

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: :
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SALTY DOG REST., LTD., :
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Debtor in Possession. :
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Case No. 16-40679 (ESS)

Chapter 11

Judge Elizabeth S. Stong

**DEBTOR'S SECOND AMENDED
CHAPTER 11 PLAN OF REORGANIZATION**

Dated: January 10, 2017
New York, New York

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INTRODUCTION

Salty Dog Rest., Ltd., the above-captioned debtor and debtor in possession (the “**Debtor**”)¹ proposes this chapter 11 plan of reorganization dated January 10, 2017, at it may be amended (this “**Plan**”) to resolve the outstanding Claims against it. All Holders of Claims who are eligible to vote on this Plan are encouraged to read the Plan attached as **Exhibit 1** to the accompanying disclosure statement also dated January 10, 2017, as it may be amended, (the “**Disclosure Statement**,”)² including all Exhibits, before voting to accept or reject this Plan. Subject to certain restrictions and requirements set forth in §1127 of the Bankruptcy Code and Bankruptcy Rule 3019, the Debtor reserves the right to alter, amend, modify, revoke, or withdraw this Plan prior to its substantial consummation. The Debtor are the proponents of this Plan within the meaning of §1129 of the Bankruptcy Code.

This Plan sets forth the means by which the Debtor will satisfy the Claims against it and after the effective date of the Plan (the “**Effective Date**”) continue to operate its bar and restaurant (the “**Bar**”) at its Brooklyn premises (the “**Premises**”) for so long as its landlord allows it to occupy the Premises as a month-to-month tenant or until a new lease may be negotiated. The Debtor’s equity interest holders (the “**Stockholders**”) will provide a cash contribution (the “**Contribution**”) to pay Claims through (i) a capital contribution of new value equal to or greater than the appraised liquidation value of the Debtor’s assets and (ii) their

¹ The terms used herein are defined in Article I of this Plan, any Exhibit to this Plan or to the Disclosure Statement, the Bankruptcy Code or the Bankruptcy Rules. Some of these terms are restated herein as necessary for the sake of clarity and the convenience of the reader.

² The Debtor initially filed its original Disclosure Statement and Plan on August 30, 2016 prior to retention of the Debtor’s accountants and receipt of the final asset appraisal report; the Amended Plan was filed on October 30, 2016.

continued personal liability as responsible persons to pay the Debtor's unpaid sales tax liabilities currently claimed to be at least \$284,435.86 (the "**Sales Tax Claim**") by the most recent audit conducted by the New York State Department of Taxation and Finance ("**NYSDOTF**"). Upon Confirmation, the Debtor will create a Post-Confirmation Liquidating Trust (the "**Trust**") and will transfer and assign to the Trust its rights to the Contribution, any net Cash sales proceeds remaining in its bank accounts or on Premises from the liquidation of its Inventory, and from successful Avoidance Actions, if any. President of the Debtor, Robert P. Fadel, ("**Fadel**") will act as the Trustee to administer and liquidate the Trust Assets, prosecute or defend and settle Causes of Action, and object to and settle currently stayed personal injury Claims against the Debtor's estate. Fadel will also act as the Disbursing Agent to satisfy Claims in accordance with this Plan.

ALL HOLDERS OF CLAIMS ENTITLED TO VOTE ON THIS PLAN ARE ENCOURAGED TO CAREFULLY READ BOTH THE DISCLOSURE STATEMENT (INCLUDING ALL EXHIBITS) AND THIS PLAN, EACH IN ITS ENTIRETY, BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.

I. DEFINED TERMS AND RULES OF INTERPRETATION

Rules of Construction

For purposes of this Plan, except as expressly provided herein or unless the context otherwise requires, all capitalized terms not otherwise defined shall have the meanings ascribed to them in Article I of this Plan or any Exhibit. Any Capitalized term used but not defined in this Plan shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable. Whenever the context requires, such terms shall include the plural as well as

the singular number, the masculine gender shall include the feminine or neuter genders, and the feminine gender shall include the masculine or neuter genders.

A. **Definitions**

1.1 **Accountant** means Denis L. Abramowitz CPA, PLLC, court approved successor to the Dobosh Firm as accountant to the Debtor.

1.2 **Administrative Claim** means an Allowed Claim for costs and expenses of administration of the Chapter 11 Case under §§ 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code including: (a) any actual and necessary costs and expenses, incurred after the Petition Date, of preserving the Estate and Claims of governmental units for taxes (including tax audit Claims related to tax years commencing after the Petition Date, but excluding Claims relating to tax periods, or portions thereof, ending on or before the Petition Date); and (b) all other claims entitled to administrative claim status pursuant to a Final Order of the Bankruptcy Court, other than Professional Fee Claims.

1.3 **Administrative Claims Bar Date** means the date which is no later than thirty (30) days from and after the Effective Date by which all requests for payment of an Administrative Claim arising after the Petition Date other than Professional Fee Claims or otherwise addressed herein, must be filed with the Court and served on counsel for the Debtor

1.4 **Allowed Claim** means a Claim or any portion thereof (a) that has been allowed by a Final Order of the Bankruptcy Court (or such other court as the Debtor and the Holder of any Claim agree may adjudicate the Claim and any objections thereto), (b) that either (x) has been listed as liquidated, non-contingent, and undisputed in an amount greater than zero on the Schedules, or (y) is the subject of a timely filed proof of claim as to which either (i) no

objection to its allowance has been Filed (either by way of objection or amendment to the Schedules) within the periods of limitation fixed by the Bankruptcy Code or by any order of the Bankruptcy Court or (ii) any objection to its allowance has been settled, waived through payment, or withdrawn, or has been denied by a Final Order, or (c) that is expressly Allowed in a liquidated amount in this Plan; provided, however, that with respect to an Administrative Claim, “Allowed Claim” means an Administrative Claim as to which a timely written request for payment has been made in accordance with applicable bar dates for such requests set by the Bankruptcy Court (if such written request is required), in each case as to which the Debtor, or any other party in interest (x) has not interposed a timely objection or (y) has interposed a timely objection and such objection has been settled, waived through payment, withdrawn, or denied by a Final Order.

1.5 **Assets** means the Debtor’s remaining Cash and/or Inventory at the close of business on January 30, 2017, the day before the contemplated Confirmation Date.

1.6 **Avoidance Actions** means Causes of Action arising under Bankruptcy Code §§502, 510, 541, 542, 544, 545, 547 through 551 and/or 553, or under related state or federal statutes and common law, including, without limitation, fraudulent transfer laws, whether or not litigation is commenced to prosecute such Causes of Action; provided, however, that Avoidance Actions shall not be deemed to include those causes of action released, waived and/or discharged pursuant to this Plan or an order of the Bankruptcy Court.

1.7 **Ballot** means each of the ballot forms distributed to each Holder of a Claim entitled to vote to accept or reject this Plan.

1.8 **Bankruptcy Code** means title 11 of the United States Code, as now in effect or hereafter amended and as applicable to the Chapter 11 Case.

1.9 **Bankruptcy Court** means the United States Bankruptcy Court for the Eastern District of New York or any other court with jurisdiction over the Chapter 11 Case.

1.10 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as now in effect or hereafter amended.

1.11 **Bar** means the Debtor's restaurant and bar located at its sole Premises in Brooklyn, NY.

1.12 **Bar Date** means February 24, 2014 or such other deadline set by the Bankruptcy Court for the filing of Proofs of Claim.

1.13 **Business Day** means any day, other than a Saturday, Sunday or "legal holiday" (as defined in Bankruptcy Rule 9006(a)) or as recognized in the State of New York.

1.14 **Capital Contribution** (or the "Contribution") means the Cash contributed by the Debtor's Stockholders to the Post-Confirmation Trust in the of at least \$15,000 which is greater than the appraised liquidation value of the Debtor's Equipment.

1.15 **Cash** means legal tender of the United States of America and equivalents thereof, which may be conveyed by check or wire transfer.

1.16 **Causes of Action** means, collectively, the CUD PI Claims, any and all Avoidance Actions, claims, actions, proceedings, causes of action, suits, accounts, controversies, agreements, promises, rights of action, rights to legal remedies, rights to equitable remedies, rights to payment and Claims (as defined in §101(5) of the Bankruptcy Code), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated,

unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise, that the Debtor and/or its Estate may hold against any Entity including, without limitation, but excluding those released, exculpated or waived pursuant to this Plan or other order of the Bankruptcy Court.

1.17 **Chapter 11 Case** means the joint case under chapter 11 of the Bankruptcy Code, assigned Case No. 16-40679 that the Debtor commenced on the Petition Date.

1.18 **Claim** means a “claim” as defined in §101(5) of the Bankruptcy Code.

1.19 **Claims Objection Deadline** means the last day for filing objections to Claims, other than Administrative Claims and Professional Fee Claims, which day shall be (a) the later of 60 days after the Effective Date or (b) such other date as the Bankruptcy Court may order.

1.20 **Class** means a category of Holders of Claims, as described in Article II.

1.21 **Confirmation** means entry by the Bankruptcy Court of the Confirmation Order.

1.22 **Confirmation Date** means the date on which the Bankruptcy Court enters the Confirmation Order.

1.23 **Confirmation Hearing** means the hearing held by the Bankruptcy Court to consider confirmation of this Plan as such hearing may be adjourned or continued from time to time.

1.24 **Confirmation Order** means the order of the Bankruptcy Court confirming this Plan under §1129 of the Bankruptcy Code.

1.25 **Consummation or Consummate** means the occurrence of, or to achieve, the Effective Date.

1.26 **Creditor** means any Entity that holds a Claim against the Debtor.

1.27 **CUD PI Claims** means those contingent, unliquidated and disputed personal injury actions against the Debtor in Class 4(c).

1.28 **Debtor** means Salty Dog Rest., Ltd., debtor and debtor-in-possession in this Chapter 11 Case.

1.29 **Disallowed Claim** means a Claim, or any portion thereof, that (a) has been disallowed by a Final Order, (b) is scheduled at zero or as contingent, disputed or unliquidated and as to which no Proof of Claim has been filed by the Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order, or otherwise deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (c) is not Scheduled, and as to which (i) no Proof of Claim has been filed by the Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law, or (ii) no request for payment of an Administrative Claim has been filed by the Administrative Claims Bar Date or deemed timely filed with the Bankruptcy Court pursuant to either the Bankruptcy Code or any Final Order or under applicable law.

1.30 **Disbursing Agent** means the Person to be appointed to make Distributions. The Trustee shall be the Disbursing Agent.

1.31 **Disclosure Statement** means the disclosure statement, as it may be amended (including all Exhibits and schedules) relating to this Plan, distributed contemporaneously herewith in accordance with §§1125 and 1126(b) of the Bankruptcy Code and Bankruptcy Rule 3016.

1.32 **Disputed Claim** means a Claim, or any portion thereof, that has not been Allowed pursuant to this Plan or a Final Order.

1.33 **Disputed Claim** Amount means (a) if a liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) the liquidated amount set forth in the Proof of Claim relating to the Disputed Claim; (ii) an amount agreed to by the Debtor and the Holder of the Disputed Claim; or (iii) if a request for estimation is filed by any party, the amount at which the Claim is estimated by the Bankruptcy Court; (b) if no liquidated amount is set forth in the Proof of Claim relating to a Disputed Claim, (i) an amount agreed to by the Debtor and the holder of the Disputed Claim or (ii) the amount estimated by the Bankruptcy Court with respect to the Disputed Claim; or (c) if the Claim is listed on the Schedules as unliquidated, contingent or disputed and no Proof of Claim was filed, or deemed to have been filed, by the Bar Date and the Claim has not been resolved by written agreement of the parties or an order of the Bankruptcy Court, zero.

1.34 **Distribution** means any distribution of Cash to the Holders of Allowed Claims in accordance with the terms of this Plan.

1.35 **Distribution Date** means the date upon which initial distributions are made by the Disbursing Agent to Holders of Allowed Claims entitled to receive Distributions

under this Plan, which shall be the date on which the Trustee determines in the exercise of his or her prudent business judgment that there are sufficient funds to make a Distribution.

1.36 **Distribution Record Date** means, for purposes of the Distributions to be made to Holders of Allowed Class 4 General Unsecured Claims, the last Business Day of the month preceding the Distribution Date.

1.37 **Effective Date** means the Business Day on which this Plan becomes effective as provided in Article VIII.

1.38 **Entity** shall have the meaning set forth in §101(15) of the Bankruptcy Code.

1.39 **Estate** means the estate of the Debtor created under §541 of the Bankruptcy Code.

1.40 **Exhibit** means an exhibit annexed to either this Plan or to the Disclosure Statement.

1.41 **Face Amount** means (a) when used in reference to a Disputed Claim, the Disputed Claim Amount and (b) when used in reference to an Allowed Claim, the Allowed amount of such Claim.

1.42 **Fadel** means Robert P. Fadel, President and equity interest holder of the Debtor.

1.43 **Final Decree** means the decree contemplated under Bankruptcy Rule 3022.

1.44 **Final Fee Application** means the final request for Payment of its Allowed Professional Fees and final reimbursement of Allowed Expenses by the Debtor's Professionals which have been filed no later than 30 days after the Effective Date.

1.45 **Final Order** means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket in the Chapter 11 Case, the operation or effect of which has not been stayed, reversed or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal, seek review or rehearing or petition for certiorari has expired and as to which no appeal or request for review or rehearing or petition for certiorari was filed or, if filed, remains pending.

1.46 **General Unsecured Trade Claim** means an unsecured Claim by one or more of the Debtor's trade vendors and suppliers that is not an Administrative Claim, Priority Tax Claim, Priority Non-Tax Claim, Secured Claim or Professional Fee Claim, and is within Class 4(b).

1.47 **Governmental Unit** means a "governmental unit" as defined in §101(27) of the Bankruptcy Code.

1.48 **Holder** means an Entity holding a Claim.

1.49 **Impaired means** a Claim or Class that is impaired within the meaning of §1124 of the Bankruptcy Code.

1.50 **Inventory** means the beer, wine and liquor products sold by the Debtor in the ordinary course of its business generally restocked on a daily basis.

1.51 **Liability Insurance Carrier** means IICRRG, the liquidated Delaware insurance carrier which insured the Debtor against liability claims prepetition until its operations

were assigned to a Receiver and further insurance transactions permanently enjoined by the Delaware Chancery Court.

1.52 **Lien** shall mean any lien, security interest, pledge, title retention agreement, encumbrance, charge, mortgage or hypothecation, other than, in the case of securities and any other equity ownership interests, any restrictions imposed by applicable United States or foreign securities laws.

1.53 **Local Rules** means the Local Rules of the United States Bankruptcy Court for the Eastern District of New York.

1.54 **NYSDOTF** means the New York State Department of Taxation and Finance.

1.55 **Person** shall have the meaning set forth in §101(41) of the Bankruptcy Code.

1.56 **Petition Date** means February 24, 2016.

1.57 **Plan** means this chapter 11 plan, as it may be amended, and all supplements, appendices, and schedules, either in its current form or as the same may be altered, amended, or modified from time to time.

1.58 **Post-Confirmation Trust** means the entity to be created on the Effective Date in accordance with Article V.C and the Post-Confirmation Trust Agreement for the benefit of holders of Allowed Claims.

1.59 **Post-Confirmation Trust Agreement** means the agreement governing the creation and operation of the Trust.

1.60 **Post-Confirmation Trustee** means Fadel, the Person to be appointed to administer the Trust in accordance with the terms and provisions of the Trust Agreement, or any successor Trustee appointed pursuant to the provisions of the Trust Agreement.

1.61 **Premises** means the Debtor's sole business location at 7509 Third Avenue, Brooklyn, New York in which it operates its Bar.

1.62 **Priority Non-Tax Claim** means a Claim, other than an Administrative Claim or Priority Tax Claim, which is entitled to priority in payment pursuant to §507(a) of the Bankruptcy Code.

1.63 **Priority Tax Claim** means a Claim of a Governmental Unit of the kind specified in §§502(i) and 507(a)(8) of the Bankruptcy Code.

1.64 **Professional** means (a) any professional employed or retained in the Chapter 11 Case pursuant to §§327, 328, or 1103 or otherwise of the Bankruptcy Code and (b) any professional or other entity seeking compensation or reimbursement of expenses in connection with the Chapter 11 Case pursuant to §503 of the Bankruptcy Code..

1.65 **Professional Fee Claim** means a Claim of a Professional for compensation for services rendered or reimbursement of costs, expenses or other charges incurred after the Petition Date and prior to and including the Effective Date.

1.66 **Proof of Claim** means the proof of claim that must be filed on or before the Bar Date or such other date as prescribed by the Bankruptcy Court.

1.67 **Sales Tax Claim** means the claim for unpaid sales tax, penalties and interest claimed by the NYSDOTF against the Debtor as set forth in its most recent completed audit.

1.68 **Scheduled** means, with respect to any Claim, the status, priority and amount, if any, of such Claim as listed in the Schedules.

1.69 **Schedules** means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor pursuant to §521 of the Bankruptcy Code and the Bankruptcy Rules, as such Schedules have been or may be further modified, amended or supplemented in accordance with Bankruptcy Rule 1009 or orders of the Bankruptcy Court.

1.70 **Solicitation** means the solicitation by the Debtor of acceptances and rejections of this Plan in accordance with §1125 of the Bankruptcy Code.

1.71 **Tax Claim** means all or that portion of a Claim held by a Governmental Unit for a tax assessed or assessable against the Debtor, including income taxes, employment taxes and any related penalties or interest.

1.72 **Taxes** means any and all taxes, levies, imposts, assessments, customs duties or other charges of whatever nature imposed at any time by any governmental authority or by any political subdivision or taxing authority thereof or therein and all interest, penalties or similar liabilities with respect thereto.

1.73 **Trust Assets** means the stockholders' Cash Contribution and proceed of the sale of the Debtor's Inventory to be deposited into the Trust including any net proceeds of any judgment collected or settlement approved by the Bankruptcy Court, Avoidance Actions and other Causes of Action, if any. The Trust Assets will be identified on a schedule to be filed as an exhibit prior to the Confirmation Hearing

1.74 **Unclassified Claims** means Administrative, Priority and Tax Claims.

1.75 **Unimpaired** means a Claim that is not impaired within the meaning of §1124 of the Bankruptcy Code.

1.76 **U. S. Trustee** means the Office of the United States Trustee for Region 2.

1.77 **Voting Deadline** means the date and time, as fixed by an order of the Bankruptcy Court and set forth in the Disclosure Statement, by which all Ballots to accept or reject this Plan must be received in order to be counted.

B. Rules of Interpretation

For purposes of this Plan (a) any reference in this Plan to an agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, (b) any reference in this Plan to an existing document or Exhibit filed or to be filed means such document or Exhibit as it may have been or may be amended, modified, or supplemented, (c) unless otherwise specified, all references in this Plan to sections, articles, Schedules and Exhibits are references to sections, articles, Schedules and Exhibits of or to this Plan, (d) the words “herein” and “hereto” refer to this Plan in its entirety rather than to a particular portion of this Plan, (e) captions and headings to Articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan and (f) to the extent not modified herein, the rules of construction set forth in §102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply.

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

D. **Governing Law.** Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) and except as otherwise provided herein or therein, the laws of the State of New York shall govern the construction and implementation of this Plan and any agreements, documents and instruments executed in connection with this Plan.

II. CLASSIFICATION OF CLAIMS AND VOTING ELIGIBILITY

A. **Introduction.**

All Claims except Administrative Claims and Priority Tax Claims are placed in the Classes set forth below. In accordance with §1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified. A Claim is placed in a particular Class only to the extent that the Claim falls within the description of that Class, and is classified in other Classes to the extent that any portion of the Claim falls within the description of the other Classes. A Claim is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim is Allowed in that Class and the Claim has not been paid, released, settled or withdrawn prior to the Effective Date.

B. **Unclassified Claims (not entitled to vote on this Plan).**

2.1 Administrative Claims.

2.2 Priority Tax Claims.

C. **Unimpaired Classes of Claims (deemed to have accepted this Plan and, therefore, not entitled to vote on this Plan).**

3.1 Class 1: Secured Tax Claims.

3.2 Class 1(a): The Secured Claim of the New York State Department of Tax & Finance.

3.3 Class 2: Priority Non-Tax Claims. (None known).

3.4 Class 3: Secured Claims. (None known).

3.5 Class 5: Equity Interest Claims of the Debtor's three Stockholders.

D. **Impaired Classes of Claims (entitled to vote on this Plan).**

4.1 Class 4: General Unsecured Claims in Classes 4(a), 4(b) and 4(c).

III. TREATMENT OF CLAIMS

A. **Unclassified Claims**

1.1 **Administrative Claims.** Except as otherwise provided herein, and subject to the requirements set forth herein, on, or as soon as reasonably practicable after the later of (i) the Effective Date and (ii) the date an Administrative Claim becomes an Allowed Administrative Claim, a Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release and discharge of and in exchange for the Allowed Administrative Claim, (a) Cash equal to the unpaid portion of the Face Amount of such Allowed Administrative Claim or (b) such other treatment as to which the Holder and the Debtor shall have agreed; provided, however, that Allowed Administrative Claims with respect to liabilities incurred by the Debtor in the ordinary course of business during the Chapter 11 Case may be paid in the ordinary course of business in accordance with the terms and conditions of any agreements relating thereto. Distributions to Holders of Allowed Administrative Claims shall be made by the Debtor or the Trust, at the Debtor's sole discretion.

1.2 **Priority Tax Claims.** Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid by the Debtor prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim shall receive, at the Debtor's sole discretion, Cash in an amount equal to the Allowed Priority Tax Claim (i) on the Effective Date or as soon as practicable after the later of (a) the Effective Date or (b) the date the Claim becomes an Allowed Priority Tax Claim, (ii) in equal quarterly payments, beginning on the Effective Date and continuing over a period ending not later than five (5) years after the Effective Date together with interest at the federal funds rate of interest on the Effective Date. All Allowed Priority Tax Claims that are not due and payable on or before the Effective Date shall be paid in the ordinary course of business by the Disbursing Agent. Distributions to Holders of Allowed Priority Tax Claims shall be made by the Post- Confirmation Trust, at Mr. Fadel's sole discretion.

B. Unimpaired Claims

2.1 Class 1: Secured Tax Claims. Treatment of Class 1(a) Secured Tax Claims.: Except to the extent that a Holder of an Allowed Class 1(a) Secured Tax Claim, if any, has been paid prior to the Distribution Date, agrees to a different treatment, or is treated in a different manner under this Plan, on or as soon as is practicable after the Effective Date, each Holder of a Class 1(a) Allowed Secured Tax Claim shall receive, at Mr. Fadel's sole discretion, Cash in an amount equal to the Allowed Amount of its Allowed Secured Tax Claim (i) on the Effective Date or as soon as practicable after the later of (a) the Effective Date, (b) the date the Claim becomes an Allowed Secured Tax Claim, (ii) in equal quarterly payments, plus interest at the federal funds rate, beginning on the Effective Date and continuing over a period ending not

later than five (5) years after the Effective Date or (iii) as may be otherwise agreed between the Holder of a Class 1(a) Allowed Secured Tax Claim and the Debtor, Payment will be in full satisfaction, settlement, release and discharge of, and in exchange for the Allowed Class 1(a) Secured Tax Claim. Distributions to Holders of Allowed Class 1(a) Secured Tax Claims shall be made either by the Debtor or the Trust, at Mr. Fadel's sole discretion.

2.2 Treatment of Class 1(b) Secured Tax Claims:

Except to the extent that a Holder of an Allowed Class 1(b) Secured Tax Claim has been paid prior to the Distribution Date or agrees to a different treatment, on or as soon as is practicable after the Effective Date each Holder of a Class 1(b) Allowed Secured Tax Claim shall receive at the Debtor's sole discretion, Cash in an amount equal to the Allowed Amount of its Allowed Secured Tax Claim (a) on the Effective Date or as soon as practicable after the later of (i) the Effective Date and (ii) the date the Claim becomes an Allowed Secured Tax Claim, or (b) in equal quarterly payments, plus interest at the federal funds rate, beginning on the Distribution Date and continuing over a period ending not later than five (5) years after the Distribution Date. Payment will be in full satisfaction, settlement, release and discharge of, and in exchange for the Allowed Class 1(b) Secured Tax Claim. Distributions to the Holder of the Allowed Class 1(b) Secured Tax Claim shall be made by the Debtor or Trust, at the Debtor's sole discretion. It shall be an event of default solely under this Article III(B)(1)(b) (x) if the Debtor or the Trust fail to make any payment to the Holder of the Class 1(b) Secured Tax Claim as provided in this Plan, (y) if the Debtor or the Trust fail to pay any tax liabilities owing to the Holder of the Class 1(b) Secured Tax Claim or (z) if the Debtor fails to file tax returns by the due date of the return or of any extension of time permitted under title 26, U.S. Code.

In the event of any such default under this Article III(B)(1)(b), the Holder of the Class 1(b) Allowed Secured Claim shall provide written notice to the Debtor and its counsel. Such notice shall, at a minimum (a) identify the nature of the default, (b) state the amount of the default, if any, (c) notify the Debtor of the last date upon which such default can be cured and (d) notify the Debtor that if such default is not cured, the Holder of a Class 1(b) Allowed Secured Tax Claim may collect any unpaid liabilities through the administrative collection provisions of the title 26, U.S. Code. Upon receipt of such written notice of default, the Debtor shall have a period of thirty (30) days from receipt of such notice to cure such default and during such thirty (30) days, the Holder of a Class 1(b) Allowed Secured Tax Claim shall take no action against the Debtor. If such default is cured by the Debtor on or within said thirty (30) day period, then this Plan shall continue in full force and effect as if no default had occurred. iii. If the Debtor fail to cure such default on or within said thirty (30) day period, then the Holder of a Class 1(b) Allowed Secured Tax Claim may collect any unpaid liabilities through the administrative collection provisions of the Internal Revenue Code, and the automatic stay of 11 USC 362(a) is lifted solely to permit the Holder of a Class 1(b) Allowed Secured Tax Claim to collect any unpaid Claims owing to it without further order of the Court. 2.

2.3 Class 2: Priority Non-Tax Claims. Except to the extent that a Holder of an Allowed Class 2 Priority Non-Tax Claim, if any, has been paid prior to the Distribution Date or agrees to a different treatment, on or as soon as is practicable after the Distribution Date, the Disbursing Agent shall pay to each Holder of an Allowed Priority Non-Tax Claim Cash in an amount equal to the Face Amount of such Allowed Priority Non-Tax Claim. Payment will be in full satisfaction, settlement, release and discharge of, and in exchange for the Allowed Class 2

Priority Non-Tax Claim. Distributions to Holders of Allowed Class 2 Priority Non-Tax Claims shall be made by the Debtor or the Trust, at the Debtor's sole discretion.

2.4 Class 3: Secured Claims. The Holder of such a Secured Claim, if any, shall retain its Lien in the property securing the debt. The Plan leaves unaltered the legal, equitable and contractual rights to which the Holder is entitled under its loan and security documents. The Debtor shall continue to make current payments of monthly principal and interest to the Holder. Any pre-Petition Date arrears that are owed to the Holder shall be paid in full on the Effective Date. Distributions to the Holder shall be made by the Debtor.

2.5 Class 5 Equity Interest Claims: The three holders of such equity Claims shall retain their equity interests upon condition of their contributing new value (the Contribution) to the Trust in an amount of Cash in the amount of at least \$15,000, which is greater than the appraised liquidation value of the Debtor's Equipment and \$120,000 to be paid to the Debtor to pay the Court approved fees and expenses of its Professionals. In addition, the three Stockholders retaining their Equity Interests shall remain personally liable in the event that the Debtor fails to pay or otherwise resolve the Sales Tax Claim against the Debtor.

C. Impaired Claims.

3.1 Class 4: General Unsecured Claims. Any Ballot returned unsigned without any indication that the voting creditor accepts or rejects the Plan will be deemed a ballot accepting the Plan. Any Ballot returned without an amount will be deemed in the amount set forth on the Debtor's Schedules.

3.2 An Allowed Class 4(a) Secured Claim held by the NYSDOTF. (See Secured Claims). Except as otherwise stated herein, or any order of the Court, treatment of the

Priority Tax Claims held by the NYSDOTF and the Administrative Claims held by the NYSDOTF shall be treated (but not classified) with Secured Class 4(a) Tax Claims and shall also satisfy the Class 4(a) Secured Tax Claims.

3.3 Upon full payment of the Class 4(a) Secured Tax Claims, the NYSDOTF shall release its lien against the Debtor's property and shall record such lien with the appropriate New York State governmental entity.

3.4 The Holder of an Allowed Class 4(b) Trade Claim will receive in an amount equal to seventy-five percent (75%) of the face amount of its Allowed Class 4 Claim distributed on a calendar quarterly basis, in the amount of approximately \$4,800 beginning on the Effective Date for a maximum of five years unless such creditor shall agree with the Debtor to different treatment.

- a. Distributions to the Holders of Allowed Class 4(a) Claims shall be made (a) on a date that is 60 days after the Debtor has reduced any judgment to Cash or (b) the date a Class 4 Claim becomes an Allowed Claim pursuant to a Final Order, or shall be paid on such other terms as the Debtor and such Allowed Claim Holders may agree.
- b. The Debtor may, in its sole discretion, elect to prepay any amounts due to those Class 4 Claimants, with the amount of such prepayment to be equal to the then-present value of the unpaid portion of such Allowed Class 4 Claim discounted at a rate of 5%.

- c. No Holder of an Allowed Class 4 General Unsecured Claim shall receive interest on its Allowed Claim.

3.5 Distributions to Holders of Allowed Class 4(c) General Unsecured CUD PI Claims shall be made *pro rata* from the net proceeds received in Cash in the Trust, not from the Debtor pursuant to Bankruptcy Law. If a Class 4 General Unsecured Claim is not an Allowed Claim on a Distribution Date, the Holder of that Claim will receive its Distribution as soon as practicable after the Claim becomes an Allowed Claim.

3.6 “Net Proceeds” as used in the above Article means gross proceeds of:

- a. The Capital Contribution made by the Debtor’s Stockholders and Cash generated by the daily liquidation of the Debtor’s Inventory as of the Confirmation Date; and
- b. any judgment recovered by the Debtor on any Avoidance or Fraudulent Conveyance actions; less
- c. all expenses incurred in any of the foregoing, including compensation of Professionals and expense reimbursement.

D. Allowed Claims.

4.1 Notwithstanding any provision herein to the contrary, the Disbursing Agent shall only make Distributions to Holders of Allowed Claims. No Holder of a Disputed Claim will receive any Distribution until (and then only to the extent that) its Disputed Claim becomes an Allowed Claim. Any Holder of a Claim that becomes an Allowed Claim after the Effective Date will receive its Distribution in accordance with the terms and provisions of this Plan.

IV. ACCEPTANCE OR REJECTION OF THE PLAN

A. Impaired Classes of Claims Entitled to Vote.

1.1 The Holders of Claims in Class 4 are entitled to vote to accept or reject this Plan, and the votes of the Holders of those Claims will be solicited.

B. Acceptance by an Impaired Class.

2.1 In accordance with §1126(c) of the Bankruptcy Code and except as provided in §1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds ($\frac{2}{3}$) in dollar amount and more than one-half ($\frac{1}{2}$) in number of the Allowed Claims of such Class that have timely and properly voted.

C. Presumed Acceptances by Unimpaired Classes

3.1 Classes 1, 2, 3 and 5 are Unimpaired. Under §1126 of the Bankruptcy Code, the Holders of Claims in Classes 1, 2, 3 and 5 are conclusively presumed to accept this Plan and its votes will not be solicited.

D. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code

4.1 If any subclass of Class 4 rejects this Plan, the Debtor may, at its sole option, (i) seek confirmation of this Plan from the Court under §1129(b) of the Bankruptcy Code employing the “cramdown” procedures set forth therein and/or (ii) modify this Plan. The Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan, the Disclosure Statement, the Trust Agreement or any Exhibits to satisfy the requirements of §1129(b) of the Bankruptcy Code, if necessary.

V. MEANS FOR IMPLEMENTING THE PLAN

1.1 Implementing Actions. Unless otherwise provided in this Plan, on the Effective Date or as soon thereafter as practicable, the following shall occur to implement this Plan: (i) all actions, documents and agreements necessary to implement this Plan shall be taken or executed including the Trust Agreement; (ii) the Stockholders will deliver their Contribution and the Debtor's net Cash proceeds to the Trust; and (iii) the Disbursing Agent shall make all Distributions required to be made to Holders of Allowed Claims pursuant to this Plan.

1.2 The Debtor will continue to engage in business as a Bar and restaurant at its Premises in Brooklyn after Confirmation of its Plan, and, if necessary to the Plan, will provide continuing quarterly reports, and payments of U. S. Trustee's fees as required by the Bankruptcy Code, Trustee's Guidelines and Local Rules. The Debtor will be primarily liable, before the Stockholders, for payment of the Sales Tax Claim and for causing the Debtor to pay the Class 4(b) General Unsecured Trade Creditors on a quarterly basis for 20 consecutive quarters starting on the Effective Date, unless different terms are otherwise agreed by the Debtor and such Claimants.

B. Exemption from Certain Transfer Taxes

2.1 Pursuant to § 1146(a) of the Bankruptcy Code, any transfers from the Debtor or the Trust or any other Entity or to the Trust pursuant to this Plan shall not be subject to any stamp tax or similar tax, and the Confirmation Order shall direct the appropriate state and local governmental officials or agents to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

C. Post-Confirmation Trust and Post-Confirmation Trustee

3.1 On or before the Effective Date, the Debtor shall execute the Trust Agreement and take all other steps necessary to establish the Trust in accordance with and pursuant to the terms of this Plan including, without limitation, funding the Trust. The Debtor shall transfer and assign to the Trust all of its right, title and interest in and to the Trust Assets. Any recoveries on account of Causes of Action obtained prior to the Effective Date shall be deposited into the Trust for the payment of Distributions to holders of Allowed Claims provided, however, that there may be deducted from such proceeds the amount necessary to fund any authorized expenses.

3.2 From and after the Effective Date, the Trustee or his agent shall be authorized, without any supervision or approval of the Bankruptcy Court or the US Trustee to employ and compensate such Persons, including counsel, financial advisors and accountants, as he considers necessary to enable him to perform his functions and the reasonable fees and costs of such employment and other expenditures shall be paid out of the Trust Assets.

3.3 Notwithstanding any other term or provision of this Plan, the Trustee shall be empowered to initiate, prosecute, defend, and resolve all legal actions and other proceedings related to any Cause of Action and to compromise and settle any Cause of Action upon such notice and order of the Bankruptcy Court as may be required

3.4 The Trustee will be responsible for continuing any objections to Claims against the Debtor or its Estate (if filed before the Effective Date) or filing any objections to Claims against the Debtor or its Estate (if filed after the Effective Date) that are inconsistent with the Debtor's books and records or are otherwise disputable, and for prosecuting or settling those objections.

D. **Post-Effective Date Costs**

4.1 From and after the Effective Date and without further order of the Bankruptcy Court, the costs and expenses incurred by the Trustee shall be paid out of the Trust Assets, and the Debtor or the Disbursing Agent shall pay the fees and expenses of its Professionals in the ordinary course of business including, without limitation, those fees and expenses incurred in connection with the implementation and consummation of this Plan.

E. **Preservation of Causes of Action**

5.1 In accordance with §1123(b)(3) of the Bankruptcy Code and except as otherwise provided in an order of the Bankruptcy Court, the Debtor and its Estate shall retain all of the causes of action arising under applicable state laws, including, without limitation, the Causes of Action, Avoidance Actions, if any, and all other causes of action of a trustee or debtors-in-possession under the Bankruptcy Code, all of which shall be automatically transferred to the Trust.

F. **Effectuating Documents**

6.1 Further Transactions The Debtor and the Trustee shall be authorized to execute, deliver, file or record such agreements or documents, and take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

G. **Funding of the Post-Confirmation Trust**

7.1 On or as soon as practicable after the Effective Date, the Debtor shall transfer and assign to the Trust the Trust Assets, consisting initially of the Stockholder's Cash Contribution together with any net Cash from operations remaining on the Premises from liquidation of its Inventory, and thereafter, may include any judgments recovered by the Debtor

under the Bankruptcy Code. In addition the Stockholders shall remain responsible persons with respect personal liability for the Sales Tax Claim.

VI. PROVISIONS GOVERNING DISTRIBUTIONS

A. Distributions for Claims Allowed as of the Effective Date

1.1 Except as otherwise provided in this Plan, all Distributions to be made on account of Allowed Claims as of the Effective Date shall be made on the Distribution Date. Distributions on account of Claims that first become Allowed Claims after the Distribution Date shall be made pursuant to the terms and conditions of this Plan and the Trust Agreement. No Distribution shall be made on account of any Allowed Claim or portion thereof that (i) has been satisfied after the Petition Date pursuant to an order of the Bankruptcy Court; (ii) is listed in the Schedules as contingent, unliquidated, disputed or in a zero amount, and for which a Proof of Claim has not been timely filed; or (iii) is evidenced by a Proof of Claim that has been amended by a subsequently filed Proof of Claim that purports to amend the prior Proof of Claim, except to the extent that the amended Claim is Allowed.

B. Disbursing Agent

2.1 The Trustee as the Disbursing Agent shall make all Distributions from the Trust required under this Plan or the Confirmation Order, subject to the terms and provisions of this Plan. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of his or her duties unless otherwise ordered by the Bankruptcy Court or required by the Bankruptcy Code or the Bankruptcy Rules. The cost of any required bond shall be paid out of the Trust Assets. The Disbursing Agent shall be authorized and

directed to rely upon the Debtor's books and records and its Professionals in determining Allowed Claims entitled to Distribution under this Plan.

2.2 On or as soon as practicable after the Effective Date the Debtor shall turn over to the Disbursing Agent any Cash that constitutes the Trust Assets. The Disbursing Agent shall establish one or more accounts in the name of the Trustee (in such capacity) for the payment of the Allowed Class 4(c) Claims. All such accounts shall be held at banking institutions that are authorized depositories for the U. S Bankruptcy Court, Eastern District of New York. Allowed Class 4(b) Claims shall be paid directly by the Debtor as provided in the Plan.

2.3 All Cash held by the Disbursing Agent in the name of the Trustee shall be deposited or invested in accordance with §345 of the Bankruptcy Code.

C. **Delivery of Distributions and Undeliverable or Unclaimed Distributions**

3.1 Delivery of Distributions in General a. Distributions to Holders of Allowed Claims shall be made (i) at the addresses set forth on the Proofs of Claim filed by the Holders (or at its last known addresses if no Proof of Claim is filed or if the Debtor have been notified of a change of address), (ii) at the addresses set forth in any written notices of address changes delivered to the Debtor or the Disbursing Agent after the date of any related Proof of Claim, (iii) at the addresses reflected in the Schedules if no Proof of Claim has been filed and the Debtor have not received a written notice of a change of address or (iv) at the addresses set forth in the records of the Debtor at the time of the Distribution.

3.2 Distributions made after the Distribution Date shall be made from the Trust in accordance with the terms of this Plan and the Trust Agreement.

3.3 In making Distributions under this Plan, the Disbursing Agent may rely upon the accuracy of the claims register maintained by the Clerk of the Bankruptcy Court in the Chapter 11 Case, as modified by any Final Order of the Bankruptcy Court allowing or disallowing Claims in whole or in part.

D. Undeliverable and Unclaimed Distributions

4.1 If the Distribution to any Holder of an Allowed Claim is returned to the Disbursing Agent as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until the Disbursing Agent is notified in writing of the Holder's then-current address, at which time all missed Distributions shall be made to the Holder, without interest.

4.2 Amounts in respect of undeliverable Distributions made by the Disbursing Agent shall be returned to and revert with the Trust until the Distributions are claimed.

4.3 Any Holder of an Allowed Claim that does not assert a Claim pursuant to this Plan for an undeliverable or unclaimed Distribution within sixty (60) days after the date on which the Distribution to it is made shall be deemed to have forfeited its Claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such Claim or for an undeliverable or unclaimed Distribution against the Debtor and Post-Confirmation Trustee (in such capacity) and its respective agents, attorneys, representatives, employees or independent contractors, and/or any of its property including the Trust Assets. In such cases, any Cash otherwise reserved for undeliverable or unclaimed Distributions shall

become Trust Property and shall be distributed in accordance with the terms of this Plan and the Trust Agreement.

4.4 Nothing contained in this Plan or the Trust Agreement shall require the Debtor or the Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

E. **Means of Cash Payment**

5.1 Cash payments made pursuant to this Plan shall be in U.S. dollars and shall be made at the option and in the sole discretion of the Disbursing Agent by (i) checks drawn on or (ii) wire transfers from a domestic bank selected by the Disbursing Agent, which bank shall be an authorized depository in the Eastern District of New York. Cash payments to foreign creditors may be made, at the option of the Disbursing Agent, in such funds and by such means as are necessary or customary in a particular jurisdiction.

5.2 Notwithstanding any other terms of this Plan, Claims will be paid only to the extent Allowed.

F. **No Interest on Claims**

6.1 Post-petition interest shall not accrue or be paid on any Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim unless otherwise expressly provided for in this Plan, the Confirmation Order, as may be required by the Bankruptcy Code or as may be required under a separate agreement between such Holder and the Debtor, or either of them.

G. **Withholding and Reporting Requirements**

7.1 In accordance with §346 of the Bankruptcy Code and in connection with this Plan and all distributions hereunder, the Post Confirmation Trustee or Disbursing Agent (as

the case may be) shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. The Post Confirmation Trustee or Disbursing Agent (as the case may be) shall be authorized to take any and all actions necessary and appropriate to comply with such requirements.

7.2 As a condition of making any Distribution under this Plan, the Disbursing Agent may require the Holder of an Allowed Claim to provide such Holder's taxpayer identification number, and such other information, certification or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of this Plan, each Entity receiving a Distribution pursuant to this Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such Distribution.

H. **Setoff**

8.1 Unless otherwise authorized by a Final Order, any Holder of a Claim must assert any setoff or recoupment rights against a claim by the Debtor against such entity by filing an appropriate motion seeking authority to setoff or recoup on or before the Distribution Date or will be deemed to have waived and be forever barred from asserting any right to setoff against a claim by the Debtor notwithstanding any statement to the contrary in a Proof of Claim or any other pleading or document filed with the Bankruptcy Court or delivered to the Debtor or the Trustee.

I. **Procedure for Treating and Resolving Disputed, Contingent and/or Unliquidated Claims**

9.1 Objection Deadline; Prosecution of Objections. Except as set forth herein with respect to Professional Fee Claims and Administrative Claims, all objections to Claims must be filed and served on the Holders of such Claims no later than the Claims Objection Deadline (as such Deadline may be extended by order of the Bankruptcy Court). If an objection has not been filed to a Proof of Claim or the Schedules have not been amended with respect to a Claim that (i) was Scheduled by the Debtor but (ii) was not Scheduled as contingent, unliquidated and/or disputed, by the Claims Objection Deadline, as the same may be extended by order of the Bankruptcy Court, the Claim to which the Proof of Claim or Scheduled Claim relates will be treated as an Allowed Claim if the Claim has not been allowed earlier.

9.2 No Distributions Pending Allowance. Notwithstanding any other provision of this Plan, no Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to the Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim. To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtor on account of a Cause of Action, no Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

9.3 Distributions After Allowance. Distributions to the Holder of a Disputed Claim, to the extent that it ultimately becomes an Allowed Claim, will be made in accordance with provisions of this Plan that govern distributions to Holders in that Class

9.4 *De Minimis* Distributions. The Disbursing Agent shall not have any obligation to make a Distribution on account of an Allowed Claim if the amount to be distributed to the specific Holder has a value less than five dollars (\$5).

9.5 Allocation of Plan Distributions Between Principal and Interest. To the extent that any Allowed Claim entitled to a Distribution under this Plan is composed of indebtedness and accrued but unpaid interest thereon, the Distribution shall, for all income tax purposes, be allocated to the principal amount of the Claim first and then, to the extent the consideration exceeds the principal amount of the Claim, to the portion of the Claim representing accrued but unpaid interest.

J. **Distribution Record Date**

10.1 Neither the Debtor nor the Disbursing Agent will have any obligation to recognize the transfer of any Allowed Claim that occurs after the close of business on the Distribution Record Date, and will be entitled for all purposes in this Plan to recognize and distribute only to those Holders of Allowed Claims who are Holders as of the close of business on the Distribution Record Date.

VII. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. **Rejected Contracts and Leases**

1.1 Except as otherwise provided in the Confirmation Order or this Plan, the Confirmation Order shall constitute an order under §365 of the Bankruptcy Code assuming all prepetition executory contracts and unexpired leases to which either of the Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (a) was previously assumed,

assumed and assigned, or rejected by the Debtor, (b) previously expired or terminated pursuant to its own terms on or before the Effective Date, (c) previously expired or terminated by operation of law, including §365 of the Bankruptcy Code, or (d) is the subject of a pending motion to assume or reject on the Confirmation Date.

B. Rejection Damage Bar Date

2.1 If the rejection of an executory contract or unexpired lease gives rise to a Claim by the counterparty or parties to the contract or lease, the Claim shall be forever barred and shall not be enforceable against the Debtor, the Trustee (in such capacity), the Disbursing Agent or the Trust Assets unless a Proof of Claim is filed and served on the Trustee within thirty (30) days after service of a notice of the Effective Date or such other date as is set by the Bankruptcy Court.

VIII. CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions to Effective Date.

1.1 The following are conditions precedent to the occurrence of the Effective Date, each of which must be satisfied or waived in writing:

- a. The Confirmation Order shall have been entered and become a Final Order.
- b. The Confirmation Order shall provide that the Debtor are authorized and directed to take all actions necessary or appropriate to enter into, implement and consummate the agreements or documents created in connection with this Plan or to effectuate, advance or further the purposes thereof.

- c. The Confirmation Order shall fix a deadline for the filing of requests for payment Administrative Claims.
- d. All other actions, documents, and agreements necessary to implement this Plan shall have been effected or executed including, without limitation, the Post- Confirmation Trust Agreement.
- e. The Debtor shall have sufficient Cash, including the proceeds of the Stockholders' Contribution, to enable all required payments necessary to Confirmation to be made including, without limitation, payments to the Trust.

B. Consequences of Non-Occurrence of Effective Date

2.1 If the Effective Date does not timely occur, the Debtor reserve all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that this Plan be null and void in all respects, and/or that any settlement of Claims provided for in this Plan be null and void. If the Bankruptcy Court enters an order vacating the Confirmation Order, the time within which the Debtor may assume and assign, or reject all executory contracts and unexpired leases not previously assumed, assumed and assigned, or rejected, shall be extended for a period of 30 days after the date the Confirmation Order is vacated, without prejudice to further extensions.

IX. ALLOWANCE AND PAYMENT OF CERTAIN ADMINISTRATIVE CLAIMS

A. Final Fee Applications

1.1 All requests for payment of final Professional Fee Claims must be filed no later than 30 days after the Effective Date.

1.2 Objections, if any, to Final Fee Applications must be filed and served on counsel and special counsel for the Debtor, the requesting Professional and the US Trustee no later than thirty (30) days after the date on which the Final Fee Application is served and filed.

1.3 After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and Bankruptcy Rules, the Allowed amounts of the Professional Fee Claims shall be determined by the Bankruptcy Court.

B. Employment of Professionals after the Effective Date

2.1 From and after the Effective Date, any requirement that Professionals comply with §§327 through 331 of the Bankruptcy Code or any order previously entered by the Bankruptcy Court in seeking retention or compensation for services rendered or expenses incurred after such date will terminate.

C. Administrative Claims Bar Date

3.1 All requests for payment of an Administrative Claim arising after the Petition Date other than Professional Fee Claims or otherwise addressed herein, must be filed with the Court and served on counsel for the Debtor no later thirty (30) days from and after the Effective Date.

3.2 Unless the Debtor or any other interested party objects within thirty (30) days from and after the Administrative Claims Bar Date, the Administrative Claim shall be deemed allowed in the amount requested.

3.3 If the Debtor or any other party in interest objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of the Administrative Claim, if any.

X. EFFECT OF PLAN CONFIRMATION

A. Binding Effect

1.1 The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims and its respective successors and assigns.

B. Discharge of the Debtor

2.1 Pursuant to §1141(d)(1) of the Bankruptcy Code, Confirmation shall discharge the Debtor from any Claim that arose prior to Confirmation whether or not the Holder of the Claim has accepted or rejected this Plan, except that (i) pursuant to §1141(d)(2) of the Bankruptcy Code, the Debtor will not be discharged from any debt excepted from discharge under §523 of the Bankruptcy Code and (b) pursuant to §1141(d)(5)(A). Confirmation does not discharge any debt provided for in this Plan until the Court grants a discharge on completion of all payments under this Plan.

C. Debtor's Releases

3.1 **On the Effective Date, the Debtor, on behalf of themselves and its Estate shall release unconditionally, and hereby are deemed to forever release unconditionally, the Debtor's Professionals from any and all claims, obligations, suits,**

judgments, damages, rights, causes of action and liabilities whatsoever (other than the right to enforce the performance of its respective obligations, if any, to the Debtor under this Plan, and the contracts and other agreements delivered under this Plan), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, directly or derivatively, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Chapter 11 Case, this Plan or the Disclosure Statement provided, however, that notwithstanding the foregoing nothing contained herein is intended to or shall operate as a release of any claims for fraud, willful misconduct or gross negligence, criminal conduct, bad faith conduct, and ultra vires actions. The foregoing shall not release and shall not be deemed or construed to release Avoidance Actions or the recipients of any transfers that are avoidable or recoverable under Chapter 5 of the Bankruptcy Code. Pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct, nothing in this Plan shall operate as a release of liability for malpractice for any attorney professional.

D. Injunction. Except as otherwise provided in this Plan, the Confirmation Order shall provide, among other things, that from and after the Effective Date all Persons who have held, hold or may hold Claims against the Debtor are permanently enjoined from taking any of the following actions against the Debtor or its Estate, or any of its property on account of any such Claims:

4.1 Commencing or continuing, in any manner or in any place, any action or other proceeding;

4.2 Enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order;

4.3 Creating, perfecting or enforcing any lien or encumbrance;

4.4 Asserting a setoff, right of subrogation or recoupment of any kind against any debt, liability or obligation due to the Debtor unless authorized under this Plan; and

4.5 Commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan; provided, however, that nothing contained in this Plan shall preclude such Persons from exercising its rights pursuant to and consistent with the terms of this Plan or the Confirmation Order.

E. Exculpation and Limitation of Liability

5.1 Except as otherwise provided in this Plan and to the extent permissible under §1125(e) of the Bankruptcy Code, the Debtor, its Professionals and any of such parties' successors and assigns, shall not have or incur any claim, action, proceeding, Cause of Action, suit, account, controversy, agreement, promise, right to legal remedies, right to equitable remedies, right to payment or Claim (as defined in §101(5) of the Bankruptcy Code), whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured and whether asserted or assertable directly or derivatively, in law, equity or otherwise to one another or to

any Holder of a Claim, or any other party in interest, or any of its respective agents, employees, representatives, financial advisors, attorneys, or any of its successors or assigns, for any act or omission originating or occurring on or after the Petition Date through and including the Effective Date in connection with, relating to, or arising out of the Debtor, the Chapter 11 Case, negotiation and filing of this Plan or any prior plans, filing the Chapter 11 Case, the pursuit of confirmation of this Plan or any prior plans, the consummation of this Plan, the administration of this Plan or the property to be liquidated and/or distributed under this Plan, except for fraud, willful misconduct or gross negligence, criminal conduct, bad faith conduct, and ultra vires actions as determined by a Final Order of a court of competent jurisdiction, and in all respects shall be entitled to reasonably rely upon the advice of counsel with respect to its duties and responsibilities under this Plan. Pursuant to Rule 1.8(h)(1) of the New York Rules of Professional Conduct, nothing in this Plan shall operate as an exculpation or a limitation of liability for malpractice for any attorney professional.

F. **Term of Bankruptcy Injunction or Stays**

6.1 All injunctions or stays provided for in the Chapter 11 Case under §§105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date unless otherwise provided in this Plan. Upon the Effective Date, the injunction provided in Article X. D. shall apply.

G. **Indemnification Obligations**

7.1 Except as otherwise provided in this Plan, an Order of the Bankruptcy Court or any agreement or document entered into in connection with this Plan, any and all indemnification obligations that the Debtor have pursuant to a contract, instrument, agreement

or any other document or applicable law shall be deemed rejected (if and to the extent executory) as of the Effective Date.

H. **No Injunctions against the United States Government.**

8.1 Nothing in the Plan shall enjoin the United States Government or any of its agencies, or any state or local authorities from bringing any claim, suit, action or other proceedings (whether directly, indirectly, derivatively or otherwise) against the Debtor or any of its agents, assigns or professionals under the Internal Revenue Code, the environmental laws, securities laws, or any criminal laws of the United States or any state or local authority.

XI. RETENTION OF JURISDICTION

1.1 Under §§105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order, substantial consummation of this Plan and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and this Plan to the fullest extent permitted by law, including, among other things, jurisdiction to:

1.2 Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim, the resolution of any objections to the allowance or priority of Claims and the determination of requests for the payment of claims entitled to priority under §507(a) of the Bankruptcy Code, including compensation of any reimbursement of expenses of parties entitled thereto;

1.3 Hear and determine all applications for compensation and reimbursement of expenses of Professionals under this Plan or under §§330, 331, 503(b), 1103, and 1129(a)(4)

of the Bankruptcy Code; provided, however, that, except as otherwise provided in this Plan, from and after the Effective Date, the payment of the fees and expenses of the Trustee and the Disbursing Agent and its retained agents and employees and Professionals, shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court;

1.4 Hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear, determine and, if necessary, liquidate any Claims arising therefrom;

1.5 Effectuate performance of and payments under the provisions of this Plan;

1.6 Hear and determine any and all adversary proceedings, motions, applications and contested or litigated matters arising out of, under or related to the Chapter 11 Case or this Plan;

1.7 Enter such orders as may be necessary or appropriate to execute, implement or consummate the provisions of this Plan and all contracts, instruments, releases and other agreements or documents created in connection with this Plan, the Disclosure Statement or the Confirmation Order;

1.8 Hear and determine disputes arising in connection with the interpretation, implementation, consummation or enforcement of this Plan, including disputes arising under agreements, documents or instruments executed in connection with this Plan;

1.9 Consider any modifications of this Plan and any implementing documents, cure any defect or omission or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

1.10 Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any entity with implementation, consummation, or enforcement of this Plan or the Confirmation Order;

1.11 Enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified or vacated;

1.12 Hear and determine any matters arising in connection with or relating to this Plan, the Disclosure Statement, the Confirmation Order or any agreement or document created in connection with this Plan, the Disclosure Statement or the Confirmation Order;

1.13 Enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

1.14 Hear and determine matters concerning state, local and federal taxes in accordance with §§346, 505 and 1146 of the Bankruptcy Code;

1.15 Hear and determine all matters related to the property of the Estate from and after the Confirmation Date;

1.16 Hear and determine the Avoidance Actions and other Causes of Action;
16. Hear and determine all disputes involving the existence, nature or scope of the injunctions, indemnification, exculpation and releases granted pursuant to this Plan;

1.17 Hear and determine all matters related to the Trust, the Trustee or the Disbursing Agent;

1.18 Hear and determine disputes with respect to compensation of Professionals;

1.19 Hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

1.20 Enforce all orders previously entered by the Bankruptcy Court; and 21. Enter a Final Decree closing the Chapter 11 Case.

XII. MISCELLANEOUS PROVISIONS

1.1 Modifications and Amendments. The Debtor may alter, amend or modify this Plan or any Exhibits under §1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation of this Plan as defined in §1101(2) of the Bankruptcy Code, the Debtor may, under §1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of this Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under this Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court. No material modifications of the Plan will be made after the Effective Date without notice and an opportunity to object.

B. Severability of Plan Provisions

2.1 If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, then 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 altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

C. **Successors and Assigns.**

3.1 The rights, benefits and obligations of any Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

D. **Payment of Statutory Fees.**

4.1 All fees payable through the Effective Date pursuant to 28 U.S.C. §1930 and any applicable interest thereon shall be paid on the Effective Date by the Debtor. The Debtor shall pay quarterly fees to the U.S. Trustee and any applicable interest thereon until the Chapter 11 Case is closed or converted and/or the entry of a Final Decree. The Debtor shall file post-Confirmation quarterly reports in compliance with the U.S. Trustee Guidelines. until the case is converted, dismissed, or closed by means of a final decree, whichever happens earlier. If any post-Confirmation fees U.S. Trustee quarterly fees and any applicable interest thereon are required to be paid with respect to Distributions from the Trust, those fees and any applicable interest thereon shall be paid by the Disbursing Agent from the Trust Assets.

E. **Revocation, Withdrawal or Non-Consummation.**

5.1 The Debtor reserve the right to revoke or withdraw this Plan prior to the Confirmation Date and to file subsequent plans. If the Debtor revoke or withdraw this Plan, or if Confirmation or consummation of this Plan does not occur, then (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount certain any Claim or Class of Claims), assumption or rejection of executory contracts or leases effected by this Plan, and any document or agreement executed pursuant to this Plan, shall be deemed null and void, and (c) nothing contained in this Plan, and no acts taken in preparation for consummation of this Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Debtor or any other Entity, (ii) prejudice in any manner the rights of the Debtor or any other Entity or (iii) constitute an admission of any sort by the Debtor or any other Entity.

F. **Notices.**

6.1 Any notice, request or demand required or permitted to be made or provided to or upon the Debtor, its counsel, the Post- Confirmation Trustee and/or the Disbursing Agent under this Plan shall be (a) in writing, (b) served by (i) hand delivery, (ii) overnight delivery service, (iii) first class mail, or (iv) facsimile transmission, (c) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed and (d) addressed to each of the entities below as follows:

The Debtor's counsel:

Randall S. D. Jacobs, PLLC
Attn: Randall S. D. Jacobs, Esq.
30 Wall Street, 11th Floor
New York, New York 10005
Tel: (212) 709-8116
Fax: (973) 226-8897
Email: rsdjacobs@chapter11esq.com

G. **Plan Exhibits.**

7.1 Any and all Plan Exhibits, Disclosure Statement Exhibits or other lists or schedules not filed with this Plan or the Disclosure Statement shall be filed with the Clerk of the Bankruptcy Court at least three (3) Business Days prior to date of the commencement of the Confirmation Hearing. Upon filing, those documents may be inspected in the office of the Clerk of the Bankruptcy Court during normal court hours. Holders of Claims may obtain a copy of any such document upon written request to the Debtor's counsel.

H. **Filing of Additional Documents.**

8.1 On or before substantial consummation of this Plan, the Debtor shall file such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan.

Dated: New York, New York
January 10, 2017

/s/ Robert P. Fadel

Robert P. Fadel,
President of the Debtor

RANDALL S. D. JACOBS, PLLC

By: Randall S. D. Jacobs

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