

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
IN RE:

Chapter 11

NIEBERG MIDWOOD CHAPEL INC  
aka MIDWOOD MEMORIAL CHAPEL, INC.

Case No. 1-16-40028 (ESS)

Debtor.  
-----X

**FIRST AMENDED DISCLOSURE STATEMENT**

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

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

Randy M. Kornfeld  
KORNFELD & ASSOCIATES, P.C.  
240 Madison Avenue, 8<sup>th</sup> Floor  
New York, New York 10016  
Telephone: (212) 759-6767  
Facsimile: (212) 759-6766

ATTORNEYS FOR THE DEBTOR

## INTRODUCTION

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

2. This First Amended Disclosure Statement is not intended to replace a review and analysis of the First Amended Plan. Rather, it is submitted as a review of the First Amended Plan to explain the terms and implications of the First Amended 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 First Amended 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 First Amended Plan.

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

5. THE INFORMATION CONTAINED IN THIS FIRST AMENDED 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 FIRST AMENDED 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 First Amended Plan, and fixing \_\_\_\_\_, 2016, as the last date for the filing of any objections to confirmation of the First Amended 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 trade debt, unsecured loans 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 First Amended 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 FIRST AMENDED 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 First Amended 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 First Amended Plan.

**Class 3**

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

19. **Treatment** - Payment in full and with interest 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 First Amended Plan.

**Class 4**

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

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

23. **Voting** - Unimpaired and deemed to have accepted the First Amended 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 First Amended 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 First Amended Plan as Exhibit A. The transfer of the Property under the First Amended 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 First Amended Plan.

27. **Sale Approval** - As part of the sale of the Property under the First Amended Plan, and in order to ensure consummation of the First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended Plan, including, without limitation, the Confirmation Order, shall not be subject to 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 First Amended 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 not been expressly preserved under the First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 First Amended 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 (60) 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 First Amended 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. The Debtor does not anticipate any changes regarding the post-confirmation compensation of the Debtor's management. It is anticipated that Peter Nieberg and Stanley Nieberg, the President and Vice President of the Debtor, respectively, will each continue to receive their regular annual salary of \$99,320.00.

#### **TAX CONSEQUENCES**

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

creditor has taken a bad debt deduction, First Amended Plan distributions may be taxable as income.

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

#### **RELEASES**

39. **Release of the Debtor.** The receipt and acceptance by a holder of a Claim of a distribution in accordance with the First Amended 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 First 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. Nothing under the First Amended Plan shall limit any person's or any party's liability for fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing herein shall limit the liability of the

Debtor's professionals or any other professionals for malpractice pursuant to Rule 1.8(h) (1) of the New York State Rules of Professional Conduct. Nothing in the First Amended Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Debtor or any of its members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns, nor shall anything in the First Amended Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the entities referred to herein for any liability whatsoever, including without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in this First Amended Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States.

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

#### **VOTING PROCEDURES AND REQUIREMENTS**

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

---

#### **CONFIRMATION OF THE FIRST AMENDED PLAN**

42. Section 1128(a) of the Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing on confirmation of the First Amended Plan (the "Confirmation Hearing").

Section 1128(b) provides that any party in interest may object to confirmation of the First Amended 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 First Amended 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, 8<sup>th</sup> Floor, New York, NY 10016, Attn: Randy M. Kornfeld, Esq. Objections to confirmation of the First Amended 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 First Amended Plan. The applicable requirements are: (a) The First Amended 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 First Amended 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 First Amended Plan, for services or for costs and expenses in, or in connection with, the Bankruptcy Case, or in connection with the First Amended Plan and incident to the Bankruptcy Case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the First

Amended Plan is reasonable, or if such payment is to be fixed after confirmation of the First Amended 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 First Amended Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in the First Amended Plan with the Debtor, or a successor to the Debtor under the First Amended 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 First Amended Plan, or will receive or retain under the First Amended Plan on account of such Claim or interest property of a value, as of the Effective Date of the First Amended 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 First Amended Plan or is not impaired under the First Amended Plan, (h) except if the holder of a particular Claim has agreed to a different treatment of such Claim, the First Amended 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 First Amended Plan, determined without including any acceptance of the First Amended Plan by any insider holding a Claim of such class, and (j) confirmation of the First Amended 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

First Amended Plan unless such liquidation or reorganization is proposed in the First Amended Plan.

45. The Debtor believes that the First Amended 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 First Amended Plan are made in good faith.

46. Since all creditors are unimpaired under the First Amended 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 First Amended Plan.

Dated: New York, New York  
July 6, 2016

Nieberg Midwood Chapel Inc  
*Debtor and Debtor in Possession*

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

Kornfeld & Associates, P.C.  
*Attorneys for Debtor*

By: s/ Randy M. Kornfeld  
240 Madison Avenue, 8<sup>th</sup> Floor  
New York, New York 10016  
(212) 759-6767