

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re Chapter 11
Yeshiva Ohel Moshe Case no. 16-43681
Debtor.
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DISCLOSURE STATEMENT

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

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

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ATTORNEYS FOR THE DEBTOR

INTRODUCTION

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

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

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

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

5. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN SUPPLIED BY THE DEBTOR. THE DEBTOR'S BOOKS AND RECORDS HAVE BEEN USED TO PROVIDE THE INFORMATION CONCERNING THE DEBTOR'S FINANCIAL CONDITION AS SET FORTH IN THIS DISCLOSURE STATEMENT. BASED UPON THE INFORMATION MADE AVAILABLE, DEBTOR'S COUNSEL HAS NO INFORMATION TO INDICATE THAT THE INFORMATION DISCLOSED HEREIN IS INACCURATE. NEITHER THE DEBTOR NOR ITS COUNSEL, HOWEVER, IS ABLE TO STATE DEFINITELY THAT THERE IS NO INACCURACY HEREIN OR THAT FUTURE EVENTS MAY NOT RENDER THE INFORMATION CONTAINED HEREIN INACCURATE.

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

BACKGROUND

7. On August 17, 2016, the Debtor filed a Chapter 11 petition under Title 11 of the United States Code, 11 U.S.C. 101 et seq. (the "Bankruptcy Code").

8. The Debtor is a non-profit religious corporation founded in 1929 serving low income Bensonhurst families.

9. The Debtor operates a synagogue with 400-500 congregants.

10. The Debtor also operates a school, which provides general and Judaic studies to students from pre-kindergarten through eighth grade. Up to 100 students are typically enrolled. The Debtor employs approximately 20 faculty and staff.

11. The Yeshiva has been the spiritual, educational, and cultural heart of the tight-knit Jewish community it serves for 87 years.

12. The Yeshiva operates from its building at 7914 Bay Parkway, Brooklyn, New York (the "Property"), pictured below:



13. The Property is the Debtor's most important asset.

14. The Debtor's Chapter 11 petition was triggered by a pending foreclosure action which threatens the Property, and the Yeshiva itself.

15. The Yeshiva has been denied its day in court, and faces the prospect of an unfair forfeiture.

16. The sordid tale that led to the Debtor's bankruptcy began in early 2007 when the Yeshiva sought to refinance some debt. The Yeshiva applied for a loan from Park Avenue Bank ("PAB"), a notorious financial institution whose senior executives went to prison for embezzling federal TARP funds and engaging in predatory lending practices during the time the Yeshiva sought its refinancing.

17. PAB gave a commitment letter dated February 21, 2007 for a ten year \$2 million loan to be secured by a mortgage on the Property (the "Loan"), bearing 8.5% interest for the first five years, and a variable rate the second five years. The Commitment Letter also provided for a \$300,000 escrow holdback.

18. On May 16, 2007, the Yeshiva filed a petition with the Supreme Court, State of New York, County of Kings, seeking leave to mortgage its Property as security for the Loan.

19. On the same day, the New York Attorney General's Office approved the Loan. By order and entered May 21, 2007, the Supreme Court formally approved the Loan, the Mortgage and the \$300,000 escrow holdback.

20. On May 21, 2007, PAB and the Yeshiva closed on the Loan. Rabbi Dov Machlis, the Yeshiva's Senior Rabbi and the Chairman of its Board of Directors, signed an escrow and security agreement on behalf of the Yeshiva.

21. Paragraph 2 of the escrow agreement contains the following three conditions to release of the escrow holdback:

- (i) the Yeshiva must "provide an accountant-prepared financial statement as of December 31, 2007 illustrating net operating income of no less than \$222,000 with a debt coverage ratio on the Loan of 1:25[:]"

- (ii) the Yeshiva must provide "proof that its property insurance policy does not contain a co-insurance provision [;]" and
- (iii) that "there [wa]s then no default or event of default under the Loan or under any of the Loan Documents, either declared or undeclared."

22. Shortly thereafter, PAB failed and the FDIC was appointed as its receiver.

Valley National Bank purchased the assets of PAB including the Note and Mortgage. Valley National Bank conveyed its rights to VNB, an affiliate. On May 2, 2011, VNB commenced a foreclosure action based on a payment default alleged to have occurred in February 2009.

23. VNB then sold the Note and Mortgage to HDHJ Group, LLC for an undisclosed sum; presumably substantially less than the \$2 million principal amount. HDHJ Group, LLC sold to New York Five Star Equity Corporation (the "Mortgagee") at an even steeper discount.

24. During the foreclosure, the Yeshiva engaged and/or was represented by no less than five individuals, not all of whom were lawyers, and four of whom subjected the Yeshiva to law office failure, deception and fraud. Those errors, omissions and affirmative misconduct led to summary judgment on default.

25. The Yeshiva first retained Sanford Solny, Esq. He filed and served an answer with counterclaims dated July 15, 2011.

26. Plaintiff moved for summary judgment. The Yeshiva instructed Mr. Solny to object. He did not. On April 24, 2012, while summary judgment was pending, Mr. Solny was suspended from the practice of law by the Appellate Division, First Department.

27. Just prior to a hearing of the summary judgment motion, Mr. Solny told the lender's counsel he was suspended. The Court adjourned the motion so the Yeshiva could retain new counsel.

28. The Yeshiva then retained Benjamin Herbst, whom, it was led to believe, was a reputable advocate who could resolve the dispute favorably.

29. Mr. Herbst was not an attorney, but held himself out as an experienced negotiator, with particular experience in workouts and settling foreclosure actions. He also represented to the Yeshiva that he worked closely with attorneys and would retain a duly admitted lawyer to work with him on behalf of the Yeshiva as part of his negotiations with the lender.

30. Mr. Herbst was a con artist.

31. When it retained Mr. Herbst, the Yeshiva expected that he would either settle the Foreclosure Action or arrange with Eli Fixler, the attorney with whom Herbst was working, to file a summary judgment objection.

32. Mr. Herbst did neither. Instead, he told the Yeshiva he had negotiated a settlement. He said the Yeshiva must turn over \$125,000 to himself and Mr. Fixler to fund a "settlement escrow account." Mr. Herbst even presented a bogus draft settlement agreement to the Yeshiva to convince the Yeshiva to pay.

33. There was no settlement. The \$125,000 disappeared.

34. To make matters worse, Mr. Herbst did not arrange for an attorney to oppose summary judgment.

35. An attorney named David Maho, from the "Law Office of David Maho," appeared in court for certain conferences, holding himself out to be representing the Yeshiva, notwithstanding that the Yeshiva never retained him. Mr. Maho may have been a per diem attorney hired by Mr. Herbst and/or Mr. Fixler. He never filed opposition.

36. The Yeshiva retained Anthony Auciello, Esq. to prosecute an action against Mr. Herbst and Mr. Fixler to recover the missing \$125,000.00. Ultimately, judgment was entered for the Yeshiva.

37. The Yeshiva also retained Mr. Auciello to represent it in the Foreclosure Action. By that time, the Supreme Court had conditionally granted summary judgment to VNB, subject to the Yeshiva filing opposition papers. The deadline was only days away.

38. Mr. Auciello attempted to settle the foreclosure or at least obtain an extension of time to file its objection. He was unsuccessful on both. He failed to file an objection on the Yeshiva's behalf, even though the Yeshiva retained him to do so if no settlement was made.

39. On August 22, 2014, the Supreme Court entered an order granting the VNB summary judgment, striking the Yeshiva's answer and dismissing its counterclaims. The Supreme Court appointed Harvey Greenberg as referee to ascertain and compute the amounts due.

40. The Yeshiva retained Farrell Fritz in February 2015, and on August 18, 2015, the Yeshiva moved to vacate summary judgment, and for leave to amend its answer to assert additional affirmative defenses. The Yeshiva argued that the deceit and law office failure of former counsel was a reasonable excuse to vacate the default.

41. For affirmative defenses, the Yeshiva sought leave to argue that by releasing the \$300,000 escrow without requiring the Yeshiva to comply with the release conditions, PAB materially modified the terms of the Loan without Supreme Court or New York State Attorney General approval – violating New York Religious Corporations Law ("NYRCL") § 12 (1) and Not-for-Profit Corporation Law ("NFPCL") § 155 (b).

42. In addition, the Yeshiva alleged that the Loan may be part of PAB's fraudulent and deceptive lending scheme, which was documented in a report produced by the Office of the Inspector General of the Federal Deposit Insurance Corporation, entitled "In-Depth Review of the Failure of the Park Avenue Bank," dated December 2010.

43. The Supreme Court denied the Yeshiva's motion, finding that no reasonable excuse for failing to file an objection, and that amending the answer would prejudice the Mortgagee.

44. The Yeshiva appealed. The Appellate Division denied the Yeshiva's motion for a stay pending appeal. A computation hearing was scheduled for August 18, 2016.

45. The Mortgagee asserts that it is entitled to 24% default interest for the entire post-default period for a total due of about \$5,686,286.

46. Unsecured claims are asserted in the amount of about \$506,000.

47. Besides the Property, the Debtor's most significant asset is a brokerage account holding stock shares valued at \$2,700,000.

48. The note and mortgage mature in June 2017. To emerge from bankruptcy, the Debtor intends to file a Chapter 11 plan that reinstates the note and mortgage at the non-

default contract interest rate. At the contract rate of interest the brokerage account assets will ensure payment to all creditors and payment of the note mortgage through maturity at which time the Debtor intends to refinance.

49. The Debtor anticipates that the biggest issue in this case will be whether on reinstatement the Mortgagee is entitled to contract rate interest or 24% default rate interest.

50. The purpose of Chapter 11 is to pay creditors, preserve jobs, and preserve a business. Section 1124(2) permits a debtor to reinstate an obligation in default to accomplish those goals. On reinstatement, the weight of authority holds that under section 1124(2) of the Code, a lender is not entitled to default interest. *In re Taddeo*, 685 F.2d 24 (2d Cir.1982); *In re Southeast Co.* 81 B.R. 587 (9th Cir. B.A.P. 1987) *aff'd* 868 F.2d 335 (9th Cir. 1989); *In re Entz-White Lumber and Supply, Inc.*, 850 F.2d 1338 (9th Cir.1988); *Phoenix Business Park Limited Partnership*, 257 B.R. 517 (Bankr. D. Ariz. 2001); *In re Forest Hills Associates*, 40 B.R. 410 (Bankr. S.D.N.Y. 1984); *In re Manville Forest Products Corp.*, 43 B.R. 293 (Bankr. S.D.N.Y. 1984); *In re Kizzac Management Corp.*, 44 B.R. 496 (Bankr. S.D.N.Y. 1984).

51. As stated in *Taddeo*: “Curing a default commonly means taking care of the triggering event *27 and returning to pre-default conditions. The consequences are thus nullified. This is the concept of “cure” used throughout the Bankruptcy Code. . . the cure need address only the individual event of default, thereby repealing the contractual consequences.” *In re Taddeo*, 685 F.2d 24, 26–27 (2d. Cir. 1982).

52. A plan that provides for payment at the non-default contract interest rate “take[s] care of the triggering event” that triggered default interest, and thus, “the event of

default is remedied and the consequences,” which consequences include the requirement to pay default interest, “are thus nullified.”

53. The Debtor anticipates that the Mortgagee will argue that several courts have ordered default interest in a reinstatement. Lacking any Second Circuit post-Bankruptcy Code authority, courts permitting a creditor to recover default interest rely on *Ruskin v. Griffiths*, 269 F.2d 827 (2d. Cir. 1959). *Ruskin* holds that in a “contest between creditors” a senior creditor would not be entitled to default interest, but “in a contest between a debtor's creditor and its stockholders . . . the debtor must pay creditors at the default rate.” *Id.* at 830. Even if *Ruskin* was not superseded by Section 1124 of the Bankruptcy Code and *Taddeo*, the *Ruskin* rationale still would not apply to this case.

54. The Debtor is a non-profit religious corporation without stockholders. Since the Debtor has no stockholders, this is not “a contest between a debtor's creditor and its stockholders.”

55. Instead of shareholders, the Debtor has members who donate time and money as a community service. Children get an education. Congregants get religious, social, charitable and community fulfillment. Since there are no stockholders who benefit by denying a lender default interest, there is no equitable reason to require the Debtor to pay the Mortgagee 24% interest to avoid the perceived unfairness that *Ruskin* tries to remedy.

56. The Debtor submits that freeing up funds to preserve a charitable organization and the community it serves is at least as important as freeing up funds to make a distribution to unsecured creditors. Either way, preserving the Debtor and its community cannot be equated with shareholder profit. The *Ruskin* equitable considerations that result in creditors

being paid on their claims before allowing a lender to recover default interest also support preservation of a charitable organization before allowing a lender to recover default interest.

57. In summary, the Debtor should be permitted to reinstate at the non-default contract rate because this is not a contest between stockholders and creditors. The rationale for allowing a lender to recover default interest does not exist where the debtor is a charitable organization.

58. Even if the Court finds that the Debtor must pay default interest to reinstate, courts following *Ruskin* have found that lender misconduct is grounds to deny a lender default interest. *E.g. In re General Growth Properties, Inc.*, 451 B.R. 323 (Bankr. S.D.N.Y. 2011); *See, In re Northwest Airlines, Corp.*, 2007 WL 3376895, (Bankr. S.D.N.Y. 2007).

59. Here the Debtor alleges that (a) Park Avenue Bank violated New York Religious Corporations Law and Not-for-Profit Corporation Law, and (b) engaged in predatory lending practices.

60. It remains to be seen whether the obligation can be avoided altogether based upon these allegations. But at a minimum, the Bankruptcy Court should consider whether such lender misconduct bars recovery of 24% default interest in a reinstatement under section 1124 of the Code.

61. In the meantime, the Debtor has income from donations, tuition and rents from another yeshiva that leases a portion of the Property. During this case, the Debtor will pay its expenses from those sources and from the brokerage account to the extent necessary.

DEBTOR'S PLAN OF REORGANIZATION

CLASSIFICATION AND TREATMENT OF CLAIMS

Class 1

62. **Classification** – New York City Liens. Claims total approximately \$0.00

63. **Treatment** -- Payment in full in Cash of Allowed Amount on the Effective Date, plus interest at the applicable statutory rate as it accrues from the Petition Date through the date of payment.

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

Class 2

65. **Classification** – New York Five Star Equity Corporation Claim totals approximately \$5,686,286

66. **Treatment** – The Debtor shall pay the Allowed Claim of arrears and other charges in Cash, as required to reinstate the obligation under 11 U.S.C. §1124(2) on the Effective Date from Cash on hand, and thereafter pay the obligation as it comes due.

67. **Voting** – Unimpaired and deemed to have accepted the Plan.

Class 3

68. **Classification** – Priority Claims under Sections 507(a)(2),(3),(4),(5),(6),(7) and (8) of the Bankruptcy Code. Claims total approximately \$0.

69. **Treatment** – Payment in full in Cash of Allowed Amount on the Effective Date, plus interest at the applicable statutory rate as it accrues from the Petition Date through the date of payment.

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

Class 4

71. **Classification** – General Unsecured Claims. Claims total approximately \$506,000

72. **Treatment** – Payment in full in Cash of Allowed Amount on the Effective Date, plus interest at the Legal Rate as it accrues from the Petition Date through the date of payment.

73. **Voting** – Unimpaired and deemed to have accepted the Plan.

ADMINISTRATIVE EXPENSES

74. Allowed Administrative Expenses shall be paid in full, in cash on the Effective Date, or the date such Administrative Expense becomes Allowed or as soon as practicable thereafter, except if the holder of an Allowed Administrative Expense agrees to a different treatment; provided, however, that Allowed Administrative Expenses representing obligations in the ordinary course of business or assumed by the Debtor shall be paid in full or performed by the Debtor in the ordinary course of business or under the terms and conditions of the particular transaction. The Debtor does not anticipate there will be any unpaid Administrative Expenses as of the Effective Date.

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

MEANS FOR IMPLEMENTATION

76. **Source of Funds** – Effective Date payments under the Plan will be paid from the proceeds of the sale of certain securities held by the debtor in its brokerage account.

77. **Vesting** -- Except as otherwise provided in the Plan, on the Effective Date all assets and properties of the Estate shall vest in the Debtor free and clear of all Liens, Claims and encumbrances and any and all liens, claims and encumbrances that have not been expressly preserved under the Plan shall be deemed extinguished as of such date. Except as otherwise provided herein, as of the Effective Date, all property of the Debtor shall be free and clear of all Claims and Interests of Creditors, except for the obligations that are imposed under the Plan or by a Final Order of the Bankruptcy Court.

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

79. **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

80. In a liquidation under Chapter 7 of the Bankruptcy Code, the Debtor's assets would be sold and the sale proceeds distributed to creditors in their order of priority. The Debtor believes that the Plan provides at least an equivalent return for the Debtor's estate as could be achieved in a liquidation. As set forth on Exhibit B hereto, the Debtor projects that in a

Chapter 7 liquidation, the return to the Debtor's estate would be reduced by an additional layer of administration legal expenses and commissions, which the Debtor estimates would total at least 15% of the sale proceeds.

LITIGATION ANALYSIS

81. The Debtor is aware of no pending litigation or potential litigation except the foreclosure action by the Mortgagee. The Debtor has is unaware of an avoidance actions.

PAYMENT OF CLAIMS AND OBJECTIONS TO CLAIMS

82. The Debtor shall be disbursing agent under the Plan without a bond. The Debtor reserves 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 Debtor shall maintain an undetermined claims distribution reserve for the holders of undetermined claims as of such date in a sum not less than the amount required to pay each such undetermined claim if such claim was allowed in full. To the extent that an undetermined claim becomes an Allowed Claim, the distributions reserved for such Allowed Claim, shall be released from 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

83. All unexpired leases and executory contracts not rejected prior to the Effective Date shall be assumed 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 Unsecured Claims. Any Claim arising from the rejection of any Executory Contract or unexpired lease not filed with the Court within the time period provided herein shall be deemed discharged and shall not be entitled to participate in any distribution under the Plan.

FINANCIAL PROJECTIONS AND LIQUIDATION ANALYSIS

84. Annexed hereto as Exhibit B are a balance sheet and liquidation analysis indicating that the post-confirmation Debtor will have sufficient assets to pay claims under the Plan. In the event of a liquidation, the value of the Debtor's Property would be reduced by administration expenses and a forced sale discount to fair market value.

MANAGEMENT OF THE DEBTOR

85. The Debtor is managed by Rabbi Dov Machlis. Post-confirmation management shall remain unchanged.

TAX CONSEQUENCES

86. The Debtor does 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.

87. THE DEBTOR DOES 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.

VOTING PROCEDURES AND REQUIREMENTS

88. The Plan provides for payment in full for all creditors so the Debtor will not be soliciting votes.

CONFIRMATION OF THE PLAN

89. 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.

90. By order of the Bankruptcy Court dated _____, 2016, the Confirmation Hearing has been scheduled for _____, 2016, at ____ .m., in the Honorable Elizabeth S. Stong's Courtroom, United States Bankruptcy Court, Conrad B Duberstein Courthouse, 271-C Cadman Plaza East, Brooklyn, NY 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 on or before _____, 2016: Backenroth Frankel & Krinsky, LLP, 800 Third Avenue, New York, New York 10022, Attn: Mark A. Frankel, Esq. Objections to confirmation of the Plan are governed by Bankruptcy Rule 9014.

91. 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: (a) The Plan complies with the applicable provisions of the Bankruptcy Code, (b) the Debtor has complied with the applicable provisions of the Bankruptcy Code; (c) the Plan has been proposed in good faith and not by any means forbidden by law, (d) any payment made or promised or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in, or in connection with, the Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, has been disclosed to the Bankruptcy Court, and any such payment made before the confirmation of the Plan is reasonable, or if such payment is to be fixed after confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable, (e) the Debtor has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the Debtor, an affiliate of the Debtor participating in a Plan with the Debtor, or a successor to the Debtor under the Plan, and the appointment to, or continuance in, such office of such individual, is consistent with the interests of Creditors and equity security holders and with public policy, and the Debtor has disclosed the identity of any insider that will be employed or retained by the reorganized Debtor, and the nature of any compensation for such insider, (f) with respect to each class of impaired Claims, either each holder of a Claim or interest of such class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or interest property of a value, as of the Effective Date of the Plan, an amount that is not less than the amount that such holder would so receive or retain if the Debtor was liquidated on such date under Chapter 7 of the Bankruptcy Code, (g) each class of Claims or interests has either accepted the Plan or is not impaired under the Plan, (h) except 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.

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

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

CONCLUSION

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

Dated: New York, New York
September 1, 2016

Yeshiva Ohel Moshe
Debtor and Debtor in Possession

By: s/ Rabbi Dov Machlis

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UNITED STATES BANKRUPTCY COURT
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PLAN OF REORGANIZATION

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ATTORNEYS FOR THE DEBTOR

INTRODUCTION

Yeshiva Ohel Moshe (“Debtor”), proposes this Plan of Reorganization to its Creditors. UPON CONFIRMATION, THIS PLAN SHALL BE A BINDING OBLIGATION BETWEEN AND AMONG THE DEBTOR AND EACH OF THE DEBTOR'S CREDITORS (AS SUCH TERMS ARE DEFINED BELOW).

DEFINITIONS

As used in this Plan, the following terms will have the meanings hereinafter set forth:

94. "Administrative Expense" Any cost or expense of administration of the Bankruptcy Case entitled to priority under section 507(a)(1) and allowed under section 503(b) of the Bankruptcy Code, and any fees or charges assessed against the Debtor’s Estate under Chapter 123, Title 28, United States Code.

95. “Administrative Expense Claim” shall mean claim for payment of an Administrative Expense.

96. "Allowance Date" shall mean the date which a Disputed Claim becomes an Allowed Claim by Final Order.

97. “Allowed Amount” shall mean the amount of a Claim: (a) to the extent that a Proof of Claim is filed timely or, with leave of the Court late filed as to which (i) no party in interest files an objection or (ii) which is allowed by a Final Order; or (b) which is listed on the Debtor’s schedules or any amendments thereto but which is not listed therein as disputed, unliquidated or contingent.

98. "Allowed Claim" shall mean a Claim: (a) to the extent that a Proof of Claim is filed timely or, with leave of the Court late filed as to which (i) no party in interest files an objection or (ii) which is allowed by a Final Order; or (b) which is listed on the Debtor's schedules or any amendments thereto but which is not listed therein as disputed, unliquidated or contingent.

99. "Allowed Secured Claim" shall mean a Secured Claim to the extent it is an Allowed Claim.

100. "Allowed Unsecured Claim" shall mean an Unsecured Claim to the extent it is an Allowed Claim.

101. "Bankruptcy Case" shall mean this Chapter 11 bankruptcy case.

102. "Bankruptcy Code" shall mean Title 11 of the United States Code (11. U.S.C. § 101 et. seq.

103. "Bankruptcy Court" shall mean the Court as defined below.

104. "Bar Date" shall mean _____ .

105. "Cash" shall mean all cash and cash equivalents which evidence immediately available funds in United States dollars.

106. "Claim" shall mean a right to payment as set forth in § 101(5) of the Bankruptcy Code.

107. "Claimant" shall mean the holder of a Claim.

108. "Confirmation Date" shall mean the date of the entry of the Confirmation Order.

109. "Confirmation Hearing" shall mean the hearing pursuant to the Bankruptcy Code Section 1128 before the Bankruptcy Court regarding the proposed confirmation of the Plan.

110. "Confirmation Order" shall mean the order of the Court confirming the Plan.

111. "Court" shall mean the United States Bankruptcy Court for the EASTERN District of New York.

112. "Creditor" shall mean any entity that holds a Claim against the Debtor.

113. "Debtor" shall mean Yeshiva Ohel Moshe.

114. "Disputed Claim" shall mean the whole or any portion of any claim against the Debtor to which an objection is timely filed as to which a Final Order has not been entered allowing or disallowing such Claim or any portion thereof.

115. "Effective Date" shall mean the Date upon which the Confirmation Order is a Final Order, or such other date after the Confirmation Date as may be practicable.

116. "Estate" shall mean the estate of the Debtor created upon the commencement of the Bankruptcy Case pursuant to Section 541 of the Bankruptcy Code.

117. "Executory Contracts" shall mean "executory contracts" and "unexpired leases" as such terms are used within Section 365 of the Bankruptcy Code.

118. "Final Order" shall mean an order of the Court that has not been reversed, modified, amended or stayed, and as to which the time to appeal or to seek review or certiorari thereof has expired, and as to which no appeal, review or rehearing is pending.

119. "Interest" shall mean an existing ownership interest in the Debtor.

120. "Interest Holder" shall mean a holder and owner of an existing Interest in the Debtor.

121. "Legal Rate" shall mean the applicable interest rate as set forth in 28 U.S.C. §1961 as of the Petition Date.

122. "Lien" shall mean a charge against or interest in property to secure payment of a debt or performance of an obligation.

123. "Mortgagee" shall mean New York Five Star Equity Corporation.

124. "Petition Date" shall mean August 17, 2016.

125. "Plan" shall mean this Plan of Reorganization, and any and all modifications and/or amendments hereto.

126. "Property" shall mean 7914 Bay Parkway, Brooklyn, New York.

127. "Secured Claim" shall mean a Claim secured by a Lien on property included within the Debtor's Estate.

128. "Secured Creditor" shall mean the owner or holder of a Secured Claim.

129. "Unsecured Claim" shall mean a claim for which the Claimant does not hold (a) a valid, perfected and enforceable Lien, security interest or other interest in or encumbrance against Debtor or the Debtor's Estate; (b) a right to setoff to secure the payment of such Claim. An Unsecured Claim includes, but is not limited to, a Claim for damages resulting from rejection of any Executory Contract pursuant to Section 365 of the Bankruptcy Code, and does not include administrative or priority claims.

130. "Unsecured Creditor" shall mean the owner or holder of an Unsecured Claim.

CLAIMS CLASSIFICATION AND TREATMENT

Class 1

131. Classification – New York City Liens.

132. Treatment – Payment in full in Cash of Allowed Amount on the Effective Date, plus interest at the applicable statutory rate as it accrues from the Petition Date through the date of payment..

133. Voting -- Unimpaired and deemed to have accepted the Plan.

Class 2

134. Classification – New York Five Star Equity Corporation

135. Treatment -- The Debtor shall pay the Allowed Claim of arrears and other charges in Cash, as required to reinstate the obligation under 11 U.S.C. §1124(2) on the Effective Date from Cash on hand, and thereafter pay the obligation as it comes due.

136. Voting -- Unimpaired and deemed to have accepted the Plan.

Class 3

137. Classification – Priority Claims under Sections 507(a)(2),(3),(4),(5),(6),(7) and (8) of the Bankruptcy Code.

138. Treatment – Payment in full in Cash of Allowed Amount on the Effective Date, plus interest at the applicable statutory rate as it accrues from the Petition Date through the date of payment.

139. Voting -- Unimpaired and deemed to have accepted the Plan.

Class 4

140. Classification -- General Unsecured Claims

141. Treatment -- Payment in full in Cash of Allowed Amount on the Effective Date, plus interest at the Legal Rate as it accrues from the Petition Date through the date of payment.

142. Voting -- Impaired and entitled to vote to accept or reject the Plan.

ADMINISTRATION CLAIMS

143. Allowed Administrative Expenses shall be paid in full in Cash on the Effective Date, or the date such Administrative Expense becomes Allowed, except to the extent that the holder of an Allowed Administrative Expense agrees to a different treatment; provided however, that Allowed Administrative Expenses representing obligations incurred in the ordinary course of business or assumed by the Debtor shall be Paid in full or performed by the Debtor in the ordinary course of business or pursuant to the terms and conditions of the particular transaction. Any outstanding U.S. Trustee fees shall be paid in full in Cash on the Effective Date. United States Trustee fees will be paid, and operating reports will be filed as they come due by the Debtor.

MEANS FOR IMPLEMENTATION

144. **Source of Funds** – Effective Date payments under the Plan will be paid from the proceeds of the sale of certain securities held by the debtor in its brokerage account.

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

146. **Vesting of Assets** -- Except as otherwise provided in the Plan, on the Effective Date all assets and properties of the Estate shall vest in the Debtor free and clear of all Liens, Claims and encumbrances and any and all liens, claims and encumbrances that have not been expressly preserved under the Plan shall be deemed extinguished as of such date. Except as otherwise provided herein, as of the Effective Date, all property of the Debtor shall be free and clear of all Claims and Interests of Creditors, except for the obligations that are imposed under the Plan or by a Final Order of the Bankruptcy Court.

147. **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.

148. **Preservation of Claims** -- All rights pursuant to Sections 502, 544, 545 and 546 of the Bankruptcy Code, all preference claims pursuant to Section 547 of the Bankruptcy Code, all fraudulent transfer claim pursuant to Section 548 of the Bankruptcy Code, and all claims relating to post-petition transactions under Section 549 of the Bankruptcy Code

shall be preserved for the benefit of the Debtor's estate, provided, however, that the Debtor shall have sole authority for prosecuting any such claims.

DISTRIBUTIONS TO CREDITORS

149. The Debtor shall be disbursing agent under the Plan without a bond. The Debtor reserves 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 Debtor shall maintain an undetermined claims distribution reserve for the holders of undetermined claims as of such date in a sum not less than the amount required to pay each such undetermined claim if such claim was allowed in full. To the extent that an undetermined claim becomes an Allowed Claim, the distributions reserved for such Allowed Claim, shall be released from 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

150. All unexpired leases and executory contracts not rejected prior to the Effective Date shall be assumed 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 Unsecured Claims. Any Claim arising from the rejection of any Executory Contract or unexpired lease not filed with the Court

within the time period provided herein shall be deemed discharged and shall not be entitled to participate in any distribution under the Plan.

RETENTION OF JURISDICTION

151. Retention of Jurisdiction. The Court shall have jurisdiction over all matters arising under, arising in, or relating to the Debtor's Bankruptcy Case including, but not limited to, proceedings:

- To consider any modification of the Plan under section 1127 of the Bankruptcy Code;
- To hear and determine all Claims, controversies, suits and disputes against the Debtor to the full extent permitted under 18 U.S.C. §1334 and 28 U.S.C. §157;
- To hear, determine and enforce all Claims and causes of action which may exist on behalf of the Debtor or the Debtor's estate, including, but not limited to, any right of the Debtor or the Debtor's Estate to recover assets pursuant to the provisions of the Bankruptcy Code;
- To hear and determine all requests for compensation and/or reimbursement of expenses which may be made;
- To value assets of the Estate.
- To enforce the Confirmation Order, the final decree, and all injunctions therein;
- To enter an order concluding and terminating the Bankruptcy Case;
- To correct any defect, cure any omission, or reconcile any inconsistency in the Plan, or the Confirmation Order;
- To determine all questions and disputes regarding title to the assets of the Debtor.

- To re-examine Claims which may have been allowed for purposes of voting, and to determine objections which may be filed to any Claims.

GENERAL PROVISIONS

152. **Headings.** The headings in the Plan are for convenience of reference only and shall not limit or otherwise affect the meaning of the Plan.

153. **Disputed Claims.** The Debtor shall hold in escrow the distribution that would be due on account of any Disputed Claim. No Disputed Claims shall be paid, nor shall distributions be made to a creditor holding a Disputed Claim, until such Claim becomes an Allowed Claim.

154. **Calculation of Time Periods.** Bankruptcy Rule 9006 is incorporated herein for purposes of calculating the dates set forth herein.

155. **Other Actions.** Nothing contained herein shall prevent the Debtor, Interest Holders, or Creditors from taking such actions as may be necessary to consummate the Plan, although such actions may not specifically be provided for within the Plan.

156. **Modification of Plan.** The Debtor may seek amendments or modifications to the Plan in accordance with section 1127 of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date, the Debtor may seek to remedy any defect or omission or reconcile any inconsistencies in the Plan or in the Confirmation Order, in such manner as may be necessary to carry out the purposes and intent of the Plan

INJUNCTION AND PROPERTY OF THE ESTATE

157. **Injunction.** The confirmation of this Plan shall constitute an injunction of the Court against the commencement or continuation of any action, the employment of process,

or any act, to collect, recover or offset from the Debtor or its property or properties, any obligation or debt except pursuant to the terms of the Plan.

CLOSING THE CASE

158. Upon substantial consummation, the Debtor may move for a final decree to close the Bankruptcy Case and to request such other orders as may be just.

Dated: New York, New York
September 1, 2016

Yeshiva Ohel Moshe

By: s/ Rabbi Dov Machlis

BACKENROTH FRANKEL & KRINSKY, LLP
Attorneys for Debtor

By: s/Mark A. Frankel
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New York, New York 10022
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EXHIBIT B TO DISCLOSURE STATEMENT
ASSETS AND LIABILITIES

Assets	
Real Property and misc. personal property	\$8,000,000
Brokerage Account	\$2,700,000
Total	\$10,700,000

Liabilities	
New York City Liens.	\$0.00
Secured Claims	\$5,686,286
Priority Claims under Sections 507(a)(2),(3),(4),(5),(6),(7) and (8) of the Bankruptcy Code.	0
General Unsecured Claims	\$506,000
Interest Holders	-0-
Total	\$6,192,286

CHAPTER 7 LIQUIDATION ANALYSIS

Assets	
Real Property and misc. personal property	\$8,000,000
Brokerage Account	\$2,700,000
Total	\$10,700,000

Liabilities	
Administration Claims	\$1,200,000
New York City Liens.	\$0.00
Secured Claims	\$5,686,286
Priority Claims under Sections 507(a)(2),(3),(4),(5),(6),(7) and (8) of the Bankruptcy Code.	0
General Unsecured Claims	\$506,000
Debtor	\$3,307,714
Total	\$10,700,000

Note: All claim amounts subject to objection.