

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re

Chapter 11

7901 7th Avenue LLC

Case No. 16-42775(ESS)

Debtor.
-----X

AMENDED DISCLOSURE STATEMENT FOR
PLAN OF REORGANIZATION OF CREDITOR LENDER'S CAPITAL, LLC

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

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

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

LAWRENCE F. MORRISON
MORRISON TENENBAUM PLLC
87 Walker Street, Floor 2
New York, New York 10013
Telephone: (212) 620-0938
Facsimile: (646) 390-5095

ATTORNEYS FOR THE PROPONENTS

INTRODUCTION

1. Lender's Capital, LLC (collectively, the "Proponents" or the "Mortgagee") submit this Disclosure Statement ("Disclosure Statement") in connection with the solicitation of acceptances of its Plan of Reorganization ("Plan") under Chapter 11 of the United States Bankruptcy Code. A copy of the Plan is attached hereto as Exhibit "A". All Creditors are urged to review the Plan, in addition to reviewing this Disclosure Statement. All capitalized terms used but not defined herein shall have the meaning set forth in the Plan. The Plan provides for the sale of the real estate owned by the Debtor at auction and a distribution to creditors pursuant to the Bankruptcy Code.

2. This Disclosure Statement is not intended to replace a review and analysis of the Plan. Rather, it is submitted as a review of the Plan in an effort to explain the terms and implications of the Plan. Every effort has been made to fully explain the various aspects of the Plan as it affects all Creditors. To the extent a Creditor has any questions, the Proponents urge you to contact their counsel and every effort will be made to assist you. **THE PROPONENTS URGE YOU TO VOTE IN FAVOR OF THE PLAN. THE PROPONENT'S GOAL IS FOR ALL CREDITOR CLASSES TO ACCEPT THE PLAN. IF ALL CREDITOR CLASSES DO NOT ACCEPT THE PLAN, THE PROPONENTS INTEND TO SEEK CRAMDOWN OF THE PLAN UNDER SECTION 1129(b) OF THE BANKRUPTCY CODE AS MAY BE NECESSARY TO EFFECT CONFIRMATION OF THE PLAN.**

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

Creditors whose votes are being solicited to make an informed judgment whether to accept or reject the Plan.

4. Creditors should read this Disclosure Statement in its entirety prior to voting on the Plan. No solicitation of votes may be made except pursuant to this Disclosure Statement. EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT, NO REPRESENTATIONS CONCERNING THE DEBTOR, ITS ASSETS, PAST OR FUTURE OPERATIONS, OR THE PLAN ARE AUTHORIZED, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN. ANY REPRESENTATIONS MADE TO SECURE ACCEPTANCE OR REJECTION OF THE PLAN OTHER THAN AS CONTAINED IN THIS DISCLOSURE STATEMENT SHOULD BE REPORTED TO COUNSEL FOR THE PROPONENTS.

5. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN SUPPLIED BY THE DEBTOR'S COURT FILINGS. BASED UPON THE INFORMATION MADE AVAILABLE, PROPONENTS' COUNSEL HAS NO INFORMATION TO INDICATE THAT THE INFORMATION DISCLOSED HEREIN IS INACCURATE. NEITHER THE PROPONENTS NOR THEIR 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. After reviewing this Disclosure Statement indicate your vote to accept or to reject the Plan on the enclosed ballot, and return the ballot to counsel for the Proponents so as to be received on or before _____, ~~2016~~2017.

7. The Bankruptcy Court has entered an Order fixing _____, ~~2016~~2017, at _____.m., at the United States Bankruptcy Court, 271-C Cadman Plaza East, Brooklyn, New York, 11201 as the date, time and place for the hearing on confirmation of the Plan, and fixing _____, ~~2016~~2017, as the last date for the filing of any objections to confirmation of the Plan.

BACKGROUND

8. On June 23, 2016, 7901 7th Avenue LLC (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. “101 *et seq.* (the “Bankruptcy Code”).

9. An official committee of unsecured creditors has not been appointed in this case.

10. The Debtor owns real property located at 7901 7th Avenue, Brooklyn, New York (the “Property”).

11. On its bankruptcy schedules, the Debtor lists the value of the Property as unknown. Lender’s Capital estimates the value of the Property to be approximately \$700,000.

12. The origin of the Debtor’s financial problems is unclear. It is known that the Property has never generated sufficient net operating income to service the Debtor’s obligations.

13. As of the Petition Date, Lender’s Capital, LLC (the “Proponents” or the Mortgagee) holds a first mortgage against the Property in the amount of \$646,508 through October 31, 2016.

14. 636 Assets Inc. (“636 Assets”) holds a second mortgage against the Property in the amount of \$229,000 plus interest.

15. Prior to the Petition Date, the Proponents commenced a foreclosure proceeding in New York Supreme Court, Kings County, Index No. 020753/2012.

16. The only creditors known at this time are Lender’s Capital, LLC, 636 Assets, and Consolidated Edison Company of New York, Inc. A bar date has not been set in the Debtor’s case. Upon information and belief, property taxes may also be owed to New York City. The Debtor’s bankruptcy schedules list no additional creditors.

17. The Debtor failed to file plan and disclosure statement and the Debtor’s exclusive period to file a plan expired on October 21, 2016.

18. The Mortgagee support a sale and believes further that such a sale should be incorporated into a Chapter 11 plan as it involves a liquidation of substantially all of the Debtor’s assets. Accordingly, the Mortgagee is filing this Plan with their own sale procedures to accomplish that result.

~~18.~~19. The Debtor believes that there is equity in the Property above the amount of all secured claims.

PROPONENTS' PLAN OF REORGANIZATION

CLASSIFICATION AND TREATMENT OF CLAIMS

Class 1- Secured Claims

~~19~~20. **Classification** – Lender's Capital (\$646,508) and 636 Assets (\$229,000) hold secured claims.

~~20~~21. **Treatment** – Payment of available cash, up to Allowed Amount of Class 1 Claims, in order of priority (Lender's Capital first and 636 Assets second) after payment of administrative claims and any real estate taxes.

~~21~~22. **Voting** -- Impaired and entitled to vote to accept or reject the Plan.

Class 2 – Priority Claims

~~22~~23. **Classification** – Priority Claims under Sections 507(a)(2),(3),(4),(5),(6),(7) and (8) of the Bankruptcy Code. There are no known priority creditors. Claims total approximately \$0.

~~23~~24. **Treatment** – There are no known creditors in this class. In the event that any priority creditors file claims, such creditors will be paid in order of priority after payment of Class 1 Claims and payment of administrative expenses.

~~24~~25. **Voting** – There are no creditors in this class.

Class 3 – General Unsecured Claims

~~25~~26. **Classification** – General Unsecured Claims. One creditor, Consolidated Edison Company of New York, Inc., has filed an unsecured claim in the amount of \$1,112.76.

~~26.27.~~ **Treatment** – Payment of available cash, up to Allowed Amount of Class 3 Claims, after payment of administrative claims and Class 1 and Class 2 Creditors. No distribution to unsecured creditors is anticipated.

~~27.28.~~ **Voting** – Impaired and entitled to vote to accept or reject the Plan.

Class 4 – Interest Holders

~~28.29.~~ **Classification** – Pursuant to the Debtor’s Statement of Financial Affairs, the Debtor’s Interest Holder is Ann Einhorn who holds a 100% interest.

~~29.30.~~ **Treatment** – Payment of available cash after payment of administrative claims, and Class 1, 2, and 3 claims. No distribution to equity holders is anticipated.

~~30.31.~~ **Voting** – Impaired and entitled to vote to accept or reject the Plan.

MEANS FOR IMPLEMENTATION

~~31.32.~~ **Source of Funds** – The Plan provides that after confirmation, the Proponents will be authorized to sell the Property. The Proponents shall be authorized to retain a real estate broker or auctioneer, on behalf of the Debtor, to market and sell the Property at auction or to sell the Property through such other marketing including newspaper advertising as may be approved by the Court. The Proponents shall file a motion on notice to creditors providing for the sale of the Property and the sale procedures. The Property will be sold to the highest and best bidder as soon as practicable after confirmation. The net proceeds of sale shall be distributed to creditors in accordance with the Plan. Effective Date payments under the Plan will be paid from the sale of the Property to be sold upon the terms and conditions set forth on Exhibit A to Plan, and from any other cash on hand that is property of the Debtor’s estate. The transfer of the Property under the Plan shall be free and clear of all liens, claims and

encumbrances, with any such liens, claims and encumbrances to attach to the sale proceeds, and to be disbursed under the Plan, provided, however, that the Mortgagee shall have the right, but not the obligation, to provide for a split and assignment of their mortgage and assumption by the purchaser in connection with the sale of the Property under the Plan. The Mortgagee shall be entitled to credit bid at such auction if they so choose.

32.33. Sale Approval -- As part of the sale under the Plan, and in order to ensure consummation of the Plan, the Plan requires that the Sale Order contain the following findings of fact and conclusions of law: (a) that the terms and conditions of the sale are fair and reasonable, (b) that the sale, and the purchaser's purchase, of the Property pursuant to the Plan, is non-collusive, fair and reasonable and was conducted openly and in good faith, (c) that the transfer of the Property to the purchaser represents an arm's-length transaction and was negotiated in good faith between the parties, (d) that the purchaser, as transferee of the Property, is a good faith purchaser under 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 the 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 hereby released, waived and discharged.

33.34. Release of Liens -- Except as otherwise provided for in the Plan and in connection with the assumption and assignment of the Mortgagee's mortgage, on the Effective Date, (a) each holder of a Secured Claim, shall on the Effective Date (x) turn over and release to the Proponents any and all Collateral that secures or purportedly secures such Claim, as they pertain to the properties currently owned by the Debtor or such Lien shall automatically, and

without further action by the Debtor or the Proponents, be deemed released, and (y) execute such documents and instruments as the Proponents requests to evidence such Claim holder's release of such property or Lien.

~~34.~~35. **Stamp Tax** -- Under the Plan, pursuant to Bankruptcy Code § 1146(c), (a) the issuance, transfer or exchange of any securities, instruments or documents, (b) the creation of any other Lien, mortgage, deed of trust or other security interest, (c) the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of, or in connection with, the Plan, including, without limitation, any deeds, bills of sale or assignments executed in connection with the purchase of the Property by the Purchaser and any other transaction contemplated under the Plan or the re-vesting, transfer or sale of any real or personal property of the Debtor pursuant to, in implementation of, or as contemplated in the Plan, and (d) the issuance, renewal, modification or securing of indebtedness by such means, and the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, the Confirmation Order, shall not be subject any applicable document recording tax, stamp tax, conveyance fee or other similar tax, mortgage tax, real estate transfer tax, or other similar tax or governmental assessment including without limitation New York City Real Property Transfer Tax and New York State Documentary Tax.

~~35.~~36. **Execution of Documents** -- The Proponents shall be authorized to execute, in the name of any necessary party, any instrument of conveyance, deed, notice of satisfaction, release or discharge of any Lien, Claim or encumbrance not expressly preserved in the Plan and deliver such notices to any and all federal, state and local governmental agencies or departments for filing and recordation.

~~36.37.~~ **Recording Documents** -- Each and every federal, state and local governmental agency or department shall be authorized to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transaction contemplated by the Plan, including, but not limited to any and all notices of satisfaction, release or discharge of any Lien, Claim or encumbrance not expressly preserved by the Plan, and the Confirmation Order.

LIQUIDATION ANALYSIS

~~37.38.~~ In a liquidation under Chapter 7 of the Bankruptcy Code, the Debtor's assets would sold and the sale proceeds distributed to creditors in their order of priority. The Proponents believe that the Plan provides a far better return for the Debtor's estate and creditors than could be achieved in a liquidation. A Chapter 7 Trustee represents an additional layer of administration legal expenses and commissions, which the Proponents estimate would total at least 10% of the sale proceeds.

LITIGATION ANALYSIS

~~38.39.~~ The Proponents believes that Plan confirmation will be contested. Although the Debtor have not made its intentions known in that regard, the Debtor's conduct both pre-petition and in this case indicates a healthy appetite for litigation. Accordingly, the Proponents anticipate that the Debtor will argue that they should be permitted proceed with their own plan based upon repayments to the Mortgagees over time in an unspecified amount. The Proponents will address any such issues at the confirmation hearing.

~~39.40.~~ Post-confirmation, the Proponents shall review and investigate the viability of fraudulent conveyance, preference, or other litigation claims that may be prosecuted for the benefit of creditors. There are no known claims at this time.

PAYMENT OF CLAIMS AND OBJECTIONS TO CLAIMS

~~40.41.~~ The Proponents shall be disbursing agent under the Plan without a bond. The Proponents reserve the right to file objections to claims in the event grounds exist to object to particular claims, for a period of 120 days after the Effective Date. On the initial distribution date and on each distribution date as may thereafter be necessary, the Proponents 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 the undetermined claims distribution reserve and paid to the holder of such Allowed Claim. After all the amounts of all undetermined claims have been fixed, the balance of the undetermined claims distribution reserve shall thereafter be paid in accordance with the Plan.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

~~41.42.~~ The Plan provides that all unexpired leases and executory contracts not rejected prior to the Effective Date shall be rejected under the Plan. In the event of a rejection which results in damages 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 or unexpired lease shall be treated as an Unsecured Claim. Any Claim arising from the rejection of any Executory Contract or unexpired lease not filed with the Court within the time period provided in the preceding paragraph above shall be

deemed discharged and shall not be entitled to participate in any distribution under the Plan. The Debtor's schedule G indicates that there are no executory contracts or leases.

MANAGEMENT OF THE DEBTOR

~~42.43.~~ The Debtor appears to be managed by Ann Einhorn at the present time. Post-confirmation management will remain subject to the Debtor's operating agreements, provided however, that the Plan shall be implemented by the Proponents. The Plan provides that the Proponents shall be authorized to take such steps as necessary on behalf of the Debtor to implement the Plan.

TAX CONSEQUENCES

~~43.44.~~ The Proponents do not believe that there will be any negative tax consequences to the Debtor or to Creditors under the Plan. To the extent that a creditor is not paid in full under the Plan, such creditor may be entitled to a bad debt deduction. To the extent that a creditor has taken a bad debt deduction, Plan distributions may be taxable as income.

~~44.45.~~ **THE PROPONENTS DO NOT PURPORT, THROUGH THIS DISCLOSURE STATEMENT, TO ADVISE THE CREDITORS OR INTEREST HOLDERS REGARDING THE TAX CONSEQUENCES OF THE TREATMENT OF THE CREDITORS AND INTEREST HOLDERS UNDER THE PLAN. CREDITORS AND INTEREST HOLDER SHOULD SEEK INDEPENDENT COUNSEL CONCERNING THE TAX CONSEQUENCES OF THEIR TREATMENT UNDER THE PLAN.**

PLAN ALTERNATIVES

~~45.46.~~ Generally the plan options for single asset real estate cases include selling, refinancing, recapitalizing or loan modification. Upon information and belief, the Debtor has already tried and failed to refinance. There appears to be no interest in recapitalization, and efforts to modify the loan on consent between the Proponents and the Debtor have failed as well. The Debtor's alternative to the Proponents' Plan involve a refinance of the Property, however, the terms of such refinance have not been finalized and the repayment of any refinancing is not likely to be feasible given the need to sell the Property in retail sales to raise sufficient sums. The Proponents believe that selling the Property is the only viable alternative.

VOTING PROCEDURES AND REQUIREMENTS

~~46.47.~~ A ballot to be used for voting to accept or reject the Plan is enclosed with this Disclosure Statement. Each creditor is entitled to execute the ballot, and return it to the undersigned to be considered for voting purposes. The Bankruptcy Court has directed that, in order to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received no later than _____, 2016, at the following address: Morrison Tenenbaum PLLC, 87 Walker Street, Floor 2, New York, New York 10013, Attn: Lawrence F. Morrison , Esq.

~~47.48.~~ Each Creditor of each Debtor whose Claim is impaired under the Plan is entitled to vote, if either (i) its Claim has been scheduled by such Debtor, or (ii) it has filed a Proof of Claim on or before the last date set by the Bankruptcy Court for such filings.

~~48.49.~~ Any Claim as to which an objection has been filed (and such objection is still pending) is not entitled to vote, unless the Bankruptcy Court temporarily allows the Claim in an amount which it deems proper for the purpose of accepting or rejecting the Plan upon motion by a Creditor whose Claim is subject to an objection. Such motion must be heard and

determined by the Bankruptcy Court prior to the date established by the Court to confirm the Plan.

~~49.50.~~ A Creditor's vote may be disregarded if the Bankruptcy Court determines that the Creditor's acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

~~50.51.~~ The Bankruptcy Code defines acceptance of a Plan by a class of Creditors as acceptance by holders of two-thirds in dollar amount and a majority in number of the Claims of that class which actually cast ballots for acceptance or rejection of the Plan.

~~51.52.~~ The Bankruptcy Code defines acceptance of a Plan by a class of Interests as acceptance by holders of two-thirds in amount of the allowed Interests of such class held by holders of such interests.

CONFIRMATION OF THE PLAN

~~52.53.~~ Section 1128(a) of the Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing on confirmation of the Plan (the "Confirmation Hearing"). Section 1128(b) provides that any party in interest may object to confirmation of the Plan.

~~53.54.~~ By order of the Bankruptcy Court dated ____, ~~2016~~2017, the Confirmation Hearing has been scheduled for ____, ~~2016~~2017, at ____ .m., in the Honorable Elizabeth S. Stong, 271 Cadman Plaza East, Brooklyn, New York 11201. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing or any adjourned Confirmation Hearing. Any objection to confirmation of the Plan must be made in writing and filed with the Bankruptcy Court with proof of service and served upon the following Morrison Tenenbaum

PLLC, 87 Walker Street, Floor 2, New York, New York 10013, Attn: Lawrence F. Morrison ,
Esq.

~~54.55.~~ Objections to confirmation must be filed on or before _____,

~~2016~~2017: Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

~~55.56.~~ At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129 of the Bankruptcy Code have been satisfied to enter an order confirming the Plan. The applicable requirements are as follows for each Debtor: (a) The Plan complies with the applicable provisions of the Bankruptcy Code, (b) the Proponent have complied with the applicable provisions of the Bankruptcy Code; (c) the Plan has been proposed in good faith and not by any means forbidden by law, (d) any payment made or promised or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable, (e) the Proponents have disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a Plan with the Debtor, or a successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual, is consistent with the interests of Creditors and equity security holders and with public policy, and the Proponents have disclosed the identity of any insider that will be employed or retained by the reorganized Debtor, and the nature of any compensation for such insider, (f) with respect to each class of impaired Claims, either each holder of a Claim or interest of such class has

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

~~56.57.~~ The Proponents believe that the Plan satisfies all of the statutory requirements of Chapter 11 of the Bankruptcy Code, that the Proponents have complied or will have complied with all of the requirements of Chapter 11, and that the proposals contained in the Plan are made in good faith.

~~57.58.~~ The Proponents contend that holders of all Claims impaired under the Plan will receive payments under the Plan having a present value as of the Effective Date in amounts not less than the amounts likely to be received if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code.

CRAMDOWN

~~58.59.~~ In the event that any impaired class of Claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Proponents if, as to each

impaired class which has not accepted the Plan, the Plan “does not discriminate unfairly” and is “fair and equitable.”

~~59.60.~~ The Proponents intend to invoke the cramdown provisions of section 1129(b) as to any impaired class that does not accept the plan.

~~60.61.~~ A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives less than it is legally entitled to receive for its Claims or equity interests. “Fair and equitable” has different meanings for Secured and Unsecured Claims.

~~61.62.~~ With respect to a Secured Claim, “fair and equitable” means either: (a) the impaired Secured Creditor retains its Liens to the extent of its Allowed Claim and receives deferred cash payments at least equal to the allowed amount of its Claim with a present value as of the Effective Date at least equal to the value of such Creditor's interest in the property securing its Liens; (b) property subject to the Lien of the impaired Secured Creditor is sold free and clear of that Lien, with that Lien attaching to the proceeds of the sale; or (c) the impaired Secured Creditor realizes the “indubitable equivalent” of its Claim under the Plan.

~~62.63.~~ With respect to an Unsecured Claim, “fair and equitable” means either: (a) each impaired Unsecured Creditor receives or retains property of a value equal to the amount of its Allowed Claim; or (b) the holders of Claims and Interests that are junior to the Claims of the dissenting class will not receive any property under the Plan.

~~63.64.~~ In the event one or more classes of impaired Claims rejects the Plan, the Bankruptcy Court will determine at the Confirmation Hearing whether the Plan is fair and equitable and does not discriminate unfairly against any rejecting impaired class of Claims.

