

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 11

Case No. 1-16-40028 (ESS)

NIEBERG MIDWOOD CHAPEL INC
aka MIDWOOD MEMORIAL CHAPEL, INC.

Debtor.
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DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONTAINS INFORMATION THAT MAY AFFECT CREDITORS' DECISIONS TO ACCEPT OR REJECT THE PLAN OF REORGANIZATION ANNEXED HERETO AS EXHIBIT A. ALL CREDITORS ARE URGED TO READ THIS DISCLOSURE STATEMENT CAREFULLY. ALL CAPITALIZED TERMS CONTAINED IN THIS DISCLOSURE STATEMENT SHALL HAVE THE SAME MEANING AS CAPITALIZED TERMS CONTAINED IN THE PLAN OF REORGANIZATION.

COURT APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE COURT APPROVAL OF THE TERMS OF THE PLAN.

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ATTORNEYS FOR THE DEBTOR

INTRODUCTION

1. The Debtor submits this Disclosure Statement (“Disclosure Statement”) to explain its Plan of Reorganization (“Plan”) under Chapter 11 of the United States Bankruptcy Code. A copy of the Plan is attached hereto as Exhibit A. All creditors are urged to review the Plan, besides reviewing this Disclosure Statement. All capitalized terms used but not defined shall have the meaning set forth in the Plan.

2. This Disclosure Statement is not intended to replace a review and analysis of the Plan. Rather, it is submitted as a review of the Plan to explain the terms and implications of the Plan. To the extent a Creditor has questions, the Debtor urges you to contact its counsel and every effort will be made to assist you.

3. On _____, 2016, after a notice and a hearing, the Bankruptcy Court entered an order approving this Disclosure Statement as containing information of a kind and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtor and the condition of the Debtor’s books and records, to enable Creditors to make an informed judgment on the Plan.

4. EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT, NO REPRESENTATIONS CONCERNING THE DEBTOR, ITS ASSETS, ITS PAST OR FUTURE OPERATIONS, OR THE PLAN ARE AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN.

5. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN SUPPLIED BY THE DEBTOR. THE DEBTOR’S BOOKS AND RECORDS HAVE BEEN USED TO PROVIDE THE INFORMATION CONCERNING THE DEBTOR’S

FINANCIAL CONDITION AS SET FORTH IN THIS DISCLOSURE STATEMENT. BASED UPON THE INFORMATION MADE AVAILABLE, DEBTOR'S COUNSEL HAS NO INFORMATION TO INDICATE THAT THE INFORMATION DISCLOSED HEREIN IS INACCURATE. NEITHER THE DEBTOR 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.

6. The Bankruptcy Court has entered an Order fixing _____, 2016, at _____.m., at the United States Bankruptcy Court, Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman Plaza East, Suite 1595, Brooklyn, NY 11201-1800, as the date, time and place for the hearing on confirmation of the Plan, and fixing _____, 2016, as the last date for the filing of any objections to confirmation of the Plan.

BACKGROUND

7. On January 5, 2016, the Debtor filed a Chapter 11 petition under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code").

8. The Debtor owns and operates one of the oldest, if not the oldest, independent funeral parlors in New York City, dating back to the Civil War. For more than 50 years, it has operated from its present location at 1625 Coney Island Avenue, Brooklyn, New York (the "Property"). The Debtor estimates that the Property is worth approximately \$6,800,000.00 dollars.

9. 1625 Coney Debt LLC ("Mortgagee") holds a first mortgage on the Property in the approximate amount of \$3,589,476.49 as of May 16, 2016.

10. The Debtor's general unsecured claims total approximately \$562,569.01 on account of unsecured loans the Debtor has taken and other fees and expenses. The Debtor will escrow the amounts sufficient to cover all claims pending resolution.

11. The Debtor's financial problems stem generally from a significant downturn in business over the last several years due to increased competition and demographic changes in the neighborhood in Brooklyn. The lack of business resulted in the Debtor failing to make payments on its first mortgage, which in turn resulted in the commencement of a foreclosure action. Since the filing of this case, the Debtor considered a number of options and ultimately decided to sell the Property to HH Realty Equities LLC for \$6,800,000.00 in a private sale under the Plan. Following the sale, the Debtor intends to remain in business more as a referrer of funerals to an already existing funeral home in the area as opposed to a full service provider of funerals. The sale proceeds will cover all unsecured creditors claims, the underlying mortgage in full, taxes, administration claims, and a return to equity.

DEBTOR'S PLAN OF REORGANIZATION

CLASSIFICATION AND TREATMENT OF CLAIMS

Class 1

12. **Classification** – All priority claims under section 507 of the Bankruptcy Claims, including New York City real estate taxes. These claims total approximately \$100,000.00.

13. **Treatment** - Payment in full in Cash of Allowed Amount on the date of closing of the sale of the Property.

14. **Voting** - Unimpaired and deemed to have accepted the Plan.

Class 2

15. **Classification** – All secured claims. This claim is approximately \$3,600,000.00.

16. **Treatment** - Payment in full in Cash of Allowed Amount on the date of closing of the sale of the Property.

17. **Voting** - Unimpaired and deemed to have accepted the Plan.

Class 3

18. **Classification** – All general unsecured claims. These claims total approximately \$600,000.00.

19. **Treatment** - Payment in full in Cash of Allowed Amount within 10 days of the date of closing of the sale of the Property.

20. **Voting** - Unimpaired and deemed to have accepted the Plan.

Class 4

21. **Classification** – All interest holders.

22. **Treatment** – Entitled to retain Interests.

23. **Voting** - Unimpaired and deemed to have accepted the Plan.

ADMINISTRATIVE EXPENSES

24. Allowed Administrative Expenses shall be paid in full, in cash on the Effective Date, or the date such Administrative Expense becomes Allowed or as soon as practicable thereafter, except if the holder of an Allowed Administrative Expense agrees to a different treatment; provided, however, that Allowed Administrative Expenses representing obligations in the ordinary course of business or assumed by the Debtor shall be paid in full or performed by the Debtor in the ordinary course of business or under the terms and conditions of the particular transaction. The Debtor anticipates there will be unpaid Administrative Expenses due to

professionals in this case, particularly Kornfeld & Associates, P.C., of approximately \$100,000.00.

25. All outstanding United States Trustee fees shall be paid as they come due.

MEANS FOR IMPLEMENTATION

26. **Source of Funds** - Obligations under the Plan will be satisfied from the transfer of the Property to HH Realty Equities LLC (the "Purchaser"), under the terms and conditions of the Contract of Sale, dated April 6, 2016, annexed to the Plan as Exhibit A. The transfer of the Property under the Plan shall be free and clear of liens, claims and encumbrances, with any such liens, claims and encumbrances to attach to the sale proceeds, and to be disbursed under the Plan.

27. **Sale Approval** - As part of the sale of the Property under the Plan, and in order to ensure consummation of the Plan, the Confirmation Order shall contain the following findings of fact and conclusion of law: (a) that the terms and conditions of the sale are fair and reasonable, (b) that the Debtor's sale, and the Purchaser's purchase, of the Property pursuant to the Plan, is non-collusive, fair and reasonable and was conducted openly and in good faith, (c) that the transfer of the Property to the Purchaser represents an arm's-length transaction and was negotiated in good faith between the parties, (d) that the Purchaser, as transferee of the Property, is a good faith purchaser under the Bankruptcy Code § 363(m) and, as such, is entitled to the full protection of Bankruptcy Code § 363(m), (e) the sale of the Property to Purchaser was not controlled by an agreement among potential purchasers, (f) that no cause of action exists against the Purchaser or with respect to the sale of the Property to the Purchaser under Bankruptcy Code § 363(n), and (g) that any claims under Bankruptcy Code § 363(n) or any other claims as against the Purchaser are released, waived and discharged.

28. **Stamp Tax** - Under the Plan, pursuant to Bankruptcy Code § 1146(a), (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 deeds, bills of sale or assignments executed in connection with the purchase of the Properties 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 City Real Property Transfer Tax and New York State Documentary Tax.

29. **Vesting** - Except as otherwise provided in the Plan, on the Effective Date all assets and properties of the Estate shall vest in the Debtor free and clear of all Liens, Claims, and encumbrances and any and all liens, claims and encumbrances that have no been expressly preserved under the Plan shall be deemed extinguished as of such date. Except as otherwise provided herein, as of the Effective Date, all property of the Debtor shall be free and clear of all Claims and Interests of Creditors, except for the obligations that are imposed under the Plan by a Final Order of the Bankruptcy Court.

30. **Execution of Documents** - The Debtor shall be authorized to execute, in the name of any necessary party, any notice of satisfaction, release or discharge of any Lien, Claim or encumbrance not expressly preserved in the Plan and deliver such notices to any and all federal, state and local governmental agencies or departments for filing and recordation.

31. **Recording Documents** - Each and every federal, state and local governmental agency or department shall be authorized to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transaction contemplated by the Plan, including, but not limited to any and all notices of satisfaction, release or discharge of any Lien, Claim or encumbrance not expressly preserved by the Plan, and the Confirmation Order.

LIQUIDATION ANALYSIS

32. In a liquidation under Chapter 7 of the Bankruptcy Code, the Debtor's assets would be sold and the sale proceeds distributed to creditors in their order of priority. The Debtor believes that the Plan provides at least an equivalent return for the Debtor's estate as could be achieved in a liquidation. A copy of the Debtor's liquidation analysis is annexed hereto as Exhibit B.

LITIGATION ANALYSIS

33. The Debtor knows of no pending litigation or potential litigation, except for (a) the foreclosure action instituted in New York State Supreme Court by the Mortgagee and (b) the lawsuit by the predecessor of the Purchaser, which is being resolved in accordance with the terms of the Contract of Sale annexed to the plan as Exhibit A. The Debtor has done a review of its records and represents that there are no avoidance actions.

PAYMENT OF CLAIMS AND OBJECTIONS TO CLAIMS

34. The Debtor shall be disbursing agent under the Plan without a bond. The Debtor shall establish an escrow account on the Effective Date in the amount of (i) all claims (including claims to which the Debtor does not intend to object), (ii) all anticipated professional fees, and all other administrative expenses and costs, such as United States Trustee fees, to be disbursed by the escrow agent upon orders of this Court. This will serve as a minimum source of cash for these expenses, though all such expenses of administration must be paid, if not by the Debtor then by the investors or new entity. The Debtor has not yet completed its review of the Claims asserted in this case. The Debtor reserves its right to file objections to Claims in the event grounds exist to object to particular Claims, for a period of 60 days after the Effective Date. On the initial distribution date and on each distribution date as may thereafter be necessary, the Debtor shall maintain an undetermined Claims distribution reserve for the holders of undetermined claims as of such date in a sum not less than the amount required to pay each such undetermined Claim if such claim was allowed in full. To the extent that an undetermined Claim becomes an Allowed Claim, the distributions reserved for such Allowed Claim, shall be released from an undetermined claims distribution reserve and paid to the holder of such Allowed Claim. After all the amounts of all undetermined Claims have been fixed, the balance of the undetermined Claims distribution reserve shall thereafter be paid in accordance with the Plan.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

35. At least 10 days prior to the Confirmation Hearing, the Debtor shall designate those Executory Contracts that the Debtor seeks to reject. Such designation shall be made by the filing of a notice in the docket of this case and by service by overnight delivery to the counterparties to such agreements. All Executory Contracts not so designated shall be deemed assumed under the Plan as of the Confirmation Date. In the event of a rejection of any

Executory Contract which results in damage to the other party or parties to the Executory Contract, a Proof of Claim for such damages must be filed by the damaged party with the Court within sixty (6) days after the Effective Date. All Allowed Claims arising from the rejection of any Executory Contract shall be treated as an Unsecured Claim. Any Claim arising from the rejection of any Executory Contract or unexpired lease not timely filed with the Court shall be deemed discharged and shall not be entitled to participate in any distribution under the Plan.

MANAGEMENT OF THE DEBTOR

36. The Debtor is managed by Stanley Nieberg and Peter Nieberg, the Debtor's only members. Post-confirmation management shall remain unchanged.

TAX CONSEQUENCES

37. The Debtor does not believe there will be any negative tax consequences to the Debtor or to Creditors under the Plan. To the extent that a creditor is not paid in full under the Plan, such creditor may be entitled to a bad debt deduction. If a creditor has taken a bad debt deduction, Plan distributions may be taxable as income.

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

RELEASES

39. **Release of the Debtor.** The receipt and acceptance by a holder of a Claim of a distribution in accordance with the Plan shall constitute a release and extinguishment of any and

all claims and causes of action, known or unknown, against the Debtor, and all of Debtor's property arising out of any transaction prior to Confirmation, including but not limited to, this Chapter 11 case, any actions by anyone taken with respect to the administration of the Chapter 11 case, liquidation of any property of the estate of the Debtor, or debts, agreements, contracts, obligations or torts arising from or related to transactions or other dealings with the Debtor, other than debts, agreements, contracts, and obligations not rejected by the Debtor or created by virtue of this Amended Plan; and shall further act as a bar to any creditor or party in interest thereafter pursuing any claim or cause of action it held or alleges to have held against the Debtor, or Debtor's property. However, such discharge shall not constitute a release as to claims arising from gross negligence, willful misconduct, criminal conduct or violations of police power.

40. **No Discharge.** Pursuant to section 1141(d)(3), the Debtor will not receive a discharge upon confirmation of the Plan.

VOTING PROCEDURES AND REQUIREMENTS

41. There are no impaired classes under the Plan so the Debtor will not be soliciting votes.

CONFIRMATION OF THE PLAN

42. 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"). Section 1128(b) provides that any party in interest may object to confirmation of the Plan.

43. By order of the Bankruptcy Court dated ___, 2016, the Confirmation Hearing has been scheduled for ___, 2016, at ___ .m., in the Honorable Elizabeth S. Stong's Courtroom, United States Bankruptcy Court, Conrad B. Duberstein U.S. Bankruptcy Courthouse, 271 Cadman Plaza East, Suite 1595, Brooklyn, NY 11201-1800. 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 upon the following by July 8, 2016: Kornfeld & Associates, P.C., 240 Madison Avenue, 8th Floor, New York, NY 10016, Attn: Randy M. Kornfeld, Esq. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

44. At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129 of the Bankruptcy Code have been satisfied to enter an order confirming the Plan. The applicable requirements are: (a) The Plan complies with the applicable provisions of the Bankruptcy Code, (b) the Debtor has complied with the applicable provisions of the Bankruptcy Code, (c) the Plan has been proposed in good faith and not by any means forbidden by law, (d) any payment made or promised or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable, (e) the Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a Plan with the Debtor, or a successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual, is consistent with the interests of Creditors and equity security holders and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the reorganized Debtor, and the

nature of any compensation for such insider, (f) with respect to each class of impaired Claims, either each holder of a Claim or interest of such class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or interest property of a value, as of the Effective Date of the Plan, an amount that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Bankruptcy Code, (g) each class of Claims or interests has either accepted the Plan or is not impaired under the Plan, (h) except if the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Administrative Expenses and priority Claims will be paid in full on the Effective Date, (i) at least one class of impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of such class, and (j) confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization of the Debtor or any successors to the Debtor under the Plan unless such liquidation or reorganization is proposed in the Plan.

45. The Debtor believes that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, that the Debtor has complied or will have complied with all of the requirements of Chapter 11, and that the proposals contained in the Plan are made in good faith.

46. Since all creditors are unimpaired under the Plan and the Debtor will not be invoking the cram down provisions under section 1129(b) of the Bankruptcy Code.

CONCLUSION

The Debtor urges the Debtor's Creditors to support the Plan.

Dated: New York, New York
May 31, 2016

Nieberg Midwood Chapel Inc
Debtor and Debtor in Possession

By: s/ Peter Nieberg, President of
Nieberg Midwood Chapel Inc.

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