

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

328 HOFFMAN LANE LLC,

Debtor.

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Chapter 11

Case No. 18-71322

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**DISCLOSURE STATEMENT FOR DEBTOR'S PLAN OF  
LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

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Dated: As of May 29, 2018

**IMPORTANT DATES:**

- Deadline by which to file and serve objections to Confirmation of the Plan: \_\_\_\_\_, 2018, at 4:00 p.m. (prevailing Eastern Time)
- Hearing on Confirmation of the Plan: \_\_\_\_\_, 2018 at \_\_\_\_\_ a.m. (prevailing E.S.T.)

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THE DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL TO THE BANKRUPTCY COURT BUT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT AT THIS TIME. THE INFORMATION CONTAINED HEREIN SHOULD NOT BE RELIED UPON FOR ANY PURPOSE BEFORE A DETERMINATION BY THE BANKRUPTCY COURT THAT THIS DISCLOSURE STATEMENT CONTAINS "ADEQUATE INFORMATION" WITHIN THE MEANING OF BANKRUPTCY CODE §1125.

THE DEBTOR (AS VOTING AGENT) MUST ACTUALLY RECEIVE YOUR BALLOT ON OR BEFORE THE ABOVE STATED VOTING DEADLINE.

THE DEBTOR CANNOT PROVIDE ANY ASSURANCE THAT THE DISCLOSURE STATEMENT (AND THE EXHIBITS) ULTIMATELY APPROVED IN THE CHAPTER 11 CASE (A) WILL CONTAIN ANY OF THE TERMS IN THIS CURRENT DOCUMENT, OR (B) WILL NOT CONTAIN DIFFERENT, ADDITIONAL, MATERIAL TERMS THAT DO NOT APPEAR IN THIS DOCUMENT.

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**THE BANKRUPTCY COURT'S CONDITIONAL APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE FINAL BANKRUPTCY COURT APPROVAL OR THE BANKRUPTCY COURT'S RECOMMENDATION ON THE MERITS OF THE DEBTOR'S PLAN OF LIQUIDATION.**

**INTRODUCTION AND GENERAL BACKGROUND<sup>1</sup>**

On February 28, 2018 (the "Petition Date"), 328 Hoffman Lane LLC (the "Debtor") filed a voluntary petition for relief (the "Chapter 11 Case") with the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"), under chapter 11 of title 11, United States Code (the "Bankruptcy Code"). On the Petition Date the Debtor's real property was the subject of a foreclosure action initiated by its second position mortgagee. The Debtor believes that its real property is worth far in excess of all of its obligations and will sell such property under the Plan to satisfy all creditor claims in full. The Debtor submits this Disclosure Statement pursuant to Bankruptcy Code §1125, to Holders of Claims in connection with: (a) the solicitation of votes to accept or reject the *Debtor's Plan of Liquidation Under Chapter 11 of the Bankruptcy Code*, as the same may be amended from time to time (the "Plan"), and (b) the Final Hearing to Approve the Disclosure Statement and confirm the Plan, which is scheduled for \_\_\_\_\_, 2018 at \_\_\_\_\_ a.m. (prevailing E.S.T.) (the "Confirmation Hearing"). A copy of the Plan is annexed hereto as Exhibit "A" and incorporated herein by reference.

The purpose of this Disclosure Statement is to set forth information (a) regarding the Debtor and the Chapter 11 Case, (b) concerning the Plan and alternatives to the Plan, (c) advising the Holders of Claims and Equity Interests of their rights under the Plan, and (d) assisting the Holders of Claims in making an informed judgment regarding whether they should accept or reject the Plan.

By order entered \_\_\_\_\_, 2015 (the "Disclosure Statement Order"), the Bankruptcy Court conditionally approved this Disclosure Statement, in accordance with Bankruptcy Code §1125, as containing "adequate information" to enable a hypothetical, reasonable creditor or investor typical of Holders of Claims against, or Equity Interests in, the Debtor to make an informed judgment as to whether to accept or reject the Plan, and authorized its use in connection with the solicitation of votes with respect to the Plan.

The Disclosure Statement Order sets forth in detail the deadlines, procedures and instructions for voting to accept or reject the Plan, and for filing objections to confirmation of the Plan, the Record Date for voting purposes, and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Each Holder of a Claim entitled to vote on the Plan should read this Disclosure Statement and all Exhibits hereto including the Plan, the Disclosure Statement Order, and the instructions accompanying the Ballot in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Equity Interests for voting purposes and the tabulation of votes. **CONDITIONAL APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.** No solicitation of votes may be made except pursuant to this Disclosure Statement and Bankruptcy Code §1125. In voting on the Plan, Holders of Claims and Equity Interests should not rely on any information relating to the Debtor and its business,

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<sup>1</sup> All capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

other than that contained in this Disclosure Statement, the Plan and all exhibits and appendices hereto and thereto.

THE DEBTOR BELIEVES THAT THE PLAN PROVIDES FOR THE BEST AVAILABLE RECOVERY TO THEIR CREDITORS.

THE DEBTOR IS PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT FOR PURPOSES OF INFORMING CREDITORS REGARDING THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THIS DISCLOSURE STATEMENT. THE DEBTOR URGES EACH HOLDER OF A CLAIM OR AN EQUITY INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF DISCLOSURE CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.

IT IS THE DEBTOR'S POSITION THAT THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER. RATHER, HOLDERS OF CLAIMS AND EQUITY INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THIS DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE DEBTOR OR THE POST-CONFIRMATION DEBTOR MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN WHETHER OR NOT THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTOR'S CHAPTER 11 CASE AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES.

THE DEBTOR IS MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTOR MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTOR HAS NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND EQUITY INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE DISCLOSURE STATEMENT WAS FILED.

THE DEBTOR HAS NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTOR HAS NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTOR OR THE VALUE OF THE REAL PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

A. PURPOSE AND EFFECT OF THE PLAN

The Plan provides for the Sale of the Real Property by private sale or by auction, subject to approval by the Bankruptcy Court. The proceeds of the Sale will be used to make all distributions pursuant to the terms of the Plan. The Debtor or the Post-Confirmation Debtor, as applicable, may pursue certain Causes of Action to collect additional Cash for distribution pursuant to the terms of the Plan.

As more fully described herein, the Debtor believes that the proceeds of the Sale will be sufficient to make a 100% distribution to all Holders of Claims and Equity Interests.

B. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for similarly situated creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the bankruptcy petition date. Consummating a plan is the principal objective of a chapter 11 case. The Bankruptcy Court's confirmation of a plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the Bankruptcy Court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the Bankruptcy Court confirming a plan provides for the treatment of the debtor's liabilities in accordance with the terms of the confirmed plan.

Prior to soliciting acceptances of a proposed chapter 11 plan, Bankruptcy Code §1125 requires a debtor to prepare a disclosure statement containing information of a kind, and in sufficient detail, to enable a hypothetical reasonable creditor or investor to make an informed judgment regarding acceptance of the chapter 11 plan. This Disclosure Statement is being submitted in accordance with the requirements of Bankruptcy Code §1125.

C. SUMMARY OF CLASSIFICATION AND TREATMENT OF ALLOWED CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTOR UNDER THE PLAN

THE FOLLOWING CHART IS A SUMMARY OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS AND THE POTENTIAL DISTRIBUTIONS UNDER THE PLAN. THE AMOUNTS SET FORTH BELOW ARE ESTIMATES ONLY. ANY ESTIMATES OF CLAIMS OR EQUITY INTERESTS IN THIS DISCLOSURE STATEMENT MAY VARY FROM THE FINAL AMOUNTS ALLOWED BY THE BANKRUPTCY COURT. AS A RESULT OF THE FOREGOING AND OTHER UNCERTAINTIES WHICH ARE INHERENT IN THE ESTIMATES, THE ESTIMATED RECOVERIES IN THIS DISCLOSURE STATEMENT MAY VARY FROM THE ACTUAL RECOVERIES RECEIVED.

SUMMARY OF EXPECTED RECOVERIES

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Estimated Allowed Claims Remaining<sup>2</sup></u>	<u>Treatment of Claim/Equity Interest</u>	<u>Projected Recovery Under the Plan</u>
N/A	Priority Tax Claims	\$0	Unless otherwise agreed to by Holders of Allowed Priority Tax Claims and the Debtor, or the Post-Confirmation Debtor, as applicable, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction of such Allowed Priority Tax Claim: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; (2) payment of the Allowed Priority Tax Claim in an amount agreed to by the Debtor or the Post-Confirmation Debtor, as applicable, and such Holder.	100%

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<sup>2</sup> These amounts represent estimated Allowed Claims, and do not represent amounts actually asserted by creditors in Proofs of Claim or otherwise. As the Debtor has not completed its analysis of Claims in the Chapter 11 Case and objections to such Claims have not been fully litigated, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be greater or lower than estimated.



<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Estimated Allowed Claims Remaining<sup>2</sup></u>	<u>Treatment of Claim/Equity Interest</u>	<u>Projected Recovery Under the Plan</u>
1	Priority (Non-Tax) Claims	\$0	The legal, equitable and contractual rights of the Holders of Allowed Class 1 Claims are unaltered. Unless otherwise agreed to by Holders of Allowed Class 1 Claims and the Debtor, or the Post-Confirmation Debtor, as applicable, each Holder of an Allowed Class 1 Claim shall receive, in full and final satisfaction of such Allowed Class 1 Claim, payment of the Allowed Class 1 Claim in full in Cash on or as soon as reasonably practicable after the Effective Date.	100%
2	BNB Bank Claim	\$163,640.00	Subject to any pending objection to, or adversary proceeding regarding, the validity or priority of the Class 2 Claim, at the closing of the Sale or as soon as reasonably practicable after the Effective Date, the holder of the Allowed Class 2 Claim will receive full and final satisfaction of its Allowed Class 2 Claim.	100%

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Estimated Allowed Claims Remaining<sup>2</sup></u>	<u>Treatment of Claim/Equity Interest</u>	<u>Projected Recovery Under the Plan</u>
3	Second Mortgagee Claim	\$705,329.00	Subject to any pending objection to, or adversary proceeding regarding, the validity or priority of the Class 3 Claim, the Allowed Class 3 Claim shall be paid in full as soon as such Class 3 Claim shall become Allowed. Upon a determination of the Allowed Amount of the Class 3 Claim by the Bankruptcy Court or by agreement between such Holder and the Debtor, the Allowed Class 3 Claim shall be paid in full, in Cash. If the Allowed amount of such Class 3 Claim has been fixed as of the Closing of the Sale, such Allowed Class 3 Claim shall be paid in full, in Cash, at the closing of the Sale, on or as soon as reasonably practicable after the Effective Date. If the Allowed amount of such Class 3 Claim is fixed after the closing of the Sale, the Allowed Class 3 Claim shall be paid in full, in Cash, within (20) days of becoming an Allowed Claim.	100%
4	General Unsecured Claims	\$0	Holders of Allowed General Unsecured Claims will receive, in full and final satisfaction, settlement, and discharge and in exchange for each Allowed General Unsecured Claim, payment in full plus interest at the Federal judgment rate.	100%

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Estimated Allowed Claims Remaining<sup>2</sup></u>	<u>Treatment of Claim/Equity Interest</u>	<u>Projected Recovery Under the Plan</u>
5	Equity Interests	N/A	To the extent that any Net Sale Proceeds are available after full payment of all statutory fees, Administrative Claims, Priority Tax Claims, and Claims in Classes 1, 2, 3 and 4, the Holders of Class 5 Interests shall receive the remaining funds.	Retain their interests and any value remaining after the payment of all Allowed Claims.

In accordance with Bankruptcy Code §1123(a)(1), Administrative Claims and Priority Tax Claims have not been classified (as set forth in Article III of the Plan).

#### D. ENTITIES ENTITLED TO VOTE ON THE PLAN

Under the Bankruptcy Code, not all holders of claims against and equity interests in a debtor are entitled to vote on a chapter 11 plan. Holders of Claims that are Unimpaired by the Plan are deemed to accept the Plan under Bankruptcy Code §1126(f) and, therefore, are not entitled to vote on the Plan. Holders of Claims or Equity Interests Impaired by the Plan and receiving no distribution under the Plan are not entitled to vote because they are deemed to have rejected the Plan under Bankruptcy Code §1126(g).

The Classes of Claims and Equity Interests classify Claims and Equity Interests for all purposes, including voting, Confirmation, and distribution pursuant to the Plan and Bankruptcy Code §§1122 and 1123(a)(1). The Plan deems a Claim or an Equity Interest to be classified in a particular Class only to the extent that the Claim or the Equity Interest qualifies within the description of that Class and will be deemed classified in a different Class to the extent that any remainder of the Claim or Equity Interest qualifies within the description of a different Class.

The following sets forth the Classes that are entitled to vote on the Plan and the Classes that are not entitled to vote on the Plan:

Class	Claim	Status	Voting Rights
1	Priority (Non-Tax) Claims	Unimpaired	Deemed to Accept
2	BNB Bank Claim	Unimpaired	Deemed to Accept
3	Second Mortgagee Claim	Unimpaired	Deemed to Accept
4	General Unsecured Claims	Unimpaired	Deemed to Accept
5	Equity Interests	Unimpaired	Deemed to Accept

- The Debtor is NOT seeking votes from the Holders of Claims in any Class because all Classes, are Unimpaired under the Plan. Pursuant to Bankruptcy Code §1126(f), Classes 1, 2, 3, and 4 are deemed to have accepted the Plan.

For a detailed description of the Classes of Claims and the Classes of Equity Interests, as well as their respective treatment under the Plan, please refer to Article III of the Plan.

#### E. SOLICITATION PROCESS

##### 1. Voting and Voting Agent

To the extent any creditor believes it is Impaired and entitled to vote on the Plan, the Debtor's attorneys are the agents in connection with the solicitation of votes to accept or reject the Plan (the "Voting Agent").

##### 2. Solicitation Package

The following documents and materials will constitute the solicitation package (collectively, the "Solicitation Package"):

- the Disclosure Statement Order;
- an appropriate form of Ballot and instructions with respect thereto, if applicable;
- the approved form of the Disclosure Statement (together with the Plan, which is Exhibit "A" thereto); and
- such other materials as the Bankruptcy Court may direct.

#### F. VOTING PROCEDURES

##### 1. Record Date

The Record Date is \_\_\_\_\_, 2018, the date on which the Bankruptcy Court entered the order conditionally approving the Disclosure Statement. The Record Date is the date on which the following will be determined: (a) which Holders of Claims are entitled to accept or reject the Plan and receive the Solicitation Package; and (b) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can act as the Holder of a Claim.

- ##### 2. Voting Deadline – There are no Impaired Classes entitled to vote.

#### G. CONFIRMATION HEARING

Bankruptcy Code §1128(a) requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan filed under chapter 11 of the Bankruptcy Code. Bankruptcy Code §1128(b) provides that any party in interest may object to confirmation of the plan.

1. Confirmation Hearing Date

The Confirmation Hearing will commence on \_\_\_\_\_, 2018 at \_\_\_\_\_ a.m. (prevailing E.S.T.), before the Honorable Louis A. Scarcella, United States Bankruptcy Judge, in the Bankruptcy Court. The Confirmation Hearing may be continued from time to time without further notice other than an adjournment announced in open court at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing. The Bankruptcy Court, in its discretion and prior to the Confirmation Hearing, may put in place additional procedures governing the Confirmation Hearing. The Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing, without further notice to parties in interest.

2. Disclosure Statement and Objection Deadline

The Disclosure Statement and Plan Objection Deadline ("Objection Deadline") is \_\_\_\_\_, 2018 at 4:00 p.m. All objections to the Disclosure Statement or the Plan must be filed with the Bankruptcy Court and served on the Debtor, and certain other parties in accordance with the Disclosure Statement Order, as approved, on or before the Objection Deadline. Objections to the Plan or requests for modifications to the Plan, if any, must:

- be in writing;
- conform to the Bankruptcy Rules and the Local Bankruptcy Rules;
- state the name and address of the objecting Entity and the amount and nature of the Claim or Equity Interest of such Entity;
- state with particularity the basis and nature of the objection and, if practicable, a proposed modification to the Plan that would resolve the objection; and
- be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served so that it is received by the Debtor, and other parties identified in the Disclosure Statement Order on or prior to the Objection Deadline.

The proposed schedule will provide Entities with sufficient notice of the Objection Deadline, which will be at least 28 days, as required by Bankruptcy Rule 2002(b), plus three (3) days for service by first class mail, as required by the Bankruptcy Rule 9006(f). The Debtor believes that the Objection Deadline will afford the Bankruptcy Court, the Debtor, and other parties in interest reasonable time to consider any objection to final approval of the Disclosure Statement and confirmation of the Plan prior to the Confirmation Hearing.

THE BANKRUPTCY COURT WILL NOT CONSIDER OBJECTIONS UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER.

H. CONFIRMATION AND CONSUMMATION OF THE PLAN

It will be a condition to Confirmation of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. The Sale will be conducted by the Debtor, and the Plan will be consummated after the closing of the Sale on the Effective Date.

## II. CHAPTER 11 CASE OF THE DEBTOR

### A. BANKRUPTCY PETITIONS

On February 28, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief under the Bankruptcy Code.

### B. INITIAL MOTIONS AND ORDERS

Shortly after the Petition Date, the Debtor filed the following motion.

#### 1. Retention of Forchelli Deegan Terrana LLP

On April 13, 2018, the Debtor filed an *Application to Employ Forchelli Deegan Terrana LLP as Counsel to Debtor and Debtor in Possession* (ECF Doc. No. 15) (the "Retention Application"). On May \_\_\_, 2018, the Court entered an order granting the Retention Application (ECF Doc. No. \_\_\_).

### C. OTHER MOTIONS

During the Chapter 11 Case, the Debtor filed additional motions and applications.

#### 1. Motion to Set Last Day to File Proofs of Claim

On May 23, 2018, the Debtor filed a motion seeking entry of an order establishing deadlines and procedures for filing proofs of claim and approving the Debtor's proposed forms and manner of notice of the proposed deadlines (ECF Doc. No. \_\_\_) (the "Bar Date Motion"). On \_\_\_, 2018, the Court entered an Order approving the Bar Date Motion (ECF Doc. No. \_\_\_). Pursuant to the Order approving the Bar Date Motion, the General Bar Date is July 19, 2015 and the Governmental Bar Date is September \_\_\_, 2018.

#### 2. Application to Retain Coldwell Banker Residential Brokerage

On \_\_\_, 2018, the Debtor filed an application to retain Coldwell Banker Residential Brokerage ("CBRB") as its broker for the marketing and Sale of the Real Property in this Chapter 11 Case (ECF Doc. No. \_\_\_). On \_\_\_, 2018, the Court entered an Order granting the Debtor's application to retain CBRB as its broker (ECF Doc. No. \_\_\_). CBRB will be paid from the proceeds of the Sale, subject to a properly noticed application and approval by the Bankruptcy Court.

#### 3. Motion to Approve Sale and Related Bid Procedures

On May \_\_\_, 2018, the Debtor filed the *Debtor's Application for Orders under Bankruptcy Code Sections 105 and 363; (1) Authorizing and Approving the Terms and Conditions for the Sale of the Debtor's Real Property By Private Sale or Subject to Higher or Better Offers, Free and Clear of All Liens, Claims, and Encumbrances; (2) Authorizing the Consummation of the Transactions Contemplated Therein; (3) Authorizing and Approving the Terms and Conditions of the Public Auction Sale; (4) Establishing a Procedure to Confirm the Highest or Best Offer Received at the Auction; (5) Approving the Form, Time and Scope of Notice of the Auction; and (6) Granting Related Relief* (ECF Doc. No. \_\_\_) (the "Sale Motion"). Among other things, the

Sale Motion sought to approve the Debtor's proposed bidding procedures with respect to the Sale and authorize the Debtor to enter into a stalking horse contract with a potential bidder.

On \_\_\_\_\_, 2018, the Court entered an order granting the Sale Motion.

D. NO APPOINTMENT OF A CREDITORS' COMMITTEE

To date, the Office of the United States Trustee for Region 2 has not appointed an unsecured creditors' committee in this Chapter 11 Case.

E. CLAIMS PROCESS AND CLAIMS BAR DATE

In chapter 11, claims against a debtor are established either as a result of being listed in a debtor's schedules of assets and liabilities or through assertion by a creditor in a timely filed proof of claim. Claims asserted by a creditor are either allowed or disallowed. If allowed, a claim would be recognized and treated pursuant to a plan; if disallowed, a creditor would have no right to obtain any recovery on or otherwise enforce the claim against the debtor.

1. Section 341(a) Meeting of Creditors

On April 4, 2018, the United States Trustee conducted the Section 341(a) Meeting of Creditors in the Chapter 11 Case.

2. Schedules and Statements

On April 4, 2018, the Debtor filed with the Bankruptcy Court its Statement of Financial Affairs, Schedules of Assets and Liabilities, Schedule of Executory Contracts and Unexpired Leases, and Lists of Creditors and Equity Holders (collectively, the "Schedules") (ECF Doc. No. 14). Copies of the Schedules are available with the Clerk of the Bankruptcy Court. The Debtor reserve the rights to amend the Schedules during the Chapter 11 Case.

3. General and Governmental Bar Dates

The Proposed Order approving the Bar Date Motion establishes July 19, 2018, as the bar date for filing proofs of claim against the Debtor, and September 1, 2018 as the deadline for filing a proof of claim by a governmental unit (as defined by Bankruptcy Code §101(27)).

F. SALE PROCESS

Prior to and during the pendency of the Chapter 11 Case, and with the assistance of CBRB, the Debtor has marketed the Real Property to prospective purchasers.

As stated above, on June \_\_\_\_, 2018 the Debtor filed the Sale Motion.

On June \_\_\_\_, 2018, the Court entered an order granting the Sale Motion.

### III. SUMMARY OF PLAN<sup>3</sup>

#### A. ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

##### 1. Administrative Claims

##### (a) General Administrative Claims

Except as otherwise provided herein and subject to Bankruptcy Code §§328, 330(a) and 331, each Holder of an Allowed General Administrative Claim, including any Allowed Fee Claims, will be paid the full amount of such Allowed Claim in Cash: (a) on or as soon as reasonably practicable after the Effective Date; (b) if such Claim is Allowed after the Effective Date, on or as soon as practicable after the date such Claim is Allowed; (c) upon such other terms as may be agreed upon by such Holder and the Post-Confirmation Debtor; or (d) as otherwise ordered by the Bankruptcy Court.

Except as otherwise provided in the Plan, unless previously Filed, requests for payment of General Administrative Claims must be Filed and served pursuant to the procedures specified in the Plan and prior to the applicable General Administrative Claims Bar Date. Holders of General Administrative Claims that do not File and serve such a request by the applicable General Administrative Claims Bar Date shall be forever barred, stopped, and enjoined from asserting such General Administrative Claims against the Debtor, its Estate and such General Administrative Claims shall be deemed discharged as of the Effective Date. Objections to such requests must be Filed and served on the Post-Confirmation Debtor and the requesting party within 30 days after the General Administrative Claims Bar Date.

##### (b) Fee Claims

Retained Professionals or other entities asserting a Fee Claim for services rendered before the Confirmation Date, must File and serve on the Debtor, the United States Trustee, and such other Entities who are designated by the Bankruptcy Rules or any order of the Bankruptcy Court an application for final allowance of such Fee Claim no later than sixty (60) days after the Confirmation Date. Objections to any Fee Claim must be Filed and served on the Debtor, the United States Trustee, and the requesting party no later than thirty (30) days after the Filing of such Fee Claim.

The Debtor estimates that the aggregate amount of unpaid Fee Claims that will be required to be paid on or after the Effective Date by the Post-Confirmation Debtor will be approximately \$150,000.00.

##### 2. Priority Tax Claims

Each Holder of an Allowed Priority Tax Claim due and payable on or prior to the Effective Date shall receive, as soon as reasonably practicable after the Effective Date, on account of such Claim: (1) Cash in an amount equal to the amount of such Allowed Priority Tax Claim; or (2) Cash in an amount agreed to by the Debtor or the Post-Confirmation Debtor, as applicable, and such Holder; provided, however, that such parties may further agree for the

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<sup>3</sup> The following summary is qualified in its entirety by reference to the Plan. In the event of any inconsistency between the summary provided herein and the Plan, the Plan shall control in all respects.



payment of such Allowed Priority Tax Claim at a later date. Allowed Priority Tax Claims shall, to the extent not paid in full in Cash on the Effective Date, be paid from the assets held by the Post-Confirmation Debtor in accordance with the Plan.

3. Fees Payable to the United States Trustee

The Post-Confirmation Debtor shall pay all United States Trustee quarterly fees under 28 U.S.C. §1930(a)(6), plus interest due and payable under 31 U.S.C. §3717, on all disbursements including Plan payments and disbursements in and outside the ordinary course of the Debtor's business, until the entry of a Final Order closing the Chapter 11 Case, dismissal of the Chapter 11 Case, or conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

B. CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

1. Administrative Claims and Priority Tax Claims

In accordance with Bankruptcy Code §1123(a)(1), Administrative Claims and Priority Claims have not been classified and thus are excluded from the Classes of Claims and Equity Interests set forth in Article III of the Plan.

2. Summary

The categories of Claims and Equity Interests listed below classify Claims and Equity Interests for all purposes, including Confirmation and distributions pursuant to the Plan and pursuant to Bankruptcy Code §§1122 and 1123(a)(1). The Plan deems a Claim or Equity Interest to be classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or an Equity Interest is in a particular Class only to the extent that any such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

3. Classification and Treatment of Claims Against the Debtor

Class 1 - Priority (Non-Tax) Claims

- (i) Classification: Class 1 consists of all Priority Claims against the Debtor which are not tax claims.
- (ii) Treatment: The legal, equitable and contractual rights of the Holders of Allowed Class 1 Claims are unaltered. Unless otherwise agreed to by Holders of Allowed Class 1 Claims and the Debtor, each Holder of an Allowed Class 1 Claim shall receive, in full and final satisfaction of such Allowed Class 1 Claim, payment of the Allowed Class 1 Claim in full in Cash on or as soon as reasonably practicable after the Effective Date.
- (iii) Voting: Class 1 is Unimpaired, and Holders of Class 1 Claims are conclusively presumed to have accepted the Plan pursuant

to Bankruptcy Code §1126(f). Therefore, Holders of Class 1 Claims are not entitled to vote to accept or reject the Plan; provided, however, that all Class 1 Claims shall be subject to becoming Allowed Claims under the provisions of the Plan.

Class 2 – BNB Bank Claim

- (i) Classification: Class 2 consists of the secured BNB Bank Claim against the Real Property.
- (ii) Treatment: BNB Bank shall receive payment of its Allowed Class 2 Claim, in Cash, at the closing of the Sale.
- (iii) Voting: Class 2 is Unimpaired, and Holders of Class 2 Claims are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code §1126(f). Therefore, Holders of Class 2 Claims are not entitled to vote to accept or reject the Plan; provided, however, that all Class 2 Claims shall be subject to becoming Allowed Claims under the provisions of the Plan.

Class 3 – Second Mortgagee Claim

- (i) Classification: Class 3 consists of the allowed Second Mortgagee Claim.
- (ii) Treatment: The Allowed Class 3 Claim shall be paid in full as soon as such Class 3 Claim shall become Allowed. Upon a determination of the Allowed Amount of a Class 3 Claim by the Bankruptcy Court or by agreement between such Holder and the Debtor, the Allowed Class 3 Claim shall be paid in full, in Cash. If the Allowed amount of such Class 3 Claim has been fixed as of the closing of the Sale, such Allowed Class 3 Claim shall be paid in full, in Cash at the closing of the Sale. If the Allowed amount of such Class 3 Claim is fixed after the closing of the Sale, such Allowed Class 3 Claim shall be paid in full, in Cash, within (20) days of becoming an Allowed Claim.
- (iii) Voting: Class 3 is Unimpaired, and Holders of Class 3 Claims are conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code §1126(f). Therefore, Holders of Class 3 Claims are not entitled to vote to accept or reject the Plan; provided, however, that all Class 3 Claims shall be subject to becoming Allowed Claims under the provisions of the Plan.

Class 4 – General Unsecured Claims

- (i) Classification: Class 4 consists of all General Unsecured Claims held against the Debtor.
- (ii) Treatment: Holders of Allowed General Unsecured Claims will receive, in full and final satisfaction, settlement, and discharge

and in exchange for each Allowed General Unsecured Claim, payment in full plus interest at the Federal judgment rate.

- (iii) Voting: Class 4 is Unimpaired, and therefore Holders of Class 4 Claims are not entitled to vote to accept or reject the Plan.

#### Class 5 - Equity Interests

- (i) Classification: Class 5 consists of all Equity Interests in the Debtor.
- (ii) Treatment: To the extent that any Net Sale Proceeds are available after full payment of all statutory fees, Administrative Claims, Priority Tax Claims, and Claims in Classes 1, 2, 3 and 4, the Holders of the Class 5 Interests shall receive the remaining funds.
- (iii) Voting: Class 5 is Unimpaired, and Holder of Class 5 Interests is deemed to accept the Plan.

#### 4. Special Provision Governing Unimpaired Claims

Except as otherwise provided herein, nothing in the Plan shall affect the Debtor's rights with respect to any Unimpaired Claims, including all rights with respect to legal and equitable defenses to or setoffs or recoupment against any such Unimpaired Claims.

### C. ACCEPTANCE OR REJECTION OF THE PLAN

#### 1. Presumed Acceptance of Plan

Classes 1, 2, 3, 4 and 5 are Unimpaired under the Plan, and are, therefore, conclusively presumed to have accepted the Plan pursuant to Bankruptcy Code §1126(f).

#### 2. Voting Classes

No Classes are Impaired under the Plan, there are no Creditors entitled to vote to accept or reject the Plan.

#### 3. Acceptance by Impaired Classes of Claims

Pursuant to Bankruptcy Code §1126(c), and except as otherwise provided in Bankruptcy Code §1126(e), an Impaired Class of Claims entitled to vote to accept or reject the Plan has accepted the Plan if the Holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims in such Class actually voting have voted to accept the Plan.

### D. MEANS FOR IMPLEMENTATION OF THE PLAN

#### 1. Source of Funds

Sale of the Real Property: The payments due under the Plan will be paid from the proceeds of the Sale, to be approved by the Bankruptcy Court pursuant to Bankruptcy Code

§363. The Sale will be consummated free and clear of liens and encumbrances pursuant to Bankruptcy Code §363(f), with all liens and encumbrances to attach to the Net Sale Proceeds.

2. Release of Liens and Claims

Except as otherwise provided in the Plan or in any contract, instrument, release or other agreement or document entered into or delivered in connection with the Sale or the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all Claims, including, but not limited to, the Class 1, Class 2, Class 3 and Class 4 Claims, against the property of any Estate, including but not limited to the Real Property, shall be fully released and discharged.

3. Exemption from Certain Transfer Taxes

Pursuant to Bankruptcy Code §1146(a), the sale of the Real Property pursuant hereto shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States. The appropriate state or local governmental officials or agents are directed to forgo the collection of any such tax or governmental assessment and to accept for filing and recordation instruments or other documents pursuant to such transfers of the Real Property without the payment of any such tax or governmental assessment. Such exemption specifically applies, without limitation, to: (1) the creation of any mortgage, deed of trust, lien or other security interest; (2) the making or assignment of any lease or sublease; or (3) the making or delivery of any deed or other instrument of transfer under, in furtherance of or in connection with the Plan, including: (a) any merger agreements; (b) agreements of consolidation, restructuring, disposition, liquidation or dissolution; (c) deeds; (d) bills of sale; or (e) assignments executed in connection with the sale of the Real Property pursuant to the Plan.

E. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

1. Assumption and Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, all Executory Contracts and Unexpired Leases shall be deemed automatically rejected in accordance with the provisions of Bankruptcy Code §§365 and 1123 of the Bankruptcy Code as of the Effective Date, unless any such Executory or Unexpired Lease:

- (a) has previously been assumed by the Debtor by Final Order of the Bankruptcy Court;
- (b) has been assumed by the Debtor by order of the Bankruptcy Court as of the Effective Date which order becomes a Final Order after the Effective Date;
- (c) is the subject of a motion to assume or reject pending as of the Effective Date; or
- (d) is otherwise assumed pursuant to the terms of the Plan.

2. Claims Based on Rejection of Executory Contracts or Unexpired Leases

Notwithstanding anything to the contrary provided herein or in the Plan, all Proofs of Claim arising from the rejection (if any) of Executory Contracts or Unexpired Leases must be

Filed within the later of: (a) 30 days after the entry of an order of the Bankruptcy Court approving any such rejection; and (b) the first Business Day that is 30 days following the Effective Date. Any Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claim are not timely Filed will be forever barred from assertion against the Debtor, its Estate and property of the Post-Confirmation Debtor, unless otherwise ordered by the Bankruptcy Court or as otherwise provided herein. All such Claims shall, as of the Effective Date, be subject to the permanent injunction set forth in the Plan.

Notwithstanding anything herein to the contrary, nothing in this Disclosure Statement or the Plan is intended to extend the deadline by which Proofs of Claim arising from the rejection (if any) of Executory Contracts or Unexpired Leases was required to be previously Filed.

### 3. Modifications, Amendments, Restatements or Other Agreements

Unless otherwise provided by the Plan, each rejected Executory Contract or Unexpired Lease shall include all modifications, amendments, restatements or other agreements that in any manner affect such Executory Contract or Unexpired Lease, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal and any other interest.

Amendments, restatements or other modifications to Executory Contracts or Unexpired Leases executed by the Debtor during the pendency of the Chapter 11 Case shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority or amount of any Claim arising in connection therewith.

### 4. Reservation of Rights

Nothing contained in the Plan or the exhibits to the Plan shall constitute an admission by the Debtor that any such contract or lease is an Executory Contract or Unexpired Lease or that the Debtor or the Post-Confirmation Debtor has any liability thereunder. Additionally, the Debtor and Post-Confirmation Debtor reserve all of their defenses and rights with respect to any rejection damages claims filed by an Entity with respect to an Executory Contract or Unexpired Lease.

## F. PROVISIONS GOVERNING DISTRIBUTIONS

### 1. Distributions for Allowed Claims

Except as otherwise provided in the Plan or as may be ordered by the Bankruptcy Court, and subject to the establishment of a Disputed Claims Reserve, all distributions with respect to Claims that are Allowed Claims as of the Effective Date shall be made by the Post-Confirmation Debtor as set forth in the Plan. The Debtor shall make distributions on the Effective Date or as soon as reasonably practicable thereafter to Holders of Allowed Administrative Claims, Fees of the type described in 28 U.S.C. § 1930(a)(6), including the fees of the United States Trustee, and any applicable interest, Allowed Fee Claims, and all Allowed Claims in Classes 1, 2, 3 and 4 and Interests in Class 5. The Debtor shall make further distributions to Holders of Claims that subsequently become Allowed Claims pursuant to the Plan.

### 2. Distributions on Account of Claims Allowed After the Effective Date

#### (a) Payments and Distributions on Disputed Claims

Notwithstanding any provision in the Plan to the contrary, except as otherwise agreed by the Post-Confirmation Debtor, no partial payments and no partial distributions will be made with respect to a Disputed Claim until the resolution of any such disputes by settlement or Final Order. On the first Business Day which is 20 calendar days after the end of the calendar quarter in which a Disputed Claim becomes an Allowed Claim, the Holder of such Allowed Claim will receive such payments and distributions to which that Holder is then entitled under the Plan. In the event Claims require adjudication or other resolution, the Post-Confirmation Debtor reserves the right to, or shall upon an order of the Bankruptcy Court, establish appropriate reserves for potential payment of any such Claims.

### 3. Delivery and Distributions and Undeliverable or Unclaimed Distributions

#### (a) Delivery of Distributions in General

Except as otherwise provided in the Plan, the Post-Confirmation Debtor shall make distributions to Holders of Allowed Claims at the address for each such Holder as indicated on the Debtor's books and records as of the date of any such distribution; provided, however, that if such Holder Files a Proof of Claim, the address identified by the Proof of Claim shall be the address for such distribution, and the manner of delivery for such distributions shall be determined at the discretion of the Post-Confirmation Debtor. Nothing in the Plan shall require or be deemed to require the Post-Confirmation Debtor to attempt to locate any Holder of an Allowed Claim. Distributions shall be made in accordance with the provisions of the Plan and may be made in one or more payments or deliveries.

#### (b) Minimum Distributions

Notwithstanding anything in the Plan to the contrary, and unless the proceeds of the Sale yield funds sufficient to pay Class 5 Claims in full, the Post-Confirmation Debtor shall not be required to make distributions or payments of less than \$25.00 and shall not be required to make partial distributions or payments of fractions of dollars. Whenever any payment or distribution of a fraction of a dollar under the Plan would otherwise be called for, the actual payment or distribution will reflect a rounding of such fraction to the nearest whole dollar, with half dollars or less being rounded down. Any Holder of an Allowed Claim whose aggregate distribution under this Plan is less than \$25.00 shall forfeit, at the option of the Post-Confirmation Debtor, such amount to, and such amount shall vest in, the Post-Confirmation Debtor for distribution in accordance with the terms of the Plan.

In the event that (a) all Allowed Claims, including Administrative Claims, have been paid in full, or (b) only *de minimis* assets remain in the Post-Confirmation Estate, all undeliverable distributions or unclaimed property shall revert to the Post-Confirmation Debtor.

#### (c) Undeliverable Distributions and Unclaimed Property

Subject to Bankruptcy Rule 9010, and except as otherwise provided herein, distributions to Holders of Allowed Claims shall be made by the Post-Confirmation Debtor at (a) the address for each Holder of an Allowed Claim as set forth in the Schedules, unless superseded by the address set forth on the Proof of Claim filed by such Holder, or (b) the last known address for such Holder if no proof of Claim is filed, or if the Debtor or the Post-Confirmation Debtor, has been notified in writing of a change of address.



If any distribution is returned as undeliverable, the Post-Confirmation Debtor may, in its sole discretion, make such efforts to determine the current address of the Holder of the Claim with respect to which the distribution was made, but no distributions to any Holder of an Allowed Claim will be made until the Post-Confirmation Debtor has determined the current address of the Holder of such Allowed Claim, at which time the distribution will be made without interest. The Post-Confirmation Debtor shall have the discretion to determine how to make distributions in the most efficient and cost-effective manner.

Amounts in respect of any undeliverable distributions made by the Post-Confirmation Debtor shall be returned to, and held in trust by, the Post-Confirmation Debtor, until the distributions are claimed, or are deemed to be Unclaimed Property upon the expiration of six (6) months from the date of the return of the undeliverable distribution. Unclaimed Property shall be utilized by the Post-Confirmation Debtor to make additional distributions in accordance with the provisions of the Plan. After the final distribution is made under the Plan, or after all Allowed Claims (including Allowed Administrative Claims) have been paid in full, with interest, any Unclaimed Property shall revert to the Post-Confirmation Debtor.

G. PROCEDURES FOR RESOLVING DISPUTED, CONTINGENT AND UNLIQUIDATED CLAIMS OR EQUITY INTERESTS

1. Resolution of Disputed Claims

Any objections to Claims, other than Administrative Claims, shall be Filed no later than the Claims Objection Bar Date.

2. Claims Allowance

Except as expressly provided in the Plan or in any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), no Claim shall be deemed Allowed unless and until such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the Bankruptcy Court has entered a Final Order (including the Confirmation Order) in the Chapter 11 Case allowing such Claim. Except as expressly provided by the Plan or any order entered in the Chapter 11 Case prior to the Effective Date (including the Confirmation Order), the Post-Confirmation Debtor will have and shall retain after the Effective Date any and all rights and defenses that the Debtor had with respect to any Claim as of the Petition Date.

3. Controversy Concerning Impairment

If a controversy arises as to whether any Claims or any Class of Claims are Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine any such controversy before the Confirmation Date.

4. Disallowance of Claims

EXCEPT AS OTHERWISE AGREED TO BY THE DEBTOR OR POST-CONFIRMATION DEBTOR, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE CLAIMS BAR DATE SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE WITHOUT FURTHER NOTICE TO OR ACTION, ORDER, OR APPROVAL OF THE BANKRUPTCY COURT, AND HOLDERS OF SUCH CLAIMS MAY NOT RECEIVE ANY DISTRIBUTIONS ON ACCOUNT OF SUCH CLAIMS, UNLESS SUCH LATE

PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER OF THE BANKRUPTCY COURT ON OR BEFORE THE CONFIRMATION HEARING.

5. Amendments to Claims

On or after the Effective Date, except as otherwise provided in the Plan, a Claim may not be re-Filed or amended without the prior authorization of the Bankruptcy Court or the Post-Confirmation Debtor, and any such re-Filed or amended Claim shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

H. CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

1. Conditions Precedent to Confirmation

It shall be conditions precedent to Confirmation of the Plan that:

- (a) The Court has approved the Disclosure Statement;
- (b) all provisions, terms, and conditions of the Plan are approved in the Confirmation Order; and
- (c) the Bankruptcy Court has entered a Final Order approving the Sale; and
- (d) the Debtor has executed one or more contracts for the Sale with a successful bidder or purchaser which will enable the Post-Confirmation Debtor to have sufficient Cash to make the payments on the Effective Date required by the Plan.

2. Conditions Precedent to Consummation

It shall be a condition to Consummation of the Plan and occurrence of the Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of the Plan that:

- (a) the Confirmation Order shall have been entered and become a Final Order in form and substance satisfactory to the Debtor;
- (b) all documents and agreements necessary to implement the Plan shall have (a) been tendered for delivery, and (b) executed;
- (c) all actions, documents, certificates and agreements necessary to implement this Plan shall have been executed and delivered to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws;
- (d) the Debtor shall have executed and delivered any and all necessary documents to the successful bidder or purchaser of the Real Property sufficient to effectuate the Sale;



- (e) the Sale shall have been conducted with a successful bidder or purchaser which will enable the Post-Confirmation Debtor to have sufficient Cash to make the payments on the Effective Date required by the Plan; and
- (f) the Sale shall have closed such that the proceeds have been transferred to the Post-Confirmation Debtor and are available for distribution pursuant to the terms of the Plan.

### 3. Waiver of Conditions

The conditions precedent to Confirmation of the Plan and to Consummation of the Plan set forth in the Plan may be waived by the Debtor or Post-Confirmation Debtor without notice, leave or order of the Bankruptcy Court or any formal action other than by proceeding to confirm or consummate the Plan.

### 4. Effect of Non-Occurrence of Conditions to Consummation

If the Consummation of the Plan does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by or Claims against the Debtor; (2) prejudice in any manner the rights of the Debtor, any Holders, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any Holders or any other Entity in any respect.

## I. SETTLEMENT, INJUNCTION AND RELATED PROVISIONS

### 1. Compromise and Settlement

Notwithstanding anything contained in the Plan to the contrary, the allowance, classification and treatment of all Allowed Claims and their respective distributions and treatments hereunder takes into account and conforms to the relative priority and rights of the Claims and the Equity Interests in each Class in connection with any contractual, legal and equitable subordination rights relating thereto whether arising under general principles of equitable subordination, Bankruptcy Code §§510(b) and 510(c) or otherwise. As of the Effective Date, any and all such rights described in the preceding sentence are settled, compromised and released pursuant hereto. The Confirmation Order will constitute the Bankruptcy Court's finding and determination that the settlements reflected in the Plan are (1) in the best interests of the Debtor, its Estate, and all Holders of Claims, (2) fair, equitable and reasonable, (3) made in good faith, and (4) approved by the Bankruptcy Court pursuant to Bankruptcy Code §363 and Bankruptcy Rule 9019.

In accordance with the provisions of this Plan, and pursuant to Bankruptcy Code §363 and Bankruptcy Rule 9019, without any further notice to or action, order or approval of the Bankruptcy Court, after the Effective Date (1) the Post-Confirmation Debtor may, in its sole and absolute discretion, compromise and settle Claims against the Debtor, and (2) the Post-Confirmation Debtor may, in its respective sole and absolute discretion, compromise and settle Causes of Action against other Entities.

2. No Discharge in Favor of the Debtor

PURSUANT TO BANKRUPTCY CODE §1141(d)(3), CONFIRMATION OF THE PLAN WILL NOT DISCHARGE CLAIMS AGAINST THE DEBTOR; PROVIDED, HOWEVER, THAT NO HOLDER OF A CLAIM AGAINST THE DEBTOR MAY, ON ACCOUNT OF SUCH CLAIM, SEEK OR RECEIVE ANY PAYMENT OR OTHER DISTRIBUTION FROM, OR SEEK RECOURSE AGAINST PROPERTY OF THE DEBTOR'S ESTATE, EXCEPT AS EXPRESSLY PROVIDED IN THE PLAN.

3. Exculpation

TO THE EXTENT PERMISSIBLE, THOSE PERSONS AND ENTITIES IDENTIFIED IN BANKRUPTCY CODE §1125(e), SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ACTS BEFORE THE EFFECTIVE DATE TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH, OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING OR EFFECTING THE CONSUMMATION OF THE PLAN, THE DISCLOSURE STATEMENT, OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THE PLAN, OR ANY ACT BEFORE THE EFFECTIVE DATE TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR IN CONTEMPLATION OF THE RESTRUCTURING OR LIQUIDATION OF THE DEBTOR; PROVIDED, HOWEVER, THAT THE FOREGOING "EXCULPATION" SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY PERSON OR ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE RESULTED FROM SUCH PERSON'S OR ENTITY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF FIDUCIARY DUTY, CRIMINAL CONDUCT, ULTRA VIRES ACTIONS, OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION THAT CAUSES DAMAGES, AND, IN ALL RESPECTS, THE DEBTOR SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL WITH RESPECT TO THEIR DUTIES AND RESPONSIBILITIES UNDER THE PLAN.

NOTHING IN THE PLAN OR THE CONFIRMATION ORDER SHALL ENJOIN THE UNITED STATES GOVERNMENT OR ANY OF ITS AGENCIES OR ANY STATE AND LOCAL AUTHORITY, FROM BRINGING ANY CLAIM, SUIT, ACTION OR OTHER PROCEEDINGS (WHETHER DIRECTLY, INDIRECTLY, DERIVATIVELY OR OTHERWISE) AGAINST THE DEBTOR, OR ANY OF THE DEBTOR'S OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, ATTORNEYS, ADVISORS, AGENTS, REPRESENTATIVES AND ASSIGNS, OR THE DEBTOR'S PROPERTY, FOR ANY LIABILITY, INCLUDING UNDER THE INTERNAL REVENUE CODE, THE ENVIRONMENTAL LAWS (OR ANY CRIMINAL LAWS) OF THE UNITED STATES OR ANY STATE OR LOCAL AUTHORITY. IN ADDITION, THE INJUNCTION PROVIDED FOR IN THE PLAN SHALL NOT RELEASE ANY ATTORNEY FROM ANY OBLIGATIONS OWED UNDER RULE 1.8(h) OF THE NEW YORK STATE RULES OF PROFESSIONAL CONDUCT.

4. Preservation of Rights of Action/Reservation of Rights

(a) Maintenance of Causes of Action

Except as otherwise provided in the Plan or Confirmation Order, including the exculpation provisions thereof, after the Effective Date, the Post-Confirmation Debtor shall retain all rights to and shall have standing to commence, pursue, litigate or settle, as

appropriate, any and all Causes of Action, whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including in an adversary proceeding Filed in the Chapter 11 Case.

The Post-Confirmation Debtor may, in its sole discretion, elect not to pursue any Causes of Action that the Post-Confirmation Debtor otherwise has authority to pursue hereunder, the pursuit of which the Post-Confirmation Debtor deems not to be in the best interest of the Estate.

Except as specifically provided in the Plan or Confirmation Order, including the exculpation provisions thereof, nothing contained herein or in the Confirmation Order shall be deemed to be a waiver or relinquishment of any claim, Cause of Action, right of setoff, or other legal or equitable defense that the Debtor or its Estate had immediately prior to the Petition Date, against or with respect to any Claim whether impaired or left unimpaired by the Plan. Except as specifically provided in the Plan or Confirmation Order, including the exculpation provisions thereof, the Post-Confirmation Debtor shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff, or other legal or equitable defenses which Debtor had immediately prior to the Petition Date fully as if the Chapter 11 Case had not been commenced, and all legal and equitable rights of the Debtor respecting any Claim whether impaired or left unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Case had not been commenced.

Except as specifically provided in the Plan or Confirmation Order, including the exculpation provisions thereof, any claims, rights, or Causes of Action that the Debtor may hold against any Entity shall vest in the Post-Confirmation Debtor on the Effective Date and the Post-Confirmation Debtor shall have the exclusive right and authority to institute, prosecute, abandon, settle or compromise any and all such claims, rights and Causes of Action, and the Post-Confirmation Debtor shall not require the consent or approval of any party or any further order of the Bankruptcy Court to settle or resolve any claims, rights and Causes of Action.

(b) Preservation of All Causes of Action Not Expressly Sold, Settled, or Released

Unless a claim or Cause of Action against a Holder of a Claim or an Equity Interest or other Entity is expressly waived, abandoned, relinquished, released, compromised, assigned, or settled in the Plan or any Final Order (including the Confirmation Order), including the exculpation provisions thereof, the Debtor expressly reserves such claim or Cause of Action for later action by the Post-Confirmation Debtor (including claims and Causes of Action of which the Debtor may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtor at this time or facts or circumstances that may change or be different from those the Debtor now believe to exist) and, therefore, no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such claims or Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except where such claims or Causes of Action have been expressly released in the Plan, or any other Final Order (including the Confirmation Order), including the exculpation provisions thereof. In addition, the Debtor or the Post-Confirmation Debtor, as the case may be, reserve the right to pursue or adopt any claims alleged in any lawsuit in which the Debtor is a plaintiff, defendant, or an interested party, against any Entity, including the plaintiffs or co-defendants in such lawsuits except where such claims or Causes of Action have been released in the Plan or any other Final Order (including the Confirmation Order).

5. Preservation of Insurance.

Nothing in the Plan shall diminish or impair the enforceability of any policies of insurance that may cover claims or causes of action against the Debtor, any other Entity, or any other Person.

6. Injunction

EXCEPT AS OTHERWISE PROVIDED IN THE PLAN, ALL ENTITIES WHO HAVE HELD, HOLD OR MAY HOLD CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION, OR LIABILITIES AGAINST THE DEBTOR OR THE REAL PROPERTY ARE PERMANENTLY ENJOINED AND PRECLUDED, FROM AND AFTER THE EFFECTIVE DATE, FROM: (A) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE PURCHASER OF THE REAL PROPERTY, THE REAL PROPERTY, AND ANY ENTITY ENTITLED TO EXCULPATION UNDER THIS PLAN, ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES OF THE DEBTOR; (B) ENFORCING, ATTACHING, COLLECTING OR RECOVERING BY ANY MANNER OR MEANS ANY JUDGMENT, AWARD, DECREE OR ORDER AGAINST THE PURCHASER OF THE REAL PROPERTY, THE REAL PROPERTY, AND ANY ENTITY ENTITLED TO EXCULPATION ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES OF THE DEBTOR; (C) CREATING, PERFECTING OR ENFORCING ANY LIEN, CLAIM OR ENCUMBRANCE OF ANY KIND AGAINST THE PURCHASER OF THE REAL PROPERTY, THE REAL PROPERTY, AND ANY ENTITY ENTITLED TO EXCULPATION ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES OF THE DEBTOR; AND (D) ASSERTING ANY RIGHT OF SETOFF, SUBROGATION OR RECOUPMENT OF ANY KIND AGAINST THE PURCHASER OF THE REAL PROPERTY, THE REAL PROPERTY, AND ANY ENTITY ENTITLED TO EXCULPATION ON ACCOUNT OF OR IN CONNECTION WITH OR WITH RESPECT TO ANY SUCH CLAIMS, EQUITY INTERESTS, CAUSES OF ACTION OR LIABILITIES, UNLESS SUCH HOLDER HAS FILED A MOTION REQUESTING THE RIGHT TO PERFORM SUCH SETOFF ON OR BEFORE THE CONFIRMATION DATE, AND NOTWITHSTANDING ANY INDICATION IN A PROOF OF CLAIM OR INTEREST OR OTHERWISE THAT SUCH HOLDER ASSERTS, HAS OR INTENDS TO PRESERVE ANY RIGHT OF SETOFF PURSUANT TO BANKRUPTCY CODE §553 OR OTHERWISE.

J. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, to the extent legally permissible, the Bankruptcy Court shall, after the Effective Date, retain such jurisdiction over the Chapter 11 Case and all Entities with respect to all matters related to the Chapter 11 Case, the Debtor and the Plan, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the allowance or priority of any Claim;

2. grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;

3. resolve any matters related to the assumption, assignment or rejection of any Executory Contract or Unexpired Lease to which the Debtor is party or with respect to which the Debtor may be liable, and to adjudicate and, if necessary, liquidate, any Claims arising under any Executory Contract or Unexpired Lease;

4. resolve any issues related to any matters adjudicated in the Chapter 11 Case;

5. resolve any issues related to any order entered by the Bankruptcy Court in the Chapter 11 Case;

6. ensure that distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of the Plan;

7. decide or resolve any motions, adversary proceedings, contested or litigated matters and any other Causes of Action that are pending as of the Effective Date or that may be commenced in the future, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or instituted by the Post-Confirmation Debtor after the Effective Date; provided that the Post-Confirmation Debtor shall reserve the right to commence actions in all appropriate forums and jurisdictions;

8. enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all other contracts, instruments, and other agreements or documents adopted in connection with the Plan, the Sale, or the Disclosure Statement;

9. resolve any cases, controversies, suits or disputes that may arise in connection with the Consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan or the Sale;

10. issue injunctions and enforce them, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan, except as otherwise provided in the Plan;

11. enforce the exculpations and injunctions contained in this Plan;

12. resolve any cases, controversies, suits or disputes with respect to any injunction, exculpation or other provisions contained in this Plan, and enter such orders or take such others actions as may be necessary or appropriate to implement or enforce all such provisions;

13. enter and implement such orders or take such others actions as may be necessary or appropriate if the Confirmation Order is modified, stayed, reversed, revoked or vacated;

14. resolve any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, the Sale, or any contract, instrument, release or other agreement or document adopted in connection with the Plan, the Disclosure Statement, or the Sale; and

15. enter an order closing the Chapter 11 Case.

K. MISCELLANEOUS PROVISIONS

1. Payment of Statutory Fees

All fees and any applicable interest payable pursuant to 28 U.S.C. § 1930(a)(6) shall be paid on the Effective Date of the Plan. Thereafter, all fees, and any applicable interest, payable pursuant to 28 U.S.C. § 1930 after the Effective Date shall be paid prior to the closing of the Chapter 11 Case when due or as soon thereafter as practicable.

2. Quarterly Reports

The Debtor, or the Post-Confirmation Debtor, shall file quarterly reports after the Confirmation Date and provide copies to the U.S. Trustee, and schedule post-confirmation status conferences with the Court which shall be held subject to order of the Court.

3. Modification of Plan

Effective as of the date hereof and subject to the limitations and rights contained in the Plan: (a) the Debtor reserves the right, in accordance with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify the Plan prior to the entry of the Confirmation Order; and (b) after the entry of the Confirmation Order, the Debtor or Post-Confirmation Debtor, as applicable, may, upon order of the Bankruptcy Court, amend or modify the Plan, in accordance with Bankruptcy Code §1127(b) or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

4. Revocation of Plan

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to File subsequent chapter 11 plans. If the Debtor revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan and any document or agreement executed pursuant hereto shall be deemed null and void except as may be set forth in a separate order entered by the Bankruptcy Court; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, such Debtor or any other Entity; (b) prejudice in any manner the rights of the Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor, or any other Entity.

5. Successors and Assigns

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



6. Reservation of Rights

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order, and the Confirmation Order becomes a Final Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by the Debtor or any other Entity with respect to the Plan shall be or shall be deemed to be an admission or waiver of any rights of: (1) the Debtor with respect to the Holders of Claims or Equity Interests or other Entity; or (2) any Holder of a Claim or an Equity Interest or other Entity prior to the Effective Date.

7. Further Assurances

The Debtor or the Post-Confirmation Debtor, as applicable, all Holders of Claims receiving distributions hereunder and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

8. Severability

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court, or any other court with jurisdiction over the Chapter 11 Case, to be invalid, void or unenforceable, the Bankruptcy Court, or any other court with jurisdiction over the Chapter 11 Case, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision then will be applicable as altered or interpreted, provided that any such alteration or interpretation must be in form and substance acceptable to the Debtor; provided further that the Debtor may seek an expedited hearing before the Bankruptcy Court, or any other court with jurisdiction over the Chapter 11 Case, to address any objection to any such alteration or interpretation of the foregoing. Notwithstanding any such order by the Bankruptcy Court, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

9. Service of Documents

Any pleading, notice or other document required by the Plan to be served on or delivered shall be sent to:

The Debtor

FORCHELLI DEEGAN TERRANA LLP  
333 Earle Ovington Boulevard  
Suite 1010  
Uniondale, New York 11553  
Attn: Gerard R. Luckman

gluckman@forchellilaw.com

United States Trustee for Region 2

Office of the United States Trustee  
Alfonse D'Amato Federal Courthouse  
560 Federal Plaza  
Central Islip, New York 11722  
Attn: Alfred M. Dimino, Esq.

**IV. PROCEDURES**

A. RECORD DATE

The Record Date is \_\_\_\_\_, 2018, the date on which the Bankruptcy Court entered the Disclosure Statement Order. The Record Date is the date on which the following will be determined: (a) which Holders of Claims are entitled to accept or reject the Plan and receive the Solicitation Package; and (b) whether Claims have been properly assigned or transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can act as the Holder of a Claim.

B. SOLICITATION PROCEDURES – NOTICE OF HEARINGS

1. Solicitation Package

The following documents and materials will constitute the Solicitation Package:

- (a) the Disclosure Statement Order;
- (b) the approved form of the Disclosure Statement (together with the Plan, which is Exhibit "A" thereto); and
- (c) such other materials as the Bankruptcy Court may direct.

2. Distribution of the Solicitation Package

The Solicitation Package will be distributed to Holders of Claims in each Class as of the Record Date.

**V. CONFIRMATION PROCEDURES**

A. CONFIRMATION HEARING

The Confirmation Hearing will commence on \_\_\_\_\_, 2018 at \_\_\_\_\_ a.m. (prevailing E.S.T.).

The Objection Deadline is \_\_\_\_\_, 2018, at 4:00 p.m.



All objections to the Plan must be filed with the Bankruptcy Court and served on the Debtor and certain other parties in accordance with the Disclosure Statement Order on or before the Objection Deadline.

The Debtor's proposed schedule will provide Entities sufficient notice of the Objection Deadline, which will be at least 28 days as required by Bankruptcy Rule 2002(b), plus three (3) days for service by first class mail, as required by the Bankruptcy Rule 9006(f). The Debtor believes that the Objection Deadline will afford the Bankruptcy Court, the Debtor and other parties in interest reasonable time to consider the Objection prior to the Confirmation Hearing.

THE BANKRUPTCY COURT WILL NOT CONSIDER OBJECTIONS TO THE DISCLOSURE STATEMENT OR THE PLAN UNLESS THEY ARE TIMELY-SERVED AND FILED IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER.

Objections must be served on all of the following parties:

The Debtor

FORCHELLI DEEGAN TERRANA LLP  
333 Earle Ovington Boulevard  
Suite 1010  
Uniondale, New York 11553  
Attn: Gerard R. Luckman  
gluckman@forchellilaw.com

United States Trustee for Region 2

Office of the United States Trustee  
Alfonse D'Amato Federal Courthouse  
560 Federal Plaza  
Central Islip, New York 11722  
Attn: Alfred M. Dimino, Esq.

B. STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Disclosure Statement satisfies Bankruptcy Code §1125 and whether the Plan satisfies the requirements of Bankruptcy Code §1129. The Debtor believes that: (1) the Disclosure Statement and the Plan satisfy all of the necessary statutory requirements of chapter 11 of the Bankruptcy Code; (2) the Debtor has complied or will have complied with all of the necessary requirements of chapter 11 of the Bankruptcy Code; and (3) the Plan has been proposed in good faith. Specifically, in addition to others, as applicable, the Debtor believes that the Plan satisfies or will satisfy the applicable Confirmation requirements of Bankruptcy Code §1129 as set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor, as the Plan proponent, will have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.

- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of an Impaired Claim has accepted the Plan or will receive or retain under the Plan on account of such Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtor were liquidated on that date under chapter 7 of the Bankruptcy Code, including pursuant to Bankruptcy Code §1129(b) for Equity Interests deemed to reject the Plan.
- Each Class of Claims that is entitled to vote on the Plan has either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of such Class pursuant to Bankruptcy Code §1129(b).
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Claims and Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- All fees of the type described in 28 U.S.C. § 1930, including the fees of the United States Trustee, will be paid as of the Effective Date.

1. Best Interests of Creditors Test/Liquidation Analysis

Pursuant to Bankruptcy Code §1129(a)(7), for a plan to be confirmed, it must provide that holders of claims or equity interests will receive at least as much under a plan as they would receive in a liquidation of the debtor under chapter 7 of the Bankruptcy Code (the “Best Interest Test”). The Debtor expects that the Sale will yield funds sufficient to pay creditors in full with applicable interest. Accordingly, the Best Interest Test is satisfied.

2. Feasibility

Bankruptcy Code §1129(a)(11) requires the Bankruptcy Court to find, as a condition to confirmation, that confirmation is not likely to be followed by the debtor’s liquidation or the need for further financial reorganization, unless that liquidation or reorganization is contemplated by the Plan. The Plan contemplates that all proceeds of the Sale will be distributed to the creditors of the Debtor pursuant to the terms of the Plan. Since no further reorganization of the Debtor will be possible, the Debtor believes that the Plan meets the financial feasibility requirement.

3. Acceptance by Impaired Classes

The Bankruptcy Code requires, as a condition to confirmation, that, except as described in the following section, each class of claims or equity interests that is impaired under a plan, accept the plan. A class that is not “impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is “impaired” unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the equity interest entitles the holder of such claim or equity interest;

or (b) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such claim or equity interest entitles the holder of such claim or equity interest.

Bankruptcy Code §1126(c) defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of allowed claims in that class, counting only those claims that actually voted to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance. For a class of impaired equity interests to accept a plan, Bankruptcy Code §1126(d) requires acceptance by equity interest holders that hold at least two-thirds in amount of the allowed equity interests of such class, counting only those equity interests that actually voted to accept or reject the plan. Thus, a class of equity interests will have voted to accept the plan only if two-thirds in amount actually voting cast their ballots in favor of acceptance.

Claims in Classes 1, 2, 3, and 4 are Unimpaired under the Plan, and, as a result, the Holders of such Claims are deemed to have accepted the Plan and their votes will not be solicited.

#### C. CONTACT FOR MORE INFORMATION

Any interested party desiring further information about the Plan should contact counsel to the Debtor, Forchelli Deegan Terrana LLP, 333 Earle Ovington Boulevard, Suite 1010, Uniondale, New York 11553, Attn: Gerard R. Luckman, Tel: (516) 248-1700.

### **VI. PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

#### A. GENERAL BANKRUPTCY LAW AND PLAN-RELATED CONSIDERATIONS

##### 1. Parties in Interest May Object to the Classification of Claims and Equity Interests

Bankruptcy Code §1122 provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created certain Classes of Claims and Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

##### 2. Debtor May Not Be Able to Secure Confirmation of the Plan or Confirmation May Be Delayed

Bankruptcy Code §1129 sets forth the requirements for confirmation of a chapter 11 plan, and requires, among other things, a finding by the bankruptcy court that the value of distributions to non-accepting holders of claims and equity interests within a particular class under such plan will not be less than the value of distributions such holders would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code.

The debtor believes that the closing of the sale will yield funds sufficient to pay claims in full and there are no impaired creditors entitled to vote on the Plan. Even if the requisite acceptances are deemed received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the statutory requirements for Confirmation had not been met.

The Confirmation and Consummation of the Plan also are subject to certain other conditions. No assurance can be given that these conditions will be satisfied.

3. Debtor May Object to the Amount or Classification of a Claim

Except as otherwise provided in the Plan, the Debtor reserve the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

4. Risk of Non-Occurrence of the Effective Date

Although the Debtor believes that the Effective Date will occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

5. No Legal or Tax Advice Is Provided to You by this Disclosure Statement

This Disclosure Statement is not legal advice to you. The contents of this Disclosure Statement should not be construed as legal, business, or tax advice. Each Holder of a Claim or an Equity Interest should consult his or her own legal counsel and accountant with regard to any legal, tax and other matters concerning his or her Claim or Equity Interest. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to Confirmation of the Plan.

6. No Admissions Made

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtor) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtor, Holders of Allowed Claims or Equity Interest or any other parties in interest.

7. Failure to Identify Litigation Claims or Projected Objections

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR LITIGATION CLAIM OR PROJECTED OBJECTION TO CLAIM IS, OR IS NOT, IDENTIFIED IN THIS DISCLOSURE STATEMENT. MOREOVER, THE DEBTOR OR THE POST-CONFIRMATION DEBTOR, AS APPLICABLE, MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE LITIGATION CLAIMS AND PROJECTED OBJECTIONS TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS.

8. No Waiver of Right to Object or Right to Recover Transfers and Assets

The vote by a Holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Debtor or the Post-Confirmation Debtor to object to that Holder's Allowed Claim, or recover any preferential, fraudulent or other voidable transfer or assets, regardless of whether any Claims or Causes of Action of the Debtor or its Estate are specifically or generally identified herein.

B. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

As set forth above, if the Plan is not confirmed, the Debtor's Chapter 11 Case could be converted to a liquidation case under chapter 7 of the Bankruptcy Code. Alternatively, the Debtor, or other parties in interest may seek confirmation of an alternative plan of reorganization under chapter 11 of the Bankruptcy Code. In chapter 7, a trustee would be appointed to promptly liquidate the assets of the Debtor.

The Debtor believes that in a liquidation under chapter 7, before creditors received any distributions, additional administrative expenses involved in the appointment of a trustee and attorneys, accountants, and other professionals to assist such trustee, along with an increase in expenses associated with an increase in the number of unsecured claims that would be expected, would cause a substantial diminution in the value of the Estate. The assets available for distribution to creditors and equity holders would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, which would arise by reason of the liquidation. A more thorough discussion of the effects that chapter 7 liquidation would have on the recoveries of Holders of Claims is set forth above in Article VI.

**VII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

THE DEBTOR AND ITS PROFESSIONALS ARE NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN, WITH RESPECT TO THE DEBTOR, HOLDERS OF CLAIMS OR HOLDERS OF INTERESTS, NOR ARE THEY RENDERING ANY FORM OF LEGAL OPINION OR TAX ADVICE ON SUCH TAX CONSEQUENCES. THE TAX LAWS APPLICABLE TO CORPORATIONS OR LIMITED LIABILITY COMPANIES IN BANKRUPTCY ARE EXTREMELY COMPLEX, AND HOLDERS OF CLAIMS AND HOLDERS OF INTERESTS ARE STRONGLY URGED TO CONSULT THEIR OWN TAX ADVISORS REGARDING TAX CONSEQUENCES OF THE PLAN, INCLUDING FEDERAL, FOREIGN, STATE AND LOCAL TAX CONSEQUENCES.

**VIII. CONCLUSION AND RECOMMENDATION**

The Debtor believes that confirmation of the Plan is preferable to the alternatives described above because it provides the greatest distributions and opportunity for distributions to Holders of Claims against the Estate. In addition, any alternative to confirmation of the Plan could result in extensive delays and increased administrative expenses.

Accordingly, the Debtor urges all Holders of Claims to support the Plan.

Dated: As of May 29, 2018

Respectfully submitted,

328 HOFFMAN LANE LLC

By: s/Joseph Tuscano  
Managing Member