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

In re:

YESHIVAH OHEL MOSHE,  
*a/k/a* YESHIVA OHEL MOSHE,

Debtor.

Chapter 11

Case No. 16-43681 (ESS)

**DISCLOSURE STATEMENT FOR CHAPTER 11 PLAN OF  
REORGANIZATION PROPOSED BY NY FIVE STAR EQUITY CORP.**

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.**

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## INTRODUCTION

NY Five Star Equity Corp. (“Proponent”), the principal secured creditor of Yeshiva Ohel Moshe (the “Debtor”), submits this disclosure statement (the “Disclosure Statement”) in connection with the solicitation of acceptances of the *Chapter 11 Plan of Reorganization Proposed by NY Five Star Equity Corp.* (the “Plan”), dated April 21, 2017, a copy of which is attached hereto as Exhibit A. Unless otherwise defined, all capitalized terms have the meanings ascribed to them in the Plan.

The purpose of this Disclosure Statement is to provide holders of Claims entitled to vote to accept or reject the Plan with adequate information about (a) the Debtor’s history and business, (b) the Debtor’s Chapter 11 Case, (c) the Plan, (d) the rights of holders of Claims under the Plan, and (e) other information necessary to enable holders of Claims to make an informed judgment as to whether to vote to accept the Plan.

By order dated \_\_\_\_\_, 2017, the Bankruptcy Court approved this Disclosure Statement as containing “adequate information” pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”).

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED ON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN. NOTHING STATED HEREIN SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE PLAN ON THE DEBTOR OR HOLDERS OF CLAIMS. 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 BE REFLECTIVE OF ACTUAL OUTCOMES.

ALL CREDITORS ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. THIS DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN BY EACH HOLDER OF A CLAIM ENTITLED TO VOTE THEREON, BUT IS INTENDED TO AID AND SUPPLEMENT SUCH REVIEW. THE DESCRIPTION OF THE PLAN HEREIN IS ONLY A SUMMARY, AND HOLDERS OF CLAIMS AND OTHER PARTIES IN INTEREST ARE CAUTIONED TO REVIEW THE PLAN ITSELF TO UNDERSTAND COMPLETELY ITS PROVISIONS. IN THE EVENT ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

THE FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND THE PLAN HAS BEEN SUPPLIED BY THE DEBTOR IN ITS PRIOR FILINGS WITH THE BANKRUPTCY COURT. BASED UPON THE INFORMATION MADE AVAILABLE, PROPONENT’S COUNSEL HAS NO INFORMATION PROVING THAT THE INFORMATION DISCLOSED HEREIN IS INACCURATE. NEITHER THE PROPONENT NOR ITS COUNSEL, HOWEVER, IS ABLE TO STATE DEFINITELY THAT THERE IS

NO INACCURACY HEREIN OR THAT FUTURE EVENTS MAY NOT RENDER THE INFORMATION CONTAINED HEREIN INACCURATE. ALL CREDITORS ARE ENCOURAGED TO CONSULT WITH THEIR OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY.

**THE PLAN CONSTITUTES A VALID AND LEGALLY BINDING AGREEMENT IN ACCORDANCE WITH ITS TERMS AND CONDITIONS.** ALL EXHIBITS TO THE DISCLOSURE STATEMENT ARE INCORPORATED INTO AND ARE A PART OF THIS DISCLOSURE STATEMENT AS IF SET FORTH IN FULL HEREIN.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE LAW. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC") NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSES FOR WHICH THEY WERE PREPARED.

ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE. SUCH DISCUSSION IS INCLUDED HEREBY IN CONNECTION WITH THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN, AND EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

THIS DISCLOSURE STATEMENT AND THE PLAN REMAIN SUBJECT TO MODIFICATION AND AMENDMENT. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE ACCURATE AT ANY TIME AFTER SUCH DATE.

The Bankruptcy Court has entered an Order fixing \_\_\_\_\_, 2017, at \_\_\_\_m., at the United States Bankruptcy Court, Conrad B Duberstein Courthouse, 271-C Cadman Plaza East, Brooklyn, NY 11201, as the date, time and place for the hearing on confirmation of the Plan, and fixing \_\_\_\_\_, 2017 as the last date for the filing of any objections to confirmation of the Plan.

## BACKGROUND

On August 16, 2016, the Debtor filed a voluntary petition for relief (the “Bankruptcy Petition”) under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”).

The Debtor is a not-for-profit religious corporation that operates from a building located at 7914 Bay Parkway, Brooklyn, New York 11214 (the “Property”). The Debtor operates a synagogue with 400 to 500 congregants. In addition, the Debtor operates a school that provides general and Judaic studies to students from pre-kindergarten through eighth grade. The Debtor enrolls up to 100 students and employs approximately 20 faculty and staff.

The Debtor’s principal assets are the Property and a brokerage account containing 81,000 shares of Pfizer Inc. (the “Brokerage Account”). On its Schedules, the Debtor values its interest in the Property at approximately \$8,000,000 and the Brokerage Account at \$2,600,000.

According to the Amended Disclosure Statement, the Debtor stated that it earns income from donations, tuition and rents from another yeshiva that leases a portion of the Property. Such lease is not reflected on the Debtor’s Schedules.

According to the Schedules, Proponent is the Debtor’s only secured creditor. The Debtor scheduled no priority unsecured claims. The Debtor’s Schedule E/F reflects unsecured claims in the amount of \$980,658. Proponent holds a first position lien on the Property. As of March 31, 2017, Proponent holds a claim secured by the Property in the approximate amount of \$6,405,072.55 (the “Five Star Claim”). The Five Star Claim includes interest accrued at the default rate in accordance with the Loan Documents as well as attorneys’ fees and costs.

The Debtor’s bankruptcy filing was prompted by the imminent foreclosure of the Property by Proponent, a secured creditor with a first position lien on the Property. In early 2007, the Debtor applied for a mortgage loan from Proponent’s predecessor, The Park Avenue Bank (“PAB”). PAB approved the Debtor’s loan application, and on February 21, 2007, PAB issued a commitment letter that set forth the basic terms of the loan (the “Commitment Letter”). Pursuant to the Commitment Letter, PAB agreed to provide a ten-year \$1,750,000 loan (the “Loan”) to the Debtor, the Loan to be secured by, among other things, the Debtor’s interest in the Property.

The Commitment Letter indicated that the Loan would bear interest at a fixed rate of 8.5% per annum for the first five years, with a variable rate for the remaining five years, and that interest would accrue at the default rate of 24% per annum upon acceleration or maturity. Subsequently, the parties agreed to increase the principal amount of the Loan to \$2,000,000, with \$300,000 of the \$2,000,000 to be held back in escrow.

Thereafter, on or about May 8, 2007, the Debtor filed a petition in the Supreme Court of the State of New York, Kings County (the “Supreme Court”), seeking leave to mortgage the Property and enter into the Loan. On May 18, 2007, the Supreme Court entered an order granting the Debtor leave to mortgage the Property in accordance with the terms set forth therein. The terms of the Loan were contemporaneously approved by the New York Attorney General’s Office.

The Loan closed on May 21, 2007. The terms of the Loan were set forth in various loan documents executed by the parties (the "Loan Documents"). Consistent with the Commitment Letter, the Loan Documents provided for a default rate of interest equal to 24% per annum. In early 2009, the Debtor ceased making monthly payments when due under the Loan Documents. In response, Proponent's predecessor accelerated the Loan and commenced foreclosure proceedings to enforce its lien on the Property. The Debtor filed an answer with counterclaims and shortly thereafter, Five Star's predecessor filed a motion for summary judgment (the "Summary Judgment Motion"). The Debtor failed to file opposition papers to the Summary Judgment Motion despite having been given ample opportunity to do so.

On June 19, 2014, the Supreme Court issued an order granting the Summary Judgment Motion (the "Summary Judgment Order"). The Debtor subsequently filed a motion to vacate the Summary Judgment Order (the "Motion to Vacate"), which Proponent opposed. The Supreme Court denied the Motion to Vacate, finding that the Debtor had no excuse for its failure to file opposition papers to the Summary Judgment Motion. On July 5, 2016, the Debtor filed a notice of appeal of the Summary Judgment Order, and thereafter filed a motion to stay its enforcement (the "Motion to Stay"). The Appellate Division, Second Judicial Department denied the Motion to Stay.

Since filing the Bankruptcy Petition, the Debtor has filed several Chapter 11 Plans and Disclosure Statements. On September 1, 2016, the Debtor filed its Chapter 11 Plan (the "Debtor's Plan") and Disclosure Statement (the "Debtor's Disclosure Statement"). Thereafter, on November 3, 2016, the Debtor filed its Amended Chapter 11 Plan (the "Amended Plan") and its Amended Disclosure Statement (the "Amended Disclosure Statement").

On October 4, 2016, Proponent timely filed an objection to the Disclosure Statement (the "Disclosure Statement Objection"), wherein it objected to the Debtor's classification of Proponent's claim and the Debtor's stated intention to cure its obligation to Proponent at the non-default contract rate of interest.

On November 1, 2016, the Bankruptcy Court held a hearing to consider whether to approve the Debtor's Disclosure Statement. At the hearing, the Bankruptcy Court declined to approve the Disclosure Statement and directed the parties to confer regarding a resolution of the Disclosure Statement Objection. In addition, the Bankruptcy Court suggested that it may be appropriate for the parties to brief whether the Bankruptcy Code prohibits or permits the Debtor to reinstate its debt to Proponent by curing the existing default at the non-default interest rate.

The Debtor and Proponent submitted initial and responsive briefs on November 22, 2016 and December 20, 2016, respectively. On February 2, 2017, the Bankruptcy Court held a hearing on the Debtor's Amended Disclosure Statement. At that hearing, the Bankruptcy Court expressed doubt as to whether the Amended Disclosure Statement described a plan that could be confirmed, specifically in light of the Debtor's proposed treatment of Proponent's claim. Accordingly, the Bankruptcy Court suggested that the Debtor further amend its Amended Disclosure Statement, propose an alternative strategy for addressing Proponent's claim, and file an amended plan and disclosure statement.

On February 13, 2017, the Debtor filed the Second Amended Chapter 11 Plan and Disclosure Statement. On February 15, 2017, the Debtor filed the Third Amended Disclosure Statement. In the Third Amended Disclosure Statement, the Debtor described a plan with two alternative treatments of Proponent's claim that were made to be conditional on the outcome of a hypothetical ruling by the Bankruptcy Court on the issue of Proponent's entitlement to default rate interest under the Loan. In the event the Bankruptcy Court did not allow Debtor to apply the non-default rate of interest, the Debtor proposed to "cram down" a plan over Proponent's presumed objection.

On March 3, 2017, Proponent filed an objection to the Third Amended Disclosure Statement (the "Third Amended Disclosure Statement Objection"). In the Third Amended Disclosure Statement Objection, Proponent challenged, *inter alia*, the adequacy of the information provided in the Third Amended Disclosure Statement due to the conditional and speculative treatment of its claim. The Bankruptcy Court held a hearing on the Debtor's Third Amended Disclosure Statement on March 10, 2017, at which time the Debtor withdrew the Second Amended Chapter 11 Plan and Disclosure Statement as well as the Third Amended Disclosure Statement, choosing to restore the previously filed Amended Disclosure Statement before the Bankruptcy Court for a ruling as to its adequacy. That ruling remains pending.

The Chapter 11 Case has been pending for nearly eight months, and the Debtor has yet to file a confirmable plan. For nearly a decade, the Debtor has failed to make payments on the Loan, or taken any steps to mitigate its default. As illustrated in its monthly operating reports, the Debtor does not generate sufficient monthly income to service the deferred cash payments contemplated by the Amended Plan, and has not demonstrated an ability to make the a large balloon payment at maturity.

The Plan contemplates a sale of the Property. The proceeds of the sale of the Property and, if necessary, the proceeds of the sale of some or all of the shares of stock in the Debtor's Brokerage Account will be used to satisfy all claims asserted against the Debtor's estate, including the Five Star Claim, as well as all unsecured claims. Accordingly, no class of claims will be impaired under the Plan, and no solicitation of votes will be necessary.

PROPONENT BELIEVES THAT THE PLAN WILL ENABLE THE DEBTOR TO MAXIMIZE RECOVERIES TO ITS CREDITORS AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11. PROPONENT BELIEVES THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS.

#### **PLAN DESCRIPTION**

**THE FOLLOWING IS A SUMMARY OF THE MATTERS CONTEMPLATED TO OCCUR EITHER PURSUANT TO OR IN CONNECTION WITH THE PLAN. THIS DISCLOSURE STATEMENT ONLY HIGHLIGHTS THE SUBSTANTIVE PROVISIONS OF THE PLAN AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE READING OF THE PLAN. STATEMENTS REGARDING PROJECTED AMOUNTS OF CLAIMS OR DISTRIBUTIONS ARE ESTIMATES BY THE PLAN PROPONENT BASED ON CURRENT INFORMATION AND ARE NOT A REPRESENTATION THAT THESE**

**AMOUNTS ULTIMATELY WILL BE CORRECT. THIS DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN ANNEXED AS EXHIBIT “A” HERETO.**

**CLASSIFICATION OF CLAIMS AND INTERESTS**

General Rules of Classification. Generally, a Claim is classified in a particular Class for voting and distribution purposes only to the extent the Claim qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the Claim qualifies within the description of such other Class or Classes. Unless otherwise provided, to the extent a Claim qualifies for inclusion in a more specifically defined Class and a more generally defined Class, it shall be included in the more specifically defined Class.

Administrative Claims, Priority Tax Claims, and Professional Fee Claims. Administrative Claims, Priority Tax Claims, and Professional Fee Claims have not been classified and are excluded from the Classes set forth in Article III of the Plan in accordance with section 1123(a)(1) of the Bankruptcy Code. The treatment to be provided for Allowed Claims pursuant to this Plan and the consideration provided for herein shall be in full and final satisfaction, settlement, release, and discharge of such respective Claims.

Bar Date for Administrative Claims. Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims (except for Professional Fee Claims) must be filed and served on counsel for the Debtor and Five Star by no later than the date of the Confirmation Hearing (the “Administrative Claims Bar Date”). Any Person that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such request shall be forever barred, estopped, and enjoined from asserting such Claim or participating in distributions under the Plan on account thereof. Objections to requests for payment of Administrative Claims (except for Professional Fee Claims and Administrative Claims incurred in the ordinary course of the Debtor’s business) must be filed and served on counsel for the Debtor, Five Star, and the party requesting payment of an Administrative Claim within thirty (30) days of the date such request for payment has been filed.

Bar Date for Professional Fee Claims. Unless otherwise ordered by the Bankruptcy Court, and subject to notice and a hearing under section 330 of the Bankruptcy Code, requests for payment of Professional Fee Claims incurred through the Effective Date must be filed and served on (i) counsel to the Debtor, (ii) counsel to the Proponent, (iii) the United States Trustee, and (iv) any other Creditor or party-in-interest for which service is necessary or appropriate by no later than thirty (30) days after the Confirmation Date (the “Professional Fee Claims Bar Date”). The day prior to the Confirmation Date, each Professional shall provide counsel for the Debtor and counsel to the Proponent with a written estimate of the total amount of compensation and expenses for which such Professional expects to seek final compensation and reimbursement pursuant to section 330 of the Bankruptcy Code. Such estimates shall include estimated sums for the preparation and prosecution of any application for final compensation.

Classification of Claims. Unless otherwise ordered by the Bankruptcy Court, Classes 1, 2, 3 and 4 are all unimpaired under the Plan. Accordingly, holders of Allowed Claims in such Classes are deemed to accept the Plan and are not entitled to vote. There are no impaired classes under



this Plan. As such, Proponent is not required to solicit votes to confirm or reject this Plan. For purposes of the Plan, those Persons holding Claims against the Debtor are grouped in accordance with section 1122 of the Bankruptcy Code as follows:

- (a) Class 1 shall consist of all Priority Claims. Claims total approximately \$0.
- (b) Class 2 shall consist solely of the Allowed Secured Claim of NY Five Star Equity Corp. as holder of the mortgage on the Property. Claim totals approximately \$6,405,072.55 as of March 31, 2017.
- (c) Class 3 shall consist of all Claims held by the City of New York on account of any Liens on the Property. Claims total approximately \$0.
- (d) Class 4 shall consist of all General Unsecured Claims. According to the Debtor's schedules, General Unsecured Claims total approximately \$980,658, which amount is largely consistent with holders of general unsecured claims that have timely filed proofs of claim.

#### **TREATMENT OF UNCLASSIFIED CLAIMS**

Administrative Claims. Except to the extent the holder of an Allowed Administrative Claim agrees otherwise, each holder of an Allowed Administrative Claim shall be paid in respect of such Allowed Administrative Claim (a) the full amount thereof in Cash, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Administrative Claim, or upon such other terms as may be agreed upon by the holder of such Allowed Administrative Claim, or (b) such lesser amount as the holder of such Allowed Administrative Claim and the Debtor might otherwise agree; provided, however, that all Administrative Claims incurred in the ordinary course of the Debtor's business during the Chapter 11 Case shall be paid in the ordinary course of the Debtor's business. Notwithstanding the foregoing, the Statutory Fees shall be paid in Cash as soon as practicable after the Effective Date.

Priority Tax Claims. Proponent is not aware of any unpaid Priority Tax Claims. Except as provided herein, each Holder of an Allowed Priority Tax Claim, if any, shall be paid in respect of such Allowed Priority Tax Claim (a) the full amount thereof, without post-petition interest or penalty, in Cash, as soon as practicable after the later of (i) the Effective Date or (ii) the date on which the Priority Tax Claim becomes an Allowed Priority Tax Claim; or (b) upon such other terms as may be agreed upon by the holder of such Allowed Priority Tax Claim and the Debtor.

Professional Fee Claims. Each holder of an Allowed Professional Fee Claim shall receive 100% of the unpaid amount of such Allowed Professional Fee Claim in Cash after such Professional Fee Claim becomes an Allowed Professional Fee Claim.

Other Unclassified Claims. Allowed unclassified Claims, if any, shall be paid in Cash in full as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Claim.

## TREATMENT OF CLASSIFIED CLAIMS

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

Class 1 – Priority Claims. Class 1 shall consist of Allowed Priority Claims under sections 507(a)(2),(3),(4),(5),(6),(7) and (8) of the Bankruptcy Code. Holders of Class 1 Claims shall be paid in full in Cash out of the Property Sale Proceeds as soon as practicable after the later of (a) the Effective Date and (b) the date on which such Claim becomes an Allowed Priority Claim, or upon such other terms as may be agreed upon by the holder of such Allowed Priority Claim and the Debtor, or such lesser amount as the holder of such Allowed Priority Claim and the Debtor might otherwise agree. Class 1 is unimpaired and, therefore, holders of Claims in Class 1 are not entitled to vote and are conclusively presumed to accept this Plan.

Class 2 – Secured Claim of NY Five Star Equity Corp. Class 2 shall consist of the Allowed Secured Claim of Five Star. The holder of the Class 2 Claim shall be paid in full in Cash from the Property Sale Proceeds as soon as practicable after the closing of the sale of the Property. Interest on the Class 2 Claim will be allowed in accordance with section 506(b) of the Bankruptcy Code from the Petition Date to the Effective Date at the annual rate of 24% in accordance with the terms and conditions of the Loan Documents. In addition, all of Five Star's legal fees, costs, and charges through the Effective Date that the Debtor is required to reimburse pursuant to the Loan Documents shall also be allowed to Five Star as a part of its Allowed Secured Claim in accordance with section 506(b) of the Bankruptcy Code. Class 2 is unimpaired and, therefore, Five Star is not entitled to vote and is conclusively presumed to accept this Plan.

Class 3 – New York City Lien Claims. Class 3 shall consist of the Allowed Secured Claims of the City of New York on account of Liens against the Property. Holders of Class 3 Claims shall be paid in full in Cash from the Property Sale Proceeds as soon as practicable after the closing of the sale of the Property. Interest on the Class 3 Claims will be allowed in accordance with section 506(b) of the Bankruptcy Code from the Petition Date to the Effective Date at the annual rate charged by the holder of the Allowed Class 3 Claims. Holders of New York City Lien Claims shall be paid the Allowed Amount in Cash on the Effective Date, plus interest at the applicable statutory rate as it accrues from the Petition Date through the Effective Date. Class 3 is unimpaired and, therefore, holders of Claims in Class 3 are not entitled to vote and are conclusively presumed to accept this Plan.

Class 4 – General Unsecured Claims. Class 4 shall consist of Allowed General Unsecured Claims. Holders of Allowed Class 4 Claims shall be paid the Allowed Amount in full in Cash from the Property Sale Proceeds that remain after payment to holders of Allowed Administrative Claims and the Allowed Claims in Classes 1, 2, and 3 in accordance with the terms of this Plan and as soon as practicable after the closing of the sale of the Property. In the event remaining

Property Sale Proceeds are insufficient to satisfy the Allowed General Unsecured Claims in full, such Allowed General Unsecured Claims shall be paid in full in Cash from the Stock Sale Proceeds. Class 4 is unimpaired and, therefore, the holders of Claims in Class 4 are not entitled to vote and are conclusively presumed to accept this Plan.

Reservation of Rights. Nothing contained herein shall be deemed to limit the right of any party to object to any Administrative Claims, Priority Claims, General Unsecured Claims, and Secured Claims, provided, however, that the Five Star Allowed Claim shall not be subject to any objection, shall be allowed for all purposes, and the Loan Documents are hereby ratified and the Liens arising from the Loan Documents shall remain in full force and effect. Nothing contained herein shall affect the Debtor's rights and defenses both legal and equitable, with respect to all members of any Unimpaired Classes including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments asserted against members of any Class that is unimpaired, subject to the releases granted herein.

### **PLAN IMPLEMENTATION**

Plan Funding. Payments under the Plan will be paid from the Property Sale Proceeds following a sale of the Property that shall be implemented pursuant to the Bidding and Auction Procedures annexed as Exhibit "A" to the Plan. Prior to or on the Effective Date, the Property shall be sold to a Purchaser free and clear of all Liens, Claims, and encumbrances, with any such Liens, Claims, and encumbrances to attach to the Property Sale Proceeds, and disbursed in accordance with the provisions of this Plan. Proponent shall have the right, but not the obligation, to provide for an assignment of its mortgage and an assumption by the Purchaser in connection with the sale of the Property under the Plan. In the event the Property Sale Proceeds are not sufficient to fund the Plan, additional funding for the Plan will be paid from the Stock Sale Proceeds following a sale of some or all of the shares of stock in the Debtor's Brokerage Account.

Sale Approval. As part of the sale under the Plan, and in order to ensure consummation of the Plan, Proponent and/or the Debtor shall demonstrate and request that the Court find and conclude with respect to the sale of the Property that: (i) the terms and conditions of the sale are fair and reasonable, (ii) the sale of the Property pursuant to the Plan is non-collusive, fair, and reasonable and was conducted openly and in good faith, (iii) the transfer of the Property to the Purchaser represents an arm's-length transaction and was negotiated in good faith between the parties, (iv) the Purchaser, as transferee of the Property, is a good faith purchaser, (v) the sale of the Property to the Purchaser was not controlled by an agreement among potential purchasers, and (vi) no cause of action exists against the Purchaser or with respect to the sale of the Property and that any Claims as against the Purchaser are released, waived, and discharged. Further, if necessary to fund the Distributions under the Plan, the Bankruptcy Court's entry of the Confirmation Order shall constitute approval of the sale and transfer of the Debtor's right, title, and interest in and to the securities held in the Brokerage Account on the Effective Date (or as soon thereafter as is practicable).

Stamp Tax. Pursuant to section 1146(c) of the Bankruptcy Code, (i) the issuance, transfer or exchange of any securities, instruments or documents, (ii) the creation of any other lien, mortgage, deed of trust or other security interest, (iii) the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, pursuant to,

in furtherance of, or in connection with, the Plan, including, without limitation, any deeds, bills of sale or assignments executed in connection with the purchase of Property and any other transaction contemplated under the Plan or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated in this Plan, and (iv) the issuance, renewal, modification or securing of indebtedness by such means, and the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, this Plan, including, without limitation, the Confirmation Order, shall not be subject any applicable document recording tax, stamp tax, conveyance fee or other similar tax, mortgage tax, real estate transfer tax, or other similar tax or governmental assessment, including without limitation the New York City Real Property Transfer Tax and the New York State Documentary Tax.

Execution of Documents. Pursuant to section 1142 of the Bankruptcy Code, upon the Effective Date, the Disbursing Agent, the Debtor and any necessary party thereto, are directed to execute, release, and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of the Plan.

Recording of Documents Pursuant to sections 105, 1141(c) and 1142(b) of the Bankruptcy Code, each and every federal, state and local governmental agency or department, shall be directed to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by the Plan.

Property Turnover at Closing. The Debtor shall turnover possession of the Property sold at closing together with all files and records pertaining to construction documents, Department of Buildings building permits, violations, architectural plans, leases, repair invoices, and tenant correspondence. If the Debtor fails to turnover possession, Proponent shall be entitled to submit a writ of assistance for Bankruptcy Court approval to obtain the assistance of the United States Marshal to remove the Debtor from the Property and effectuate turnover of the Property and all related files and records pertaining to construction documents, Department of Buildings building permits, violations, architectural plans, leases, repair invoices, and tenant correspondence.

Property Marketing. The Debtor shall cooperate with any broker, auctioneer, and/or real estate professional to permit reasonable access to the Property for marketing purposes.

Corporate Action. Upon the entry of the Confirmation Order, all matters provided under the Plan involving the corporate structure of the Debtor shall be deemed authorized and approved without any requirement of further action by the Debtor, the Debtor's members, or the Debtor's boards of directors, managers, and/or managing members.

Manner of Payment. Any payment of Cash made under the Plan may be made either by check drawn on a domestic bank, by wire transfer, or by automated clearing house transfer from a domestic bank, at the option of the Reorganized Debtor.

Vesting of Property. On the Effective Date, title to and possession of any and all property of the estate, real or personal, shall be re-vested in the Reorganized Debtor free and clear of all

liens, claims, interests and encumbrances of any kind, subject to and except as otherwise provided in this Plan and the Confirmation Order.

Retention of Claims. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, the Reorganized Debtor shall retain any and all claims of the Debtor and its Estate including, without limitation, Causes of Action.

### **INJUNCTION**

Exculpation. Proponent, its agents (acting in such capacity), and any professional person employed by Proponent shall not incur any liability to any Person and/or Entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, confirmation, or consummation of this Plan, the Disclosure Statement, or any other contract, instrument, release, or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the Chapter 11 Case or this Plan; provided, however, that the foregoing exculpation from liability will not apply to actions or omissions taken in bad faith or as a result of gross negligence or willful misconduct. Nothing in this Plan shall limit the liability of any professionals to their respective clients for malpractice pursuant to Rule 1.8(h) of the New York Rules of Professional Conduct.

Confirmation Injunction. Other than such liabilities and obligations otherwise assumed or provided hereunder, and as set forth in the Confirmation Order (a) the rights afforded herein and the treatment of all Claims and Equity Interests herein, shall be in exchange for and in complete satisfaction and release of, all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, against the Debtor or any of its Assets and properties, (b) on the Effective Date, all such Claims against the Debtor shall be satisfied and released in full, and (c) all Persons shall be precluded from asserting and shall be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) against the Debtor, its Assets or property, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

Discharge. On the Effective Date, except as otherwise expressly provided in this Plan or the Confirmation Order, the Confirmation of this Plan shall as of the Effective Date: (i) discharge the Debtor, the Reorganized Debtor and any of its Assets from all Claims, demands, liabilities and other debts that arose on or before the Effective Date, including, without limitation, all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (A) a proof of claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (B) a Claim based on such debt is Allowed pursuant to section 502 of the Bankruptcy Code, (C) a Claim based on such debt is or has been disallowed by order of the Bankruptcy Court, or (D) the holder of a Claim based on such debt has accepted this Plan; and (ii) preclude all Entities from asserting against the Debtor, the Reorganized Debtor or any of its Assets any other or further Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, all pursuant to sections 524 and 1141 of the Bankruptcy Code. The discharge provided in this provision shall void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged Claim. The Debtor shall be discharged from any

Claims and agreements related to debts that arose on or before the Effective Date and such debts, Claims and agreements are deemed restructured and new as set forth in the Plan.

### **DISTRIBUTIONS UNDER THE PLAN**

**Disbursing Agent.** Effective as of the Confirmation Date, the Disbursing Agent shall have the power to: (a) take all steps and execute all instruments and documents necessary to effectuate the Plan; (b) make distributions contemplated by the Plan; (c) employ, retain, or replace professionals to represent it with respect to its responsibilities; (d) take actions to liquidate any remaining property of the Debtor's estate in a reasonable manner; and (e) receive any Cash on account of any amounts owing to Debtor. The Disbursing Agent shall hold back all amounts that would otherwise be available for distribution to the Debtor under the Plan for, among other things, a reserve for taxes due under the Plan and arising from the sale of Property under the Plan. The Disbursing Agent shall serve without a bond, and shall open a bank account in the Disbursing Agent's name and shall be the sole signatory over such account as of the Confirmation Date.

**Debtor.** Effective as of the Confirmation Date, the Debtor shall have the power to: (a) take all steps and execute all instruments and documents necessary to effectuate the Plan; (b) pursue any cause of action the Debtor's estate may possess (including without limitation any avoidance action under the Bankruptcy Code), provided, however, that absent further order of the Bankruptcy Court, such actions shall be commenced within one year of the entry of the Confirmation Order; (c) object to the allowance of any Claim or fee application that has not been Allowed pursuant to a Bankruptcy Court order; and (d) make a final report and file a final account of the administration of the Debtor's estate with the Bankruptcy Court and with the United States Trustee.

**Prior to the Distribution Date.** The Confirmation Order shall empower and authorize the Disbursing Agent to take or cause to be taken all actions that are necessary to enable it to implement effectively the provisions of this Plan, including, without limitation, consummating the sale of the Property.

**Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided herein or as ordered by the Bankruptcy Court, Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Effective Date or as soon thereafter as is practicable. Any Distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable, but not more than five (5) days after the Effective Date. Any payment or Distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

**Delivery of Distributions.** Subject to Bankruptcy Rule 9010, all Distributions to any holder of an Allowed Claim shall be made at the address set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtor or its agents, unless the Debtor and Five Star have been notified in writing of a change of address, including by the filing of a proof of claim or Administrative Claim request that contains an address for a holder of a Claim that differs from the address for such holder reflected on any Schedule.

Reserves for Administrative, Priority Tax, Other Priority Claims, and Statutory Fees. On the Effective Date, or as soon as practicable thereafter, the Disbursing Agent shall establish and maintain a reserve (to the extent necessary) in an amount equal to the sum of (i) all Disputed Administrative Claims, Disputed Cure Amounts, Disputed Priority Tax Claims, and Disputed Priority Claims, if any, in an amount equal to what would be distributed to holders of Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Claims, and Disputed Cure Amounts if their Disputed Claims had been deemed Allowed Claims on the Effective Date or on the Administrative Claims Bar Date or such other amount as may be approved by the Bankruptcy Court upon motion of the Debtor or Disbursing Agent, (ii) an estimated amount for unpaid Professional Fee Claims and any other Administrative Claims that have not been filed as of the Effective Date, and (iii) an estimated amount for unpaid Statutory Fees and Statutory Fees that may become due until the entry of a Final Decree closing the Chapter 11 Case (together, the “Administrative Claim Reserve”). Any such funds shall be maintained by the Disbursing Agent in an account at an authorized bank depository in New York. With respect to such Disputed Claims, if, when, and to the extent any such Disputed Claim becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefore shall be distributed by the Disbursing Agent to the Claimant in a manner consistent with distributions to similarly situated Allowed Claims. The balance of such Cash, if any, remaining after all Professional Fee Claims, Disputed Administrative Claims, Disputed Cure Amounts, Disputed Priority Tax Claims, and Disputed Priority Claims, have been resolved and Distributions made in accordance with the Plan, shall be released and distributed promptly to the Reorganized Debtor. No payments or Distributions shall be made with respect to a Claim that is a Disputed Claim pending the resolution of the dispute by Final Order or agreement of the parties.

Reserves for Disputed General Unsecured Claims. On or prior to the Confirmation Hearing, the Disbursing Agent shall establish a reserve (to the extent necessary) in an amount equal to all Disputed General Unsecured Claims, if any (the “Disputed GUC Reserve”). For purposes of establishing a reserve for Disputed General Unsecured Claims, Cash will be set aside in an amount equal to the amount that would have been distributed to the holders of Disputed General Unsecured Claims had their Disputed General Unsecured Claims been deemed Allowed Claims on the Effective Date or in such other amount as may be approved by the Bankruptcy Court upon motion of the Debtor or the Disbursing Agent. With respect to such Disputed General Unsecured Claims, if, when, and to the extent any such Disputed General Unsecured Claims becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefor shall be distributed by the Disbursing Agent to the Claimant on the first business day following the end of the calendar month in which the Disputed General Unsecured Claims becomes an Allowed Claim (or earlier in the discretion of the Disbursing Agent) and in a manner thereafter consistent with Distributions to similarly situated Allowed Claims. The balance of such Cash, if any, remaining in the reserve from Disputed Classified Claims after all such Disputed Claims have been resolved and Distributions made in accordance with the Plan shall be transferred to the Reorganized Debtor. No payments or distributions shall be made with respect to a Claim that is a Disputed General Unsecured Claim pending the resolution of the dispute by Final Order or agreement of the parties. The Debtor or the Disbursing Agent shall have the right to seek an Order of the Bankruptcy Court, after notice and a hearing, estimating, or limiting the amount of Cash or property that must be so deposited on account of any Disputed General Unsecured Claim. The Debtor or the Disbursing Agent shall be authorized to object to the allowance of any Disputed General Unsecured Claim, and each may seek to disallow and/or expunge any Disputed General Unsecured Claim.

Objections to Claims. The Debtor shall review the proofs of claim and file objections thereto within twenty (20) days after the Effective Date, except that the Five Star Allowed Claim shall not be subject to any objection, and shall be allowed for all purposes. The Debtor may apply to the Bankruptcy Court for an extension of time to file claim objections if the circumstances warrant such extension.

Unclaimed Distributions. If any Distribution remains unclaimed for a period of one hundred and twenty (120) days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the holder of such Allowed Claim, such unclaimed property shall be forfeited by such holder, whereupon all right, title and interest in and to the unclaimed property shall be deemed vested in the Reorganized Debtor. The amount of Cash attributable to non-negotiated and returned checks shall be returned to the Disbursing Agent for redistribution to holders of any Allowed Claims that have not been paid if necessary to complete payments under this Plan, and otherwise to the Reorganized Debtor.

Fractional Cents. Any other provisions of this Plan to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

Payments of Less than Twenty-Five Dollars. If a cash payment otherwise provided for by this Plan with respect to an Allowed Claim would be less than twenty-five (\$25.00) dollars (whether in the aggregate or on any payment date provided in this Plan), notwithstanding any contrary provision of this Plan, the Disbursing Agent shall not be required to make such payment.

Payment of Fees and Costs of the Disbursing Agent. The Estate shall reimburse the Disbursing Agent for its fees and costs incurred in performing, or in connection with, its duties, rights, and obligations under the Plan.

Exculpation. Neither the Disbursing Agent, nor any of its employees, advisors, attorneys, accountants, financial consultants, contractors, agents, and their successors and assigns, shall have or incur any liability to any Holder of a Claim or Equity Interest, or to any other entity, for any act or omission in connection with, related to, or arising out of, the pursuit of confirmation, consummation, or other administration of the Plan or the property to be distributed or otherwise dealt with under the Plan, except for gross negligence or willful misconduct, and in all respects the Disbursing Agent and each of its employees, advisors, attorneys, accountants, financial consultants, contractors, and agents shall be entitled to rely upon the advice of counsel with respect to its duties and responsibilities under the Plan. No current Holder of a Claim or Equity Interest, representative thereof, shall have or pursue any claim or cause of action against the Disbursing Agent for making payments in accordance with the Plan, or for implementing the provisions of the Plan. The Disbursing Agent shall not be liable for obligations relating to Allowed Claims to the extent that Allowed Claims are not paid in full, other than as a result of the Disbursing Agent's gross negligence or willful misconduct.



## **LITIGATION ANALYSIS**

The Debtor is presently engaged in litigation with Proponent in the Supreme Court of the State of New York, Kings County in connection with a foreclosure action brought by Proponent's predecessor in interest against the Debtor for nonpayment of amounts due under the Loan Documents (the "Foreclosure Action"). *See supra* at Section II Background for a full description of the Foreclosure Action. The Foreclosure Action is stayed by operation of the automatic stay in effect due to the Chapter 11 Case. Confirmation and consummation of the Plan may result in the satisfaction of the amounts due Proponent under the Loan Documents, and may moot the Foreclosure Action.

The Debtor purports to have unpaid judgments (the "Unpaid Judgments") against Benjamin Herbst, Nechemia Lavrinoff, Yidel Perlstein, and Yeshiva Eitz Chaim of Boro Park. *See Debtor's Schedule A/B [Dkt. No. 1]*. The Debtor has indicated that the Unpaid Judgments are largely uncollectible. *See Amended Disclosure Statement*, ¶ 47.

Other than the Foreclosure Action and litigation related to the Unpaid Judgments, Proponent is unaware of any pending litigation or potential litigation involving the Debtor. In the future, however, the Reorganized Debtor may become party to litigation. In general, litigation can be expensive and time consuming to bring or defend against. Such litigation could result in settlements or damages that could significantly affect the Reorganized Debtor's financial stability. It is also possible that certain parties will commence litigation with respect to the treatment of their Claim under the Plan. It is not possible to predict the potential litigation that the Reorganized Debtor may become party to, nor the final resolution of such litigation. The impact of any such litigation on the Reorganized Debtor's financial stability, however, could be material.

## **UNEXPIRED LEASES AND EXECUTORY CONTRACTS**

Assumption and Rejection of Agreements. Any and all pre-petition leases or executory contracts (a) not previously assumed or the subject of a motion to assume pending on the Confirmation Date and/or (b) not designated prior to the Confirmation Date as pre-petition leases or executory contracts to be assumed by the Debtor shall be deemed rejected by the Debtor.

Claims for Damages. All proofs of claim with respect to Claims arising from the rejection of executory contracts or leases, if any, must, unless another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court within thirty (30) days after the mailing of notice of Effective Date. Any and all proofs of claim with respect to Claims arising from the rejection of executory contracts by the Debtor shall be treated as General Unsecured Claims, for purposes of distribution pursuant to the Plan. Unless otherwise permitted by Final Order, any proof of claim that is not filed before the Bar Date (other than those Claims arising from the rejection of executory contracts or leases under the Plan) shall automatically be disallowed as a late filed Claim, without any action by the Debtor, and the holder of such Claim shall be forever barred from asserting such Claim against the Debtor, its Estate, or property of its Estate.

**CONDITIONS PRECEDENT TO  
ACHIEVING THE EFFECTIVE DATE**

Conditions Precedent to Achieving the Effective Date. The Plan shall not become effective unless and until (a) the Confirmation Order becomes a Final Order and is not subject to any stay or injunction; (b) the closing of the sale of the Property and (c) in the event the Property Sale Proceeds are not sufficient to fund the Plan, the sale of some or all of the shares of stock in the Debtor's Brokerage Account.

Notice of the Effective Date; Actions Taken on Effective Date. Proponent shall file and serve upon all Creditors a notice of the occurrence of the Effective Date within two (2) Business Days thereafter. Unless otherwise specifically provided in the Plan, any action required to be taken by the Debtor on the Effective Date shall be taken by the Debtor on the Effective Date or as soon as reasonably practicable thereafter.

**MANAGEMENT OF THE DEBTOR**

Post-confirmation management of the Property will be selected and retained by the Reorganized Debtor on such terms and conditions as it deems necessary and appropriate.

**RETENTION OF JURISDICTION**

Jurisdiction. Following the Confirmation Date and until such time as all payments and distributions required to be made and all other obligations required to be performed under this Plan have been made and performed by the Debtor, the Bankruptcy Court shall retain jurisdiction as is legally permissible, including, without limitation, for the following purposes:

- a) Claims. To determine the allowance, extent, classification, or priority of Claims against the Debtor upon objection by the Debtor.
- b) Injunction, etc. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, executions, performance and consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Chapter 11 Case on or before the Effective Date with respect to any Person or Entity.
- c) Professional Fees. To determine any and all applications for allowance of compensation and expense reimbursement of Professional for periods before the Effective Date, and objections thereto, as provided for the in the Plan.
- d) Certain Priority Claims. To determine the allowance, extent and classification of any Priority Tax Claims, Other Priority Claims, Administrative Claims or any request for payment of an Administrative Claim.

- e) Dispute Resolution. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and/or Confirmation Order and the making of Distributions under the Plan and/or the Confirmation Order.
- f) Actions. To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted (either before or after the Effective Date) in the Chapter 11 Case by or on behalf of the Debtor.
- g) General Matters. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code or other applicable law.
- h) Plan Modification. To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out its intent and purposes.
- i) Aid Consummation. To issue such orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person or Entity, to the full extent authorized by the Bankruptcy Code.
- j) Implementation of Confirmation Order. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated.
- k) Final Order. To enter a Final Order closing the Chapter 11 Case.

### **MISCELLANEOUS PROVISIONS**

Pre-Confirmation Modification. On notice to and opportunity to be heard by the United States Trustee, the Plan may be altered, amended or modified by Proponent before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

Post-Confirmation Immaterial Modification. Proponent, insofar as it does not materially and adversely affect the interests of holders of Claims, may correct any defect, omission or inconsistency in the Plan in such manner and to such extent as may be necessary to expedite consummation of this Plan.

Post-Confirmation Material Modification. Proponent may alter or amend the Plan after the Confirmation Date in a manner that materially and adversely affects holders of Claims, provided that such alteration or modification is made after notice and a hearing and otherwise meets the requirements of section 1127 of the Bankruptcy Code.

Withdrawal or Revocation of the Plan. If Proponent revokes or withdraws the Plan, or if confirmation or consummation of the Plan does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the allowance, fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity

Interests) and any assumption or rejection of executory contracts or leases affected by the Plan shall terminate and be of no further force or effect, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan shall constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Person, or prejudice in any manner the rights of any other Person.

Payment of Statutory Fees. The Debtor shall pay from Cash in the Estate all fees payable due as of the Effective Date pursuant to section 1930 of title 28 of the United States Code. Thereafter, the Debtor shall pay from Cash in the Estate all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest due under 31 U.S.C. § 3717, on all disbursements, including plan payments and disbursements in and outside of the ordinary course of business, until the earliest of the entry of a final decree closing the Chapter 11 Case, dismissal of the Chapter 11 Case, or conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

Successors and Assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such Person or Entities.

Preservation of Insurance. This Plan shall not diminish or impair the enforceability of any insurance policy, right or claim that may cover Claims against the Debtor (including, without limitation, its members, managers or officers) or any other persons or entity. Likewise, the Plan and Confirmation Order shall not impair any insurance carrier's rights, claims, defenses or disputes under any policy and shall not act to increase or extend any rights of the Debtor or the carries.

Cramdown. Proponent reserves the right to request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class of Claims or Equity Interests that rejects, or is deemed to have rejected in a subsequent version of this Plan that has been altered, amended, or modified by Proponent before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

Filing of Additional Documents. Except as otherwise provided in the Plan, on or before the Effective Date, Proponent may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the laws of the State of New York.

Notices. Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight courier service, freight prepaid, to be addressed as follows:

If to the Debtor: Yeshivah Ohel Moshe  
c/o Rabbi Dov Machlis  
7914 Bay Parkway  
Brooklyn, New York 11214

with a copy to: Backenroth Frankel & Krinsky, LLP  
800 Third Avenue  
New York, New York 10022  
Attn: Mark A. Frankel, Esq.

If to Five Star: NY Five Star Equity Corp.  
254 Canal Street, Suite 2001  
New York, NY 10013

with a copy to: Pryor Cashman LLP  
7 Times Square  
New York, NY 10036  
Attn: Seth H. Lieberman, Esq.

Severability. If any term or provision of the Plan is held by the Bankruptcy Court prior to or at the time of Confirmation to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make 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. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan may, at the option of Proponent, remain in full force and effect and not be deemed affected. However, Proponent reserves the right not to proceed to Confirmation or consummation of the Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

Term of Injunctions or Stays. Unless otherwise provided, all injunctions or stays provided for in this Chapter 11 Case under sections 105 and 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

Further Assurances. Proponent, the Reorganized Debtor, all holders of Claims receiving Distributions under the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

Headings. The headings used in this Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the provisions of the Plan.

Extinguishment of Causes of Action Under the Avoiding Power Provisions. On the Effective Date, all rights, claims, causes of action, avoiding powers, suits and proceedings arising under sections 506(c), 544, 545, 547, 548, 549 and 553 of the Bankruptcy Code shall be extinguished unless then pending; provided however, such rights and claims are preserved by the Debtor if asserted defensively or for purposes of offset. Except to the extent released in the Plan or order of the Bankruptcy Court, the Debtor shall have, retain, reserve, and be entitled to assert all other Claims, causes of action, rights of setoff and other legal or equitable defenses which the Debtor had immediately prior to the Petition Date as fully as if the Chapter 11 Case had not been

commenced; and any of the Debtor's legal and equitable rights respecting any such Claim which is not specifically waived, extinguished or relinquished by the Plan or order of the Bankruptcy Court may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

Entire Agreement. The Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Plan.

### **LIQUIDATION ANALYSIS**

Annexed hereto as Exhibit B is a liquidation analysis (the "Liquidation Analysis") containing the liquidation value of the Debtor's assets as well as the Debtor's liabilities. As reflected in the Liquidation Analysis, Proponent believes that liquidation of the Debtor under chapter 7 of the Bankruptcy Code may result in diminution in the value to be realized by holders of Claims or Equity Interests as compared to distributions contemplated under the Plan. Consequently, Proponent believes that confirmation of the Plan will provide a substantially greater return to holders of Claims or Equity Interests than would a liquidation under chapter 7 of the Bankruptcy Code.

### **VOTING PROCEDURES AND REQUIREMENTS**

The Plan provides for payment in full of all creditors. Therefore, consistent with Section 1126(f) of the Bankruptcy Code, all creditors are conclusively presumed to have accepted the Plan and Proponent will not be soliciting votes.

### **CONFIRMATION OF THE PLAN**

Section 1128(a) of the Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing on confirmation of the Plan (the "Confirmation Hearing"). The Bankruptcy Court has entered an Order fixing \_\_\_\_\_, 2017, at \_\_\_\_m., at the United States Bankruptcy Court, Conrad B Duberstein Courthouse, 271-C Cadman Plaza East, Brooklyn, NY 11201, as the date, time and place for the Confirmation Hearing of the Plan, and fixing \_\_\_\_\_, 2017 as the last date for filing objections to confirmation of the Plan. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjourned Confirmation Hearing.

Any objection to confirmation of the Plan must be made in writing and filed with the Bankruptcy Court with proof of service and served on the Debtor and Proponent in the manner set forth herein. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the confirmation requirements of Section 1129 of the Bankruptcy Code have been satisfied. The applicable requirements are as follows:

The Bankruptcy Code requires that a plan place each creditor's claim and each interest holder's interest in a class with "substantially similar" claims or interests.

Notwithstanding acceptance of the Plan, the Bankruptcy Court must independently determine that the Plan is in the best interests of holders of Claims.

Proponent submits: (a) that the Plan satisfies all statutory requirements of Chapter 11 of the Bankruptcy Code and applicable state law, (b) it has complied or will have complied with all of the requirements of Chapter 11 by the Effective Date, and (c) the proposals contained in the Plan are made in good faith. Proponent contends that holders of all Claims are not impaired under the Plan and will receive payments under the Plan having a present value as of the Effective Date in amounts not less than the amounts likely to be received if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

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

If the Plan is not confirmed, the alternatives include: (a) preparation and presentation of an alternative plan of reorganization or confirmation of the Debtor's Amended Plan; (b) conversion of the Debtor's Chapter 11 Case to one under chapter 7 of the Bankruptcy Code; or (c) dismissal of the Chapter 11 Case. The Debtor has not proposed a confirmable plan and appears to have no interest in recapitalization or refinancing on market based terms. In this case, therefore, Proponent believes that selling the Property is the only viable alternative that would restore in full all Claims and rights of collection and enforcement.

### **CERTAIN RISK FACTORS TO BE CONSIDERED**

HOLDERS OF CLAIMS AGAINST THE DEBTOR AND INTERESTS IN THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HERewith AND/OR INCORPORATED BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

Risk of Non-Confirmation of the Plan. Although Proponent believes that the Plan will satisfy all requirements necessary for confirmation under the Bankruptcy Code, there can be no guarantee that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no guarantee that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the solicitation of votes.

Risk of Non-Occurrence of the Effective Date. Although Proponent believes that all of the conditions precedent to the Effective Date will occur after the entry of the Confirmation Order, there can be no guarantee as to the timing of the Effective Date or that such conditions will ever occur.

Proponent Has No Duty to Update. The statements contained in this Disclosure Statement are made by Proponent as of the date hereof, unless otherwise specified in the Plan, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth in the Plan since that date. Proponent has no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.

No Representations Outside This Disclosure Statement Are Authorized. No representations concerning or related to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

Claims Could Be More Than Projected. The Allowed Amount of Claims in each Class could be significantly more or less than projected, which in turn, could cause the value of Distributions to be reduced substantially or could exceed the amount of funds available from the Debtor's estate to pay such claims in full.

No Legal or Tax Advice is Provided to You By This Disclosure Statement. The contents of this Disclosure Statement should not be construed as legal, business or tax advice. Each holder of a Claim or Equity Interest should consult his, her, or its own legal counsel and accountant as to legal, tax and other matters concerning his, her, or its Claim or Equity Interest. This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

No Admission Made. Prior to the approval of this Disclosure Statement, nothing contained herein shall constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or on holders of Claims or Equity Interests; provided, however, that upon approval of the this Disclosure Statement, nothing contained herein shall constitute an admission in any proceeding other than the Chapter 11 Case.

### **TAX CONSEQUENCES OF THE PLAN**

Confirmation of the Plan may have federal income tax consequences for the Debtor and/or holders of Claims and Equity Interests. Proponent has not obtained and does not intend to request a ruling from the Internal Revenue Service, nor has Proponent obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors and holders of Equity Interests are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain.

PROPONENT DOES NOT PURPORT, THROUGH THIS DISCLOSURE STATEMENT, TO ADVISE THE CREDITORS OR EQUITY INTEREST HOLDERS REGARDING THE TAX CONSEQUENCES OF THE TREATMENT OF THE CREDITORS AND INTEREST HOLDERS UNDER THE PLAN. CREDITORS AND EQUITY INTEREST HOLDERS SHOULD SEEK INDEPENDENT COUNSEL CONCERNING THE TAX CONSEQUENCES OF THEIR TREATMENT UNDER THE PLAN.



**RECOMMENDATION**

Proponent submits that the Plan provides the greatest and earliest possible recovery to holders of Claims and that confirmation of the Plan is in the best interest of Creditors and the Debtor in consideration of the alternatives.

Dated: April 21, 2017

Respectfully submitted,

NY Five Star Equity Corp.

By: /s/ Henry Chen

Name: Henry Chen

Title: President

# EXHIBIT A

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*Attorneys for NY Five Star Equity Corp.*

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

In re:

YESHIVAH OHEL MOSHE,  
*a/k/a* YESHIVA OHEL MOSHE,

Debtor.

Chapter 11

Case No. 16-43681 (ESS)

**CHAPTER 11 PLAN OF REORGANIZATION  
PROPOSED BY NY FIVE STAR EQUITY CORP.**

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## INTRODUCTION

NY Five Star Equity Corp. (“Five Star” or “Proponent”), a secured lender of Yeshivah Ohel Moshe, a/k/a Yeshiva Ohel Moshe, the above-captioned debtor and debtor in possession (the “Debtor”), hereby proposes the following Chapter 11 Plan of Reorganization (the “Plan”) pursuant to the provisions of chapter 11 of title 11 of the United States Code. Reference is made to the Disclosure Statement for a summary and analysis of the Plan and certain related matters.

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article XI of this Plan, Proponent expressly reserves the right to alter, amend, supplement, or modify this Plan before its substantial consummation.

## ARTICLE I

### DEFINITIONS

1.1 Scope of Definitions. As used in this Plan, the following terms shall have the respective meanings specified below. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine and the feminine gender shall include the masculine.

1.2 “Administrative Claim” shall mean a Claim for costs and expenses of administration of the Debtor’s Estate under section 503(b), 507(b), or 1114(e)(2) of the Bankruptcy Code, including, without limitation, (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the Estate and operating the Debtor’s business; (b) compensation for legal, financial advisory, accounting, and other services and reimbursement of expenses awarded or allowed under section 330(a) or 331 of the Bankruptcy Code; (c) all fees and charges assessed against the Estate under 28 U.S.C. §§ 1911–1930; and (d) all obligations designated as Allowed Administrative Claims pursuant to an order of the Bankruptcy Court.

1.3 “Administrative Claims Bar Date” shall mean the last day to file requests for payment of Administrative Claims (except for Professional Fee Claims), which requests shall be filed and served on counsel for the Debtor and Five Star no later than the Confirmation Hearing, other than those Administrative Claims expressly excluded therefrom pursuant to prior order of the Bankruptcy Court.

1.4 “Administrative Claims Reserve” shall have the meaning ascribed to such term in Section 7.3 of this Plan.

1.5 “Allowed” shall mean, with respect to a particular Claim, (a) the amount of the Claim that is listed in the Schedules and not disputed, contingent, or unliquidated, if the holder of such Claim did not duly file a proof of claim on or before the Bar Date, or (b) if the holder of such Claim duly filed a proof of claim on or before the Bar Date (or filed a proof of claim after the Bar Date and such proof of claim is deemed to be timely filed), then (i) the amount stated in such proof of claim, if no objection thereto has been interposed within the applicable period of limitations fixed by this Plan or as otherwise fixed by the Bankruptcy Court, (ii) in the case of a Claim to

which a timely objection has been made, such amount as shall be fixed by a Final Order of the Bankruptcy Court, or (iii) as to a Claim of the kind specified in Article II below, such amount as the Debtor shall agree to or such amount as shall be fixed by Final Order of the Bankruptcy Court. For purposes of determining the amount of an Allowed Claim, there shall be deducted therefrom an amount equal to the amount of any claim that the Debtor may have against the holder thereof, to the extent such claim may be set off pursuant to section 553 of the Bankruptcy Code or to the extent such claim is subject to recoupment.

1.6 “Allowed Claim” shall mean a Claim that has been Allowed.

1.7 “Assets” shall mean any and all of the respective real or personal property of any nature of the Debtor, including, without limitation, any real estate, buildings, structures, improvements, privileges, rights, easements, leases, subleases, licenses, goods, materials, supplies, furniture, fixtures, equipment, work in process, accounts, chattel paper, Cash, deposit accounts, reserves, deposits, contractual rights, intellectual property rights, claims, Causes of Action and any other general intangibles of Debtor, of any nature whatsoever, including, without limitation, the property of the estate pursuant to section 541 of the Bankruptcy Code.

1.8 “Avoidance Actions” shall mean all claims and causes of action which the Debtor has or had the power to assert pursuant to any or all of sections 510, 544, 545, 547, 548, 549, 550, 551, and 553 of the Bankruptcy Code.

1.9 “Bankruptcy Code” shall mean title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., together with all amendments, modifications, or replacements, as the same exist upon any relevant date, to the extent applicable to this Chapter 11 Case.

1.10 “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Eastern District of New York having jurisdiction over the Chapter 11 Case, and to the extent of any withdrawal of reference made pursuant to 28 U.S.C. § 157 and/or the General Order of such District Court pursuant to section 151 of title 28 of the United States Code, the United States District Court for the Eastern District of New York, or any appellate court having competent jurisdiction over the Chapter 11 Case or any particular proceeding within the Chapter 11 Case.

1.11 “Bankruptcy Rule(s)” shall mean the Federal Rules of Bankruptcy Procedure as applicable to cases under the Bankruptcy Code, together with all amendments and modifications made from time to time thereto.

1.12 “Bar Date” shall mean December 20, 2016, the date set by the Bankruptcy Court as the last day for filing a proof of claim arising prior to the Petition Date against the Debtor in this Chapter 11 Case, other than those Claims expressly excluded therefrom pursuant to an order of the Bankruptcy Court.

1.13 “Brokerage Account” shall mean the Debtor’s brokerage account held with Fidelity Brokerage Services LLC, presently consisting of 81,000 shares of Pfizer Inc. common stock.

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

1.15 “Cash” shall mean cash and cash equivalents in lawful currency of the United States of America, and other readily marketable securities or instruments, including, without limitation, direct obligations of the United States of America and certificates of deposit issued by federally insured banks.

1.16 “Causes of Action” shall mean any and all claims and causes of action of, and remedies granted to, the Debtor against any third party, including, without limitation, any avoidance claims or causes of action pursuant to sections 502, 506, 510, 541 through 545, 547 through 551, and/or 553 of the Bankruptcy Code and any claims pursuant to any other statutory or common law.

1.17 “Chapter 11 Case” shall mean the case commenced under chapter 11 of the Bankruptcy Code by the Debtor on the Petition Date, captioned *In re Yeshivah Ohel Moshe, a/k/a Yeshiva Ohel Moshe*, Case No. 16-43681 (ESS), currently pending before the Bankruptcy Court.

1.18 “Claim(s)” shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code.

1.19 “Class” shall mean a category of Holders of Claims or Equity Interests as classified in Article II of the Plan.

1.20 “Confirmation” shall mean the entry of the Confirmation Order.

1.21 “Confirmation Date” shall mean the date upon which the Confirmation Order is entered by the Bankruptcy Court.

1.22 “Confirmation Hearing” shall mean the hearing to be held in accordance with section 1128(a) of the Bankruptcy Code at which confirmation of the Plan is considered by the Bankruptcy Court, as such hearing may be adjourned or continued from time to time.

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

1.24 “Creditor(s)” shall have the meaning ascribed to such term in section 101(10) of the Bankruptcy Code.

1.25 “Debtor” shall mean Yeshivah Ohel Moshe, a/k/a Yeshiva Ohel Moshe.

1.26 “Disallowed” shall mean, with reference to any Claim, a Claim or portion thereof that has been disallowed or expunged by Final Order of the Bankruptcy Court.

1.27 “Disbursing Agent” shall mean Pryor Cashman LLP.

1.28 “Disclosure Statement” shall mean the disclosure statement filed by NY Five Star Equity Corp. with respect to this Plan, including all exhibits, schedules, and annexes thereto, and any amendments or modifications thereof.

1.29 “Disputed Claim” shall mean any Claim against the Debtor for which an amount has not been fixed by Final Order of the Bankruptcy Court that is scheduled in the Schedules as disputed, contingent, or unliquidated; or as to which (i) a proof of claim has been filed timely, (ii) an objection to the allowance of such Claim has timely been filed by or on behalf of the Debtor or any party in interest and not withdrawn, and (iii) no Final Order of the Bankruptcy Court exists allowing or disallowing such Claim or any portion thereof.

1.30 “Disputed GUC Reserve” shall have the meaning ascribed to such term in Section 7.7 of this Plan.

1.31 “Distribution(s)” shall mean any consideration to be distributed to any Entity pursuant to the Plan.

1.32 “Effective Date” shall mean the first Business Day following the date on which each of the conditions set forth in Section 9.1 of the Plan have been satisfied; provided that if a stay of the Confirmation Order is in effect, then the Effective Date shall mean the first Business Day after such stay is no longer in effect.

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

1.34 “Equity Interest” shall mean the legal, equitable, contractual or other rights of any Person with respect to any capital stock, membership interest or other ownership interest in the Debtor, whether or not transferable, and any option, warrant or right to purchase, sell, subscribe for, or otherwise acquire or receive an ownership interest or other equity security in the Debtor.

1.35 “Equity Security” shall mean an equity security as defined in section 101(16) of the Bankruptcy Code.

1.36 “Estate” shall mean, individually, the Estate of the Debtor in this Chapter 11 Case, created pursuant to section 541 of the Bankruptcy Code upon the commencement of this Chapter 11 Case.

1.37 “File”, “Filed”, or “Filing” shall mean file, filed or filing with the United States Bankruptcy Court for the Eastern District of New York, or with respect to proofs of claim, proofs timely and property transmitted to the Clerk of the Court.

1.38 “Final Decree” shall mean the decree in this Bankruptcy Case contemplated under Bankruptcy Rule 3022.

1.39 “Final Order” shall mean an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, or the docket of any such other court, the operation or effect of which has not been reversed, stayed, modified, vacated, or amended and as to which the time to appeal or seek review, rehearing, or certiorari has expired, and as to which no appeal, petition for review, rehearing, or certiorari proceeding is pending or as to which any right to appeal, reargue, or petition for certiorari is pending or as to which any right to appeal, reargue, or petition for certiorari has been waived in writing or, if an appeal, reargument, or petition for certiorari thereof has been denied, the time to take any further



appeal or to seek further hearing or certiorari has expired; provided, however, that no order or judgment shall be deemed not to be a Final Order solely by virtue of being subject to the filing of a motion for reconsideration pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3008 or 9024, or Rule 60 of the Federal Rules of Civil Procedure.

1.40 “Five Star” shall mean NY Five Star Equity Corp.

1.41 “Five Star Allowed Claim” shall mean the Allowed Secured Claim of Five Star as determined by the Bankruptcy Court or agreed to by the Debtor and Five Star.

1.42 “Five Star Claim” shall mean, collectively, the Allowed Secured Claim of Five Star in respect of (a) the balance due under the Loan Documents as of the Petition Date and (b) post-petition interest at the default rate and all fees and costs allowable under section 506(b) of the Bankruptcy Code.

1.43 “General Unsecured Claim” shall mean any unsecured, non-priority Claim that is not an Administrative Claim, Priority Tax Claim, Priority Claim, Professional Fee Claim, or Secured Claim.

1.44 “Government Bar Date” shall mean March 21, 2017, the date set by the Bankruptcy Court as the last day for a governmental entity to file a Proof of Claim arising prior to the Petition Date against the Debtor in this Chapter 11 Case, other than those Claims expressly excluded therefrom pursuant to an order of the Bankruptcy Court.

1.45 “Holder” shall mean an Entity holding a Claim or Equity Security.

1.46 “Lien” shall mean any charge against or interest in property (including, but not limited to, any mortgage, lien, pledge, charge, security interest, encumbrance, or other security device of any kind) to secure payment of a debt or performance of an obligation.

1.47 “Loan” shall mean that certain mortgage loan from Five Star’s predecessor-in-interest (The Park Avenue Bank) to the Debtor in the principal amount of \$2,000,000, secured by, among other things, the Debtor’s interest in the Property, pursuant to the terms set forth in the Loan Documents.

1.48 “Loan Documents” shall mean any and all documents, evidencing, securing, and/or governing the Loan, including, without limitation, (a) that certain Promissory Note in the original principal amount of \$2,000,000 dated May 21, 2007, (b) that certain Mortgage And Security Agreement dated May 21, 2007, (c) that certain Absolute Assignment Of Leases And Rents dated May 21, 2007, and (d) that certain Escrow And Security Agreement dated May 21, 2007.

1.49 “Local Bankruptcy Rules” shall mean the Local Bankruptcy Rules for the Eastern District of New York, together with all amendments and modifications from time to time made thereto.

1.50 “Person” shall have the meaning ascribed to such term in section 101(41) of the Bankruptcy Code.

1.51 “Petition Date” shall mean August 17, 2016, the date on which the Debtor filed its voluntary petition under chapter 11 of the Bankruptcy Code.

1.52 “Plan” shall mean this Chapter 11 Plan of Reorganization, either in its present form or as it may be altered, amended, modified or supplemented from time to time in accordance with the Plan, the Bankruptcy Code and the Bankruptcy Rules, including, without limitation, any exhibits and schedules hereto, either in its present form or as the same may be amended, modified or supplemented from time to time in accordance with the terms and provisions hereof.

1.53 “Priority Claim” shall mean any Claim, other than an Administrative Claim or a Priority Tax Claim, to the extent entitled to priority under section 507(a) of the Bankruptcy Code.

1.54 “Priority Tax Claim” shall mean a Claim of a governmental unit of the kind specified in sections 502(i), 507(a)(8) or 1129 (a)(9)(D) of the Bankruptcy Code.

1.55 “Professional(s)” shall mean any Entity or Person employed pursuant to an order of the Bankruptcy Court in accordance with sections 327, 328, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330 and/or 331 of the Bankruptcy Code.

1.56 “Professional Fee Claim” shall mean those fees and expenses claimed by a Professional pursuant to sections 330, 331 and/or 503 of the Bankruptcy Code, and accrued and unpaid as of the Effective Date, but not including any subrogation or contribution Claim arising from any Person’s payment of any fees and expenses to a Professional.

1.57 “Professional Fee Claim Bar Date” shall mean the last day for a Professional to file a Professional Fee Claim, which shall be no later than thirty (30) days after the Confirmation Date.

1.58 “Property” shall mean the real property located at 7914 Bay Parkway, Brooklyn, New York.

1.59 “Property Sale Proceeds” shall mean the proceeds of sale of the Property, less all charges to be incurred in connection with the marketing, negotiation, documentation, execution, and closing of the sale of the Property, including, without limitation, any fees and expenses paid to retain an auctioneer, real estate broker, and/or special real estate counsel.

1.60 “Proof of Claim” shall mean a proof of claim Filed pursuant to section 501 of the Bankruptcy Code and/or any order of the Bankruptcy Court, together with supporting documents.

1.61 “Proponent” shall mean NY Five Star Equity Corp.

1.62 “Purchaser” shall mean a purchaser of the Property pursuant to the Plan.

1.63 “Reorganized Debtor” shall mean the Debtor on and after the Effective Date.

1.64 “Schedule(s)” shall mean the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor as required by section 521 of the Bankruptcy Code and

Bankruptcy Rule 1007, as they may from time to time be amended in accordance with Bankruptcy Rule 1009 and Local Bankruptcy Rule 1009-1.

1.65 “Secured Claim” shall have the meaning set forth in section 506(a) of the Bankruptcy Code.

1.66 “Statutory Fees” shall mean all fees payable with respect to the Chapter 11 Case pursuant to section 1930 of title 28 of the United States Code and interest thereon pursuant to section 3717 of title 31 of the United States Code.

1.67 “Stock Sale Proceeds” shall mean the proceeds of sale from selling stock from the Brokerage Account, less any charges to be incurred in connection with the documentation, execution, and closing of such sale.

1.68 “Unimpaired” shall mean, with respect to a Claim, a Claim that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

All terms not expressly defined herein shall have the respective meaning given to such terms in section 101 of the Bankruptcy Code or as otherwise defined in applicable provisions of the Bankruptcy Code.

Unless otherwise specified herein, any reference to an Entity as a holder of a Claim includes, with respect to such Claim that Entity’s successors, assigns, and affiliates. The rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

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

All exhibits and supplements to the Plan are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such exhibits and supplements shall be timely filed in accordance with this Plan prior to the Confirmation Hearing. Holders of Claims may obtain a copy of the filed exhibits and supplements to the Plan upon written request to Five Star. Upon their filing, the exhibits and supplements may be inspected in the office of the Clerk of the Bankruptcy Court or its designee during normal business hours. The documents contained in the exhibits shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

## ARTICLE II

### CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 General Rules of Classification. Generally, a Claim is classified in a particular Class for voting and distribution purposes only to the extent the Claim qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the Claim qualifies within the description of such other Class or Classes. Unless otherwise provided, to the extent a Claim qualifies for inclusion in a more specifically defined Class and a more generally defined Class, it shall be included in the more specifically defined Class.

2.2 Administrative Claims, Priority Tax Claims, and Professional Fee Claims. Administrative Claims, Priority Tax Claims, and Professional Fee Claims have not been classified and are excluded from the Classes set forth in Article III of the Plan in accordance with section 1123(a)(1) of the Bankruptcy Code. The treatment to be provided for Allowed Claims pursuant to this Plan and the consideration provided for herein shall be in full and final satisfaction, settlement, release, and discharge of such respective Claims.

2.3 Bar Date for Administrative Claims. Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims (except for Professional Fee Claims) must be filed and served on counsel for the Debtor and Five Star by no later than the date of the Confirmation Hearing (the "Administrative Claims Bar Date"). Any Person that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such request shall be forever barred, estopped, and enjoined from asserting such Claim or participating in distributions under the Plan on account thereof. Objections to requests for payment of Administrative Claims (except for Professional Fee Claims and Administrative Claims incurred in the ordinary course of the Debtor's business) must be filed and served on counsel for the Debtor, Five Star, and the party requesting payment of an Administrative Claim within thirty (30) days of the date such request for payment has been filed.

2.4 Bar Date for Professional Fee Claims. Unless otherwise ordered by the Bankruptcy Court, and subject to notice and a hearing under section 330 of the Bankruptcy Code, requests for payment of Professional Fee Claims incurred through the Effective Date must be filed and served on (i) counsel to the Debtor, (ii) counsel to the Proponent, (iii) the United States Trustee, and (iv) any other Creditor or party-in-interest for which service is necessary or appropriate by no later than thirty (30) days after the Confirmation Date (the "Professional Fee Claims Bar Date"). The day prior to the Confirmation Date, each Professional shall provide counsel for the Debtor and counsel to the Proponent with a written estimate of the total amount of compensation and expenses for which such Professional expects to seek final compensation and reimbursement pursuant to section 330 of the Bankruptcy Code. Such estimates shall include estimated sums for the preparation and prosecution of any application for final compensation.

2.5 Classification of Claims. Unless otherwise ordered by the Bankruptcy Court, Classes 1, 2, 3 and 4 are all unimpaired under the Plan. Accordingly, holders of Allowed Claims in such Classes are deemed to accept the Plan and are not entitled to vote. There are no impaired classes under this Plan. As such, Five Star is not required to solicit votes to confirm or reject this Plan. For purposes of the Plan, those Persons holding Claims against the Debtor are grouped in accordance with section 1122 of the Bankruptcy Code as follows:

- (a) Class 1 shall consist of all Priority Claims. Claims total approximately \$0.
- (b) Class 2 shall consist solely of the Allowed Secured Claim of NY Five Star Equity Corp. as holder of the mortgage on the Property. Claim totals approximately \$6,405,072.55 as of March 31, 2017.
- (c) Class 3 shall consist of all Claims held by the City of New York on account of any Liens on the Property. Claims total approximately \$0.

- (d) Class 4 shall consist of all General Unsecured Claims. According to the Debtor's schedules, General Unsecured Claims total approximately \$980,658, which amount is largely consistent with holders of general unsecured claims that have timely filed proofs of claim.

### ARTICLE III

#### TREATMENT OF UNCLASSIFIED CLAIMS

3.1 Administrative Claims. Except to the extent the holder of an Allowed Administrative Claim agrees otherwise, each holder of an Allowed Administrative Claim shall be paid in respect of such Allowed Administrative Claim (a) the full amount thereof in Cash, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Administrative Claim, or upon such other terms as may be agreed upon by the holder of such Allowed Administrative Claim, or (b) such lesser amount as the holder of such Allowed Administrative Claim and the Debtor might otherwise agree; provided, however, that all Administrative Claims incurred in the ordinary course of the Debtor's business during the Chapter 11 Case shall be paid in the ordinary course of the Debtor's business. Notwithstanding the foregoing, the Statutory Fees shall be paid in Cash as soon as practicable after the Effective Date.

3.2 Priority Tax Claims. Proponent is not aware of any unpaid Priority Tax Claims. Except as provided herein, each Holder of an Allowed Priority Tax Claim, if any, shall be paid in respect of such Allowed Priority Tax Claim (a) the full amount thereof, without post-petition interest or penalty, in Cash, as soon as practicable after the later of (i) the Effective Date or (ii) the date on which the Priority Tax Claim becomes an Allowed Priority Tax Claim; or (b) upon such other terms as may be agreed upon by the holder of such Allowed Priority Tax Claim and the Debtor.

3.3 Professional Fee Claims. Each holder of an Allowed Professional Fee Claim shall receive 100% of the unpaid amount of such Allowed Professional Fee Claim in Cash after such Professional Fee Claim becomes an Allowed Professional Fee Claim.

3.4 Other Unclassified Claims. Allowed unclassified Claims, if any, shall be paid in Cash in full as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Claim.

### ARTICLE IV

#### TREATMENT OF CLASSIFIED CLAIMS

The categories of Claims listed below classify Claims against the Debtor for all purposes, including voting, confirmation, and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim shall be deemed classified in a particular Class only to the extent that the Claim qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim qualifies within the description of such different Class. A Claim is in a particular Class only to the extent that such

Claim is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date.

4.1 Class 1 – Priority Claims. Class 1 shall consist of Allowed Priority Claims under sections 507(a)(2),(3),(4),(5),(6),(7) and (8) of the Bankruptcy Code. Holders of Class 1 Claims shall be paid in full in Cash out of the Property Sale Proceeds as soon as practicable after the later of (a) the Effective Date and (b) the date on which such Claim becomes an Allowed Priority Claim, or upon such other terms as may be agreed upon by the holder of such Allowed Priority Claim and the Debtor, or such lesser amount as the holder of such Allowed Priority Claim and the Debtor might otherwise agree. Class 1 is unimpaired and, therefore, holders of Claims in Class 1 are not entitled to vote and are conclusively presumed to accept this Plan.

4.2 Class 2 – Secured Claim of NY Five Star Equity Corp. Class 2 shall consist of the Allowed Secured Claim of Five Star. The holder of the Class 2 Claim shall be paid in full in Cash from the Property Sale Proceeds as soon as practicable after the closing of the sale of the Property. Interest on the Class 2 Claim will be allowed in accordance with section 506(b) of the Bankruptcy Code from the Petition Date to the Effective Date at the annual rate of 24% in accordance with the terms and conditions of the Loan Documents. In addition, all of Five Star's legal fees, costs, and charges through the Effective Date that the Debtor is required to reimburse pursuant to the Loan Documents shall also be allowed to Five Star as a part of its Allowed Secured Claim in accordance with section 506(b) of the Bankruptcy Code. Class 2 is unimpaired and, therefore, Five Star is not entitled to vote and is conclusively presumed to accept this Plan.

4.3 Class 3 – New York City Lien Claims. Class 3 shall consist of the Allowed Secured Claims of the City of New York on account of Liens against the Property. Holders of Class 3 Claims shall be paid in full in Cash from the Property Sale Proceeds as soon as practicable after the closing of the sale of the Property. Interest on the Class 3 Claims will be allowed in accordance with section 506(b) of the Bankruptcy Code from the Petition Date to the Effective Date at the annual rate charged by the holder of the Allowed Class 3 Claims. Holders of New York City Lien Claims shall be paid the Allowed Amount in Cash on the Effective Date, plus interest at the applicable statutory rate as it accrues from the Petition Date through the Effective Date. Class 3 is unimpaired and, therefore, holders of Claims in Class 3 are not entitled to vote and are conclusively presumed to accept this Plan.

4.4 Class 4 – General Unsecured Claims. Class 4 shall consist of Allowed General Unsecured Claims. Holders of Allowed Class 4 Claims shall be paid the Allowed Amount in full in Cash from the Property Sale Proceeds that remain after payment to holders of Allowed Administrative Claims and the Allowed Claims in Classes 1, 2, and 3 in accordance with the terms of this Plan and as soon as practicable after the closing of the sale of the Property. In the event remaining Property Sale Proceeds are insufficient to satisfy the Allowed General Unsecured Claims in full, such Allowed General Unsecured Claims shall be paid in full in Cash from the Stock Sale Proceeds. Class 4 is unimpaired and, therefore, the holders of Claims in Class 4 are not entitled to vote and are conclusively presumed to accept this Plan.

4.5 Reservation of Rights. Nothing contained herein shall be deemed to limit the right of any party to object to any Administrative Claims, Priority Claims, General Unsecured Claims, and Secured Claims, provided, however, that the Five Star Allowed Claim shall not be subject to

any objection, shall be allowed for all purposes, and the Loan Documents are hereby ratified and the Liens arising from the Loan Documents shall remain in full force and effect. Nothing contained herein shall affect the Debtor's rights and defenses both legal and equitable, with respect to all members of any Unimpaired Classes including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments asserted against members of any Unimpaired Classes subject to the releases granted herein.

## ARTICLE V

### PLAN IMPLEMENTATION

5.1 Plan Funding. Payments under the Plan will be paid from the Property Sale Proceeds following a sale of the Property that shall be implemented pursuant to the Bidding and Auction Procedures annexed as Exhibit "A" to the Plan. Prior to or on the Effective Date, the Property shall be sold to a Purchaser free and clear of all Liens, Claims, and encumbrances, with any such Liens, Claims, and encumbrances to attach to the Property Sale Proceeds, and disbursed in accordance with the provisions of this Plan. Proponent shall have the right, but not the obligation, to provide for an assignment of its mortgage and an assumption by the Purchaser in connection with the sale of the Property under the Plan. In the event the Property Sale Proceeds are not sufficient to fund the Plan, additional funding for the Plan will be paid from the Stock Sale Proceeds following a sale of some or all of the shares of stock in the Debtor's Brokerage Account.

5.2 Sale Approval. As part of the sale under the Plan, and in order to ensure consummation of the Plan, Proponent and/or the Debtor shall demonstrate and request that the Court find and conclude with respect to the sale of the Property that: (i) the terms and conditions of the sale are fair and reasonable, (ii) the sale of the Property pursuant to the Plan is non-collusive, fair, and reasonable and was conducted openly and in good faith, (iii) the transfer of the Property to the Purchaser represents an arm's-length transaction and was negotiated in good faith between the parties, (iv) the Purchaser, as transferee of the Property, is a good faith purchaser, (v) the sale of the Property to the Purchaser was not controlled by an agreement among potential purchasers, and (vi) no cause of action exists against the Purchaser or with respect to the sale of the Property and that any Claims as against the Purchaser are released, waived, and discharged. Further, if necessary to fund the Distributions under the Plan, the Bankruptcy Court's entry of the Confirmation Order shall constitute approval of the sale and transfer of the Debtor's right, title, and interest in and to the securities held in the Brokerage Account on the Effective Date (or as soon thereafter as is practicable).

5.3 Stamp Tax. Pursuant to section 1146(c) of the Bankruptcy Code, (i) the issuance, transfer or exchange of any securities, instruments or documents, (ii) the creation of any other lien, mortgage, deed of trust or other security interest, (iii) the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of, or in connection with, the Plan, including, without limitation, any deeds, bills of sale or assignments executed in connection with the purchase of Property and any other transaction contemplated under the Plan or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated in this Plan, and (iv) the issuance, renewal, modification or securing of indebtedness by such means, and the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection

with, this Plan, including, without limitation, the Confirmation Order, shall not be subject any applicable document recording tax, stamp tax, conveyance fee or other similar tax, mortgage tax, real estate transfer tax, or other similar tax or governmental assessment, including without limitation the New York City Real Property Transfer Tax and the New York State Documentary Tax.

5.4 Execution of Documents. Pursuant to section 1142 of the Bankruptcy Code, upon the Effective Date, the Disbursing Agent, the Debtor and any necessary party thereto, are directed to execute, release, and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of the Plan.

5.5 Recording of Documents Pursuant to sections 105, 1141(c) and 1142(b) of the Bankruptcy Code, each and every federal, state and local governmental agency or department, shall be directed to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by the Plan.

5.6 Property Turnover at Closing. The Debtor shall turnover possession of the Property sold at closing together with all files and records pertaining to construction documents, Department of Buildings building permits, violations, architectural plans, leases, repair invoices, and tenant correspondence. If the Debtor fails to turnover possession, Proponent shall be entitled to submit a writ of assistance for Bankruptcy Court approval to obtain the assistance of the United States Marshal to remove the Debtor from the Property and effectuate turnover of the Property and all related files and records pertaining to construction documents, Department of Buildings building permits, violations, architectural plans, leases, repair invoices, and tenant correspondence.

5.7 Property Marketing. The Debtor shall cooperate with any broker, auctioneer, and/or real estate professional to permit reasonable access to the Property for marketing purposes.

5.8 Corporate Action. Upon the entry of the Confirmation Order, all matters provided under the Plan involving the corporate structure of the Debtor shall be deemed authorized and approved without any requirement of further action by the Debtor, the Debtor's members, or the Debtor's boards of directors, managers, and/or managing members.

5.9 Manner of Payment. Any payment of Cash made under the Plan may be made either by check drawn on a domestic bank, by wire transfer, or by automated clearing house transfer from a domestic bank, at the option of the Reorganized Debtor.

5.10 Vesting of Property. On the Effective Date, title to and possession of any and all property of the estate, real or personal, shall be re-vested in the Reorganized Debtor free and clear of all liens, claims, interests and encumbrances of any kind, subject to and except as otherwise provided in this Plan and the Confirmation Order.

5.11 Retention of Claims. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, the Reorganized Debtor shall retain any and all claims of the Debtor and its Estate including, without limitation, Causes of Action.



## ARTICLE VI

### INJUNCTION

6.1 Exculpation. Proponent, its agents (acting in such capacity), and any professional person employed by Proponent shall not incur any liability to any Person and/or Entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, confirmation, or consummation of this Plan, the Disclosure Statement, or any other contract, instrument, release, or other agreement or document created or entered into, or any other action taken or omitted to be taken in connection with the Chapter 11 Case or this Plan; provided, however, that the foregoing exculpation from liability will not apply to actions or omissions taken in bad faith or as a result of gross negligence or willful misconduct. Nothing in this Plan shall limit the liability of any professionals to their respective clients for malpractice pursuant to Rule 1.8(h) of the New York Rules of Professional Conduct.

6.2 Confirmation Injunction. Other than such liabilities and obligations otherwise assumed or provided hereunder, and as set forth in the Confirmation Order (a) the rights afforded herein and the treatment of all Claims and Equity Interests herein, shall be in exchange for and in complete satisfaction and release of, all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, against the Debtor or any of its Assets and properties, (b) on the Effective Date, all such Claims against the Debtor shall be satisfied and released in full, and (c) all Persons shall be precluded from asserting and shall be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) against the Debtor, its Assets or property, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date.

6.3 Discharge. On the Effective Date, except as otherwise expressly provided in this Plan or the Confirmation Order, the Confirmation of this Plan shall as of the Effective Date: (i) discharge the Debtor, the Reorganized Debtor and any of its Assets from all Claims, demands, liabilities and other debts that arose on or before the Effective Date, including, without limitation, all debts of the kind specified in section 502 of the Bankruptcy Code, whether or not (A) a proof of claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code, (B) a Claim based on such debt is Allowed pursuant to section 502 of the Bankruptcy Code, (C) a Claim based on such debt is or has been disallowed by order of the Bankruptcy Court, or (D) the holder of a Claim based on such debt has accepted this Plan; and (ii) preclude all Entities from asserting against the Debtor, the Reorganized Debtor or any of its Assets any other or further Claims based upon any act or omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, all pursuant to sections 524 and 1141 of the Bankruptcy Code. The discharge provided in this provision shall void any judgment obtained against the Debtor at any time, to the extent that such judgment relates to a discharged Claim. The Debtor shall be discharged from any Claims and agreements related to debts that arose on or before the Effective Date and such debts, Claims and agreements are deemed restructured and new as set forth in the Plan.

## ARTICLE VII

### DISTRIBUTIONS UNDER THE PLAN

7.1 Disbursing Agent. Effective as of the Confirmation Date, the Disbursing Agent shall have the power to: (a) take all steps and execute all instruments and documents necessary to effectuate the Plan; (b) make distributions contemplated by the Plan; (c) employ, retain, or replace professionals to represent it with respect to its responsibilities; (d) take actions to liquidate any remaining property of the Debtor's estate in a reasonable manner; and (e) receive any Cash on account of any amounts owing to Debtor. The Disbursing Agent shall hold back all amounts that would otherwise be available for distribution to the Debtor under the Plan for, among other things, a reserve for taxes due under the Plan and arising from the sale of Property under the Plan. The Disbursing Agent shall serve without a bond, and shall open a bank account in the Disbursing Agent's name and shall be the sole signatory over such account as of the Confirmation Date.

7.2 Debtor. Effective as of the Confirmation Date, the Debtor shall have the power to: (a) take all steps and execute all instruments and documents necessary to effectuate the Plan; (b) pursue any cause of action the Debtor's estate may possess (including without limitation any avoidance action under the Bankruptcy Code), provided, however, that absent further order of the Bankruptcy Court, such actions shall be commenced within one year of the entry of the Confirmation Order; (c) object to the allowance of any Claim or fee application that has not been Allowed pursuant to a Bankruptcy Court order; and (d) make a final report and file a final account of the administration of the Debtor's estate with the Bankruptcy Court and with the United States Trustee.

7.3 Prior to the Distribution Date. The Confirmation Order shall empower and authorize the Disbursing Agent to take or cause to be taken all actions that are necessary to enable it to implement effectively the provisions of this Plan, including, without limitation, consummating the sale of the Property.

7.4 Distributions for Claims Allowed as of the Effective Date. Except as otherwise provided herein or as ordered by the Bankruptcy Court, Distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Effective Date or as soon thereafter as is practicable. Any Distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable, but not more than five (5) days after the Effective Date. Any payment or Distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

7.5 Delivery of Distributions. Subject to Bankruptcy Rule 9010, all Distributions to any holder of an Allowed Claim shall be made at the address set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtor or its agents, unless the Debtor and Five Star have been notified in writing of a change of address, including by the filing of a proof of claim or Administrative Claim request that contains an address for a holder of a Claim that differs from the address for such holder reflected on any Schedule.

7.6 Reserves for Administrative, Priority Tax, Other Priority Claims, and Statutory Fees. On the Effective Date, or as soon as practicable thereafter, the Disbursing Agent shall establish and maintain a reserve (to the extent necessary) in an amount equal to the sum of (i) all Disputed Administrative Claims, Disputed Cure Amounts, Disputed Priority Tax Claims, and Disputed Priority Claims, if any, in an amount equal to what would be distributed to holders of Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Priority Claims, and Disputed Cure Amounts if their Disputed Claims had been deemed Allowed Claims on the Effective Date or on the Administrative Claims Bar Date or such other amount as may be approved by the Bankruptcy Court upon motion of the Debtor or Disbursing Agent, (ii) an estimated amount for unpaid Professional Fee Claims and any other Administrative Claims that have not been filed as of the Effective Date, and (iii) an estimated amount for unpaid Statutory Fees and Statutory Fees that may become due until the entry of a Final Decree closing the Chapter 11 Case (together, the “Administrative Claim Reserve”). Any such funds shall be maintained by the Disbursing Agent in an account at an authorized bank depository in New York. With respect to such Disputed Claims, if, when, and to the extent any such Disputed Claim becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefore shall be distributed by the Disbursing Agent to the Claimant in a manner consistent with distributions to similarly situated Allowed Claims. The balance of such Cash, if any, remaining after all Professional Fee Claims, Disputed Administrative Claims, Disputed Cure Amounts, Disputed Priority Tax Claims, and Disputed Priority Claims, have been resolved and Distributions made in accordance with the Plan, shall be released and distributed promptly to the Reorganized Debtor. No payments or Distributions shall be made with respect to a Claim that is a Disputed Claim pending the resolution of the dispute by Final Order or agreement of the parties.

7.7 Reserves for Disputed General Unsecured Claims. On or prior to the Confirmation Hearing, the Disbursing Agent shall establish a reserve (to the extent necessary) in an amount equal to all Disputed General Unsecured Claims, if any (the “Disputed GUC Reserve”). For purposes of establishing a reserve for Disputed General Unsecured Claims, Cash will be set aside in an amount equal to the amount that would have been distributed to the holders of Disputed General Unsecured Claims had their Disputed General Unsecured Claims been deemed Allowed Claims on the Effective Date or in such other amount as may be approved by the Bankruptcy Court upon motion of the Debtor or the Disbursing Agent. With respect to such Disputed General Unsecured Claims, if, when, and to the extent any such Disputed General Unsecured Claims becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefor shall be distributed by the Disbursing Agent to the Claimant on the first business day following the end of the calendar month in which the Disputed General Unsecured Claims becomes and Allowed Claim (or earlier in the discretion of the Disbursing Agent) and in a manner thereafter consistent with Distributions to similarly situated Allowed Claims. The balance of such Cash, if any, remaining in the reserve from Disputed Classified Claims after all such Disputed Claims have been resolved and Distributions made in accordance with the Plan shall be transferred to the Reorganized Debtor. No payments or distributions shall be made with respect to a Claim that is a Disputed General Unsecured Claim pending the resolution of the dispute by Final Order or agreement of the parties. The Debtor or the Disbursing Agent shall have the right to seek an Order of the Bankruptcy Court, after notice and a hearing, estimating, or limiting the amount of Cash or property that must be so deposited on account of any Disputed General Unsecured Claim. The Debtor or the Disbursing Agent shall be authorized to object to the allowance of any Disputed

General Unsecured Claim, and each may seek to disallow and/or expunge any Disputed General Unsecured Claim.

7.8 Objections to Claims. The Debtor shall review the proofs of claim and file objections thereto within twenty (20) days after the Effective Date, except that the Five Star Allowed Claim shall not be subject to any objection, and shall be allowed for all purposes. The Debtor may apply to the Bankruptcy Court for an extension of time to file claim objections if the circumstances warrant such extension.

7.9 Unclaimed Distributions. If any Distribution remains unclaimed for a period of one hundred and twenty (120) days after it has been delivered (or attempted to be delivered) in accordance with the Plan to the holder of such Allowed Claim, such unclaimed property shall be forfeited by such holder, whereupon all right, title and interest in and to the unclaimed property shall be deemed vested in the Reorganized Debtor. The amount of Cash attributable to non-negotiated and returned checks shall be returned to the Disbursing Agent for redistribution to holders of any Allowed Claims that have not been paid if necessary to complete payments under this Plan, and otherwise to the Reorganized Debtor.

7.10 Fractional Cents. Any other provisions of this Plan to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

7.11 Payments of Less than Twenty-Five Dollars. If a cash payment otherwise provided for by this Plan with respect to an Allowed Claim would be less than twenty-five (\$25.00) dollars (whether in the aggregate or on any payment date provided in this Plan), notwithstanding any contrary provision of this Plan, the Disbursing Agent shall not be required to make such payment.

7.12 Payment of Fees and Costs of the Disbursing Agent. The Estate shall reimburse the Disbursing Agent for its fees and costs incurred in performing, or in connection with, its duties, rights, and obligations under the Plan.

7.13 Exculpation. Neither the Disbursing Agent, nor any of its employees, advisors, attorneys, accountants, financial consultants, contractors, agents, and their successors and assigns, shall have or incur any liability to any Holder of a Claim or Equity Interest, or to any other entity, for any act or omission in connection with, related to, or arising out of, the pursuit of confirmation, consummation, or other administration of the Plan or the property to be distributed or otherwise dealt with under the Plan, except for gross negligence or willful misconduct, and in all respects the Disbursing Agent and each of its employees, advisors, attorneys, accountants, financial consultants, contractors, and agents shall be entitled to rely upon the advice of counsel with respect to its duties and responsibilities under the Plan. No current Holder of a Claim or Equity Interest, representative thereof, shall have or pursue any claim or cause of action against the Disbursing Agent for making payments in accordance with the Plan, or for implementing the provisions of the Plan. The Disbursing Agent shall not be liable for obligations relating to Allowed Claims to the extent that Allowed Claims are not paid in full, other than as a result of the Disbursing Agent's gross negligence or willful misconduct.

## ARTICLE VIII

### UNEXPIRED LEASES AND EXECUTORY CONTRACTS

8.1 Assumption and Rejection of Agreements. Any and all pre-petition leases or executory contracts (a) not previously assumed or the subject of a motion to assume pending on the Confirmation Date and/or (b) not designated prior to the Confirmation Date as pre-petition leases or executory contracts to be assumed by the Debtor shall be deemed rejected by the Debtor.

8.2 Claims for Damages. All proofs of claim with respect to Claims arising from the rejection of executory contracts or leases, if any, must, unless another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court within thirty (30) days after the mailing of notice of Effective Date. Any and all proofs of claim with respect to Claims arising from the rejection of executory contracts by the Debtor shall be treated as General Unsecured Claims, for purposes of distribution pursuant to the Plan. Unless otherwise permitted by Final Order, any proof of claim that is not filed before the Bar Date (other than those Claims arising from the rejection of executory contracts or leases under the Plan) shall automatically be disallowed as a late filed Claim, without any action by the Debtor, and the holder of such Claim shall be forever barred from asserting such Claim against the Debtor, its Estate, or property of its Estate.

## ARTICLE IX

### CONDITIONS PRECEDENT TO ACHIEVING THE EFFECTIVE DATE

9.1 Conditions Precedent to Achieving the Effective Date. The Plan shall not become effective unless and until (a) the Confirmation Order becomes a Final Order and is not subject to any stay or injunction; (b) the closing of the sale of the Property and (c) in the event the Property Sale Proceeds are not sufficient to fund the Plan, the sale of some or all of the shares of stock in the Debtor's Brokerage Account.

9.2 Notice of the Effective Date; Actions Taken on Effective Date. Proponent shall file and serve upon all Creditors a notice of the occurrence of the Effective Date within two (2) Business Days thereafter. Unless otherwise specifically provided in the Plan, any action required to be taken by the Debtor on the Effective Date shall be taken by the Debtor on the Effective Date or as soon as reasonably practicable thereafter.

## ARTICLE X

### RETENTION OF JURISDICTION

10.1 Jurisdiction. Following the Confirmation Date and until such time as all payments and distributions required to be made and all other obligations required to be performed under this Plan have been made and performed by the Debtor, the Bankruptcy Court shall retain jurisdiction as is legally permissible, including, without limitation, for the following purposes:

- (a) Claims. To determine the allowance, extent, classification, or priority of Claims against the Debtor upon objection by the Debtor.
- (b) Injunction, etc. To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with the Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, executions, performance and consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Chapter 11 Case on or before the Effective Date with respect to any Person or Entity.
- (c) Professional Fees. To determine any and all applications for allowance of compensation and expense reimbursement of Professional for periods before the Effective Date, and objections thereto, as provided for the in the Plan.
- (d) Certain Priority Claims. To determine the allowance, extent and classification of any Priority Tax Claims, Other Priority Claims, Administrative Claims or any request for payment of an Administrative Claim.
- (e) Dispute Resolution. To resolve any dispute arising under or related to the implementation, execution, consummation or interpretation of the Plan and/or Confirmation Order and the making of Distributions under the Plan and/or the Confirmation Order.
- (f) Actions. To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted (either before or after the Effective Date) in the Chapter 11 Case by or on behalf of the Debtor.
- (g) General Matters. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code or other applicable law.
- (h) Plan Modification. To modify the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order so as to carry out its intent and purposes.
- (i) Aid Consummation. To issue such orders in aid of consummation of the Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person or Entity, to the full extent authorized by the Bankruptcy Code.

- (j) Implementation of Confirmation Order. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated.
- (k) Final Order. To enter a Final Order closing the Chapter 11 Case.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

11.1 Pre-Confirmation Modification. On notice to and opportunity to be heard by the United States Trustee, the Plan may be altered, amended or modified by Proponent before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

11.2 Post-Confirmation Immaterial Modification. Proponent, insofar as it does not materially and adversely affect the interests of holders of Claims, may correct any defect, omission or inconsistency in the Plan in such manner and to such extent as may be necessary to expedite consummation of this Plan.

11.3 Post-Confirmation Material Modification. Proponent may alter or amend the Plan after the Confirmation Date in a manner that materially and adversely affects holders of Claims, provided that such alteration or modification is made after notice and a hearing and otherwise meets the requirements of section 1127 of the Bankruptcy Code.

11.4 Withdrawal or Revocation of the Plan. If Proponent revokes or withdraws the Plan, or if confirmation or consummation of the Plan does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan (including the allowance, fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests) and any assumption or rejection of executory contracts or leases affected by the Plan shall terminate and be of no further force or effect, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan shall constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Person, or prejudice in any manner the rights of any other Person.

11.5 Payment of Statutory Fees. The Debtor shall pay from Cash in the Estate all fees payable due as of the Effective Date pursuant to section 1930 of title 28 of the United States Code. Thereafter, the Debtor shall pay from Cash in the Estate all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest due under 31 U.S.C. § 3717, on all disbursements, including plan payments and disbursements in and outside of the ordinary course of business, until the earliest of the entry of a final decree closing the Chapter 11 Case, dismissal of the Chapter 11 Case, or conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

11.6 Successors and Assigns. The rights, benefits and obligations of any Person or Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors and/or assigns of such Person or Entities.

11.7 Preservation of Insurance. This Plan shall not diminish or impair the enforceability of any insurance policy, right or claim that may cover Claims against the Debtor (including, without limitation, its members, managers or officers) or any other persons or entity. Likewise, the Plan and Confirmation Order shall not impair any insurance carrier's rights, claims, defenses or disputes under any policy and shall not act to increase or extend any rights of the Debtor or the carries.

11.8 Cramdown. Proponent reserves the right to request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class of Claims or Equity Interests that rejects, or is deemed to have rejected in a subsequent version of this Plan that has been altered, amended, or modified by Proponent before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

11.9 Filing of Additional Documents. Except as otherwise provided in the Plan, on or before the Effective Date, Proponent may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

11.10 Governing Law. Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the laws of the State of New York.

11.11 Notices. Any notice required or permitted to be provided under the Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight courier service, freight prepaid, to be addressed as follows:

If to the Debtor:                    Yeshivah Ohel Moshe  
    c/o Rabbi Dov Machlis  
    7914 Bay Parkway  
    Brooklyn, New York 11214

with a copy to:                    Backenroth Frankel & Krinsky, LLP  
    800 Third Avenue  
    New York, New York 10022  
    Attn: Mark A. Frankel, Esq.

If to Five Star:                    NY Five Star Equity Corp.  
    254 Canal Street, Suite 2001  
    New York, NY 10013

with a copy to:                    Pryor Cashman LLP  
    7 Times Square  
    New York, NY 10036  
    Attn: Seth H. Lieberman, Esq.

11.12 Severability. If any term or provision of the Plan is held by the Bankruptcy Court prior to or at the time of Confirmation to be invalid, void or unenforceable, the Bankruptcy Court



shall have the power to alter and interpret such term or provision to make 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. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan may, at the option of Proponent, remain in full force and effect and not be deemed affected. However, Proponent reserves the right not to proceed to Confirmation or consummation of the Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

11.13 Term of Injunctions or Stays. Unless otherwise provided, all injunctions or stays provided for in this Chapter 11 Case under sections 105 and 362 of the Bankruptcy Code or otherwise in effect on the Confirmation Date shall remain in full force and effect until the Effective Date.

11.14 Further Assurances. Proponent, the Reorganized Debtor, all holders of Claims receiving Distributions under the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

11.15 Headings. The headings used in this Plan are inserted for convenience only and neither constitute a portion of the Plan nor in any manner affect the provisions of the Plan.

11.16 Extinguishment of Causes of Action Under the Avoiding Power Provisions. On the Effective Date, all rights, claims, causes of action, avoiding powers, suits and proceedings arising under sections 506(c), 544, 545, 547, 548, 549 and 553 of the Bankruptcy Code shall be extinguished unless then pending; provided however, such rights and claims are preserved by the Debtor if asserted defensively or for purposes of offset. Except to the extent released in the Plan or order of the Bankruptcy Court, the Debtor shall have, retain, reserve, and be entitled to assert all other Claims, causes of action, rights of setoff and other legal or equitable defenses which the Debtor had immediately prior to the Petition Date as fully as if the Chapter 11 Case had not been commenced; and any of the Debtor's legal and equitable rights respecting any such Claim which is not specifically waived, extinguished or relinquished by the Plan or order of the Bankruptcy Court may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

11.17 Entire Agreement. The Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Plan.

**ARTICLE XII**

**REQUEST FOR CONFIRMATION**

12.1 Proponent requests that this Plan be confirmed in accordance with section 1129 of the Bankruptcy Code.

Dated: April 21, 2017

Respectfully submitted,

NY Five Star Equity Corp.

By: /s/ Henry Chen

Name: Henry Chen

Title: President

# EXHIBIT A

## EXHIBIT A

### **BIDDING AND AUCTION PROCEDURES**

These bidding and auction procedures (the “Bidding and Auction Procedures”) shall govern the solicitation and consideration of competing offers for the sale (the “Sale”) of the real property located at 7914 Bay Parkway, Brooklyn, New York 11214 (the “Property”).

1. Time and Place of Sale. The Sale will be held on \_\_\_\_\_, 2017 at \_\_.m. at the offices of Pryor Cashman LLP, 7 Times Square, New York, New York 10036.

2. Sale Pursuant to Chapter 11 Plan. The seller of the Property is Yeshivah Ohel Moshe (“Seller” or the “Debtor”), by and through the designated disbursing agent (the “Disbursing Agent”) as set forth in the Chapter 11 Plan of Reorganization (the “Plan”) proposed by NY Five Star Equity Corp. (“Proponent”). The Sale shall be conducted pursuant to section 363 of chapter 11 of the Bankruptcy Code (“Bankruptcy Code”) and in accordance with the terms of the Plan.

3. Sale Free and Clear of Liens. The Sale of the Property shall be conducted pursuant to the Plan and shall be free and clear of liens, claims, and encumbrances, with any such liens, claims, and encumbrances to attach to the proceeds from the Sale and disbursed under the Plan.

4. Purchase Agreement. Proponent has drafted a form of the Purchase and Sale Agreement (together with all ancillary documents and agreements, the “Purchase Agreement”) to be executed by potential bidders as a written offer to purchase the Property in the Sale. The template form of Purchase Agreement is annexed as Exhibit 1 hereto. Potential bidders are encouraged to utilize this template and modify it if necessary.

5. Auctioneer. Upon entry of the Confirmation Order, the Disbursing Agent shall be authorized to retain MYC & Associates as auctioneer (“Auctioneer”) consistent with the terms of the Marketing and Sales Agreement annexed as Exhibit 2 hereto. The Auctioneer shall, among other things, market the Property and conduct the Sale in accordance with these Bidding and Auction Procedures.

6. Qualification to Bid. In order to qualify to bid on the Property, within seven (7) days prior to the commencement of the Sale, a prospective bidder (other than the Proponent) must deliver to the Disbursing Agent each of the following:

- a. An executed original of the Purchase Agreement and ancillary documents at the purchase price and upon the terms and conditions set forth therein, together with a marked copy showing any proposed changes to the form Purchase Agreement annexed hereto as Exhibit 1;
- b. a bank check in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to participate in the Sale (the “Qualifying Deposit”) payable to “Pryor Cashman LLP, Disbursing Agent”;

- c. evidence reasonably demonstrating such bidder's ability to consummate a sale on the terms proposed;
- d. all information requested by state regulatory bodies, which information may be supplemented at the request of the Disbursing Agent or other parties in interest; and
- e. documents evidencing the bidder's ability to satisfy any regulatory requirements necessary to obtain the required approvals under applicable non-bankruptcy law.

7. Qualified Bidders. Any bidder that qualifies will be a "Qualified Bidder". Only Qualified Bidders will be permitted to be present at the auction and participate in bidding for the Property at the auction. The Disbursing Agent, after consultation with the Auctioneer, shall reasonably determine, in good faith, whether any bidder is a Qualified Bidder.

8. Disclaimer. Each Qualified Bidder, by submitting a bid for the Property, shall be deemed to acknowledge and represent:

- a. That it is bound by the Bidding and Auction Procedures contained herein;
- b. That it had an opportunity to inspect and examine the Property and to review all pertinent documents and information with respect to the Property prior to making its offer and that it relied solely upon its own investigation, own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and
- c. That it did not rely upon any written or oral statements, warranties or representations of the Auctioneer, the Disbursing Agent, the Debtor, or the Debtor's agents regarding the Property, or the completeness of any information provided in connection with the Property, the bidding process or the Sale.

9. Notice of Qualifying Bid. No later than one (1) business day before the Sale, the Disbursing Agent shall notify each bidder as to whether the Disbursing Agent deems such bidder to be a Qualified Bidder.

10. Bidding. Bidding shall be conducted openly at the Sale. The opening bid shall be \$\_\_\_\_\_. After the opening bid, all subsequent competing bids shall be in increments at the direction and discretion of the Auctioneer. No bid shall be of the same amount as any existing bid. Proponent may credit bid its full claim.

11. Stalking Horse Bid. In the event a stalking horse contract is executed, the initial opening bid at the Sale will be \$\_\_\_\_\_ above the purchase price in the stalking horse contract, and subsequent bids shall be \$\_\_\_\_\_ higher than the previous bid.

12. No Contingent Bids. Bids may not be subject to financing, due diligence, zoning, environmental or any other contingency of any kind whatsoever except the entry of an order of the Bankruptcy Court approving the sale pursuant to sections 363(b) and (f) of the Bankruptcy Code.

13. Conduct of the Sale. Conduct of the Sale and increments of bidding are at the direction and discretion of the Auctioneer. The Auctioneer reserves the right to refuse admittance to, or expel anyone from, the Sale premises for any reason deemed necessary by the Auctioneer, including, but not limited to, interference with the Sale. In the event of a dispute between bidders, the Auctioneer shall make the final decision to accept the final bid, to re-offer and/or resell the Property. If any disputes should arise following the Sale, the Auctioneer's records shall be conclusive in all respects.

14. Determination of Successful Bidder(s). The Disbursing Agent shall determine the highest and best bid.

15. Successful Bidder. At the Sale, once a bidder is determined to have made the highest or best bid for the Property (the "Successful Bidder"), bidding shall be deemed closed and no additional bids will be considered. Within one (1) business day after the Successful Bidder is determined, the Successful Bidder (except for the Proponent) shall be required to increase the Qualifying Deposit to an amount equal to ten percent (10%) of the winning bid, which amount shall serve as a good faith deposit against payment of the purchase price. The Successful Bidder may also be asked to sign a statement that the Successful Bidder has inspected the Property.

16. Return of Qualifying Deposits. At the conclusion of the Sale, the Disbursing Agent will return the Qualifying Deposits to all bidders other than the Successful Bidder.

17. Sale Hearing. The successful bid will be subject to approval by the Bankruptcy Court. Please be advised that a hearing to approve the Sale of the Property to the Successful Bidder (the "Sale Hearing") will take place on \_\_\_\_\_, at \_\_:00 \_\_.m. (ET), or at such time thereafter as counsel may be heard, in the Bankruptcy Court. The Sale Hearing may be adjourned by consent of the parties or an order of the Court from time to time on notice to creditors and other parties in interest, or without further notice other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

18. Sale Approval Order. The Sale contemplated herein shall be subject to the entry of an order, or orders as the case may be, by the Bankruptcy Court, approving the Sale, and shall contain the following findings of fact and conclusions of law: (a) that the terms and conditions of the Sale are fair and reasonable, (b) that the Sale and purchase of the Property pursuant to the Plan and the Bidding and Auction Procedures is non-collusive, fair, and reasonable, and was conducted openly and in good faith, (c) that the transfer of the Property to the Successful Bidder represents an arm's-length transaction and was negotiated in good faith between the parties, (d) that the Successful Bidder, as transferee of the Property, is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protection of section 363(m) of the Bankruptcy Code, (e) the Sale of the Property to the Successful Bidder was not controlled by an agreement among potential purchasers, (f) that no cause of action exists against the Successful Bidder or with respect to the Sale under Bankruptcy Code section 363(n), and (g) that any claims under Bankruptcy Code section 363(n) or any other claims as against the Successful Bidder are hereby released, waived and discharged.

19. Closing. The Successful Bidder must pay the balance of the purchase price of the Property (the difference between the amount of the successful bid and the Qualifying Deposit) to the Disbursing Agent, by bank check, or wire transfer at the closing of title to the Property (the “Closing”) at a date that is no more than fifteen (15) days after the Order by the Bankruptcy Court approving the Sale is entered, TIME BEING OF THE ESSENCE as to the Successful Bidder, although such date may be extended solely by the Disbursing Agent.

20. Deed. The Debtor shall convey the Property by delivery of a quit claim deed in accordance with the terms set forth in the Purchase Agreement.

21. Modifications. The Auctioneer reserves the right to: (a) impose additional or different reasonable terms and conditions at or before the Sale, (b) extend the deadlines set forth in the Bidding and Auction Procedures without notice, and (c) reject any and all bids that are not from Qualified Bidders.

22. Transfer Tax. Under the Plan, pursuant to section 1146(c) of the Bankruptcy Code, (a) the issuance, transfer or exchange of any securities, instruments or documents, (b) the creation of any other lien, mortgage, deed of trust or other security interest, (c) the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of, or in connection with, the Plan, including, without limitation, any deed, bill of sale or assignment executed in connection with the purchase of the Property by the Successful Bidder, and any other transaction contemplated under the Plan, or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated in the Plan, and (d) the issuance, renewal, modification or securing of indebtedness by such means, and the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, the Confirmation Order, shall not be subject any applicable document recording tax, stamp tax, conveyance fee or other similar tax, mortgage tax, real estate transfer tax, or other similar tax or governmental assessment including without limitation New York State Documentary Tax.

23. Damages for Failure to Close. Time is of the Essence as against the Successful Bidder and the failure of the Successful Bidder to either timely pay the additional Qualifying Deposit or timely close for any reason whatsoever (except as otherwise provided below) including its failure to pay the balance of the purchase price on the Closing Date, will result in the Disbursing Agent retaining the Qualifying Deposit of the Successful Bidder as liquidated damages for the benefit of the Estate and the termination of the Successful Bidder’s right to acquire the Property. The Successful Bidder shall be obligated to close title to the Property and there is no contingency of any kind or nature that will permit the Successful Bidder to cancel or avoid its obligation under these Bidding and Auction Procedures other than the Debtor’s inability to deliver a quit claim deed to the Property. Expenses incurred by the Successful Bidder, or any competing bidder relating to any due diligence, such as obtaining title reports or environmental inspections, shall be the sole responsibility of such bidder, and under no circumstances shall the Debtor, the Disbursing Agent, Proponent or any of their respective professionals be responsible for or pay such expenses.

24. Backup Bidder. In the event that the Successful Bidder for the Property fails to tender the payment of the balance of the purchase price on the Closing Date, or otherwise perform

any of its obligations under these Bidding and Auction Procedures, the Disbursing Agent, at its sole option, shall be authorized to sell the Property to the second highest bidder (the “Second Highest Bidder”) without any further notice, without giving credit for the Qualifying Deposit forfeited by the Successful Bidder, and upon such other terms and conditions as the Disbursing Agent deems appropriate. Should the Second Highest Bidder fail to close on the Property, within such time as the parties may agree but not to exceed thirty (30) days after notice from the Disbursing Agent to the Second Highest Bidder, the Disbursing Agent shall be authorized to sell the Property to the next highest or best bidder, without the necessity of any further notice. All bidders will be bound by these Bidding and Auction Procedures, including, without limitation, those items set forth in the paragraphs above, except that the Second Highest Bidder must close within thirty (30) days of notification that such bid is accepted. TIME IS OF THE ESSENCE.

25. No Representations. The Disbursing Agent, the Debtor, Proponent, and their respective professionals have not made and do not make any representations as to the physical condition, rents, leases, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Property or the Sale, which might be pertinent to the purchase of the Property, including, without limitation, (a) the current or future real estate tax liability, assessment or valuation of the Property; (b) the potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (c) the compliance or non-compliance of the Property, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the Property; (d) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (e) the current or future use of the Property; (f) the present and future condition and operating state of any and all machinery or equipment on the Property and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation; (g) the ownership or state of title of any personal property on the Property; (h) the presence or absence of any laws, ordinances, rule or regulations issued by any governmental authority, agency or board and any violations thereof; (i) any present or future issues concerning subdivision or non-subdivision of the Property; or (j) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos or other hazardous materials anywhere on the Property. Each bidder shall be deemed to have agreed and acknowledged that no such representations have been made. The Disbursing Agent and/or the Proponent are not liable or bound in any manner by expressed or implied warranties, guaranties, promises, statements, representations or information pertaining to the Property, made or furnished by the Disbursing Agent, Proponent, the Debtor or any auctioneer, real estate broker agent, employee, servant or other person or professional representing or purporting to represent the Disbursing Agent, Proponent, or the Debtor unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing by the Disbursing Agent, Proponent, or the Debtor, respectively.

26. As Is Sale. The Property is being sold free and clear of all liens, claims and encumbrances, with any such liens, claims and encumbrances to attach to the net proceeds of sale after deduction of any expenses of sale. Furthermore, the Property is being sold “AS IS”,



“WHERE IS” “WITH ALL FAULTS”, without any representations, covenants, guarantees or warranties of any kind or nature whatsoever and subject to, among other things, (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; (e) environmental conditions; and (f) the marketability of the Property, offering memorandum and/or other similar documentation required by New York law.

27. Conduct of Sale. These Bidding and Auction Procedures will be read into the record, or specifically incorporated by reference, at the Sale of the Property. By making a bid for the Property, all bidders will be required to acknowledge these Bidding and Auction Procedures and agree to be bound by them.

28. Failure to Close. If the Disbursing Agent is unable to deliver title to the Property for any reason whatsoever, or in the event that the Bankruptcy Court refuses to confirm the Plan or approve the Sale of the Property pursuant to section 363 of the Bankruptcy Code, the Disbursing Agent’s only obligation will be to refund the Qualifying Deposit, together with interest earned thereon, if any, to the Successful Bidder, and upon such refund, the Successful Bidder will have no claim or recourse against the Disbursing Agent, the Debtor, Proponent, or any of their respective professionals.

29. Right to Withdraw Sale. The Disbursing Agent reserves its right to withdraw the Property from the Sale, either prior or subsequent to the Sale, for any reasonable reason, as the Disbursing Agent deems necessary or appropriate.

30. Plan Confirmation. The Sale of the Property is subject to confirmation of the Plan and approval by the Bankruptcy Court.

31. No Break-Up Fee. The bid does not entitle the Successful Bidder, or any other bidder, to any break-up fee, termination fee, or similar type of payment or reimbursement, and the Successful Bidder waives the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code, related in any way to the submission of its bid or the Bidding and Auction Procedures.

32. Proponent’s Designee. Notwithstanding anything to the contrary herein, Proponent shall be entitled to name a designee or designees who shall be deemed qualified to bid without posting a Qualifying Deposit or complying with the other requirements otherwise necessary to bid, and, if the Successful Bidder, shall be entitled to purchase the Property subject to some or all of the Proponent’s mortgage.

33. Bankruptcy Court Jurisdiction. The Bankruptcy Court shall determine any disputes concerning the Sale of the Property. By participating in the Sale, all bidders consent to the jurisdiction of the Bankruptcy Court to determine such disputes under the Debtor’s pending case.

# **EXHIBIT 1**

**EXHIBIT 1  
PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2017 (the "Effective Date"), between YESHIVA OHEL MOSHE, a not-for-profit religious corporation registered in New York State ("Seller"), and \_\_\_\_\_, a \_\_\_\_\_, or its assigns ("Buyer").

**RECITALS**

WHEREAS, Seller is the fee simple owner of certain premises located at 7914 Bay Parkway, Brooklyn, New York, as more particularly described in Schedule A attached hereto, and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (collectively, the "Property").

WHEREAS, on November 16, 2016 (the "Petition Date"), Seller commenced a voluntary case under chapter 11 of the Bankruptcy Code ("Bankruptcy Code"), Case No. 16-43681 (the "Chapter 11 Case"), in the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court").

WHEREAS, since the Petition Date, Seller has continued to operate its business and manage its property pursuant to sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, subject to approval of the Bankruptcy Court, and pursuant to the terms and conditions set forth in this Agreement and in orders of the Bankruptcy Court approving (i) the bidding procedures, and (ii) this Agreement and the transactions contemplated hereby, Seller desires to sell and Buyer desires to purchase the Property (as hereinafter defined) free and clear of all liens, claims, and encumbrances interest to the fullest extent permitted under section 363 of the Bankruptcy Code, and to assume and acquire by assignment certain designated prepetition contracts, leases and licenses pursuant to section 365 of the Bankruptcy Code and all applicable law as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter contained, the parties agree as follows:

**TERMS AND CONDITIONS**

**ARTICLE 1  
PURCHASE AND SALE OF ASSETS**

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement and all applicable Bankruptcy Court orders, Seller agrees to sell, convey, transfer, assign and deliver to Buyer, free of all leases, liens, security interests, interests, encumbrances, restrictions, pledges, claims, causes of action, liabilities, obligations, options, contractual commitments, rights of first refusal, successor liabilities, rights of offset, recoupment, and defenses, and Buyer agrees to

purchase from Seller, all of Seller's right, title, and interest in and to the Property, which includes, without limitation:

- a. all right, title and interest, if any, of the Seller of, in, and to the land lying in the streets, roads, or avenues, open or proposed, in front of and adjoining the Property and of, in and to any strips or gores of land adjoining the Property;
- b. all fixtures, chattels and articles of personal property owned by Seller and now or hereafter attached to or located in or upon the Premises and used or usable in connection with any present or future operation or letting of the Premises or the activities at any time conducted therein (hereinafter called "Building Equipment"), including furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, washtubs, sinks, gas and electric fixtures, stoves, ranges, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, plants and shrubbery and all other machinery, appliances, fittings, furniture, furnishings and fixtures of every kind used in the operation of the buildings standing or hereafter erected on the Property, together with any and all replacements thereof and additions thereto, and all right, title and interest of Seller in and to any Building Equipment that may be subject to any security agreements, as defined in subdivision (a) (73) of Section 9-102 of the Uniform Commercial Code of the State of New York, it being understood and agreed that all Building Equipment is part and parcel of the Property; and
- c. all site plans, surveys, plans and specifications, and floor plans in Seller's related to the Property.

1.2 Excluded Property. Notwithstanding anything to the contrary in Section 1.1, Seller shall retain all of the following property owned directly or indirectly by it (or any of Seller's affiliates), and such property below shall not be included as part of the Property to be transferred to Buyer (collectively, the "Excluded Property"):

- a. cash, cash equivalents and short-term investments, including all pre-paid utility and vendor deposits held by any party;
- b. all personal property owned by individual members of Seller;
- c. assets owned and provided by vendors of services or goods to the Property;
- d. organizational record books and minute books of Seller;
- e. bank and brokerage accounts of Seller;
- f. accounts receivable, universal settlement payments and proceeds and all other rights, claims and choses in action of Seller with respect to periods prior to the

Effective Date, and any payments, awards or other proceeds resulting therefrom;  
and

- g. writings and other items that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other cognizable privilege or protection.

1.3 Liabilities Excluded. THIS AGREEMENT EXCLUDES, AND BUYER DOES NOT ASSUME, ANY LIABILITIES OF SELLER NOT EXPRESSLY ASSUMED BY BUYER IN WRITING IN THIS AGREEMENT OR IN ANY OTHER AGREEMENT OR APPLICABLE BANKRUPTCY COURT ORDER RELATING TO THE TRANSFER OF THE PROPERTY FROM SELLER TO BUYER INCLUDING, BUT NOT LIMITED TO THE FOLLOWING \_\_\_\_\_ . ANY AND ALL ACCOUNTS PAYABLE OR OTHER OBLIGATIONS ACCRUING TO AND EXISTING AS OF THE EFFECTIVE DATE ARE AND SHALL REMAIN THE SOLE OBLIGATION AND RESPONSIBILITY OF SELLER EXCEPT AS EXPRESSLY ASSUMED BY BUYER IN WRITING.

1.4 The Escrow. The purchase and sale of the Property shall be consummated through the establishment of an escrow (the "Escrow") with \_\_\_\_\_ ("Escrow Agent"). Upon Buyer's deposit with the Escrow Agent, this Agreement shall constitute the parties' joint escrow instructions to the Escrow Agent. The Escrow Agent shall act in accordance with this Agreement. The parties agree to execute the general escrow instructions as may be requested by Escrow Agent, provided that in the event of any conflict between the provisions of such general escrow instructions and the provisions of this Agreement, the provisions of this Agreement shall control. Escrow Agent shall notify Buyer and Seller in writing of the date of receipt of this Agreement.

1.5 The Closing. Provided that all of the conditions to Closing set forth in Articles 8 and 9 have been satisfied or waived, the Escrow and the transaction contemplated hereby shall close (the "Closing") at the offices of the Escrow Agent or such other location as the parties may agree upon at (a) a date that is no more than fifteen (15) days after the Order by the Bankruptcy Court approving the Sale is entered or (b) such other date agreed to in writing by Buyer and Seller (as applicable, the "Closing Date"). On the Closing Date, Escrow Agent shall: (x) issue and deliver to Buyer the Title Policy (as such term is defined herein) or, alternatively, be irrevocably committed to issue the Title Policy (such Title Policy shall be effective as of the Closing Date), (y) deliver to Seller by wire transfer of immediately available funds to the account or accounts designated by Seller the Purchase Price (as adjusted by Seller and Buyer pursuant to a settlement statement executed by Seller and Buyer at Closing), and (z) deliver to Buyer and Seller such other agreements, documents and instruments as the parties instruct in the escrow instructions.

1.6 Purchase Price. The purchase price ("Purchase Price") for the Property shall be \_\_\_\_\_ U.S. Dollars (\$ \_\_\_\_\_). The Purchase Price consisting of and shall be payable or credited as follows:

- a. Deposit. Buyer has delivered \_\_\_\_\_ U.S. Dollars (\$ \_\_\_\_\_) (the "Deposit"), equal to ten percent (10%) of the cash portion of the Purchase Price, to Escrow in the form of a wire transfer or other immediately available funds. The

Deposit shall be deposited in an interest-bearing account for Buyer's benefit in a segregated account at the bank at which the Escrow Agent maintains its principal depository relationship. If this transaction closes, the Deposit and all interest accrued thereon shall be credited toward the Purchase Price. If this transaction does not close, the Deposit shall be paid to the party entitled hereto pursuant to the terms of this Agreement.

- b. Closing Funds. On or before the Closing Date, Buyer shall cause to be deposited with Escrow Agent an amount equal to the Purchase Price minus the Deposit in cash or other immediately available funds (the "Cash Due at Closing"). If the Purchase Price is adjusted for any reason, or Escrow Agent's balancing of the credits and debits due Buyer and Seller at Closing results in a change in the net amount due Seller hereunder, any difference shall be reflected in the Cash Due at Closing.

## **ARTICLE 2 BANKRUPTCY COURT**

2.1 Entry of Order Approving the Sale. The Sale of the Property contemplated herein shall be subject to the entry of an order, or orders as the case may be, by the Bankruptcy Court, approving the Sale of the Property (collectively, the "Sale Order"), and shall contain the following findings of fact and conclusions of law: (a) that the terms and conditions of the sale are fair and reasonable, (b) that the Sale is non-collusive, fair and reasonable and was conducted openly and in good faith, (c) that the transfer of the Property to the Buyer represents an arm's-length transaction and was negotiated in good faith between the parties, (d) that the Buyer, as transferee of the Property, is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protection of section 363(m) of the Bankruptcy Code, (e) the Sale of the Property to the Buyer was not controlled by an agreement among potential purchasers, (f) that no cause of action exists against the Buyer or with respect to the Sale of the Property to the Buyer under section 363(n) of the Bankruptcy Code, and (g) that any claims under section 363(n) of the Bankruptcy Code or any other claims as against the Buyer are hereby released, waived, and discharged.

## **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that, as of the Effective Date and the Closing Date:

3.1. Organization and Standing. Seller is a corporation duly organized and validly existing under the laws of the state of its incorporation.

3.2. Capacity; Authority; Consents. Subject to the approval of the Bankruptcy Court and any governmental regulatory agencies with jurisdiction over the Seller, Seller has full power, legal capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations under this Agreement.

3.3. No Violation. Neither the execution and delivery by Seller of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Seller will violate conflict with or result in a breach of any material provision of the Articles of Incorporation, bylaws or other organizational documents of Seller. To Seller's actual knowledge and except for compliance with the statutory reserves mandated under the New York Not-for-Profit Corporation Law, the New York Religious Corporation Law, and the regulations promulgated thereunder, Seller is not aware of any violation of any statute, rule, regulation or order of any court or Federal, state or local governmental agency or instrumentality having jurisdiction over it, the Property, the violation of which would have a material adverse effect on the ownership or operation of the Property.

3.4. Environmental Compliance. To Seller's actual knowledge, the Property is not contaminated with any hazardous or regulated substances, and Seller is in compliance with sections 9601 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., and all other applicable state, county, municipal, administrative or other environmental, hazardous waste or substance, health and/or safety laws, ordinances, rules, and regulations pertaining to the environmental or ecological conditions on, under or about the Property. There are no underground storage tanks on the Property.

3.5. Sale Free and Clear of Liens. The deed to the Property shall be conveyed to Buyer as a quitclaim deed and shall be free and clear of liens, claims, and encumbrances, with any such liens, claims and encumbrances to attach to the net proceeds of the Sale after payment of all expenses of the Sale.

3.6. Full Disclosure. All of Seller's warranties, representations or covenants in this Agreement: (i) constitute a material part of the consideration hereunder; (ii) are true and complete, current and accurate as of the date hereof; (iii) shall be true, complete, current and accurate as of the Effective Date and the Closing Date; and (iv) shall survive the Closing Date and delivery of the Property to Buyer.

3.7. As Is Sale. The Property is being sold free and clear of all liens claims and encumbrances, with any such liens, claims and encumbrances to attach to the net proceeds of the Sale after payment of all expenses of the Sale. Furthermore, the Property is being sold "AS IS", "WHERE IS" "WITH ALL FAULTS", without any representations, covenants, guarantees or warranties of any kind or nature whatsoever and subject to, among other things, (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; (e) environmental conditions; (f) the marketability of the Property, offering memorandum and/or other similar documentation required by New York law; (g) the current or future real estate tax liability, assessment or valuation of the Property; (h) the potential qualification of the Property for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (i) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Property from any source, including, but not limited to, any state, city or federal government or institutional lender; (j) the current or future use of the Property; (k) the present and

future condition and operating state of any and all machinery or equipment on the Property and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation; (l) the ownership or state of title of any personal property on the Property; (m) the presence or absence of any laws, ordinances, rule or regulations issued by any governmental authority, agency or board and any violations thereof; (o) any present or future issues concerning subdivision or non-subdivision of the Property; or (p) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos or other hazardous materials anywhere on the Property.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that, as of the Effective Date and the Closing Date:

4.1. Organization and Standing. Buyer is a \_\_\_\_\_ formed, validly existing, and in good standing under the laws of the state of \_\_\_\_\_ and is qualified, or will be qualified by the Closing Date, to do business under the laws of the state of New York and is a [not-for-profit corporation under section 501(c) of the Internal Revenue Code or a for-profit entity].

4.2. Capacity; Authority; Consents. Subject to the approval of the Bankruptcy Court and any governmental regulatory agencies with jurisdiction over the Buyer, Buyer has full power, legal capacity and authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations under this Agreement.

4.3. No Violation. Neither the execution and delivery by Buyer of this Agreement nor the consummation of the transactions contemplated hereby nor compliance with any of the material provisions hereof by Buyer will violate, conflict with or result in a breach of any material provision of the Articles of Incorporation, Article of Organization, Bylaws, Operating Agreements or other organizational document of Buyer.

4.4. Ability to Perform. Buyer has the ability to obtain funds in cash in amounts equal to the Purchase Price by means of credit facilities or otherwise and will at the Closing Date have immediately available funds in cash which are sufficient to pay the Purchase Price and to pay any other amounts payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement and does not require financing as a condition to closing.

4.5. Full Disclosure. All of Buyer's warranties, representations or covenants in this Agreement: (i) constitute a material part of the consideration hereunder; (ii) are true and complete, current and accurate as of the date hereof; (iii) shall be true, complete, current and accurate as of the Effective Date; and (iv) shall survive the Closing Date and delivery of the Property to Buyer. None of the statements, representations or warranties of Buyer misstates or omits any fact which would make such statements, representations or warranties incomplete, misleading or incorrect in any material respect. Buyer shall inform Seller if any statement, representation or warranty becomes incorrect, misleading or incomplete subsequent to the date hereof



4.6. Due Diligence. The Buyer has had access to the Property and has completed its due diligence, except for the following, which shall be completed no later than \_\_\_\_\_, 2017.

4.7. Use of Property. The Buyer intends to continue to operate and sponsor the Seller's Property as a \_\_\_\_\_, which [is/is not] consistent with the current use of the Property. The Buyer [will/will not] seek regulatory approval, to the extent necessary, to effect or implement changes to the Property. [Explain in detail any planned change of use in Property, if necessary].

## **ARTICLE 5 MUTUAL COVENANTS**

5.1. General Covenants. Following the execution of this Agreement, Seller and Buyer agree:

- a. to cooperate fully with each other in preparing, filing, prosecuting, and taking any other actions which are or may be reasonable and necessary to obtain the consent of any governmental instrumentality or any third party, to accomplish the transactions contemplated by this Agreement;
- b. to deliver such other instruments of title, certificates, consents, endorsements, assignments, assumptions and other documents or instruments, as reasonably necessary to consummate the transactions contemplated by this Agreement; and
- c. to confer on a regular basis with the other, report on material operational matters and promptly advise the other orally and in writing of any change or event having, or which, insofar as can reasonably be foreseen could have, a material adverse effect on such party or which would cause or constitute a material breach of any of the representations, warranties or covenants of such party contained herein.

5.2. Licensing. Buyer shall use commercially reasonable efforts to obtain prior to the Closing Date (or as soon thereafter as practicable) all consents, approvals, and licenses necessary to permit the consummation of the transactions contemplated by this Agreement, including such licensure and certification approval as may be necessary to enable it, its affiliates, or its assigns, to lawfully operate the Property as contemplated by herein effective as of the Effective Date. Seller, in turn, shall cooperate in all reasonable respects with Buyer in its efforts to obtain such consents, approvals, and licenses.

5.3. Utilities. Buyer and Seller shall cooperate to take all steps necessary to transfer all utilities related to the operation of the Property including, without limitation, electric service, gas service, telephone service, cable service, internet service, sewage, water and trash removal, into Buyer's name, as directed by Buyer, effective as of the Effective Date.

## **ARTICLE 6 COVENANTS**

6.1. Covenants of Seller.

- a. Seller Information. Seller has made available due diligence materials, and to the extent in Seller's possession, Seller shall deliver copies of any other materials relating to the transfer of the Property as may be reasonably requested by Buyer, without any representation or warranty as to the accuracy of such materials. If, prior to the Effective Date, Seller discovers or becomes aware of any material change in the Property or any matter affecting the Property that would render any of the materials it previously provided to Buyer false or misleading, then Seller shall disclose such material change or matter to Buyer in writing as soon as reasonably possible and deliver to Buyer any additional related materials in Seller's possession.
- b. Right of Inspection. From the date of this Agreement until the earlier of termination of this Agreement or thirty (30) days after the Effective Date, as applicable, Seller shall (i) permit Buyer's authorized representatives to have full access to the Property during regular business hours, (ii) make its key employees and officers available to confer with Buyer and its authorized representatives, (iii) make available to Buyer's representatives all books and records relating to the Property and the obligations and liabilities of Seller including, but not limited to, contracts and agreements, filings with any regulatory authority, any financial operating data and any other information relating to Seller's business activities with respect to the Property, as Buyer may from time to time request; provided, that Seller shall not be obligated to make available books and records or other information relating to the Excluded Assets.

6.2. Title and Bankruptcy Court Approval. Seller, at its sole cost, shall be obligated to seek from the Bankruptcy Court, in connection with or as part of the Sale Order, approval of the Sale pursuant to this Agreement free and clear of all claims, liens, and encumbrances, other than liens for taxes and assessments that are not delinquent.

**ARTICLE 7**  
**TITLE**

7.1. Title Policy. Buyer shall order the title commitment (the "Title Commitment") from \_\_\_\_\_ (the "Title Company") and shall direct the Title Company to issue a standard form New York owner's policy of title insurance (the "Title Policy") for the Property in the amount of the Purchase Price showing title to the Property in Seller. Buyer shall each pay the cost of the Title Commitment (including search and exam fees) and the Title Policy (including extended coverage) in the full amount of the Purchase Price issued therefrom. Buyer shall also pay the cost of any Lender's Title Policy and title endorsements (excluding extended coverage). To the extent the issuance of the title endorsements requires extra materials other than the Survey, Seller covenants to cooperate with Buyer in obtaining these materials prior to the Closing, at no additional cost to Buyer.

**ARTICLE 8**  
**CONDITIONS TO OBLIGATION OF BUYER TO PERFORM**

The obligations of Buyer under this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, each of which are for the sole benefit of Buyer and may be waived by Buyer at Buyer's sole option by delivery to Seller of a written notice of such waiver.

8.1. Compliance with Agreement. Seller shall have performed all of its obligations hereunder, and Seller's representations and warranties in this Agreement shall be true and correct in all material respects (without giving effect to any materiality qualifiers therein) on and as of the Effective Date and the Closing Date.

8.2. Regulatory Approvals. Buyer shall have received all regulatory approvals necessary to purchase the Property.

8.3. Bankruptcy Court Approval. The Sale Order (a) shall have been entered by the Bankruptcy Court in a form reasonably acceptable to Buyer no later than \_\_\_\_\_, 2017, which date may be waived or extended only by mutual agreement of the parties, (b) shall be unappealed, unappealable, unstayed, and not subject to a motion for reconsideration or post-judgment relief, by no later than the Closing Date, unless waived by Buyer in its sole discretion, and shall not have been modified, amended, dissolved, revoked or rescinded without Buyer's consent, and (c) shall be in full force and effect on the Closing Date (collectively, a "Final Order").

8.4. Delivery of Seller Closing Items. Seller shall have deposited in Escrow all of the Seller Closing Items (as defined below).

8.5. Title Policy. The Title Company shall have issued the Title Policy in accordance with the Title Commitment premiums to be paid by Buyer unless Title Policy is required to resolve title objections and curatives.

8.6. Unfavorable Action or Proceeding. On the Closing Date, no orders, decrees, judgments or injunctions of any court or governmental body shall be in effect, and no claims, actions, suits, proceedings, arbitrations or investigations shall be pending or threatened, which challenge or seek to challenge, or which could prevent or cause the rescission of, the consummation of the transactions contemplated in this Agreement.

**ARTICLE 9**  
**CONDITIONS TO OBLIGATION OF SELLER TO PERFORM**

The obligations of Seller under this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, each of which are for the sole benefit of Seller and may be waived by Seller at Seller's sole option by delivering to Buyer a written notice of such waiver.

9.1. Compliance with Agreement. Buyer shall have performed all of its obligations hereunder, and Seller's representations and warranties in this Agreement shall be true and correct in all material respects (without giving effect to any materiality qualifiers therein) on and as of the Effective Date and the Closing Date.

9.2. Bankruptcy Court Approval. The Sale Order shall have become a Final Order.

9.3. Delivery of Buyer Closing Items. Seller shall have deposited in Escrow all of the Seller Closing Items (as defined below).

9.4. Unfavorable Action or Proceeding. On the Closing Date, no orders, decrees, judgments or injunctions of any court or governmental body shall be in effect, and no claims, actions, suits, proceedings, arbitrations or investigations shall be pending or threatened, which challenge or seek to challenge, or which could prevent or cause the rescission of, the consummation of the transactions contemplated in this Agreement.

## **ARTICLE 10 RISKS AND REMEDIES**

10.1. Remedies Prior to or on Closing.

- a. Breach or Default. In the event of any material breach or default of any warranty, covenant, agreement, condition or other obligation of a party hereunder, the other party may at its option, subject to Section 11.2, terminate this Agreement by delivering written notice of termination to the defaulting party specifying with particularity the breach or default on which the notice is based. In the event of such a termination, subject to the notice and cure provisions set forth in Section 10.2 below, Escrow Agent shall cancel the Escrow, and the Deposit shall be handled in accordance with Article 11.
- b. Default of Seller. In the event the Closing and the transactions contemplated hereby do not occur as provided herein by reason of the default of Seller, Buyer may elect, as the sole and exclusive remedy of Buyer, to terminate this Agreement and receive the Deposit from Seller, and in such event Seller shall not have any further liability whatsoever to Buyer hereunder.
- c. Default of Buyer. In the event of a default by Buyer, Seller may elect, as the sole and exclusive remedy of Seller, to terminate this Agreement and receive the Deposit from the Escrow Agent, and in such event, except as expressly provided in this Agreement, Buyer and its affiliates shall not have any further liability whatsoever to Seller hereunder.

10.2. Notice of Default. Notwithstanding anything contained herein to the contrary, neither party to this Agreement may claim termination or pursue any other remedy (other than injunctive relief) on account of a breach of a condition, covenant or warranty by the other, without first giving such other party written notice of such breach and not less than ten (10) days within

which to cure such breach (such ten (10) day period to supersede any shorter cure period that may be applicable, but not to be in addition thereto). The Closing Date, if necessary, shall be postponed if necessary to afford such opportunity to cure.

10.3. Risk of Loss. Until the Effective Date, Seller shall (a) bear all risk of loss with regard to the Property (whether or not insured), (b) cause to be maintained in full force and effect fire and extended coverage insurance in an amount equal to one hundred percent (100%) of the replacement cost of the Property, and (c) comply with all requirements of all such insurance policies. Prior to the Effective Date, Seller shall not reduce or cancel the amount of coverage of any insurance policy pertaining to the Property. In the event that all or any part of the Property become damaged or destroyed by fire, windstorm or any other casualty on or prior to the Effective Date, Seller shall immediately notify Buyer of such damage or destruction. In the event that such damage or destruction is in the aggregate more than \_\_\_ Hundred Thousand Dollars AND 0/100 U.S. Dollars (\$\_\_\_,000), Buyer shall have the option to: (x) terminate this Agreement by written notice delivered to Seller within ten (10) days after Buyer's receipt of notice of such damage or destruction, in which case the Deposit shall be returned to Buyer and the parties shall have no further obligations hereunder, or (y) proceed with the transactions contemplated by this Agreement without abatement of the Purchase Price, in which case (i) all insurance proceeds shall be deemed to have been absolutely and irrevocably assigned to and be payable directly to Buyer, (ii) after the Close of Escrow, Buyer shall have the right to conduct all settlement proceedings with respect to the insurance claims, and (iii) Seller shall deliver to Buyer through Escrow an unconditional assignment of all insurance proceeds. If this Agreement is not terminated, Seller shall not be obligated to repair any damage or destruction.

## ARTICLE 11 TERMINATION

11.1. Termination. This Agreement may be terminated prior to the Closing:

- a. By Seller or Buyer if, following the entry of the Sale Order, Seller determines to abandon the process established pursuant thereto;
- b. By mutual written consent of Seller and Buyer;
- c. By Buyer:
  - i. if the Closing shall not have occurred on or before \_\_\_\_\_, 2017 (the "Outside Closing Date", as to which there shall be no cure period) by reason of the failure of any condition precedent under Article 8;
  - ii. if the Sale Order shall not be a Final Order by the Closing Date (unless such failure to become a Final Order results primarily from an action or failure to act by Buyer);
  - iii. if, prior to Closing, Seller's Chapter 11 Case is dismissed, converted to a Chapter 7 Case or a Chapter 11 Trustee is appointed; or

iv. if there is a material breach or default by Seller of any representation, warranty, covenant, agreement, condition or other obligation hereunder.

d. By Seller if there has been a material breach by Buyer of any representation or warranty contained herein or in the due and timely performance of any covenant or agreement contained herein, Seller has notified Buyer of such breach in writing, and the breach has not been cured within ten (10) Business Days after delivery of such notice (except as to the Closing Date, which shall be handled pursuant to the next two subsections).

11.2. Effect of Termination.

- a. Immediately upon the occurrence of any termination of this Agreement by Buyer pursuant to Section 11.1(c), and provided that Buyer is not otherwise in material breach of this Agreement for which the cure period has expired without cure, Seller shall refund the Deposit to Buyer as set forth herein.
- b. In the event that this Agreement is validly terminated by Seller pursuant to Section 11.1(d) while Buyer is in material breach of this Agreement for which the cure period has run without cure, then as its sole and exclusive remedy and complete liquidated damages, Seller shall be entitled to receive the Deposit. In all other cases, upon termination of this Agreement, the Deposit shall be immediately refunded to Buyer.
- c. In all events of termination, any interest on the Deposit shall follow the Deposit.

**ARTICLE 12  
CLOSING**

12.1. Seller's Obligations at Closing. On or before the Closing Date, Seller shall deposit into Escrow, or deliver or cause to be delivered directly to Buyer, each of the following items (collectively, "Seller Closing Items"):

- a. Evidence of all required board approvals authorizing the execution and performance of this Agreement;
- b. All releases, waivers, and satisfactions necessary to deliver title and/or satisfy any requirements for issuance of the Title Policy, and to the extent possible and at no cost to Seller, cooperate in the transfer, assignment, or issuance of any existing engineering reports running for the benefit of and in the name of Buyer;
- c. A certificate from Seller certifying to Buyer (a) that it has complied with the covenants set forth in this Agreement, and (b) the truth of all representations and warranties of Seller set forth in this Agreement;

- d. All necessary instruments of transfer, properly executed by Seller acknowledged, conveying, transferring, and assigning to Buyer all of Seller's right, title and interest in and to the Property and any and all warranties or rights in connection therewith, all in form and substance reasonably satisfactory to Buyer and Seller, including without limitation:
- i. The deed (the "Deed") conveying the Property;
  - ii. All keys and combinations for all locks on the Property, which Escrow Agent shall immediately deliver to Buyer upon Closing; and
  - iii. Such other forms and documents as Buyer or Escrow Agent may reasonably request in order to effectuate the transactions contemplated hereby and close the Escrow.

12.2. Buyer's Obligations at Closing. On or before the Closing Date, Buyer shall deposit in Escrow, or deliver or cause to be delivered directly to Seller, each of the following items (the "Buyer Closing Items"):

- a. The Cash Due at Closing, plus other amounts required to be deposited by Buyer to pay for Buyer's share of costs and prorations, by wire transfer, cashier's check or other form of immediately available funds acceptable to Escrow Agent; and
- b. Such other documents, forms, certifications, instructions or items as Seller or Escrow Agent may reasonably request to effectuate the transactions contemplated hereby and close the Escrow.

### **ARTICLE 13 GENERAL PROVISIONS**

13.1. Notices. All notices, requests, demands, and other communications required under this Agreement shall be in writing and shall be deemed duly given and received (a) if personally delivered, on the date of delivery, (b) if mailed, three (3) days after deposit in the United States Mail, registered or certified, return receipt requested, postage prepaid and addressed as provided below, or (c) if by a courier delivery service providing overnight or "next-day" delivery, on the next business day after deposit with such service, addressed as follows:

If to Seller:

Yeshivah Ohel Moshe  
c/o Rabbi Dov Machlis  
7914 Bay Parkway  
Brooklyn, New York 11214

with a copy to:

Backenroth Frankel & Krinsky, LLP  
800 Third Avenue  
New York, New York 10022  
Attn: Mark A. Frankel, Esq.

If to Buyer:

with a copy to:

Any party may change its above-designated address by giving the other party written notice of such change in the manner set forth herein.

13.2. Effect of Termination. The termination of this Agreement shall operate to terminate any other agreements and documents executed in connection with the transfer of the Property to Buyer; provided that such termination shall not diminish a party's rights and remedies for a breach or default by another party.

13.3. Governing Law; Jurisdiction. Except as expressly provided herein, this Agreement shall be construed in accordance with, and governed by, the laws of the state of New York, without regard to the application of conflicts of law principles. The parties agree that any legal suit, action or proceeding arising out of or relating to this Agreement must be submitted to the Bankruptcy Court, and they hereby irrevocably submit to the jurisdiction of any such court.

13.4. Further Documentation. Each party will execute and deliver such further instruments and do such further acts and things as may be reasonably required to carry out the intent and purpose of this Agreement.

13.5. Survival of Representations, Warranties and Covenants. The respective representations, warranties, covenants, performance, and remedies of Buyer and Seller made herein or in any certificate or other document delivered pursuant to this Agreement, shall survive the Closing Date, the Effective Date, the consummation of the transactions contemplated hereby, and the delivery of the Property to Buyer, and shall not be waived or merged thereby until any applicable statute of limitations has run, notwithstanding any examination made by or for the party to whom such representations, warranties or covenants were made, the knowledge of any officers, directors, shareholders, members, partners, employees or agents of the party, or the acceptance of any certificate or opinion.

13.6. Cross Default. Any material breach or default of any warranty, covenant, agreement, condition shall constitute a material breach or default of this Agreement and the non-breaching party shall be entitled to any and all remedies to which such non-breaching party may be entitled under the terms of this Agreement.

13.7. Business Day. As used in this Agreement, "business day" shall mean a day other than Saturday, Sunday or any day on which banking institutions in New York, New York, are required or authorized by law or other governmental action to close, and all other references to "days" shall mean calendar days. If any deadline set forth herein falls on a day that is not a business day under this Agreement, such deadline shall become the next business day thereafter.



13.8. Subsequent Chapter 11 Plan; Conversion; Dismissal. In the event of a Closing, no Chapter 11 Plan subsequently proposed or confirmed in Seller's bankruptcy shall contain any provisions that are inconsistent with or purport to override the terms of this Agreement and the ancillary agreements to be entered into herewith, all of which shall be expressly preserved under the terms of such plan. Further, in the event of a conversion of this case to Chapter 7 or dismissal, the post-closing obligations under this Agreement shall be unaffected and fully preserved, such that any subsequently appointed Chapter 7 Trustee shall be obligated and required to comply with all post-Closing duties.

13.9. Assignment. Buyer may assign this Agreement or certain of its rights under this Agreement to affiliates of Buyer, upon written notice to Seller, provided Buyer or an entity controlling Buyer retains control of such affiliates. In the event of an assignment, Seller shall cooperate with Buyer to effectuate the transfer of any and all transfer documents or ancillary agreements hereto into the name of the affiliate(s) designated by Buyer, and except for the Deposit, Buyer shall have no further liability hereunder.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

**SELLER:**

YESHIVA OHEL MOSHE,  
a \_\_\_\_\_ non-profit religious corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BUYER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

# **EXHIBIT 2**



## EXCLUSIVE RIGHT-TO-SELL MARKETING AND SALES AGREEMENT

This agreement (the "**Agreement**") made and entered into on \_\_\_\_\_ (the "**Effective Date**"), by and between MYC & Associates, Inc., hereinafter ("**MYC**"), maintaining its corporate address at 1110 South Avenue, Suite 22, Staten Island, NY 10314; and Pryor Cashman LLP as a disbursing agent (the "**Disbursing Agent**") for Yeshivah Ohel Moshe, a debtor and debtor-in-possession (the "**Debtor**"), contains the terms and conditions which will govern the marketing and sale of real property as defined below as of the Effective Date.

The Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on July 16, 2016, in the United States Bankruptcy Court for the Eastern District of New York (the "**Bankruptcy Court**"), commencing Case No. 16-43681 (ESS).

The Debtor is the deeded owner of certain real property, including improvements and fixtures thereon, commonly known as, and located at 7914 Bay Parkway, Brooklyn, NY 11214 (the "**Property**").

The Disbursing Agent and MYC hereby agree that:

1. **EXCLUSIVITY.** The Disbursing Agent grants MYC the sole and exclusive right-to-sell the Property by public auction (the "**Auction**") as of the Effective Date.
2. **TERM.** The term (the "**Term**") of this Agreement is 180 days from the Effective Date.
3. **SERVICES.** Commencing on the Effective Date, MYC will perform the following services:
  - a. create a marketing program for the Property that may include, but not be limited to, the following:
    - Direct telephone solicitation;
    - Direct mail solicitation;
    - Distribution of informational brochures;
    - Placement of a "For Sale" sign on the Property directing inquiries to MYC;
    - Web-based advertising on [www.MYCcorp.com](http://www.MYCcorp.com);
    - Direct e-mail notifications to MYC's subscriber mailing list;
    - Web-based advertising on auction, real estate and targeted websites; and
    - Print advertising in publications as deemed appropriate by MYC.

- b. Assuming the Debtor provides MYC with necessary information<sup>1</sup>, MYC will provide interested buyers with a due diligence package including, but not limited to:
  - Lease(s) and amendment(s) thereto;
  - Copies of any survey(s);
  - Current tax bill(s);
  - Floor plans for building(s);
  - Operating expense(s); and
  - Environmental report(s).
- c. prepare marketing brochures and other similar sales materials that will be transmitted to all interested parties;
- d. (i) consult with the Disbursing Agent on the strategy and tactics for fulfilling the Engagement; (ii) identify, contact, screen, and introduce prospective purchasers to the opportunity for a sale with the Disbursing Agent; (iii) draft and convey such other information or correspondence with prospective purchasers as may be needed from time to time, including answers to queries regarding information contained in the offering materials; (iv) coordinate a bidding procedure; (v) supervise and/or participate in due diligence investigations carried out by prospective purchasers; (vi) and negotiate on behalf of the Disbursing Agent;
- e. utilize marketing budget not less than \$15,000.00 and may prepare newspaper, magazine, and journal advertisements, signs, informational brochures, mailing lists, and mailings.

4. **TERMS OF SALE.** The sale of the Property shall be conducted in accordance with the bidding procedures approved by the Bankruptcy Court. Any sale of the Property shall be sold free and clear of all liens, claims and encumbrances as more specifically set forth in the bidding procedures.

5. **COMPENSATION AND COMMISSION.** The Disbursing Agent shall pay MYC a commission in the amount of four percent (4%) that will be calculated and paid from either the accepted bid for the Property sold at Auction, or the amount of the refinance of the Property, *provided that* any commission owed to MYC in the event of a refinance shall be paid out of the proceeds of such refinance (the "**Commission**"). For the avoidance of doubt, the Disbursing Agent shall not be personally liable for the Commission, and any liability will be limited to the amounts recovered by the Disbursing Agent in its capacity as Disbursing Agent pursuant to the Debtor's Chapter 11 Plan. The Commission earned by MYC will only be paid to MYC upon the submission of a proper application made to the Bankruptcy Court.

6. **MARKETING COSTS.** MYC shall cover all marketing costs.

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<sup>1</sup> In the event the Debtor fails to provide MYC with the information it needs to prepare a satisfactory due diligence package, MYC has an affirmative duty to alert the Disbursing Agent and/or the Bankruptcy Court.

7. **SOLE AND EXCLUSIVE RIGHT-TO-SELL.** The Disbursing Agent grants MYC the sole and exclusive right to sell the Property during the Term.

8. **BUYER BROKER PARTICIPATION.** If the successful bidder for the Property is registered by a Buyer's Broker in accordance with the Broker Participation Guidelines, then such Buyer's Broker shall be entitled to one and one-half percent (1.5%) of the high bid at auction (the "**Buyer Broker Commission**"). The distribution of the Buyer Broker Commission will be disbursed to the Buyer's Broker within five (5) business days after the Commission is paid to MYC.

9. **REPRESENTATIONS, WARRANTIES & OBLIGATIONS.** (a) MYC agrees to promote and conduct the Auction in its usual way as to obtain the highest possible selling price for the Property, (b) MYC shall furnish at the time of the Auction such assistants and other help as may be required to handle the Auction and shall in every way endeavor to sell the Property for as high a price as may be obtained, and (c) MYC shall conduct the Auction in accordance with the terms and conditions of sale and/or bidding procedures that are approved by the Bankruptcy Court. MYC does not assume responsibility for the truthfulness, accuracy, or completeness of any information provided by the Debtor, whether or not MYC makes any independent verification thereof. In the absence of gross negligence or willful misconduct in the performance of services hereunder, neither MYC nor any officer, employee, affiliate, director or stockholder of MYC shall be subject to any liability to the Debtor's post-confirmation estate or to any officer, employee, director, member or stockholder of the Debtor for any error, inaccuracy or omission, material or otherwise, which may appear in information furnished to or on behalf of the Debtor, or for any act or omission in the course of, or in connection with, the rendering or providing of services or advice hereunder.

10. **MISCELLANEOUS.** This Agreement shall be binding upon the parties hereto and their respective successors, heirs, and assignees. Nothing in this Agreement, express or implied, is intended to confer or does confer on any person or entity, other than the parties hereto and their respective successors, heirs, and assigns any rights or remedies under or by reason of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect pursuant to the terms hereof.

11. This Agreement incorporates the entire understanding of the parties regarding the subject matter hereof, and supersedes all previous agreements or understandings regarding the same, whether written or oral.

12. This Agreement may not be amended, and no portion hereof may be waived, except in a writing duly executed by the parties.

13. Any action or suit of any kind must be commenced within one (1) year from the date when the cause of action or suit accrued or it will be forever barred. The right of action or suit will accrue, and the one (1) year limitation period will begin to run, on the date of the breach, damage, or injury is sustained and not when the resulting cost, damage, harm or loss is discovered.

14. The parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among parties equally sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the intent of the parties as set forth in this Agreement.

15. This Agreement shall be governed by the laws of the State of New York, without regard to such state's rules concerning conflicts of laws. Each party irrevocably waives any right to trial by jury in any action, proceeding, or counterclaim (whether based upon contract, tort, or otherwise) related to or arising out of this Agreement.

16. The parties irrevocably consent to the Bankruptcy Court's jurisdiction with respect to any action to approve or enforce this Agreement and expressly waive any right to commence any action in any other forum or to contest the Court's jurisdiction.

17. The Bankruptcy Court shall retain exclusive jurisdiction over the subject matter of this Agreement, including, but not limited to, the implementation and interpretation of the terms and conditions herein.

18. This Agreement may be executed in one or more counterparts, each of which is deemed an original, together constituting one and the same document. Facsimile signatures and signatures in portable document format (pdf) are deemed originals for the purposes of this Agreement.

(THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK)

19. The persons executing this Agreement on the parties' behalf warrant and represent that they are authorized and empowered to execute and deliver this Agreement on behalf of such party.

AGREED TO AND ACCEPTED BY:

Pryor Cashman LLP as Disbursing Agent

BY: \_\_\_\_\_

PRINT: \_\_\_\_\_

ITS: \_\_\_\_\_

DATED: \_\_\_\_\_

MYC & Associates, Inc.

BY: \_\_\_\_\_

Marc P. Yaverbaum

ITS: \_\_\_\_\_

DATED: \_\_\_\_\_

DRAFT



# EXHIBIT B

**EXHIBIT B****LIQUIDATION ANALYSIS<sup>1</sup>**

<b>LIQUIDATION VALUE OF ASSETS</b>	
Real Property and Misc. Personal Property	\$8,000,000
Brokerage Account	\$2,570,130 <sup>2</sup>
<b>Total Assets</b>	<b>\$10,570,130</b>

<b>LIABILITIES</b>	
<b>Administration Claims</b>	
Chapter 7 Trustee Fees	\$240,000
Chapter 7 Legal and Accounting Fees	\$480,000
Professional Fees and Expenses	\$480,000
<b>Secured Claims</b>	
New York City Liens	\$0
NY Five Star Equity Corp. (Mortgage)	\$6,405,072.55 <sup>3</sup>
Priority Claims under sections 507(a)(2), (3), (4),(5),(6),(7) and (8) of the Bankruptcy Code	\$0
<b>General Unsecured Claims</b>	<b>\$980,658</b>
<b>Total Liabilities</b>	<b>\$8,585,730.55</b>
<b>Total Available for Reorganized Debtor</b>	
	<b>\$1,984,399.45</b>

<sup>1</sup> Unless otherwise noted herein, all amounts set forth on this liquidation analysis were obtained from the Debtor's Amended Disclosure Statement [Dkt. No. 43].

<sup>2</sup> Based upon the Debtor's Monthly Operating Report for Filing Period January 2017 [Dkt. No. 116].

<sup>3</sup> Inclusive of interest that has accrued since the Petition Date at the default rate as well as legal fees and costs due under the Loan Documents. Specifically, this amount is the aggregate of: (a) the amount listed in the proof of claim filed by NY Five Star Equity Corp [Claim No. 9-1] and (b) interest at the default rate from the Petition Date through March 31, 2017 under the Loan Documents and (c) legal fees and costs for such period, as allowable under 11 U.S.C. § 506(b). This amount is subject to change, as interest, fees and costs continue to accrue pursuant to the Loan Documents.