

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

Guy America Development Enterprises, Corp.

Debtor.

Chapter 11

Case No. 1-17-43984-ess

Hon. Elizabeth S. Stong
United States Bankruptcy Judge

AMENDED DISCLOSURE STATEMENT TO MLF3 PITKIN LLC'S
AMENDED CHAPTER 11 PLAN OF REORGANIZATION OF
GUY AMERICA DEVELOPMENT ENTERPRISES, CORP.

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

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Dated: New York, New York
May 8, 2018

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MLF3 Pitkin LLC (“MLF3” and/or “Proponent”), a secured mortgagee of Guy America Development Enterprises, Corp. (the “Debtor”), has filed its Amended Chapter 11 Plan of Liquidation for the Debtor (the “Plan”), with the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”). This Amended Disclosure Statement (the “Disclosure Statement”) is being submitted for the approval of the Bankruptcy Court for use in connection with the Plan pursuant to Section 1125 of Title 11 of the United States Code (the “Bankruptcy Code”).

A copy of the Plan accompanies this Disclosure Statement. A glossary of terms frequently used in this Disclosure Statement is set forth in Article 1 of the Plan, whose definitions shall apply to this Disclosure Statement to the extent any capitalized terms are not already defined herein.

MLF3 believes that Confirmation of the Plan is in the best interests of all the Debtor’s Creditors.

SUMMARY OF THE PLAN

The Plan provides for the reorganization of the Debtor by liquidating the Debtor’s real Properties through one or more public Sales, in order to generate proceeds to pay creditors of the Debtor’s estate. In addition to proceeds from the Sale of the Properties, the Proponent intends to commit cash presently held by the Receiver¹ (the “Receivership Funds”) in order to pay all Statutory Fees, Administrative Claims, the Secured Claims in Class 1 and Class 3 and the Priority Claims in Class 4 in full on the Effective Date.

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In the event that the Available Cash on the Effective Date is insufficient to provide creditors of the Debtor’s estate with the distributions required to be made on the Effective Date, any shortfall will be funded by the Proponent by either reducing the distribution to be made on account the MLF3 Secured Claim in Class 2, or through Cash to be provided by the Proponent) with any such shortfall funding constituting an administrative claim against the Debtor’s estate payable from Cash after the Effective Date. Holders of Class 5 General Unsecured Claims will receive a *pro rata* distribution² of Available Cash after payment in full of all holders of senior claims from Available Cash.

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To the extent necessary,³ on the Effective Date, the Liquidating Trust shall be created. The Liquidating Trust shall be run by the Liquidating Trustee and may, among other things, object to claims and shall control all Causes of Action, the proceeds of which, after expenses of the Liquidating Trust (including attorney’s fees), shall become Available Cash for distribution.

¹ Net of the Receiver’s fees and commissions, and the fees of the Receiver’s secondary appointees.

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² Such payments likely coming from the net proceeds of the liquidation of the assets of the Liquidating Trust.

³ At a hearing before the Bankruptcy Court on January 9, 2018, the Debtor alleged that a parcel of real property which it had conveyed to a third party, either was or will be re-conveyed to the Debtor.

The table below provides a summary of the classification and treatment of Claims and Interests under the Plan. The figures set forth in the table below represents the Proponent’s best estimate of the total amount of Claims filed or scheduled in this Case. These estimates have been developed by the Proponent based on its own research and certain other documents of public record. Although the Proponent believes that the amounts of the Claims set forth below are substantially correct, there can be no assurance that the Claims and Interests will be allowed by the Bankruptcy Court in the amount and/or at the priority set forth below:

Class	Claim/Interest	Treatment of Claim/Interest	Estimated Amount of Allowed Claims or Interests ⁴	Estimated % Distribution on Claims/Interest ⁵
N/A	Administrative Expenses	NA	\$20,000	100%
1	Secured Claims	Unimpaired	\$59,174.10	100%
2	MLF3 Secured Claim	Impaired	\$2,192,426.05	Unknown
<u>3</u>	<u>Flushing Secured Claim</u>	<u>Impaired</u>	<u>\$369,812.46</u>	<u>100%</u>
<u>4</u>	<u>Priority Claims</u>	<u>Unimpaired</u>	<u>\$0</u>	<u>100%</u>
<u>5</u>	<u>General Unsecured Claims</u>	<u>Impaired</u>	<u>\$27,667.39</u>	<u>Unknown</u>
<u>6</u>	<u>Interests</u>	<u>Unimpaired</u>	<u>n/a</u>	<u>100%</u>

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CONFIRMATION OF THE PLAN

Pursuant to Section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a combined hearing to consider approval of this Disclosure Statement and Confirmation of the Plan, on _____, 2018 at _____ p.m., Eastern Standard Time, in the United States Bankruptcy Court for the Eastern District of New York, Martin Luther King, Jr., Federal

⁴ The estimated amount listed for Class 2 contains the entirety of MLF3’s Claim. To the extent that the net proceeds of the Sale of the Properties and the Receivership Funds are insufficient to fund the distributions the Plan requires to be made on or about the Effective Date, the MLF3 Secured Claim in Class 2 will be reduced accordingly. As explained elsewhere, the differential between the amount of the MLF3 Claim and the MLF3 Secured Claim (i.e., the deficiency claim) shall constitute the MLF3 Unsecured Claim, which shall be in Class 5; provided, however, that to the extent that the amount of payment that would otherwise be made on the MLF3 Secured Claim is further reduced to provide sufficient funds to make the payments required on the Effective Date, such further reduction shall constitute an administrative expense claim payable on or after the Effective Date. The amount listed for Class 2 and Class 5 assumes that the net proceeds of the Sale of the Properties is sufficient to make all payments required to be made on or about the Effective Date and, thus, assumes that the MLF3 Secured Claim is equal to the MLF3 Claim.

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⁵ For Classes 2 and 5, the estimated distribution percentage is listed as unknown because the funds to be distributed to these classes depend on the net proceeds from the Sale, the amount of the Receivership Funds and, for Class 5, the liquidation of other assets, including the Causes of Action, whose collective value is unknown at this time.

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Building, 50 Walnut Street, Newark, New Jersey. The Bankruptcy Court has directed that objections, if any, to the Approval of the Disclosure Statement or Confirmation of the Plan be filed and served on or before _____, 2018 at __:00 p.m. EST.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129 of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. The Proponent intends to seek Confirmation of the Plan at the Confirmation Hearing. The Proponent believes that the Plan satisfies all applicable requirements of Section 1129(a) of the Bankruptcy Code. Confirmation makes the Plan binding upon the Debtor, its Interest Holder(s), all Creditors, and other parties in interest regardless of whether they have objected to the Plan. Since no classes of claims are impaired under the Plan other than Class 2 and Class 5, all classes of claims other than Class 2 and Class 5 are deemed to have accepted the Plan. Ballots will be sent to all holders of Claims in Class 2 and Class 5 for their acceptance or rejection of the Plan.

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As of the Effective Date, all holders of Claims or Interests will be precluded from asserting any Claim against the Debtor or the Debtor's assets or property or other interests in the Debtor based on any transaction or other activity of any kind that occurred before the Confirmation Date except as otherwise provided in the Plan.

VOTING INSTRUCTIONS AND CONFIRMATION OF PLAN

A. Manner of Voting on Plan

Before voting, this Disclosure Statement as well as the Plan, should be read in its entirety. You should only use the Ballot sent to you with this Disclosure Statement, if any, to cast your vote for or against the Plan.

If you hold a Claim in Class 2 or Class 5, included in the package of materials forwarded to you along with this Disclosure Statement and the Plan, is a ballot for your acceptance or rejection of the Plan. You should complete, date and sign your ballot and return it to Kriss & Feuerstein LLP, 360 Lexington Ave, Suite 1200, New York, New York 10017, Attn: Jason S. Leibowitz, Esq. and Daniel N. Zinman, Esq., attorneys for the Proponent. All ballots must be **received** prior to **5:00 P.M. on _____, 2018**. A copy of the form of the ballot is annexed hereto as **Exhibit "B"**.

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B. Claim Holders Entitled to Vote

Under the Bankruptcy Code, any holders of Claims in Classes that are "impaired" under the Plan are entitled to vote to accept or reject the Plan, unless such Class neither receives nor retains any property under the Plan (in which case such Class is deemed to have rejected the Plan). Bankruptcy Code Section 1124 provides generally that a Class is impaired if the legal, equitable or contractual rights of the Claims or Interests in that Class are altered.

Subject to the exceptions provided below, any holder whose Claim is impaired under the Plan is entitled to vote if either (i) its Claim has been scheduled by the Debtor and such Claim is not scheduled as disputed, contingent or unliquidated; or (ii) such Claim holder has filed a proof of Claim which is not otherwise a Disputed Claim.

A holder of a Disputed Claim is not entitled to vote on the Plan unless such Claim is temporarily allowed by the Proponent or by an order of the Bankruptcy Court in an estimated amount which it deems proper for the purpose of voting to accept or reject the Plan. In other words, only holders of Allowed Claims in impaired classes may vote to accept or reject the Plan. A Claim to which an objection has been filed or a Claim (i) which is listed on the Debtor's Schedules as disputed, unliquidated or contingent; and (ii) with respect to which a superseding proof of Claim has not been filed, is not an Allowed Claim for voting purposes, unless the Claim is settled by agreement or the Court allows the Claim (in whole or in part) by Final Order. Upon request of a party-in-interest, the Court may temporarily allow or estimate a Disputed Claim for the purpose of voting on the Plan. Ballots cast in respect of claims other than Allowed Claims will not be counted. In addition, a vote may be disregarded if the Bankruptcy Court determines that the acceptance or rejection of the Plan by the Creditor is not solicited or procured in good faith, or in accordance with the provisions of the Bankruptcy Code.

C. Classes Not Impaired Under the Plan

Claims by Holders in Class 1 (Secured Claims), [Class 3 \(Flushing Secured Claim\)](#) and Class [4](#) (Priority Claims) pursuant to Section 1124 of the Bankruptcy Code are unimpaired under the Plan and therefore not entitled to vote on the Plan.

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D. Classes Impaired Under the Plan

Claims by Holders in Class 2 (MLF3 Secured Claim) and Class [5](#) (General Unsecured Creditors) are impaired under the Plan and are eligible, subject to the limitations set forth above, to vote to accept or reject the Plan. Any controversy as to whether any Claim or Class of Claims is impaired under the Plan shall, after notice of any hearing, be determined by the Bankruptcy Court.

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E. Vote Required for Class Acceptance

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a Class of impaired Claims as acceptance by at least two-thirds (2/3) in dollar amount and more than one half (1/2) in number of holders of Allowed Claims in that Class who cast ballots.

Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of Interest holders as acceptance by holders of at least two-thirds (2/3) in amount of the allowed interests of such class who cast ballots.

NOTICE TO HOLDERS OF CLAIMS AND INTERESTS

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This Disclosure Statement is being furnished by the Proponent to the Debtor's known creditors pursuant to Section 1125(b) of the Bankruptcy Code. The Plan has been filed with the Bankruptcy Court and is incorporated herein by reference. Parties in interest may view the Plan on the internet at <http://www.nyeb.uscourts.gov>.⁶

The purpose of this Disclosure Statement is to enable you, as a Creditor to make an informed decision in exercising your right to consider whether to object to the Plan and, if applicable, whether to vote for or against confirmation of the Plan.

The historical information concerning the Debtor has been prepared using certain filings made with the Bankruptcy Court. The estimates and asserted priority of Claims and Interests set forth herein may vary from the final amounts of Claims or Interests allowed by the Bankruptcy Court.

Notwithstanding any provision of the Plan to the contrary, definitions and descriptions contained herein respecting pre-Petition documents, agreements, or claims are provided solely for the purpose of identification and classification thereof and do not constitute an admission by the Proponent of the existence, validity, allowance, or amount of any such claim, document or agreement. Except to the extent explicitly Allowed by the Plan, the Proponent has expressly reserved the right to challenge the existence, validity, allowance, or amount of any such claim, document or agreement.

This Disclosure Statement contains a summary of certain provisions of the Plan and the transactions contemplated thereunder, as well as descriptions of certain other related documents. While the Proponent believes that these summaries are fair and accurate, such summaries are qualified to the extent that they do not set forth the entire text of such documents. Reference is made to the Plan and the documents referred to herein and therein for a complete statement of the terms and provisions thereof. In the event of any inconsistency between the terms of the Plan and this Disclosure Statement, the terms of the Plan shall be controlling. In reviewing the Plan and this Disclosure Statement, the reader should give special attention to "RISK FACTORS." No statements or information concerning the Debtor or its assets or financial condition are authorized by the Proponents, other than as set forth in this Disclosure Statement, its exhibit(s) and the Plan.

The statements contained in this Disclosure Statement are made as of the date hereof unless another time is specified herein. The delivery of this Disclosure Statement shall not create, under any circumstances, an implication that there has been no change in the facts set forth herein since the date hereof.

This Disclosure Statement is intended for the sole use of Creditors and Interest Holders to be informed about the Plan. Each holder of a Claim or Interest should review this Disclosure

⁶ A password is necessary for access to view documents on the Internet.

Statement, its exhibit(s) and the Plan. Holders of Claims or Interests are urged to consult with their own legal and financial advisors.

No Person has been authorized to use or promulgate any information concerning the Debtor or the Plan, other than the information contained in this Disclosure Statement and the exhibits hereto. You should not rely on any information relating to the Debtor or the Plan other than that contained in this Disclosure Statement and the exhibits hereto.

BACKGROUND

THE DEBTOR AND ITS PROPERTIES

The Debtor is the owner of several income generating real properties in Brooklyn, NY, defined in the Plan as the “First Property” and the “Second Property.” These Properties, along with an additional property (“426 Shepherd”) owned by the Debtor’s principal,⁷ are collateral for a mortgage securing loans given by MLF3. On or about April 17, 2014, a predecessor of MLF3 filed a complaint in the New York Supreme Court, Kings County, that, among other things, sought to foreclose on the First Property, the Second Property and 426 Shepherd. In that foreclosure action, the New York Supreme Court, County of Kings, appointed Gregory M. Laspina (the “Receiver”) as Temporary Receiver of Rents.

The Plan proposes to sell the Properties through an Auction. There is also an additional Property, defined in the Plan as the “Third Property” that the Debtor transferred to a company owned by the Debtor’s principal’s daughter pre-petition for no consideration. On or about January 9, 2018, the Debtor represented that the Third Property had been transferred back to the Debtor’s estate. On or after that point, the Third Party was transferred back to the ownership of the Debtor. The Third Property will be sold in connection with the Plan pursuant to the Bid Procedures. A copy of the Bid Procedures is annexed hereto as **Exhibit “A”**. Additional details about the Third Property can be found below in the sections “The Transferred Property” and “Motion for Standing and Temporary Restraining Order”.

The term “Properties” as used herein means the First Property, the Second Property and the Third Property. The following chart summarizes the Properties, including which ones are subject to the MLF3 Mortgage:

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⁷ This additional property is located at 426 Shepherd Avenue a/k/a 2470 Pitkin Avenue, Brooklyn, New York – Block: 4020, Lot 15 and is owned by Vishnu Bandhu, the Debtor’s principal.

Property	Address	Subject to MLF3 Mortgage
First Property	2540-2542 Pitkin Avenue, Brooklyn, New York – Block: 4023, Lots 17 & 18	Yes
Second Property	2481 Pitkin Avenue a/k/a 417 Shepherd Avenue, Brooklyn, New York – Block 4005, Lot 35	Yes
Third Property	2274 Pitkin Avenue, Brooklyn, New York (Block 4012, Lot 111)	No ⁸

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THE TRANSFERRED PROPERTY

On or about April 3, 2017, the Debtor transferred the Third Property, commonly known as 2274 Pitkin Avenue, Brooklyn, New York by quick claim deed to V.J.B. Investment Inc. (“VJB”) for the stated sum of \$10. Signing for VJB is Vijaya Bandhu, who is the daughter of Vishnu Bandhu, the Debtor’s only officer and director and the Debtor’s sole operator.

THE DEBTOR’S BANKRUPTCY FILING

On or about July 31, 2017 (the “Petition Date”), the Debtor filed for bankruptcy protection under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor remains a debtor-in-possession.

SIGNIFICANT POST-PETITION EVENTS IN THIS CHAPTER 11 CASE

MOTION FOR STANDING AND TEMPORARY RESTRAINING ORDER

On or about December 26, 2017, MLF3 filed a Motion (the “Standing Motion”) for an Order Granting MLF3 Pitkin LLC Derivative Standing to Bring Claims on Behalf of the Estate Against Insiders and for an Order to Show Cause Granting Temporary Restraining Order, by which MLF3 sought, among other things: (a) to obtain standing to bring claims against VJB, Vijaya Bandhu and Vishnu Bandu on behalf of the Debtor’s estate for the benefit of the Debtor’s creditors, including claims of fraudulent transfer, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, unjust enrichment and a preliminary injunction; and (b) a temporary restraining order, barring VJB from transferring the Property or any interest in the Property and Ordering VJB to keep all income generated by the Property in an interest-bearing account pending resolution of the litigation. On or about December 27, 2017, the Court entered an order scheduling the hearing on the Standing Motion for January 9, 2018.

On January 9, 2018, a hearing was held on the Standing Motion at which the Debtor represented to the Court that the Third Property was transferred back from VJB to the Debtor’s estate and that all income generated by the Third Property while under the nominal ownership of

⁸ The Third Property is subject to a mortgage of [Flushing Savings Bank](#) and is not owned by MLF3 or an affiliate thereof.

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VJB either paid a mortgage loan on the Third Property (which mortgage loan is not with MLF3 but is with Flushing Savings Bank) or was transferred to the Debtor's account. The New York City Department of Finance, Office of the City Register (a/k/a ACRIS) reflects that VJB transferred the Third Property, back to the Debtor in a record filed on or about March 20, 2018.

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Under the Plan, all Causes of Action, including the claims against VJB, Vijaya Bandhu and Vishnu Bandhu arising from the transfer of the Third Property, will become assets of the Litigation Trust.

Turnover Motions

On December 18, 2017, the Debtor filed its Motion to Compel the Receiver to Turnover Assets, Provide an Accounting and to Use the Secured Creditor's Cash Collateral [Dkt. No. 31] (the "Turnover Motion"), by which the Debtor sought an order directing the Receiver to turnover its assets and control over the Properties to the Debtor. Also on December 18, 2017, MLF3 filed its Motion to Excuse Turnover Pursuant to 11 U.S.C. § 543(d) [Dkt. No. 32] (the "Motion to Excuse Turnover" and, together with the Turnover Motion, the "Turnover Motions"), by which MLF3 sought an order authorizing the Receiver to remain in possession, custody, and control of the First Property and Second Property, excusing the Receiver from any turnover requirement and authorizing the Receiver to maintain and operate those Properties in the ordinary course of business pursuant to the Receivership Order. The parties filed various additional pleadings in support of and/or in opposition to the two motions.

On January 9, 2018, the Court held a hearing on the Turnover Motions. On January 12, 2018, the Court entered the Interim Order Regarding Turnover and the Continued Hearings on MLF3 Pitkin LLC's Motion to Excuse Turnover and the Debtor's Motion to Compel Turnover (Dkt. No. 52), by which the Court, on an interim basis, among other things: (a) authorized the Receiver to remain in possession, custody and control of the First Property and the Second Property and to maintain and operate those Properties in the ordinary course of business of the receivership; (b) ordered the Debtor and the Debtor's manager (i.e., Brijwattie Bandhu, the Debtor's principal's wife) to personally appear at the February 26, 2018 hearing (on, among other things, the Turnover Motions) and all subsequent hearings; and (c) ordered the Debtor to immediately comply with certain document demands of the Receiver with such document production to be complete on or before January 16, 2018 by 4:00 p.m. Eventually, the Debtor complied.

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OPERATING REPORTS

As of the date hereof, the Debtor has filed monthly operating reports for the months of August 2017 through December 2017.

BAR DATE

In accordance with the requirements of Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, the Debtor filed its Schedules of assets and liabilities, including schedules

of all of its known creditors and the amounts and priorities of the Claims the Debtor believes are owed to such creditors. The Deadline for filing claims (including governmental claims) was December 11, 2017 (the "Bar Date") in this matter.

If no objection to a properly filed proof of claim is filed on or before the later of (i) ninety (90) days following the Effective Date; or (ii) sixty (60) days after the date proof of such Claim or Interest or a request for payment of such Claim is filed with the Bankruptcy Court (or as extended by the court), then such Claim will be deemed Allowed and will be entitled to the full Distribution under the Plan on account of its Allowed Claim. The Proponent reserves the right to object to any proof of Claim not explicitly Allowed by the Plan.

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SUMMARY OF THE PLAN

The following summary of the terms of the Plan is qualified in its entirety by reference to the provisions of the Plan, a copy of which accompanies this Disclosure Statement, and which is incorporated herein by reference.

The Proponent submits that the treatment of Creditors under the Plan is more favorable than the treatment Creditors would receive if the Chapter 11 Case were converted to a Chapter 7. Therefore, the Proponent submits that the Plan is in the best interests of the Creditors and the Proponent recommends acceptance of the Plan by holders of Claims in Class 5.

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FUNDING

The Plan distributes funds to Creditors generated from four sources. First, the Broker will sell the First and Second Properties (and the Third Property, if the Third Party has been transferred to the Debtor's estate by Confirmation), with the proceeds after expenses (e.g., the Broker's fee) being used to pay Creditors. Second, the Receiver shall contribute the Receivership Funds to Available Cash. Third, the Proponent will contribute enough funds to Available Cash to enable payment in full of all payments the Plan requires to be made on the Effective Date either through a reduction in the amount otherwise to be paid the Proponent on account of its Class 2 (MLF3 Secured Claim) Claim or through a cash payment by the Proponent. Any funds so contributed will constitute an administrative expense claim to be paid after the Effective Date. Fourth, the Liquidating Trust will bring Causes of Action with the proceeds after expenses (e.g., attorney's fees and costs), being used to pay Creditors.

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From these sources of funds, Creditors in Class 1, Class 3 and Class 4, along with Statutory Fees, Administrative Claims, will be paid in full on the Effective Date from Available Cash. Currently, it is estimated that Creditors in Class 2 (MLF3 Secured Claim) will receive a distribution on the Effective Date in an amount less than payment in full and Creditors in Class 5 (General Unsecured Creditors) will not receive a distribution on the Effective Date of the Plan, but will likely eventually receive a distribution from Available Cash sometime after the Effective Date, depending on the amount of net proceeds of the Sale of the Properties, results of litigation

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prosecuted by the Liquidation Trust, and the net proceeds of the liquidation of any non-cash assets recovered by the Liquidation Trust.

Classification and Treatment of Claims and Interests

Classification of claims is governed, in part, by Sections 1122 and 1123(a) of the Bankruptcy Code. Section 1123(a) requires that a plan designate classes of claims, requires that the plan specify the treatment of any impaired class of claims, and requires that the plan provide the same treatment for each claim of a particular class, unless the holder of a claim receiving less favorable treatment consents to such treatment. 11 U.S.C. § 1123(a)(1), (3) and (4). Section 1122(a) of the Bankruptcy Code provides, subject to an exception for administrative convenience, that “a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.”

Article 3 of the Plan classifies the various Claims against and Interests in the Debtor into four (4) classes of Claims and one (1) class of Interests:

- Class 1 - Secured Claims
- Class 2 - MLF3 Secured Claim
- Class 3 - [Flushing Secured Claim](#)
- ~~Class 4 - Priority Claims~~
- Class ~~5~~ - General Unsecured Claims
- Class ~~6~~ - Interest Holders

Since Class 1 (Secured Claims), ~~Class 3 (Flushing Secured Claim)~~ and Class ~~4~~ (Priority Claims) are unimpaired under the Plan, holders of claims in such classes are conclusively deemed to have accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code and no voting or balloting will be conducted under the Plan on account of such claims. Claims in Class 2 (MLF3 Secured Claim) and Class ~~5~~ (General Unsecured Claims) are impaired under the Plan. As such, ballots for voting on the Plan will be distributed to the holders of such claims. As set forth in Article 2 of the Plan, pursuant to Section 1123(a)(1) of the Bankruptcy Code, certain Administrative Claims against the Debtor have not been classified. See “SUMMARY OF THE PLAN -- Treatment of Non-Classified Claims.” Interests in Class ~~6~~ are insiders that are keeping their interests in the Debtor. As such, they will not vote, as they are unimpaired and as their votes would not be counted for determining compliance with certain confirmation requirements in the Bankruptcy Code. 11 U.S.C. § 1129(a)(10).

Class 1 – Secured Claims. Class 1 consists of the Secured Claims (which does not include the MLF3 Secured Claim). Claims in Class 1 will be paid in full, with interest at the applicable rate, on the Effective Date or as soon thereafter as is reasonably practical. The Proponent estimates that the Claims in Class 1 will total \$59,174.10.

Class 2 - MLF3 Secured Claim. Class ~~2~~ consists of the MLF3 Secured Claim, which is the portion of the MLF3 Claim that is secured by a valid, enforceable Lien on the First

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Property and the Second Property. Although the exact sale price of those Properties is currently unknown, it is estimated that the proceeds of the Sale will be insufficient to provide payment in full of the MLF3 Claim and the other payments the Plan requires to be made on or about the Effective Date (*i.e.*, Claims in Class 1, Class 3, Class 4, Statutory Fees and Administrative Claims). In such circumstances, the MLF3 Secured Claim will receive all of the net proceeds of the Sale after payment of Available Cash on the Effective Date of Claims in Class 1, Class 3, Class 4 and Statutory Fees and Administrative Claims, and MLF3 will have a deficiency claim (defined in the Plan as the “MLF3 Unsecured Claim” and classified as a Claim in Class 5 (General Unsecured Claims)) in the amount of the remaining unpaid portion of the MLF3 Claim. As explained elsewhere, to the extent MLF3 voluntarily reduces the amount of the MLF3 Secured Claim in order to ensure that there are sufficient funds to make all payments required to be made on the Effective Date, the amount of such voluntary reduction shall constitute an administrative expense, payable after the Effective Date.

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Class 3 – Flushing Secured Claim. Class 3 consists of the Flushing Secured Claim. The holder of the Allowed Class 3 Flushing Secured Claim will receive on account of such Allowed Flushing Secured Claim payment in full from Available Cash on or about the Effective Date from the proceeds of the Sale of the Third Property. The Proponent estimates that the Claim in Class 3 will total \$369,812.46.⁹

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Class 4 – Priority Claims. Class 4 consists of the Priority Claims. Each holder of an Allowed Class 4 Priority Claim will receive on account of such Allowed Priority Claims payment in full from Available Cash on or about the Effective Date. The Proponent estimates that the Claims in Class 4 will total \$0.

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Class 5 – General Unsecured Claims. Class 5 consists of General Unsecured Claims, which have been scheduled in the Debtor’s schedules and/or for which proofs of claims have been filed in the Court’s Claims Register. Each holder of an Allowed Class 5 General Unsecured Claim will receive on account of such claim a pro rata distribution of Available Cash after all payments to Class 1 Claims, the Class 2 Claim, the Class 3 Claim, the Class 4 Claims, Statutory Fees and Administrative Claims, with simple interest at the Federal Judgment Rate per annum from the Petition Date. The Proponent estimates that the amount of Allowed general unsecured claims will be \$27,667.39, without considering the potential deficiency claim of MLF3.

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Class 6 – Interest Holders. Class 6 consists of the holders of Interests in the Debtor. Holders of Allowed Class 6 Interests shall continue to retain and maintain such Interests in the Debtor and the Post-Confirmation Debtor following Confirmation of the Plan in the same percentages as existed as of the Petition Date. Additionally, to the extent that there is any Available Cash after full payment of all Statutory Fees, Administrative Claims, the Class 1 Claims, the Class 2 Claim, the Class 3 Claim, the Class 4 Claims, and the Class 5 Claims, the holders of the Allowed Class 6 Interests shall receive such remaining Available Cash, pro rata, in accordance with their respective percentage interests in the Debtor.

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⁹ This estimate is as of March 28, 2018.

TREATMENT OF NON-CLASSIFIED CLAIMS

Pursuant to Section 1123(a)(1) of the Bankruptcy Code, the Plan does not classify Administrative Claims entitled to priority treatment under Section 507(a)(2) of the Bankruptcy Code. Article 2 of the Plan provides for the manner of treatment of such non-classified Claims.

Administrative Claims. Administrative Claims are the costs and expenses of administration of this Case, allowable under Section 503(b) of the Bankruptcy Code, other than Bankruptcy Fees. Administrative Claims include Claims for the provision of goods and service to the Debtor after the Petition Date, Claims of professionals, such as attorneys, brokers, appraisers, and accountants, retained pursuant to an order of the Bankruptcy Court, for compensation and reimbursement of expenses under Section 330 of the Bankruptcy Code, and tax claims for the period from the Petition Date to the Effective Date of the Plan.

Each holder of an Allowed Administrative Claim shall receive cash in the full amount of its Administrative Claim on or about the Effective Date of the Plan or, if not Allowed on the Effective Date, within 14 days of a Final Order allowing such Administrative Claim, unless otherwise mutually agreed in writing between the Debtor and the holder of such Claim and/or if an applicable statute or regulation allows a later payment, in which case payment will be made on or before such statutory or regulatory deadline. It is estimated that the Administrative Claims total \$20,000.

Article 2 of the Plan sets a final date for the filing of Administrative Claims against the Debtor. The Administrative Bar Date is the first Business Day that is fourteen (14) days after entry of the Confirmation Order, including with respect to Professional Fees.

Bankruptcy Fees. All fees and charges assessed against the Debtor of their Estates under Section 1930 of title 28 of the United States Code and any applicable interest thereon shall be paid by the Disbursing Agent in Cash in full as required by statute, and until the closing, conversion or dismissal of this case, whichever is earlier. The Disbursing Agent shall continue to be responsible for the payment of any such fees and charges.

Professional Fees. Section 330 of the Bankruptcy Code sets the standard for the determination by the Bankruptcy Court of the appropriateness of fees to be awarded to Professionals retained by the Debtor in a case under the Bankruptcy Code. In general, bankruptcy legal services are entitled to command the same competency of counsel as other cases. "In that light, the policy of this section is to compensate attorneys and other professionals serving in a case under title 11 at the same rate as the attorney or other professional would be compensated for performing comparable service other than in a case under title 11." 124 Cong. Rec. H11091 (Daily ed. Sept. 28, 1978).

Reasonable compensation due to the Debtor's retained professionals pursuant to Section 330 of the Bankruptcy Code, as determined by the Bankruptcy Court, shall be payable in full and

in Cash on the later of the Effective Date or within 7 business days of the date such fees and expenses are allowed by a Final Order, unless otherwise agreed to in writing between the holder of such claim and the Debtor and approved by the Bankruptcy Court. It is estimated that the Debtor's professional's fees and expenses should not exceed \$20,000.00.

DISPUTED CLAIMS

Article 8 of the Plan contains a mechanism for resolving disputes concerning the amount of certain Claims asserted against the Debtor by any Entity. To the extent that any Claim is not Allowed by the Plan, the Proponent reserves the right to object to such Claim.

Time to Object. Unless otherwise ordered by the Bankruptcy Court or allowed under this Plan, the Proponent prior to the Effective Date and the Liquidating Trust after the Effective Date may file and serve any objection to any Claim or Interest at any time, but in no event after the Effective Date for Claims that are otherwise entitled to payment on the Effective Date or, for all Claims that are otherwise entitled to payment after the Effective Date, the later to occur of (i) ninety (90) days following the Effective Date; or (ii) sixty (60) days after the date proof of such Claim or Interest or a request for payment of such Claim is filed with the Bankruptcy Court, unless the time is extended by the Bankruptcy Court.

DISTRIBUTIONS UNDER THE PLAN

Article 8 contains provisions governing the making of Distributions on account of Claims and Interests. All Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank. All distributions are to be made from Available Cash by the Disbursing Agent.

Distributions shall be made: (1) at the addresses set forth on the respective Proofs of Claim or Proofs of Interests Filed by such holders; (2) at the addresses set forth in any written notices of address changes delivered to the Disbursing Agent after the date of any related Proof of Claim; or (3) at the address reflected in the Schedules if no Proof of Claim is filed and the Disbursing Agent has not received a written notice of a change of address. If the Distribution to the holder of any Claim is returned to the Disbursing Agent as undeliverable, no further Distribution shall be made to such holder unless and until the Disbursing Agent is notified in writing of such holder's then current address. If, after all payments are made, there remains any Distribution that has been returned as undeliverable, then the funds in such Distribution shall be redistributed to the other creditors in accordance with the Plan. The Disbursing Agent shall round each Distribution to each Creditor to the nearest penny.

UNCLAIMED DISTRIBUTIONS

Any Cash or other property to be distributed under the Plan shall be redistributed by the Disbursing Agent to other creditors pursuant to the Plan and such creditor shall forfeit its right to receive any Distribution(s) under this Plan if such Distribution is not claimed by the Entity entitled

thereto before the later of (i) three months after the Effective Date or (ii) thirty days after an Order allowing the Claim of that Entity becomes a Final Order or are otherwise Allowed.

DISTRIBUTIONS WITH RESPECT TO DISPUTED CLAIMS

During the pendency of any objection to any Claim, no Distribution under the Plan will be made to the holder of such Claim. However, there will be set aside and reserved on behalf of such disputed Claim such cash or property as the holder thereof would be entitled to receive in the event such Claim was an Allowed Claim on the date of such Distribution. The Proponent, the Disbursing Agent and/or the Liquidating Trustee may seek an order of the Bankruptcy Court estimating or limiting the amount of Cash or property that must be deposited in respect of any such Disputed Claims. Cash held in reserve for Disputed Claims will be held in trust for the benefit of the holders of such Claims.

Within 14 days after the entry of a Final Order resolving an objection to a Disputed Claim, the Disbursing Agent shall distribute all Cash or other property, including any interest, dividends or proceeds thereof, to which a holder is then entitled with respect to any formerly Disputed Claim that has become an Allowed Claim to the extent Allowed.

SURRENDER OF INSTRUMENTS

No Creditor that holds a note or other instrument of the Debtor evidencing such Creditor's Claim may receive any distribution with respect to such Claim or Interest unless and until the note or other instrument evidencing such Claim is surrendered pursuant to the provisions of the Plan. In the event an instrument evidencing a claim has been lost, stolen or mutilated, the Proponent and/or the Disbursing Agent may request reasonable affidavits and indemnification by a financially responsible party before making any distribution(s) to such Creditor.

COMPLIANCE WITH TAX REQUIREMENTS

In connection with the Plan, the Debtor, the Proponent, the Disbursing Agent and the Liquidating Trustee shall not be relieved of, and shall comply with all withholding and reporting requirements imposed by federal, state and local taxing authorities, and distributions under the Plan shall be subject to such withholding and reporting requirements.

EFFECTIVE DATE

The Effective Date of the Plan is defined as the dated upon which the following conditions have been met (unless waived by the Proponent): the Confirmation Order and Sale Approval Order, in form and substance satisfactory to the Proponent in its sole discretion shall have been entered; and all actions required to be taken to implement the Confirmation Order including but not limited to the transfer of title to the Properties at the Closing shall have occurred and any contribution necessary to fully fund the distributions provided for under this Plan shall have been deposited with the Disbursing Agent.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Effective on and as of the Effective Date, all Executory Contracts and Unexpired Leases to which the Debtor is a party shall be deemed rejected in accordance with Section 365 of the Bankruptcy Code (other than residential leases, which shall be assumed) unless the Executory Contract or Lease is listed as assumed and assigned to a Successful Bidder on a notice to be filed with the Bankruptcy Court (the "Assumption Notice"), with such notice being served by the Proponent on the counterparty to each such Executory Contract or Unexpired Lease, no later than twenty one (21) days prior to the Effective Date.

Rejection Claims. Allowed Claims arising from the rejection of any Executory Contract or Unexpired Lease of the Debtor pursuant to the Plan shall be treated as Unsecured Claims. Any proof of claim for damages arising from such rejection shall be filed with the Court no later than thirty (30) days after receipt of notice of the occurrence of the Effective Date. Any such Claim not timely filed and served shall be forever barred from assertion and may not be enforced against either the Debtor, the Proponent, the Disbursing Agent, the Liquidating Trust or their successors or their respective Property.

TRANSFER OF PROPERTY

Except as otherwise provided in the Plan, on the Effective Date, all of the assets of the Debtor's Estate other than the Properties sold in the Sale shall vest in the Liquidating Trust. On the Effective Date, any and all Liens, Claims and encumbrances that have not been expressly preserved or granted under or in connection with the Plan shall be deemed extinguished as of such date.

LIQUIDATING TRUST

Under the Plan, a trust (the "Liquidating Trust") will be created on or about the Effective Date. *See* Plan, Article 7. All actions, causes of action, controversies, liabilities, obligations, rights, suits damages, judgments, claims, and demands whatsoever, whether know or unknown, reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, secured or unsecured, assertable directly or derivatively, existing or hereafter arising, in law, equity, or otherwise (collectively, the "Causes of Action") will be transferred from the Debtor's estate to the Liquidating Trust on or about the Effective Date. In connection with the transfer of the Debtor's Causes of Action to the Liquidating Trust, any Privilege shall be transferred to the Liquidating Trust and shall vest in the Liquidating Trustee and its representatives along with the Causes of Action.

Subject to the terms and provisions of the Liquidating Trust Declaration, which will be in substantially the form to be filed with the Bankruptcy Court prior to the Confirmation Hearing, the Liquidation Trust will be managed by the Liquidating Trustee (who will be MLF3). The Liquidating Trustee will be responsible for the prosecution of the Causes of Action and the liquidation of the Trust's assets. The Plan also provides that the Liquidating Trustee may hire

professionals to assist it in its responsibilities, including any professionals already representing a party in this Bankruptcy Case, so long as the Liquidating Trustee determines in its sole discretion that such professional does not hold an adverse interest to the Liquidating Trust.

All distributions to be made by the Liquidating Trustee on behalf of the Liquidating Trust shall be net of any professional fees, costs or expenses incurred or reserved by the Liquidating Trustee in connection with administering, litigating or otherwise resolving the Causes of Action, and making any necessary filings with the Bankruptcy Court, any applicable taxing authority or other entity, and liquidating the assets of the Liquidating Trust. Such net amount shall be distributed by the Liquidating Trustee on behalf of the Liquidating Trust to the Disbursing Agent, with such disbursed funds becoming Available Cash. The Disbursing Agent shall then distribute such funds to Creditors and/or Interest holders in accordance with the Plan.

POST-CONFIRMATION OPERATING REPORTS AND UNITED STATES TRUSTEE'S FEES

The Debtor up to the Effective Date and the Liquidating Trust after the Effective Date shall be responsible for filing quarterly post-confirmation status reports with the Bankruptcy Court by not later than the 20th day after the conclusion of each calendar quarter. After the Effective Date, the Disbursing Agent shall pay all quarterly fees required under 28 U.S.C. § 1930 and applicable interest under 31 U.S.C. § 3717, until the earlier of (a) conversion or dismissal of this Chapter 11 Case or (b) entry of a final decree closing this Chapter 11 Case.

TRANSFER TAXES

Pursuant to Section 1146(a) of the Bankruptcy Code, the initial issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer in connection with or in furtherance of the Plan (including any instrument executed in furtherance of the transactions contemplated by the Plan) shall be exempt and shall not be subject to tax under any law imposing a Transfer Tax, mortgage recording tax or similar tax as set forth in the Plan.

REVOCAION OF THE PLAN

The Plan may be altered, amended, modified or withdrawn by the Proponent at any time before substantial consummation of the Plan, as provided in Sections 1101(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. Section 1127 of the Bankruptcy Code authorizes the proponent of a chapter 11 plan to modify such plan at any time prior to confirmation of the plan so long as the plan, as modified, continues to meet certain technical requirements of Sections 1122 and 1123 of the Bankruptcy Code with respect to the classification of Claims and Interests and the contents of a plan. Prior to Confirmation, if the Proponent files modifications to the Plan, pursuant to Section 1127(a) "the plan as modified becomes the plan." No order of the Court is required to modify the Plan under the terms of Section 1127(a); however, the proponent of a modification to a plan must comply with Section 1125 of the Bankruptcy Code with respect to the plan as modified.

If the Proponent revokes or withdraws the Plan, or if no Confirmation Order is entered, the Plan shall be null and void, and nothing contained in the Plan shall constitute a waiver or release of any Claims by or against, or any Interest in the Debtor in any further proceedings involving the Debtor or the Proponent.

RETENTION OF JURISDICTION

The Plan contains detailed provisions providing for the retention of jurisdiction by the Bankruptcy Court over the Case for the purposes of, *inter alia*, determining all disputes relating to Claims or Interests and other issues presented by or arising under the interpretation, implementation or enforcement of the Plan.

RISK FACTORS

Plan payments are to be made from, among other things, the Sale, the Receivership Funds and the Causes of Action prosecuted by the Liquidating Trust. The net proceeds of the Sale and such Causes of Action is uncertain.

CONFIRMATION OF THE PLAN

All Distributions to holders of Allowed Claims are contingent on the Plan being confirmed by this Court. Otherwise, the Proponent and/or the Disbursing Agent is not obligated to make the payments required hereunder.

CONFIRMATION HEARING

The Bankruptcy Code requires that the Bankruptcy Court, after notice, hold a hearing to consider confirmation of the Plan. **The Confirmation Hearing is scheduled to commence on _____, 2018 at 10:00 a.m. in the United States Bankruptcy Court Eastern District of New York, Conrad B. Duberstein U.S. Courthouse, 271-C Cadman Plaza East, Suite 1595, Brooklyn, NY 11201-1800.** The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement made at the Confirmation Hearing.

Deleted: ..

The Bankruptcy Court has directed **that objections, if any, to confirmation of the Plan be filed and served on or before _____, 2018 at 5:00 p.m.** Objections must be served upon (i) Counsel to the Proponent: Kriss & Feuerstein LLP., 360 Lexington Avenue, Suite 1200, New York, New York, New York 10017 – Attn: Jason S. Leibowitz, Esq. and Daniel N. Zinman, and (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, NY 10014.

REQUIREMENTS FOR CONFIRMATION

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of Section 1129 of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. These requirements include determinations by the Bankruptcy Court that: (i) the Plan has classified Claims and Interests in a permissible manner, (ii) the contents of the Plan comply with various technical requirements of the Bankruptcy Code, (iii) the Proponent has proposed the Plan in good faith, (iv) the Proponent has made disclosures concerning the Plan that are adequate and include information concerning all payments made or promised in connection with the Plan and the Case, (v) the Plan is in the "best interests" of all Creditors and Interest Holders; and (vi) the Plan is feasible. The Proponent believes that all of these conditions have been or will be met prior to the Confirmation Hearing.

Best Interest Test. The so-called "best interest" test requires that each impaired Creditor and impaired Interest Holder either (a) accepts the Plan or (b) receives or retains under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the value such entity would receive or retain if the Debtor's estate were to be liquidated under chapter 7 of the Bankruptcy Code.

To determine what the holders in each Class of Claims or Interest would receive if the Debtor were liquidated under Chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets in a chapter 7 liquidation case. The amount that would be available for satisfaction of Allowed Claims against and Allowed Interests in the Debtor would consist of the proceeds resulting from the disposition of the Debtor's assets, augmented by the cash held by the Debtor. Such amount would be reduced by the amount of any Claim or Claims secured by the Debtor's assets, the costs and expenses of the liquidation, and any additional Administrative Claims and Priority Claims that may arise. Such value is then juxtaposed against the amount creditors are receiving under the Plan to determine if the value each impaired creditor is receiving is the same or more than such creditor would receive from a Chapter 7 liquidation on the Confirmation Date.

The costs of liquidation under Chapter 7 would become Administrative Claims with the highest priority against the proceeds of liquidation. Such costs would include the fees payable to a Chapter 7 trustee, as well as those which might be payable to attorneys, financial advisors, appraisers, accountants and other professionals that such trustee may engage to assist in the liquidation. In addition, Chapter 7 costs would include any liabilities incurred or assumed pursuant to the transactions necessary to effectuate the liquidation. Moreover, claims entitled to administrative priority may arise by reason of any breach or rejection of any executory contracts entered into by the Debtor during the pendency of the Case in chapter 11.

After satisfying Administrative Claims arising in the course of the chapter 7 liquidation, the proceeds of the liquidation would then be payable to satisfy any unpaid expenses incurred during the time this Case was pending under chapter 11, including compensation for attorneys, financial advisors, appraisers, accountants and other professionals retained by the Debtor.

Liquidation Analysis. The Proponent has concluded that the Plan provides to each Creditor and Interest Holder a recovery with a present value which equals or exceeds the distribution that such person would receive if the Debtor were to be liquidated under Chapter 7 of the Bankruptcy Code. Given the increased costs associated with a chapter 7 proceeding, the Proponent submits that all Creditors and Interest Holders are receiving more under the Plan than they would in a chapter 7 liquidation, satisfying the best interests of creditors test.

Feasibility. For the Plan to be confirmed, it must be demonstrated that consummation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtor. Given that the Plan calls for the liquidation of all of the assets of the Debtor, the Plan meets the feasibility requirements of the Bankruptcy Code.

EFFECT OF CONFIRMATION

LIMITATION OF LIABILITY

Section 1125(e) of the Bankruptcy Code, commonly referred to as the "safe harbor," protects persons acting in good faith, from civil claims arising in connection with solicitations of acceptances of chapter 11 plans or participating in the offer, issuance, sale or purchase of a security under the Plan. Pursuant to Section 1125(e), as set forth in Article 8 of the Plan, neither the Proponent, the Disbursing Agent, the Liquidating Trustee, nor any professional person employed by any of them shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement or any other action taken or omitted to be taken in connection with the Plan except in the case of fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing contained herein shall limit the liability of the respective professionals pursuant to Rule 1.8(h)(1) of the New York State Rules of Professional Conduct. From and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute, and may be submitted as, a complete defense to any claim or liability released to the extent provided by the Plan.

ALTERNATIVES TO THE PLAN

If the Plan is not confirmed by the Bankruptcy Court the alternatives may include (a) liquidation of the Debtor under chapter 7 of the Bankruptcy Code or (b) the dismissal of the Debtor's case.

The Proponent believes that the Plan provides a recovery to all Creditors and Interest Holders equal to or greater than would be obtainable in chapter 7 liquidation or foreclosure sale and believes that the Plan enables Creditors to realize the most value under the circumstances.

The Proponent reserves its right to file an amended plan and/or disclosure statement.

CERTAIN FEDERAL INCOME TAX CONSEQUENCES

The following summary of certain U.S. Federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the particular circumstances pertaining to each holder of an Allowed Claim. Each holder of an Allowed Claim is urged to consult his own tax advisors. This summary does not cover all potential U.S. federal income tax consequences that could possibly arise under the Plan and does not address the Plan's U.S. federal income tax consequences for any holder of an Allowed Claim that is a partnership (or other pass-through entity) or otherwise subject to special tax rules.

The Proponent has not requested any ruling from the Internal Revenue Service or any other taxing authority with respect to such matters nor will the Proponent, with respect to the federal income tax consequences of the Plan, obtain any opinion of counsel. Consequently, there can be no assurance that the treatment set forth in the following discussion will be accepted by the IRS. The Proponent offers no statements or opinions that are to be relied upon by the creditors as to the treatment of creditors' claims under the Plan. Matters not discussed in this Disclosure Statement may affect the tax consequences of the Plan on any particular holder of a Claim or Equity Interest

This summary is based upon the laws in effect on the date of this Disclosure Statement and existing judicial and administrative interpretations thereof, all of which are subject to change, possibly with retroactive effect. Holders of Allowed Claims should consult their own tax advisors as to the Plan's specific federal, state, local and foreign income and other tax consequences.

The tax consequences to Creditors and Interest Holders will differ and will depend on factors specific to each Creditor or Interest Holder, including but not limited to: (i) whether the Claim or Interest (or portion thereof) constitutes a claim for principal or interest; (ii) the origin of the Claim or Interest; (iii) the type of consideration received by the Creditor or Interest Holder in exchange for the Claim or Interest; (iv) whether the Creditor or Interest Holder is a United States person or foreign person for tax purposes; (v) whether the Creditor or Interest Holder reports income on the accrual or cash basis method; (vi) whether the Creditor or Interest Holder has taken a bad debt deduction or otherwise recognized loss with respect to a Claim or Interest.

THERE ARE MANY FACTORS WHICH WILL DETERMINE THE TAX CONSEQUENCES TO EACH CREDITOR OR INTEREST HOLDER. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX, AND IN SOME CASES, UNCERTAIN. THEREFORE, IT IS IMPORTANT THAT EACH CREDITOR OR INTEREST HOLDER OBTAIN HIS, HER OR ITS OWN TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR OR INTEREST HOLDER AS A RESULT OF THE PLAN.

THE DISCUSSION HEREIN IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY CREDITOR OR INTEREST HOLDER FOR THE PURPOSE OF AVOIDING TAX PENALTIES THAT MAY BE IMPOSED ON A TAX PAYER. THE DISCUSSION HEREIN WAS WRITTEN TO SUPPORT THE TRANSACTIONS DESCRIBED IN THIS DISCLOSURE STATEMENT. EACH CREDITOR OR INTEREST HOLDER SHOULD SEEK ADVICE BASED UPON THE CREDITOR'S OR INTEREST HOLDER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

ADDITIONAL INFORMATION

Requests for information and additional copies of this Disclosure Statement and the other materials delivered together herewith and all deliveries, correspondence and questions, as the case may be, relating to the Plan should be directed to (i) Counsel to the Proponent: Kriss & Feuerstein LLP., 360 Lexington Avenue, Suite 1200, New York, New York, New York 10017 – Attn: Jason S. Leibowitz, Esq. and Daniel N. Zinman, Esq., (ii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, NY 10014 or (iii) may be retrieved from the Court's web site at <https://ecf.nyeb.uscourts.gov> (provided such party has PACER access) by searching Case No.: 1-17-43984-ess.

Copies of all pleadings, orders, lists, schedules, proofs of claims or other documents submitted in these cases are on file in the Office of the Clerk of the United States Bankruptcy Court Eastern District of New York, Conrad B. Duberstein U.S. Courthouse, 271-C Cadman Plaza East, Suite 1595., Brooklyn, NY 11201-1800, and are available for public inspection Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m.

CONCLUSION

The Proponent believes that confirmation of the Plan is in the best interests of all Creditors and Interest Holders.

Dated: New York, New York
May 8, 2018

Deleted: January 26

KRISS & FEUERSTEIN LLP

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