

**McBREEN & KOPKO**

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**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

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In re:

FM KELLY CONSTRUCTION GROUP, INC.,

Chapter 11

Case No.: 16-72143 (REG)

Debtor.

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**DEBTOR'S DISCLOSURE STATEMENT**

This Disclosure Statement is filed pursuant to Section 1125 of Title 11, United States Code, on behalf of FM Kelly Construction Group, Inc., the Debtor.

**THE COURT HAS CONDITIONALLY APPROVED THIS DISCLOSURE STATEMENT AS CONTAINING ADEQUATE INFORMATION TO ENABLE PARTIES AFFECTED BY THE PLAN TO MAKE AN INFORMED JUDGMENT ABOUT ITS TERMS. THE COURT HAS NOT YET DETERMINED WHETHER THE PLAN MEETS THE LEGAL REQUIREMENTS FOR CONFIRMATION, AND THE FACT THAT THE COURT HAS APPROVED THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE AN ENDORSEMENT OF THE PLAN BY THE COURT, OR A RECOMMENDATION THAT IT BE ACCEPTED. THE COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT IS SUBJECT TO FINAL APPROVAL AT THE HEARING ON CONFIRMATION OF THE PLAN. OBJECTION TO THE ADEQUACY OF THIS DISCLOSURE STATEMENT MAY BE FILED UNTIL \_\_\_\_\_.**

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**A. INTRODUCTION/NOTICE OF HEARING AND SOURCE OF INFORMATION**

Pursuant to Section 1125 of Title 11 of the United States Code (the “Bankruptcy Code”), FM Kelly Construction Group, Inc., the debtor and debtor-in-possession (the “Debtor”) provides this Disclosure Statement to all of its known creditors and other parties in interest in order to provide information deemed by the Debtor to be material and necessary to enable such creditors and parties in interest to make a reasonable informed decision in the exercise of their rights to vote on and participate in the Plan of Reorganization proposed by the Debtor (the "Plan"). The proposed Plan is annexed hereto as Exhibit "A".

The information contained in this Disclosure Statement is based on the representations made by the Debtor in its Petition and Schedules and all other documents provided to counsel for the Debtor and are believed to be accurate. It has not been subjected to a certified audit or independent review. Therefore, no representation or warranty is made as to its accuracy or completeness. However, the Debtor has reasonably endeavored to obtain and supply all material information. The Office of the United States Trustee has not yet reviewed and approved the Disclosure Statement. The Bankruptcy Court will conduct a hearing on the adequacy of the Disclosure Statement.

Terms utilized in this Disclosure Statement, if not defined herein, shall have the same meaning as such terms are used or defined in the Plan unless the context hereof requires a different meaning.

**THE BANKRUPTCY COURT HAS SET \_\_\_\_\_, 2017  
AT \_\_\_\_\_ .M. AS THE DATE AND TIME OF THE HEARING FOR FINAL  
APPROVAL OF THE DISCLOSURE STATEMENT AND CONFIRMATION OF**

THE PLAN AND OBJECTIONS THERETO, WHICH HEARING WILL BE HELD IN THE UNITED STATES BANKRUPTCY COURT, EASTERN DISTRICT OF NEW YORK, CENTRAL ISLIP FEDERAL COURTHOUSE, 290 FEDERAL PLAZA, COURTROOM 860, CENTRAL ISLIP, NEW YORK 11722. CREDITORS OF AND HOLDERS OF INTERESTS IN THE DEBTOR MAY ATTEND SUCH HEARING. THE BANKRUPTCY COURT HAS FIXED \_\_\_\_\_ AS THE DATE AND TIME BY WHICH ALL WRITTEN OBJECTIONS TO CONFIRMATION OF THE PLAN AND/OR THE DISCLOSURE STATEMENT SHALL BE FILED WITH THE BANKRUPTCY COURT AND SERVED SO AS TO BE RECEIVED BY SAID DATE UPON THE ATTORNEYS FOR THE DEBTOR AND THE UNITED STATES TRUSTEE.

A BALLOT ACCOMPANIES THIS DISCLOSURE STATEMENT FOR YOUR USE IN VOTING ON THE PLAN. IN ORDER TO BE CONFIRMED, THE PLAN MUST BE ACCEPTED BY A MAJORITY IN NUMBER AND TWO-THIRDS IN AMOUNT OF THOSE VOTING IN EACH CLASS IMPAIRED UNDER THE PLAN, EXCEPT TO THE EXTENT THAT THE PLAN MAY BE CONFIRMED NOTWITHSTANDING THE FAILURE TO OBTAIN SUCH ACCEPTANCE IN ACCORDANCE WITH SECTION 1129(b) OF THE BANKRUPTCY CODE.

YOU ARE URGED TO REVIEW THE PLAN, THIS DISCLOSURE STATEMENT, AND THE BALLOT WITH COUNSEL OF YOUR CHOICE. HOLDERS OF CLAIMS WHICH ARE IMPAIRED UNDER THE PLAN MAY VOTE TO ACCEPT OR REJECT THE PLAN BY COMPLETING, MAILING AND/OR FAXING THE ENCLOSED BALLOT SO AS TO BE RECEIVED ON OR BEFORE \_\_\_\_\_, 4:00 P.M. TO DEBTOR'S ATTORNEYS,

**AT THE ADDRESS, FAX NUMBER, AND/OR E-MAIL ADDRESS SET FORTH BELOW:**

McBreen & Kopko  
500 North Broadway, Suite 129  
Jericho, New York 11753  
Attn: Kenneth A. Reynolds, Esq.  
Fax: (516) 364-0612  
E-mail: [JDelacruz@mklawnyc.com](mailto:JDelacruz@mklawnyc.com)

**THE DEBTOR RECOMMENDS AND REQUESTS YOUR ACCEPTANCE OF THE PLAN.**

Other than the information set forth in this Disclosure Statement, the Debtor has not authorized any person or entity to make representations concerning the Debtor, its business, their future income, the value of the Debtor's assets, or the amounts to be distributed under the Plan. Any representations or inducements made to secure your acceptance of the Plan which is other than as contained in this Disclosure Statement should not be relied upon by you in determining whether to accept or reject the Plan.

**B. DEBTOR'S BACKGROUND**

(i) **Description of the Debtor and History of Debtor's Business**

The Debtor was formed in 2011 as a commercial interior general contractor. The company was founded by Fred Kelly, Jamie Walsh and Joe Barbera.

From 2011 to 2013, most of the Debtor's projects were commercial interior fit outs. A new tenant would sign a lease for a floor of an office building and the Debtor would demolish the existing installation and build a new office based on the architects' design. Projects would typically run about 12 weeks.

At the start of 2014, the scope of the Debtor changed to add building core projects to the portfolio. Primarily, the Debtor added lobby projects in addition to interior fit outs. This

resulted in a greater time for the average project to complete. Also, the dollar values of the lobbies tended to be larger than the historical interior jobs and the Debtor began to take on larger interior jobs.

In 2015, most of the Debtor's sales were in interior jobs. Also, the Debtor began to do selective self-performing of trades such as painting, carpentry and selective demolition. The Debtor began to experience difficulty with two specific projects related to cost overruns and difficulty getting paid which led to cash flow issues. These issues climaxed in January 2016 with the sudden end of a key project.

The Debtor spent the first half of 2016 consolidating and working on rebuilding its project backlog to no avail and filed for Chapter 11 in May, 2016. While in Chapter 11, the Debtor continued to price work as a general contractor but found it difficult to close work.

However, it did find that it was having moderate success selling painting work and began to focus on that. By the end of 2016 and early 2017, it became clear that being a painting subcontractor was the best way for the Debtor to reorganize and that is the current focus of the Debtor moving forward. It has entered into agreements with third parties to minimize the overall cost of delivery to the Debtor moving forward.

The Debtor has decided that it is prudent at this time to outsource its jobs to third parties thus reducing the Debtor's payroll cost structure. In addition, by outsourcing its customer contracts to a third party, the need for general liability coverage is eliminated as this is covered by the third part. The Debtor has decided that sales it generates will be direct to third parties on a project-by-project basis in which the third party is responsible for the payroll and liability coverage, and will be entitled to a percentage of the overall contract value of ten percent (10%). The Debtor provides the sales lead, client relations, estimating, project management and material purchase. The Debtor is entitled to the full net profit of

the contract less the payroll, insurance, and percentage fee to the outsource firm. The Debtor's contract with the outsource firm is annexed hereto as Exhibit "B".

(ii) **Debtor's Insiders**

Insiders of the Debtor, as defined by § 101(31) of the Bankruptcy Code, consist of Joseph Barbera, Frederick M. Kelly and James Walsh<sup>1</sup>, shareholders of the Debtor. The compensation paid to Joseph Barbera, Frederick M. Kelly and James Walsh by the Debtor during the two year period prior to the commencement of the Debtor's bankruptcy case totals approximately \$440,000.00, \$356,853.87, and \$111,000.00, respectively; and compensation paid to Joseph Barbera, Frederick M. Kelly and James Walsh by the Debtor during the pendency of this chapter 11 case totals approximately \$31,200.00, \$31,200.00, and \$0.00, respectively.

(iii) **Management of the Debtor Before and During the Bankruptcy**

During the two (2) years prior to the date on which the bankruptcy petition was filed, and during the pendency of the Debtor's chapter 11 case, the officers, directors, managers, or other persons in control of the Debtor were comprised of Joseph Barbera and Frederick M. Kelly, the insiders of the Debtor (the "Managers"). The Managers will also act as the management of the Debtor post-confirmation. Post-confirmation, the Debtor's Managers shall only increase their compensation in a manner consistent with that of employees, if any, of the Debtor: i.e., if the employees receive a ten percent (10%) increase, the Debtor may in its discretion increase the Manager's compensation by a corresponding ten percent (10%).

(iv) **Events Leading to Chapter 11 Filing**

The Debtor's bankruptcy filing was precipitated by the numerous lawsuits and arbitrations pending against the Debtor and its insiders together with a significant decrease

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<sup>1</sup> James Walsh has ceased performing any services for the Debtor since in or about 2014.

in revenues.

The Debtor has never filed for bankruptcy relief prior to the instant Chapter 11 filing.

**C. HISTORY OF THE CHAPTER 11 CASE**

The Debtor commenced this proceeding by filing a voluntary petition in the United States Bankruptcy Court for the Eastern District of New York under Chapter 11 of the Bankruptcy Code, on May 12, 2016 (the “Petition Date”).

As indicated by Schedule “D” of the Debtor’s bankruptcy petition and with the claims register maintained on the Court’s docket, secured claims were scheduled and/or filed against the Debtor in which the Debtor intends on filing an objection to reclassify each claim to unsecured claims as no estate property is encumbered by creditor claims

Pursuant to Section 341 of the Bankruptcy Code, a meeting of creditors was held on June 17, 2016.

On May 20, 2016 the Debtor filed a motion seeking the retention of McBreen & Kopko as bankruptcy counsel to Debtor [Docket No. 14], which application was amended and filed with the Court on June 27, 2016. By an order of the Court dated August 10, 2016 McBreen & Kopko’s retention was approved on behalf of the Debtor *nunc pro tunc* to May 12, 2016.

On or about June 6, 2016 creditor, Division 10, Inc., filed an adversary proceeding against the Debtor. The Debtor filed an answer on or about July 7, 2016 and thereafter the Court scheduled a pre-trial conference for August 17, 2016, which was adjourned to September 28, 2016 and November 21, 2016. On or about November 19, 2016 the Debtor filed its Motion to dismiss the adversary proceeding. By an order of the Court dated

December 19, 2016 and after hearing before the Court on December 14, 2016 the adversary proceeding of Division 10, Inc. was dismissed.

An order setting forth the last day to file proofs of claim was entered on July 14, 2016, scheduling the claims bar date as August 26, 2016 [Docket No. 32]. The claims register and Schedule “F” of Debtor’s Petition reflect that there are general unsecured claims scheduled and/or filed, exclusive of insiders and disputed claims, aggregating Two Million Five Hundred Eleven Thousand One Hundred Thirty-Five and 70/100 (\$2,511,135.70) Dollars<sup>2</sup>.

On September 8, 2016 the Debtor filed a Motion to Extend its Time within which Debtor may Assume or Reject its Non-Residential Real Property Lease [Docket No. 37]. By and order of the Court dated October 19, 2016 the Debtor’s time to assume or reject its non-residential real property lease was extended through and including December 8, 2016.

On October 14, 2016 Financial Services Vehicle Trust (“FSVT”), a creditor of the Debtor, filed a Motion for Relief from Stay in connection with a 2014 BMW lease [Docket No. 40]. On February 1, 2017 FSVT filed a proposed stipulation and conditional order granting relief from the automatic stay [Docket No. 53] which was signed by the Court on February 2, 2017 [Docket No. 54].

On October 18, 2016 the Debtor filed a Motion to Extend its Time to File a Plan of Reorganization [Docket No.41]. By an order of the Court dated November 29, 2015 the Debtor’s time to file a Plan of Reorganization was extended to January 7, 2017.

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<sup>2</sup> The above total includes claims which the Debtor will object to as well as a reduced claim of Forty Seventh Fifth Company, LLC which dispute has not been realized, though negotiations continue. To be clear, Forty Seventh Fifth Company, LLC has not yet agreed to the claim reduction proposed herein. Claim number 29 of Sponsors for Educational Opportunity, Inc. did not schedule a claim amount and the Debtor intends on objecting to the foregoing claim as well as to the claim filed by insider James Walsh for \$240,667.00.



By virtue of a stipulation and order dated December 8, 2016 the Debtor's time to assume or reject its non-residential real property lease through and including June 8, 2017.

On or about January 4, 2017 the Debtor filed its Second Motion to Extend its Time to File a Plan of Reorganization [Docket No.51] through and including March 8, 2017 which correlates with the 300-day small business deadline.

**D. REORGANIZED DEBTOR**

The Plan contemplates that the Debtor shall retain its property and business interests subject only to those liens, claims and encumbrances set forth herein which survive confirmation of Debtor's Plan.

**E. PROJECTED RECOVERY OF AVOIDABLE TRANSFERS**

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

**F. PLAN FUNDING**

The Plan will be financed from income derived from the operation of Debtor's business.

**G. CLASSIFICATION, AMOUNT AND NUMBER OF CLAIMS**

The Plan divides all Claims and Interests into the following two (2) Classes, plus Administrative, Priority Claims and Statutory Fees.

1. Administrative Claims consist of the Allowed Claims of Debtor's duly retained professionals and any other administrative expenses allowed under Section 503 of the Bankruptcy Code. Administrative Claims will include the fees and expenses of Debtor's counsel, McBreen & Kopko, in the approximate amount of Fifty Five Thousand and 00/100 (\$55,000.00) Dollars through confirmation, inclusive of a pre-petition retainer. McBreen &

Kopko received a retainer prior to the Petition Date in the amount of Fifteen Thousand and 00/100 (\$18,833.00) Dollars from the Debtor.

The claims of Debtor's professionals shall be subject to final fee applications pursuant to Bankruptcy Code Section 330 and orders of the Court approving the fees and expenses as sought by the applications.

The Debtor estimates the total necessary to pay Administrative Claims on the Effective Date equals not less than Fifty Five Thousand and 00/100 (\$55,000.00) Dollars.

In order to confirm the Plan, it is necessary for the Debtor to satisfy the Administrative Claims in full at or before Confirmation or have the holder of each Administrative Claim agree to different treatment.

2. In addition to Administrative Claims there exists three (3) Allowed Priority Claims: (a) the New York State Department of Labor, Unemployment Insurance Division with a priority claim in the amount of Thirty-Seven and 35/100 (\$37.35) Dollars for the tax period October 1, 2013 through September 30, 2014; (b) NYC Office of Administrative Trials and Hearings, NYC Environmental Control Board (ECB) with a priority claim in the amount of Seventeen Thousand Ten and 15/100 (\$17,010.15) Dollars; and (c) New York State Department of Taxation and Finance with a priority claim in the amount of Two Thousand Seven Hundred Thirty and 71/100 (\$2,730.71) Dollars for the tax period ending December 31, 2015.

3. Class I consists of the claims of the Debtor's insider shareholder, Joseph Barbera, holding a claim in the aggregate amount of Six Thousand Seven Hundred Forty-Five and 00/100 (\$6,745.00) Dollars. The claim of the Debtor's insider shall be subordinated to the claims of the general unsecured creditors and will receive no distribution under the Plan, but shall retain his equity interests in the Debtor.

4. Class II consists of the allowed claims of the general unsecured creditors. The amount of general unsecured claims totals approximately Two Million Five Hundred Eleven Thousand One Hundred Thirty-Five and 70/100 (\$2,511,135.70) Dollars.

5. In addition to Administrative, Priority, secured and general unsecured claims, there exists statutory fees due and payable by the Debtor to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6). United States Trustee fees and any applicable interest thereon shall continue to be paid by the Debtor until the earlier of Debtor's case being closed by entry of a final decree, converted, or dismissed.

#### **H. REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

##### **1. Confirmation Hearing**

The Bankruptcy Court has set \_\_\_\_\_**.m.** as the date and time for a hearing to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for confirmation of the Plan have been satisfied. Each Creditor will receive notice of the Confirmation Hearing.

##### **2. Requirements for Confirmation**

In order to confirm the Plan, Section 1129 of the Bankruptcy Code requires the Court to make a series of determinations concerning the Plan, including that:

- a. the Plan classifies Claims and Interests in a permissible manner;
- b. the Plan complies with the technical requirements of Chapter 11 of the Bankruptcy Code;
- c. the proponent of the Plan (here the Debtor) has proposed the Plan in good faith;
- d. the Plan proponent's disclosures concerning the Plan have been adequate and have included information concerning all payments and distributions to be made in connection with the Plan.

The Debtor believes that all of these conditions have been met or will be met by the time of the Confirmation Hearing, and the Debtor will seek a determination of the Court to this effect at the Confirmation Hearing.

**3. Acceptances Necessary for Confirmation**

The Bankruptcy Code requires that the Plan be accepted by requisite votes of Creditors, except to the extent that "cram down" is available under Section 1129(b) of the Bankruptcy Code. The Bankruptcy Code requires that the Plan be feasible. Annexed hereto as Exhibit "C" are the projections of the Debtor over a four (4) year period demonstrating that the proposed payments enumerated under the Plan are feasible.

The Bankruptcy Code also requires that the Plan place each Creditor's Claim in a class with other Claims which are substantially similar. The Debtor believes that the classification system in the Plan meets the Bankruptcy Code's standard. Although the Court must independently conclude that the Plan's classification system is legally authorized, any Creditor who believes that the Plan has improperly classified any group of Claims may object to Confirmation of the Plan.

At the Confirmation Hearing, the Court must determine, among other things, whether the Plan has been accepted by each Class of Creditors who's Claims are impaired under the Plan. Under Section 1126 of the Bankruptcy Code, any impaired Class is deemed to accept the Plan if it is accepted by at least two-thirds in amount and more than one-half in number of the Allowed Claims of Class members who have voted on the Plan. Further, unless there is unanimous acceptance of the Plan by an impaired Class, the Court must also determine that under the Plan, Class members will receive property of value as of the Effective Date of the Plan that is not less than the amount such Class members would receive or retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on

the Effective Date. Annexed hereto as Exhibit “D” is a liquidation analysis, which demonstrates that holders of all claims will not receive less under the Plan than such claim would receive if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code.

**4. Confirmation of Plan Without Necessary Acceptances**

The Plan may be confirmed even if it is not accepted by all of the impaired classes if the Court finds that the Plan was accepted by at least one impaired Class and does not discriminate unfairly against, and is fair and equitable with respect to all non-accepting impaired Classes. This provision is set forth in Section 1129(b) of the Bankruptcy Code and requires, among other things, that the Creditors in the impaired classes must either receive or retain the full value of their Claims or, if they receive less, subject to certain limited exceptions, no Class with a junior priority may receive anything. In this case, the Class I insider and shareholder, Joseph Barbera, represent a junior priority to other creditors in the case. The Plan contemplates that Class I shall receive no monetary distribution. The Plan, however, provides that Class I shall retain its equity interests in the Debtor. Based upon the foregoing, it is possible that the Absolute Priority Rule may be implicated in this case.

**5. Persons Entitled to Vote on the Plan**

Only the votes of Classes who’s Claims are impaired by the Plan will be counted in connection with Confirmation. Generally, this includes any Creditors who, under the Plan, will receive less than payment in full of the Allowed Amount of their Claims on the Effective Date.

In determining the acceptance of the Plan, votes will be counted only if submitted by a Creditor whose Claim is scheduled by the Debtor as undisputed, non-contingent, and liquidated or who timely filed with the Bankruptcy Court a proof of claim which has not been objected to or disallowed.

**6. Solicitation of Acceptances**

This Disclosure Statement must be finally approved by the Court in accordance with Section 1125 of the Bankruptcy Code and be provided to each Creditor whose Claim has been scheduled by the Debtor or who filed a proof of claim. This Disclosure Statement is intended to assist Creditors whose Claims are impaired in evaluating the Plan and in determining whether to accept or reject the Plan. Under the Bankruptcy Code, acceptance or rejection of the Disclosure Statement means that this document sets forth "adequate information" as required by the Bankruptcy Code, and does not constitute a recommendation by the Court either for or against the Plan.

**7. Voting Procedures**

All persons or entities entitled to vote on the Plan may cast their votes for or against the Plan by completing, dating, and signing the ballot for accepting or rejecting the Plan to be sent to them under separate cover, and delivering same to counsel for the Debtor: Kenneth A. Reynolds, Esq., McBreen & Kopko, 500 North Broadway, Suite 129, Jericho, New York 11753 via first class mail, e-mail ([jdelacruz@mklawny.com](mailto:jdelacruz@mklawny.com)) or facsimile (516-364-0612). In order to be counted, all ballots must be received by McBreen & Kopko on or before the date set forth in the Notice of Hearing on Confirmation of Plan. A copy of the proposed ballot has been annexed hereto as Exhibit "E".

**I. DESCRIPTION OF THE PLAN**

The following is a summary of certain provisions of the Plan. IT IS NOT A COMPLETE STATEMENT OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO PROVISIONS OF THE PLAN. The Plan is annexed to this Disclosure Statement as Exhibit "A". The Plan, which is subject to the provisions of the Bankruptcy Code, provides for treatment of all Creditors of the Debtor. SINCE THE PLAN DEALS

WITH SOPHISTICATED LEGAL CONCEPTS, AND INCORPORATES THE DEFINITIONS AND REQUIREMENTS OF THE BANKRUPTCY CODE, YOU MAY WISH TO CONSULT WITH COUNSEL OF YOUR CHOICE IN MAKING ANY DECISIONS REGARDING YOUR VOTING ON THE PLAN.

**1. Summary of Classifications and Treatment of Claims, Interests and Statutory Fees under the Plan**

The Plan divides Claims of the Debtor into Administrative Claims and Two (2) Classes of Claims. The Classes and payments to be made in respect of, or treatment proposed to be accorded to Allowed Claims of each Class under the Plan are summarized and described below. The term "Allowed Claim" is defined in the Plan. The Plan also defines "Disputed Claim(s)" and proposes the treatment to be accorded to Disputed Claims. The proposed treatment of Disputed Claims is also summarized and described below.

**a. Administrative Claims**

Administrative Claims consist of the Allowed Claims of Debtor's duly retained professionals and any other administrative expenses allowed under Section 503 of the Bankruptcy Code. Administrative Claims will include the fees and expenses of Debtor's counsel, McBreen & Kopko, in the approximate amount of Fifty-Five Thousand and 00/100 (\$55,000.00) Dollars through confirmation, inclusive of a pre-petition retainer. McBreen & Kopko received a retainer prior to the Petition Date in the amount of Eighteen Thousand Three Hundred Thirty-Three and 00/100 (\$18,333.00) Dollars from the Debtor. The Debtor and McBreen & Kopko have agreed that the Debtor shall pay to McBreen & Kopko \$1,500.00 per month until the administrative claim is paid in full.

The claims of Debtor's professionals shall be subject to final fee applications pursuant to Bankruptcy Code Section 330 and orders of the Court approving the fees and expenses as sought by the applications.

The Debtor estimates the total necessary to pay Administrative Claims on the Effective Date equals not less than Fifty Five Thousand and 00/100 (\$55,000.00) Dollars.

In order to confirm the Plan, it is necessary for the Debtor to satisfy the Administrative Claims in full at or before Confirmation or have the holder of each Administrative Claim agree to different treatment.

**b. Priority Claims**

The three (3) Allowed Priority Claims shall be treated as follows:

(a) the New York State Department of Labor, Unemployment Insurance Division with a priority claim in the amount of Thirty-Seven and 35/100 (\$37.35) Dollars for the tax period October 1, 2013 through September 30, 2014 will be paid in full upon the Effective Date of the Plan, together with a current rate of interest;

(b) NYC Office of Administrative Trials and Hearings, NYC Environmental Control Board (ECB) with a priority claim in the amount of Seventeen Thousand Ten and 15/100 (\$17,010.15) Dollars shall be paid in full over forty-eight (48) months in equal monthly amounts of \$354.37, together with a current rate of interest; and

(c) New York State Department of Taxation and Finance with a priority claim in the amount of Two Thousand Seven Hundred Thirty and 71/100 (\$2,730.71) Dollars for the tax period ending December 31, 2015 shall be paid in full over forty-eight (48) in equal monthly amounts of \$57.58, together with a current rate of interest.



**c. Statutory Fees**

In addition to Administrative, Priority, secured and general unsecured claims, there exists statutory fees due and payable by the Debtor to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6). United States Trustee fees and any applicable interest thereon shall continue to be paid by the Debtor until the earlier of Debtor's case being closed by entry of a final decree, converted, or dismissed.

**d. Class I Claim (Insider Shareholder)**

Class I consists of the Claims of the Debtor's insider shareholder holding a claim in the aggregate amount of Six Thousand Seven Hundred Forty-Five and 00/100 (\$6,745.00) Dollars. The Claim of the Debtor's Insider shall be subordinated to the claims of the general unsecured creditors and will receive no distribution under the Plan. As consideration for the Debtor's principal retaining his equity interest in the Debtor, the Insider of the Debtor, which is the Debtor's principal, has agreed to subordinate its claims to the claims of the Debtor's general unsecured creditors.

The Class I Claim is impaired and is presumed to have voted in favor of the Plan.

**e. Class II Claims (General Unsecured Creditor Claims)**

Class II consists of the claims of general unsecured creditors in the Debtor's case. The amount of general unsecured claims filed and/or scheduled is approximately Two Million Five Hundred Eleven Thousand One Hundred Thirty-Five and 70/100 (\$2,511,135.70) Dollars. The Debtor proposes to pay the unsecured creditors a ten percent (10%) dividend of their allowed claims in forty-eight (48) equal monthly installments of \$5,231.53 per month<sup>3</sup>.

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<sup>3</sup> Secured claims filed and/or scheduled by the Debtor encumber non-estate property and will be the subject of reclassification objections by the Debtor from secured to unsecured.

The Class II creditors are impaired and are entitled to vote on the Plan.

**f. Classes Impaired Under The Plan**

Under Section 1126 of the Bankruptcy Code, Classes of Claims which are impaired are entitled to vote on a plan of reorganization. Under Section 1124 of the Code, a Class of Claims is impaired unless the Plan, with respect to such Class:

- (a) leaves unaltered the legal, equitable and contractual rights to which such Claim or Interest entitles the holder of such Claim or Interest; or
- (b) reinstates a previously accelerated Claim or Interest by which (a) curing any prepetition defaults (other than a default under Section 365(b)(2) of the Code, (b) reinstating the maturity of such Claim or Interest as it existed result of reliance on a contractual acceleration provisions or similar applicable law, and (c) not otherwise altering the legal, equitable or contractual rights to which such Claim or Interest entitle the holders of such Claim or Interest; or
- (c) provides on the Effective Date that (a) with respect to a class of Claims, the holders of such Claims receive Cash equal to the allowed amount of their Claims; and (b) with respect to a class of Interests, the holders of such Interests receive the greater of any fixed liquidation preference that they are entitled to under any security, or any fixed price at which the debtor may redeem such security pursuant to the terms of such security.

Classes I and II are impaired under the Plan and entitled to vote. Administrative Claims and Priority Claims are not impaired under the Plan and are not entitled to vote.

**J. CURRENT BALANCE SHEET, LIQUIDATION ANALYSIS AND STATEMENTS OF OPERATION**

**a. Balance Sheet**

Annexed hereto as Exhibit “F” is a copy of Debtor’s balance sheet as of January 31, 2017.

**b. Liquidation Analysis**

Annexed hereto as Exhibit "D" is a Liquidation Analysis.

**c. Statements of Operation**

Monthly statements of operations for the period of May, 2016 through January, 2017 are annexed hereto as Exhibit "G".

**K. CONFIRMATION REQUIREMENTS**

The Confirmation Requirements and requirements of "cram down" are more fully enumerated in Section H.

**L. FOUR YEAR PROJECTION OF OPERATIONS OF REORGANIZED DEBTOR**

Annexed hereto as Exhibit "C" are the projections of the Debtor's operations for the four (4) year period subsequent to the Effective Date.

**M. POTENTIAL LITIGATION BY DEBTOR AGAINST INSIDERS AND OTHERS**

NONE.

**N. OTHER LITIGATIONS**

The Debtor is currently reviewing its books and records to evaluate if it has any possible accounts receivable collection actions to commence.

**O. CLAIMS OBJECTIONS**

The Debtor is currently reviewing its books and records to evaluate which, if any, claims shall be made the subject of an objection.

**P. LIQUIDATION ANALYSIS**

If this Plan is not confirmed, the Debtor and/or creditors may file another Plan which may call for higher or lower payments to creditors. Notwithstanding the foregoing, the likely result will be the liquidation of the Debtor. Under this scenario, as reflected in Exhibit

“D” annexed hereto, administrative fees exceed the value of the Debtor’s assets such that unsecured creditors would receive no distribution.

**Q. ABSOLUTE PRIORITY RULE**

With certain exceptions, one of the requirements for confirmation is that a plan not provide for any payments to a junior class unless all superior classes are paid in full. Since general unsecured creditors are superior to the Debtor, the Debtor may not retain their interests, unless one of three situations occur:

1. The plan provides for full payment to general unsecured creditors; or
2. The stockholders seeking to retain their equity interests contribute “money or money’s worth” in the form of needed capital to the reorganized debtor reasonably equivalent in value to that of the equity interest sought to be retained; or
3. The class of unsecured creditors waive their rights by consenting to the plan as proposed.

In the present case, the unsecured creditors are expected to consent to the Plan as proposed, and therefore, the Debtor does not anticipate seeking a “cram down” of the claims of unsecured creditors.

**R. TAX CONSEQUENCES OF THE PLAN**

THE FOLLOWING DISCUSSION IS A SUMMARY OF CERTAIN SELECTED SIGNIFICANT FEDERAL INCOME TAX CONSEQUENCES BUT NOT STATE, LOCAL OR FOREIGN TAX CONSEQUENCES, OF THE PLAN TO THE DEBTOR, HOLDERS OF CLAIM AND INTERESTS. THESE TAX CONSEQUENCES MAY BE AFFECTED BY SUCH FACTORS AS CHANGES IN THE STRUCTURE OF THE DEBTOR FROM THAT DESCRIBED HEREIN. THE FEDERAL INCOME TAX CONSEQUENCES TO HOLDERS MAY VARY SIGNIFICANTLY DEPENDING ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER. MOREOVER, THE

FEDERAL INCOME TAX CONSEQUENCES OF CERTAIN ASPECTS OF THE PLAN ARE UNCERTAIN BECAUSE OF THE LACK OF APPLICABLE LEGAL PRECEDENT AND THE POSSIBILITY OF CHANGES IN FEDERAL INCOME TAX LAWS. ACCORDINGLY, EACH HOLDER OF AN ALLOWED CLAIM OR INTEREST IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.

In general, the federal income tax consequences to the Debtor and to each holder of an Allowed Claim will depend on numerous factors. These factors include but are not limited to the following:

- A. The identity and status of the particular Claimant for federal income tax purposes;
- B. The financial status of the Claimant and the Debtor, including the amount and character of any current tax attributes and tax attribute carryovers or carrybacks of the Claimant and/or the Debtor;
- C. The nature (recourse or nonrecourse) and terms of the debt instrument(s) to be restructured including the allocation of payments between principal and accrued but unpaid interest;
- D. The accounting method of the Claimant;
- E. The relationship, if any, between the Debtor and Claimants;
- F. The residency, alienage or place of legal incorporation or formation (foreign or U.S.) of the Claimant and/or the persons owning beneficial equity interests in the Claimant.
- G. The type or method of debt restructure adopted by the Debtor and Claimant and the timing of such debt restructure.

The application of the factors to each Claimant will depend on the Claimant's individual facts and circumstances. In addition the federal income tax consequences to the

Debtor and Claimants may depend on events which occur several years after the Plan is implemented.

**THE DEBTOR'S LEGAL COUNSEL DOES NOT HAVE SUFFICIENT INFORMATION TO DETERMINE ALL OF THE SPECIFIC FEDERAL INCOME TAX CONSEQUENCES TO EACH OF THE CLAIMANTS RESULTING FROM THE PLAN. ACCORDINGLY, EACH HOLDER OF A CLAIM IS STRONGLY ADVISED TO CONSULT WITH SUCH HOLDER'S OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**NO RULINGS HAVE BEEN OR ARE EXPECTED TO BE REQUESTED FROM THE INTERNAL REVENUE SERVICE OR ANY STATE TAX AGENCY CONCERNING ANY OF THE TAX MATTERS DESCRIBED HEREIN. THERE CAN BE NO ASSURANCE THAT THE IRS OR ANY STATE TAX AGENCY WILL NOT CHALLENGE THE POSITIONS TAKEN BY THE DEBTOR WITH RESPECT TO ANY OF THE ISSUES ADDRESSED HEREIN OR THAT A COURT OF COMPETENT JURISDICTION WOULD NOT SUSTAIN SUCH A CHALLENGE.**

**S. TAX CONSEQUENCES TO ALLOWED CLAIMANTS**

The federal income tax consequences with respect to payments of cash to Allowed Claimants in partial or full satisfaction of debt, or pursuant to a tax free recapitalization or other restructuring, depend on the allocation of such payments to principal and interest owed on the debt. The allocation of payments between interest and principal may affect:

- a. the existence and timing of recognition of interest income by a cash basis Claimant;
- b. the existence and timing of interest deductions on a cash basis (and sometimes to an accrual basis) Debtor;

- c. the amount (and possibly the character) of worthless debt loss recognized by the Claimants;
- d. the amount of cancellation of indebtedness income recognized by the Debtor; and
- e. the amount of gain or loss recognized by the Claimant pursuant to a recapitalization under Internal Revenue Code § 368(a)(1)(E).

An Allowed Claimant will recognize ordinary income to the extent that any stock, debt securities, other premises, or cash received is attributable to interest (including original issue discount) which has accrued while the Claimant held the debt and which the Claimant previously included in income, exceeds the fair market value of stock, debt and cash received by the Claimant which is attributable to such accrued interest (including OID).

In addition, such Claimants will realize gain on such amount equal to the excess of the fair market value of stock, debt, other premises and cash received (excluding amounts attributable to interest and discussed above) over the cost or other tax basis of the debt claims surrendered (excluding any tax basis allocated to accrued interest). The gain may be a capital gain or ordinary gain unless the exchange has the effect of the distribution of a dividend under Internal Revenue Code § 305 (discussed below) in which case gain recognized that is not in excess of earning and profits of the Debtor will be treated as a dividend. A corporate Claimant who receives a dividend may qualify for a dividend received deduction with respect to the dividend.

The rules regarding taxation of payments to Claimants which are attributable to other accrued but unpaid income items (e.g., rents, compensation, royalties, dividends, etc.) are similar to the rules described above for payments allocated to interest.

**- Importance of Obtaining professional Tax Assistance.**

**THE FOREGOING IS INTENDED TO BE ONLY A SUMMARY OF SELECTED FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN, AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH, AND RECEIPT OF ADVICE FROM, A TAX PROFESSIONAL. THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN THAT ARE DESCRIBED HEREIN AND THE STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN THAT ARE NOT ADDRESSED HEREIN, ARE COMPLEX AND, IN SOME CASES, UNCERTAIN. SUCH CONSEQUENCES MAY ALSO VARY BASED ON THE INDIVIDUAL CIRCUMSTANCES OF EACH HOLDER OF A CLAIM. ACCORDINGLY, EACH CLAIMANT AND EQUITY HOLDER IS STRONGLY URGED TO CONSULT WITH ITS OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE PLAN.**

**T. MAINTENANCE OF EMPLOYEE BENEFIT PLANS**

The Debtor does not maintain any employee benefit plans.

**U. ACCOUNTING PROCESS**

The financial information contained in this Disclosure Statement was derived from the Petition, Schedules and monthly operating reports filed by the Debtor in this case.

**V. POST-PETITION ASSETS AND LIABILITIES**

The Debtor has not accrued significant assets or liabilities except as otherwise set forth herein.



**W. EXECUTORY CONTRACTS**

Unless the Confirmation Order shall otherwise provide, or the Debtor shall have filed a motion to reject any executory contracts on the Effective Date, the Debtor will assume all executory contracts which have not otherwise expired by their own terms.

A proof of claim for any claim arising from the rejection of an executory contract shall be filed within thirty (30) days subsequent to the date that an order is entered rejecting the executory contract and the claim arising from the rejection of an executory contract for which a proof of claim is not filed within such time period shall be disallowed in its entirety and forever barred.

The Debtor does not anticipate rejecting any executory contracts.

**X. RETENTION OF JURISDICTION**

Following Confirmation, the Bankruptcy Court shall retain such jurisdiction as is legally permissible, including, without limitation, for the following purposes: (i) to determine the allowability, classification, or priority of Claims; (ii) to construe and to take any action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court; (iii) to issue such orders as may be necessary for the implementation, execution, performance, and consummation of the Plan; (iv) to determine any and all applications for allowance of compensation and expense reimbursement of Professional Persons; (v) to determine any other request for payment of Administrative Claims; (vi) to determine all applications, motions, adversary proceedings, contested matters, claim objections, and any other litigated matters instituted prior to the closing of the Reorganization Case, including litigation commenced to set aside or avoid any transfers pursuant to Bankruptcy Code Sections 544, 545, 547, 548, 549, 550 and 553; (vii) to modify the Plan under Bankruptcy Code Section 1127, to remedy any defect or omission in the

Plan, or to reconcile any inconsistency in the Plan, or to reconcile any inconsistency in the Plan so as to carry out its intent and purposes.

**Y. DISTRIBUTIONS UNDER THE PLAN**

General Matters Concerning the Distribution of Consideration

**1. The Disbursing Agent(s)**

The Debtor shall act as Disbursing Agent(s) under the Plan with respect to all creditors.

**2. Cash Payments**

Cash payments made pursuant to the Plan will be in U.S. dollars by checks drawn on a banking institution that is an authorized depository in the Eastern District of New York selected by the Debtor, or by wire transfer from a banking institution that is an authorized depository in the Eastern District of New York, at the option of the Debtor.

**3. Transmittal of Distributions**

All distributions shall be deemed made at the time such distribution is deposited in the United States mail, postage prepaid or, in case of wire transfers, upon receiving confirmation from the transferring bank. Except as otherwise agreed with the holder of an Allowed Claim, such distribution shall be distributed by mail to (i) the address listed by such holder for receiving distributions in its Proof of Claim or (ii), if no Proof of Claim was filed, the mailing address reflected upon the filed Schedules of Assets and Liabilities or in the Debtor's books and records for such holder.

**4. Undeliverable Distributions**

If any distribution is returned to a Disbursing Agent as undeliverable, no further distributions shall be made to the holder of the Allowed Claim or Allowed Interest on which such distribution was made unless and until the Debtor are notified in writing of such

holder's then-current address. Undeliverable distributions shall remain in the possession of the Debtor, until such time as a distribution becomes deliverable or is deemed canceled (as hereinafter provided). Any unclaimed distribution shall be accounted for separately, but there shall be no duty to invest any such unclaimed distribution in any manner. Any holder of an Allowed Claim or Allowed Interest that does not present a Claim for an undeliverable distribution within one hundred and eighty (180) days after the date upon which a distribution is first made available to such holder shall have its right to such distribution discharged. In such event the subject claimant shall be forever barred from asserting any such Claim against the Debtor or its property. All unclaimed or undistributed distributions shall, pursuant to Bankruptcy Code Section 347(b), be the property of the Debtor and shall be treated as determined by the Debtor in its sole and absolute discretion.

**5. Fractional Cents**

Any other provision of this Plan to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would be otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

**6. Payments of less than Ten Dollars**

If a cash payment otherwise provided for by this Plan with respect to an Allowed Claim would be less than ten dollars (\$10.00) (whether in the aggregate or on any payment date provided in this Plan), notwithstanding any contrary provision of this Plan, the Reorganized Debtor and/or the litigation trustee (on behalf of the Creditor Trust), as applicable, shall not be required to make such payment.

**Z. PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

(a) **Objection to Claims.**

After the Effective Date, the Debtor shall have the exclusive power and authority to prosecute and resolve objections to Claims. No later than thirty (30) days after the Effective Date, the Debtor shall file all objections to Claims, except that the Debtor may object to Proofs of Claim filed after the Effective Date no later than thirty (30) days after the filing of such Proof of Claim. The Court may extend such objection periods for cause shown upon motion of the Debtor.

(b) **Resolution of Disputed Claims.**

(i) Unless otherwise ordered by the Court, the Debtor shall litigate to judgment, settle or withdraw objections to Disputed Claims, in its sole discretion, without notice to any party in interest.

(c) **No Distribution Pending Allowance.**

Notwithstanding any other provision hereof, if any portion of a Claim is a Disputed Claim, no payment or distribution shall be made to the holder on account of such portion of the Claim which constitutes a Disputed Claim unless and until such Disputed Claim becomes allowed. Nothing contained herein, however, shall be construed to prohibit payment or distribution on account of any undisputed portion of a partially Disputed Claim.

(d) **Distributions Upon Disputed Claims that Become Allowed Claims.**

Distributions to holders of Disputed Claims that subsequently become Allowed Claims will be paid by the Debtor no later than the later to occur of (i) sixty (60) days after the Disputed Claim becomes an Allowed Claim; and (ii) Debtor's making other distributions under the Plan to holders of Allowed Claims.

(e) **Estimation.**

The Debtor may, at any time, request that the Bankruptcy Court estimate any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code regardless of whether the Debtor previously objected to such Claim. The Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection. In the event that the Bankruptcy Court estimates any contingent, unliquidated, or Disputed Claim, the amount so estimated shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on the amount of such Claim, the Debtor may pursue supplementary proceedings to object to the allowance of such Claim. All of the aforementioned objection, estimation, and resolution procedures are intended to be cumulative and not exclusive of one another. On and after the Effective Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court.

**AA. LEGAL EFFECTS OF CONFIRMATION AND EFFECTIVENESS OF THE PLAN**

**1. Discharge and Injunction**

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court that, except as otherwise provided in the Plan or in agreements or Orders entered in connection therewith, on and after the Effective Date;

a. the rights afforded in the Plan, and the treatment of all Claims and Interests thereunder: (i) shall be in exchange for, and in complete satisfaction, discharge, and release of all Claims, (including without limitation, all Administrative Claims, Secured

Claims, Priority Claims, other Priority Claims, and Unsecured Claims (including any interest accrued on such Claims from and after the Petition Date)), against the Debtor, its shareholders and officers, or any of the Debtor's assets or properties and any liability thereunder, and (ii) shall terminate all Interests of any nature whatsoever;

b. all substantive rights or obligations of the Debtor under any Interests shall be terminated, and the Debtor shall be deemed discharged and released to the fullest extent permitted by Bankruptcy Code Section 1141 from all Claims or Interests that arose prior to the Effective Date against the Debtor or its property or assets, (including without limitation, all Administrative Claims, Secured Claims, Priority Claims, other Priority Claims, and Unsecured Claims (including any interest accrued on such Claims from and after the Petition Date)), and all debts of the kind specified in Bankruptcy Code Sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. This discharge and release shall be effective in each case whether or not: (i) a proof of claim or proof of interest based on such Claim, Administrative Claim, or Interest is filed or deemed filed pursuant to Bankruptcy Code Section 501, (ii) a Claim, Administrative Claim is Allowed pursuant to the Bankruptcy Code, or (iii) the holder of a Claim, Administrative Claim has accepted the Plan;

c. all Persons shall be permanently enjoined by Bankruptcy Code Section 524 from asserting against the Debtor, its successors, assets or properties, or the shareholders and officers of the Debtor, any other further Claims, Administrative Claims based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date. The discharge shall void any judgment against the Debtor at any time obtained to the extent that it relates to a Claim, Administrative Claim, or Interest that has been discharged or terminated;

d. all Persons who have held, currently hold, or may hold a Claim or Administrative Claim discharged or terminated pursuant to the terms of the Plan shall be permanently enjoined by Bankruptcy Code Section 524 from taking any of the following actions on account of any such discharged Claim or terminated Interest: (i) commencing or continuing in any manner any action or other proceeding against the Debtor, its successors, assets, or properties, or the Debtor's shareholders or officers; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtor, its successors, assets, or properties; (iii) creating, perfecting, or enforcing any lien or encumbrance against the Debtor, its successors, assets, or properties; (iv) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due to the Debtor, its successors, assets, or properties; and (v) commencing or continuing any action, in any manner or place, that does not comply with or is inconsistent with the provisions of the Plan or the Confirmation Order. Any Person violating such injunction may be liable for actual damages, including costs and attorneys' fees and, in appropriate circumstances, punitive damages; and

e. all Persons who have held, currently hold, or may hold a Claim, Administrative Claim, or Interest discharged or terminated pursuant to the terms of the Plan shall be permanently enjoined by Bankruptcy Code Section 524 from commencing or continuing in any manner any action or other proceeding against any party on account of a Claim or cause of action that was property of the estate, including, without limitation, any derivative Claims capable of being brought on behalf of the Debtor, and all such Claims and causes of action shall remain exclusively vested in the Debtor to the maximum extent such Claims and cases of action were vested in the Debtor in Possession. The Plan shall be binding upon and govern the acts of all Persons including, without limitation, all holders of

Claims, Administrative Claims, and Interests, all filing agents or officers, title agents or companies, recorders, registrars, administrative agencies, agencies or officials thereof, secretaries of state, and all other Persons who may be required by law, the duties of their office, or contract to accept, file, register, record, or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the assets of the Debtor.

**2. Revesting of Property of the Estate and Release of Liens**

Except as otherwise provided in the Plan, any contract, instrument, or other agreement or document created in connection with the Plan, or the Confirmation Order, on the Effective Date, all property of the estate, wherever situated, shall be revested in the Debtor free and clear of all Claims, mortgages, deeds of trust, liens, security interests, encumbrances, and other interests of any person, and the Debtor may thereafter operate its business and may use, acquire, and dispose of property and compromise or settle any Claims without the supervision or approval of the Bankruptcy Court, free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy rules of the United States Bankruptcy Court for the Eastern District of New York, and the guidelines and requirements of the Office of the United States Trustee for the Eastern District of New York.

**BB. MODIFICATION OR REVOCATION OF THE PLAN**

Subject to the restrictions on modifications set forth in Bankruptcy Code Section 1127, the Debtor reserves the right to alter, amend, or modify the Plan before or after the Effective Date. No alterations, amendments, or modifications may be made by any party except the Debtor. If the Plan is modified by the Debtor, it may be necessary to amend the Disclosure Statement and to re-solicit ballots from all or some voting Classes. A hearing on



such issues and any re-solicitation of ballots likely would significantly delay Confirmation and, consequently, significantly delay distributions under the Plan.

The provisions of the Plan are not severable unless such severance is agreed to by the Debtor and such severance would constitute a permissible modification of the Plan pursuant to Bankruptcy Code Section 1127.

**CC. SUMMARY OF CERTAIN OTHER PROVISIONS OF THE PLAN**

**1. Setoffs**

Except as otherwise provided in the Plan, agreements entered into in connection therewith, the Confirmation Order, or in agreements previously approved by Final Order of the Bankruptcy Court, the Debtor may, pursuant to Bankruptcy Code Section 553 or applicable non-bankruptcy law, setoff against any Allowed Claim (before any distribution is made on account of such Claim) any and all of the Claims, rights and causes of action of any nature that the Debtor may hold against the holder of such Allowed Claim. The Debtor do not presently claim any rights to set-off against creditor's claims. The Debtor, however, reserve their rights to further investigate and assert set-off rights prior to Confirmation of a plan of reorganization, if applicable.

**DD. EVENT OF DEFAULT**

The Debtor shall be deemed in default if it fails to make timely payments to any creditors as provided for in the Plan and the Debtor and each creditor shall abide by the following:

(1) Upon written receipt from any creditor of notice of default relating to payment, the Debtor shall have a period of thirty (30) days from receipt of such notice to cure such default, during such 30-day period, the creditors shall take no action to terminate the Debtor's Plan. If such default is cured by the Debtor within the 30-day period, the Plan

shall continue in full force and effect. Any notices of default under the Plan shall be served upon the Debtor and Debtor's attorney.

(2) If full payment of the default amount is not paid by the Debtor within thirty (30) days of such demand, the Internal Revenue Service may collect any unpaid liabilities through the administrative collection provisions of the Internal Revenue Code, and the automatic stay of 11 U.S.C. 362(a) is lifted for this purpose without further order of the court.

(3) If Debtor fails to make any post-confirmation deposits, fails to pay any post-confirmation tax liability or fails to file post-confirmation tax returns by the due date of the tax return, then the United States may declare a default of the Plan.

**EE. FINAL DECREE**

Pursuant to Local Bankruptcy Rule 3022-1, within fourteen (14) days following the full administration of the estate, the Debtor or the Reorganized Debtor shall file, on notice to the United States Trustee, an application and a proposed order for a final decree closing this case.

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**CONCLUSION**

The Debtor believes that the Plan affords Creditors the potential for the greatest realization from the Debtor's assets and, therefore, is in the best interest of the Creditors. Accordingly, the Debtor urges all Creditors to cast their ballots in favor of accepting the Plan.

The Debtor shall be required to file quarterly post-confirmation status reports until the case is closed, converted, or dismissed, whichever happens earlier.

Dated: Jericho, New York  
March 7, 2017

**McBREEN & KOPKO**  
Attorneys for the Debtor

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Dated: Jericho, New York  
March 7, 2017

**FM KELLY CONSTRUCTION  
GROUP, INC.**  
Debtor and Debtor-in-Possession

By: /s/ Joseph Barbera  
Joseph Barbera, Shareholder