Chapter 11 trustee by mail at 240 Lewis Wharf, Boston, MA 02110; by email at [jj@andersonaquino.com](mailto:jj@andersonaquino.com) or by telephone at (617) 723-3600.

**B. Disclaimer**

*The Court's approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until \_\_\_\_\_, 2017.*

**II. BACKGROUND**

**A. Description and History of the Debtor's Business**

The Debtor was formed in September, 2012 as a Massachusetts limited liability company. Since its inception, the Debtor has been in the business of owning and operating the commercial property located at 144 Broadway, Revere, Massachusetts (the "Property"). The Property consists of two contiguous lots, containing a total of 7,980 square feet. The first lot, containing 5,150 square feet, is improved with a two story steel framed building. The building consists of 5,606 square feet of finished space. The first floor is occupied by Revere Karate Academy, a martial arts and self-defense instruction and training facility. The second floor is occupied by Smile Dental, P.C. ("Smile Dental"), which provides general as well as cosmetic dental services. Each tenant pays \$2,800 per month under tenancy at will agreements. The second lot, consisting of 2,830 square feet, contains eight parking spaces for use by the aforesaid tenants and their visitors.

**B. Insiders of the Debtor**

As of the Petition Date, the sole member of the Debtor was Vladislav Yanovsky. Mr. Yanovsky is also an officer of Dental Smile, the second floor tenant.

The Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code on June 15, 2016 (the “Petition Date”). Mr. Yanovsky states that he has not received any compensation from the Debtor during the two years prior to the Petition Date nor at any time following the Petition Date.

### **C. Management of the Debtor Before and During the Bankruptcy**

During the two years prior to the Petition Date, the officers, directors, managers or other persons in control of the Debtor (collectively the “Managers”) were Leonid Y. Karin and Vladislav Yanovsky.

From the Petition Date until September 13, 2016, Mr. Yanovsky was the sole Manager of the Debtor. The Trustee assumed the responsibilities of managing the Debtor’s affairs upon his appointment as Chapter 11 trustee on September 13, 2016.

After the effective date of the order confirming the Plan, the sole Manager of the Debtor will be Vladislav Yanovsky (the “Post- Confirmation Manager”).

### **D. Events Leading to Chapter 11 Filing**

The Debtor purchased the Property on or about September 21, 2012 for \$600,000 from Michael Lenn (“Lenn”). The purchase was financed by a loan from BankGloucester (the “Bank”) to the Debtor and Leonid Y. Kharin, as co-borrowers, in the amount of \$450,000 (the “BankGloucester Loan”). The BankGloucester Loan was secured by a first priority mortgage (the “Mortgage”) as well as an Assignment of Leases and Rents by the Debtor.

At the time of its formation, the managers of the Debtor were Dr. Kharin and Mr. Yanovsky. On or about September 21, 2012, Yanovsky resigned as manager, leaving Dr. Kharin as sole manager. At the time of the BankGloucester financing, Dr. Kharin held a 99% beneficial interest in the Debtor; Mr. Yanovsky held the remaining 1%. Dr. Kharin was also an officer of Smile Dental and worked full-time as a dentist at the 144 Broadway location.

In late 2013 or early 2014, a dispute arose between Dr. Kharin and Yanovsky. Dr. Kharin resigned as an officer and discontinued providing dental services through Smile Dental. However, Dr. Kharin continued to assert that he held a 99% interest in the Debtor. Mr. Yanovsky disputed Dr. Kharin’s contentions, and in fact claimed that he held 100% of the beneficial interest in the Debtor as a result of various breaches by Dr. Kharin. The parties were unable to resolve the dispute regarding ownership and control over the Debtor, leading Mr. Yanovsky to commence an action in Middlesex County Superior Court to resolve the dispute, styled *Yanovsky and YAKH LLC v Kharin*, Civil Action No. 15-0082CV (the “State Court Action”).

On October 8, 2015, Dr. Kharin filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, Case No. 15-13913-MSH. In his bankruptcy schedules, Dr. Kharin listed the membership interest in the Debtor as an asset, although he noted that the ownership claim was disputed. On December 2, 2015, the Chapter 7 trustee in Dr. Kharin’s case entered into a stipulation with Yanovsky pursuant to which the Trustee relinquished any beneficial interest he may have had in the Debtor in exchange for payment to the estate of \$10,000. By Order dated December 14, 2015, the Court approved the stipulation between Dr. Kharin’s trustee and Mr.

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Yanovsky.

As a result of the disruption and costs associated with Dr. Kharin's withdrawal from the dental practice, the prosecution of the State Court Action and Dr. Kharin's bankruptcy filing, the Debtor fell into arrears on the BankGloucester Note and the Bank commenced a foreclosure action. On or about January 11, 2016, Yanovsky and BankGloucester entered into a forbearance agreement to allow the Debtor approximately 60 days to obtain replacement financing. The Forbearance Agreement was extended to April 15, 2016, however, the Debtor was unable to obtain a financing commitment. Accordingly, BankGloucester scheduled a foreclosure sale for June 16, 2016. The Debtor filed for Chapter 11 on June 15, 2016.

#### **E. Significant Events During the Bankruptcy Case**

On June 17, 2016, two days after the Petition Date, the United States Trustee filed a motion to dismiss the Debtor's Chapter 11 case due, in part, to the Debtor's failure to retain counsel. Prior to the hearing on the US Trustee's motion to dismiss, the Court entered an Order dismissing the Debtor's case due to its failure to file required documents. On August 3, 2016, the Court vacated its dismissal order and reinstated the Debtor's case.

On August 18, 2016, the US Trustee filed a motion to convert the Debtor's case to Chapter 7, or to appoint a Chapter 11 trustee due, among other things, to the Debtor's failure to open debtor-in-possession account or to pay post-petition real estate taxes. On September 12, 2016, the Court entered an Order requiring the appointment of a Chapter 11 trustee. Thereafter, the Trustee was appointed Chapter 11 trustee by the US Trustee.

Since his appointment, the Trustee has worked to stabilize the Debtor's operations and to determine whether a plan of reorganization was feasible. The Trustee obtained an independent appraisal of the Property, a copy of which is attached hereto as Exhibit B. The Trustee also collected rents from the tenants at the Property. Since his appointment, the Trustee has collected \$49,522.14 in rents and other estate funds. With the consent of BankGloucester, the Trustee used approximately \$13,252.73 to pay all outstanding post-petition real estate taxes.

The Trustee determined that the Debtor's current cash flow is sufficient to allow it to meet current obligations as they come due, however, the cash flow is insufficient to cure the pre-petition tax arrearages, which continue to accrue interest at a rate of 16%, or to cure the arrearages on the BankGloucester Note. Accordingly, the Trustee has spent considerable time negotiating with Mr. Yanovsky regarding an infusion of cash necessary to confirm a plan of reorganization. Mr. Yanovsky agreed to inject \$150,000, the source of which would be the proceeds of a pending sale of property in Everett, Massachusetts. The Trustee monitored the sale process and confirmed receipt by Mr. Yanovsky of net sales proceeds in excess of the capital contribution commitment. As a result, the Trustee is able to file the Plan.

#### **F. Projected Recovery of Avoidable Transfers**

The Trustee does not believe that it will be necessary to pursue potential preference, fraudulent conveyance, or other avoidance actions.

#### **G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Trustee reserves the right to object to claims. Therefore, even if your claim is allowed

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for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

**H. Current and Historical Financial Conditions**

The Trustee obtained a comparative market analysis and valuation of the Property from a commercial specialist at the Revere, Massachusetts office of Century 21. The appraisal is attached hereto as Exhibit B.

The Debtor did not maintain financial statements prior to the Petition Date. The most recent post-petition operating report filed by the Trustee is attached hereto as Exhibit C.

**III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

**B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date	All paid in the ordinary course.	Paid in full on the effective date of the Plan, or according to terms of obligation if later

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Professional Fees, as approved by the Court.	\$12,500	Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Chapter 7 Trustee fees and expenses	\$8,000	Paid in full on the effective date of the Plan
Other administrative expenses	None.	Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees	\$500	Paid in full on the effective date of the Plan
<b>TOTAL</b>	<b>\$21,000</b>	

*2. Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

*The Trustee believes that he is entitled to treat the pre-petition secured tax claims of the City of Revere as priority tax claims for purposes of payment. However, the Trustee has elected to treat such claims as secured claims to be paid in full on the Effective Date of the Plan. Other than the claims of the City of Revere, the Trustee does not believe that there are any priority tax claims in this case.*

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

*3. Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following is a list of all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

*Class 1 – Claim of BankGloucester*

The claim of BankGloucester is based upon a Commercial Promissory Note dated September 21, 2012 (the "Note") in the original principal amount of \$450,000. Upon information and belief, the Note is in arrears as of December 21, 2015. According to BankGloucester, as of April 1, 2017, the outstanding balance of the loan was \$497,541.82, which includes interest, fees and expenses. The obligations to BankGloucester are secured by a mortgage on the property located at 144 Broadway, Revere, Massachusetts (the "Property") as well as by an Assignment of Leases and Rents.

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BankGloucester states that the amount required to bring the Note current as of April 1, 2017 was \$75,982.95. The arrearages consist of unpaid (i) interest in the amount of \$31,847.65; (ii) principal reduction payments in the amount of \$8,868.90; (iii) late fees in the amount of \$1,869.00; (iv) legal fees in the amount of \$28,068.50; (v) appraisal and insurance charges in the amount of \$2,061.00; and (vi) auction and advertising fees and charges in the amount of \$3,268.00. The Trustee anticipates that BankGloucester will assess additional interest and principal reduction charges that may accrue between April 1, 2017 and the Effective Date.

On the Effective Date, the Trustee will make a payment to BankGloucester in the amount necessary to bring the BankGloucester Note current. In the event the Trustee and BankGloucester are unable to agree on the cure amount, the amount will be determined by the Bankruptcy Court. The maturity date of the Note shall remain unchanged. From and after the Effective Date, the interest rate of the Allowed Class 1 Secured Claim shall be calculated at the interest rates specified in the Note. The monthly principal and interest payment due under the Note shall be \$2,669.93 through the fifth anniversary of the Note, at which point it shall be reset in accordance with the terms of the Note.

Except as modified herein, the holder of the Allowed Class 1 Secured Claim shall retain all of its rights and obligations under the loan documents. Pending payment in full of its Allowed Class 1 Secured Claim pursuant to this Plan, the holder of the Allowed Class 1 Secured Claim shall retain its liens on the collateral securing such Claim. Upon payment in full of such Allowed Class 1 Secured Claim, such Claim shall be deemed forever discharged and released.

*Based upon the foregoing treatment, the Trustee believes that the Claim of BankGloucester is unimpaired.*

Class 2 – Tax Claim of City of Revere, Massachusetts

The claim of the City of Revere (“Revere”) is based upon accrued and unpaid pre-petition real estate taxes and water and sewer charges. Under applicable law, the tax obligations constitute a lien on the Property. The amount of Revere’s secured claim is approximately \$80,782.27 (calculated through May 31, 2017). On the Effective Date, the Debtor shall pay the City of Revere the entire amount of its unpaid pre-petition tax claim, in full in satisfaction of its Class 2 claim.

*Based upon the foregoing treatment, the Trustee believes that the Claim of the City of Revere is unimpaired.*

4. Classes of Priority Unsecured Claims

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

*The Trustee does not believe that there are any priority unsecured claims in this case.*



5. Class of General Unsecured Claims

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

*The Trustee does not believe that there are any priority unsecured claims in this case.*

6. Class of Equity Interest Holders

Equity interest holders are parties who hold an ownership interest (*i.e.*, equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company (“LLC”), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

As stated above, the Debtor is a limited liability company. The sole member of the Debtor is Vladislav Yanovsky. Upon the Effective Date of the Plan, 100% of the beneficial interests in the Debtor will vest in Mr. Yanovsky.

*Class 3 is unimpaired.*

**C. Means of Implementing the Plan**

1. *Source of Payments*

Payments and distributions under the Plan will be funded by (i) cash on hand in the amount of approximately \$35,000; and (ii) a capital contribution in the amount of \$150,000 from Vladislav Yanovsky, the sole member of the Debtor.

2. *Post-confirmation Management*

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or no)?	Position	Compensation
Vladislav Yanovsky	Sole member of YAKH; officer of Smile Dental, P.C.	Yes	Manager	None

**D. Risk Factors**

The proposed Plan has the following risks:

The Trustee believes that the loss or interruption in receipt of rental income is the primary risk factor that might affect the Debtor’s ability to meet its post-confirmation obligations. That risk is mitigated by the fact that both tenants are long-term occupants of the Property. The Karate Academy has been in operation since 1980. It is a mainstay in the Revere community, as confirmed by the Trustee’s real estate appraiser (a life-long Revere resident).

In addition, the Trustee believes that the commitment made by Mr. Yanovsky to inject \$150,000 in new capital will serve to lessen the risk of non-performance by the Debtor, both from a financial as well as a psychological standpoint.

#### **E. Executory Contracts and Unexpired Leases**

Section 6.1 of the Plan lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed in Section 6.1 will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

***The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is \_\_\_\_\_.*** Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.

#### **F. Tax Consequences of Plan**

The Debtor is a limited liability company. As a result, the Debtor itself will not incur tax liability as a result of any of the transactions resulting from the Plan. Instead, as a pass-through entity, all tax consequences flow to the members. As all creditors will be paid in full under the Plan, the Trustee believes that tax consequences will be negligible, if any.

***Notwithstanding the foregoing, Creditors and Equity Interest Holders Concerned with How the Plan May Affect Their Tax Liability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.***

### **IV. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

### A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that all classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.

#### 1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case was March 31, 2017.***

#### 2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

#### 3. *Who is **Not** Entitled to Vote*

The holders of the following five types of claims and equity interests are *not* entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and

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- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

***Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.***

#### 4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

### **B. Votes Necessary to Confirm the Plan**

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by a cram-down on non-accepting classes, as discussed later in Section B.2.

#### 1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

#### 2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not discriminate unfairly, and is fair and equitable toward each impaired class that has not voted to accept the Plan.

***You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.***

### **C. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit D.

#### **D. Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

##### *1. Ability to Initially Fund Plan*

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit E.

##### *2. Ability to Make Future Plan Payments And Operate Without Further Reorganization*

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit G.

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post-confirmation taxes, of \$10,900.24. The final Plan payment is expected to be paid on the Effective Date.

***You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.***

#### **V. EFFECT OF CONFIRMATION OF PLAN**

##### **A. DISCHARGE OF DEBTOR**

On the Effective Date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the Effective Date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007(c) of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(6)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.

##### **A. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan.

The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated *and* (2) the Court authorizes the proposed modifications after notice and a hearing.

**B. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

Respectfully Submitted,

/s/ John J. Aquino

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John J. Aquino, Chapter 11 trustee