

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

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In re:

**624 EAST 222nd STREET, LLC  
AKA 624 EAST 222nd REALTY, LLC  
AKA 624 E. 222nd REALTY, LLC**

Debtor.

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Chapter 11  
Case No:  
12-13992-jlg

**DISCLOSURE STATEMENT FOR  
AMENDED PLAN OF LIQUIDATION OF 624 EAST 222<sup>ND</sup> STREET, LLC**

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**Wayne Greenwald, Esq.**

**Dated:** New York, New York  
February 15, 2017

## **DISCLAIMER**

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN FOR PURPOSES OF DISCLOSING THE CONTENTS OF THE PLAN. CREDITORS ARE UNIMPAIRED UNDER THE PLAN ARE DEEMED TO HAVE ACCEPTED THE PLAN. ACCORDINGLY, THE DEBTOR WILL NOT BE SOLICITING ACCEPTANCES OF THE PLAN FROM CREDITORS. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY REPRESENTATIONS OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN.

ALL CREDITORS AND HOLDERS OF EQUITY INTERESTS SHOULD READ THIS DISCLOSURE STATEMENT AND ALL EXHIBITS HERETO, INCLUDING THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN AND THE EXHIBITS ANNEXED TO THE DISCLOSURE STATEMENT AND THE PLAN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED HEREIN. THE TRANSMISSION OF THIS DISCLOSURE STATEMENT SHALL NOT CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION STATED SINCE THE DATE HEREOF. AFTER THE DATE HEREOF, THERE CAN BE NO ASSURANCE THAT (A) THE INFORMATION AND REPRESENTATIONS CONTAINED HEREIN WILL BE MATERIALLY ACCURATE, AND (B) THIS DISCLOSURE STATEMENT CONTAINS ALL MATERIAL INFORMATION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE, AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. THIS DISCLOSURE STATEMENT WAS PREPARED TO PROVIDE HOLDERS OF CLAIMS AGAINST AND EQUITY INTERESTS IN THE DEBTORS WITH "ADEQUATE INFORMATION" (AS DEFINED IN THE BANKRUPTCY CODE) SO THAT THEY CAN MAKE AN INFORMED JUDGMENT ABOUT THE PLAN.

THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, AS A STIPULATION OR AS A WAIVER, BUT, RATHER, AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, OR OTHER LEGAL EFFECTS OF THE LIQUIDATION OR THE PLAN ON HOLDERS OF CLAIMS AGAINST, OR EQUITY INTERESTS IN, THE DEBTOR.

## SUMMARY

The Debtor, **624 East 222<sup>nd</sup> Street, LLC** (the “Debtor”) , filed its *Second Amended Plan of Liquidation of 624 East 222<sup>nd</sup> Street, LLC* dated February 15, 2017 (the “Plan” A copy of the Plan is annexed hereto as Exhibit “A.”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). This *Amended Disclosure Statement for Plan of Liquidation of 624 East 222<sup>nd</sup> Street, LLC* (the “Disclosure Statement”) has been approved by the Bankruptcy Court for use in connection with the solicitation of acceptances of the Plan from holders of Claims against the Debtor pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”). Capitalized terms not defined herein have the same definitions as provided in the Plan.

In the Debtor’s opinion, the treatment of claims and interests under the Plan provides a greater recovery for Creditors and Interest Holders than that which is likely to be achieved under other alternatives for the reorganization or liquidation of the Debtor.

**Accordingly, the Debtor believes that Confirmation of the Plan is in the best interests of Creditors and Interest Holders.**

### **THE DEBTOR**

The Debtor’s primary asset is property located at 624 East 222nd Street, Bronx, New York (the “Property”), which consists of a six-story multiple-dwelling residential building with approximately forty-three (43) rental apartment units.

### **THE PLAN**

The Plan provides for a sale of the Property to Allerton Fund II, LLC. or its designee (the “Purchaser”), subject to higher and better offers under the sale procedures annexed as **Exhibit B** to the Plan. The Debtor has negotiated the Contract of Sale with Allerton, a copy of which is

attached to the Plan as **Exhibit A**. The Plan provides for a 100% recovery to all Holders of Allowed Claims against the Debtor and payment of \$1,360,000 to Holders of Interests.

The Plan complies with section 1129(b) of the Bankruptcy Code, in that the Property will be sold and all Allowed Claims will be paid in full.

The table below provides a summary of the classification and treatment of Claims under the Plan. The figures set forth in the table below represent the best estimate of the aggregate amount of Claims in the Case. These estimates are based on an analysis of the Schedules filed by the Debtor, proofs of claim filed by the bar date and certain other documents of public record. There can be no assurance that Claims will be allowed by the Bankruptcy Court in the amounts set forth below. The aggregate amount of Allowed Claims may be significantly different from the amounts set forth below as the result of objections to claims which may be brought by the Debtor or through stipulations which may be negotiated with various creditors.

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Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
\$0.00 <sup>2</sup>	Administrative Claims (excluding Claims for professional compensation and reimbursement and Administrative Tax Claims, but including post petition ordinary course liabilities)	<b>Non-Voting.</b> Each Allowed Administrative Claim, to the extent not previously paid, shall be paid by the Disbursing Agent in Cash in full by the Disbursing Agent on: (i) the later of (x) the Effective Date, (y) the date payment of such Claim is due under the terms thereof or applicable law, or (z) three business days after such Claim becomes an Allowed Administrative Claim or (ii) as may be otherwise mutually agreed in writing between the Debtor and the Holder of such Claim; <i>provided, however,</i> that any Administrative Claim incurred by the Debtor in the ordinary course of its business shall be paid in full or performed by the Plan Administrator in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim and any agreements relating thereto. <sup>3</sup>
\$ 0.00	Administrative Tax Claims	<b>Non-Voting.</b> All Allowed Administrative Tax Claims held by Governmental Units shall be paid, in Cash by the Disbursing Agent, in full either (I) on or as soon after the Effective Date as practicable, or (ii) upon such other terms as may be agreed to, in writing, between the Debtor and/or Plan Administrator and such Governmental Units on or after the Confirmation Date.
\$100,000	Administrative Claims for	<b>Non-Voting.</b> Each Person seeking an award by the Bankruptcy Court of Professional Fees shall

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<sup>1</sup>Amounts set forth in this chart are not and should not be deemed admissions by the Debtor or the Purchaser as to validity or amount of any scheduled or filed claim. The Debtor reserves all rights to object to any scheduled or filed claim in the Debtor's case.

<sup>2</sup> Debtor's counsel has been advised that the Debtor's previously retained counsel will not be seeking fees in this Case.

<sup>3</sup>The receiver for the Debtor's Property, Dominick Calderoni, Esq., received a State Court order granting him interim commissions of \$117,051.68. The Debtor submitted an order to the Bankruptcy Court for authority for the receiver to receive that payment from funds he collected.

Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
	Professional Compensation and Reimbursement <sup>4</sup>	file its final application for approval of its Professional Fees, but shall provide the Debtor with an estimate of any Professional Fees it might be seeking within three (3) days prior to the hearing on Confirmation. Each Holder of an Allowed Claim for Professional Fees shall receive from the Disbursing Agent, in full satisfaction of such Allowed Claim, Cash in the amount of such Allowed Claim within three days of the entry of a Final Order Allowing such Claim.
\$0.00 <sup>5</sup>	Priority Tax Claims	<b>Non-Voting.</b> In full satisfaction, release and discharge of Priority Tax Claims, and except as may be otherwise mutually agreed in writing between the Debtor and such Governmental Units, all allowed Priority Tax Claims shall be paid by the Plan Administrator in Cash in full, together with interest on the Effective Date or as soon thereafter as practicable.
Class 1 \$0.00	Priority Non-Tax Claims	<b>Unimpaired.</b> In full satisfaction, release and discharge of the Priority Non-Tax Claims, each Holder of an Allowed Priority Non-Tax Claim shall receive, on the Effective Date, or as soon as practicable after each such Claim becomes an Allowed Claim, payment from the Disbursing Agent, (I) in Cash in the full amount of its Priority Non-Tax Claim, or (ii) as may be otherwise agreed in writing between the Debtor and the Holder of such Priority Non-Tax Claim.

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<sup>4</sup> Any agreement with respect to the waiver and/or modification of fees will be disclosed to the Court and the Office of the United States Trustee.

<sup>5</sup> Amount based upon Schedules.

Class and Estimated Amount <sup>1</sup>	Type of Claim or Equity Interest	Summary of Treatment
Class 2 \$3,898,791 <sup>6</sup>	Allerton Secured Claim	<b>Unimpaired</b> If Allerton or its designee or its designee is not the Purchaser, in full satisfaction, release and discharge of the Allerton Secured Claim, Allerton shall receive from the Disbursing Agent at the Closing, Cash, in the full amount of the Allerton Secured Claim. If Allerton or its designee or its designee is the Purchaser, in full satisfaction, release and discharge of the Allerton Secured Claim, Allerton or its designee may receive credit at closing toward the purchase price of the Property, in the amount of the Allerton Secured Claim

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<sup>6</sup> As of March 31, 2017 plus \$680 per day thereafter.

<p>Class 3 Estimated: \$197,812<sup>7</sup></p>	<p>Other Secured Claims</p>	<p><b>Unimpaired.</b> In full satisfaction, release and discharge of each Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive from the Disbursing Agent at the Closing, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (I) Cash, in the full amount of the Allowed Secured Claim, or (ii) such other treatment as to which the Debtor and/or Plan Administrator and each Holder of such Other Secured Claim shall have agreed upon in writing.</p>
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<sup>7</sup> Amount based upon Schedules and claims filed.



Class 4 \$118,288 <sup>7</sup>	Unsecured Claims	<b>Unimpaired. I,</b> in full satisfaction, settlement, release and discharge of the Class 4 Unsecured Claims, the Holders of each Allowed Class 4 Unsecured Claims against the Debtor shall receive, on the Effective Date or as soon thereafter as practicable, Cash equal to 100% of their Allowed Unsecured Claim, with interest at the federal judgment rate, from the Disbursing Agent.
Class 5	Allowed Interests	<b>Unimpaired.</b> After all Holders of Allowed Claims of Classes 1 through 4 are paid in full, or provision is made for payment of Disputed Claims, the Interest Holders shall receive \$1.36 million. plus all Sale Proceeds above the Stalking Horse Bid no earlier than the Effective Date. This anticipated distribution is based on funds expected to remain after all Allowed Claims are paid in full. The amount to be paid ultimately depends on the amount of that remainder.

**CONFIRMATION OF THE PLAN**

Pursuant to section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan, on \_\_\_\_\_, 2017 at :00 .m., Eastern Standard Time, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004. The Bankruptcy Court has directed that objections, if any, to Confirmation of the Plan be filed and served on or before \_\_\_\_\_, 2017 at 5:00 p.m., in the manner described under “ACCEPTANCE AND CONFIRMATION -- Confirmation Hearing.”

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. The Debtor intends to seek

Confirmation of the Plan at the Confirmation Hearing. **The Debtor believes that the Plan satisfies all applicable requirements of section 1129(a) and section 1129(b) of the Bankruptcy Code.** See “ACCEPTANCE AND CONFIRMATION -- Requirements for Confirmation” for a description of such requirements.

Upon the entry of the Confirmation Order, pursuant to section Bankruptcy Code, § 1141(d), except as otherwise provided in the Plan, the distributions provided for in the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims against the Debtor or any of its assets or properties, including any Claim accruing after the Petition Date and before the Confirmation Date. As of the Closing, all holders of Claims shall be precluded from asserting any Claim against the Debtor or its assets or properties 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. Confirmation makes the Plan binding upon the Debtor, all Creditors and other parties regardless of whether they have accepted the Plan.

**NOTICE TO HOLDERS OF CLAIMS AND INTERESTS**

This Disclosure Statement and the accompanying notification of non-voting status are being furnished to the Debtor’s known Creditors and Interest Holders pursuant to section 1125(b) of the Bankruptcy Code. A copy of the Plan is included in this package and is incorporated herein by reference.

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED BY THE DEBTOR. THE STATEMENTS AND OPINIONS SET FORTH HEREIN ARE THOSE OF THE DEBTOR, AND NO OTHER PARTY HAS ANY RESPONSIBILITY WITH**

**RESPECT THERETO.**

**THIS DISCLOSURE STATEMENT CONTAINS IMPORTANT INFORMATION THAT MAY BEAR UPON YOUR DECISION TO ACCEPT OR REJECT THE PLAN PROPOSED BY THE DEBTOR. PLEASE READ THIS DOCUMENT WITH CARE.**

**THE PLAN HAS NOT BEEN APPROVED OR DISAPPROVED BY ANY BANKRUPTCY COURT, THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE FAIRNESS OR MERITS OF THE PLAN OR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

The historical information concerning the Debtor has been prepared using the Debtor's books and records and filings made with the Bankruptcy Court. The estimates of Claims set forth herein may vary from the final amounts of Claims allowed by the Bankruptcy Court. Every effort has been made to ensure the accuracy of all such information, except as noted in the Disclosure Statement. Nevertheless, the information presented here is unaudited and has not been examined, reviewed or compiled by the Debtor.

This Disclosure Statement contains a summary of some of the Plan's terms and contemplated transaction and may contain descriptions of other related documents, if any. The Debtor believes that these summaries are fair and accurate. Still, they are summaries which do not set forth the entire text of such documents. Reference is made to the Plan and the

documents referred to herein and therein, if any, 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 future business operations, results of operations or financial condition, are authorized by the Debtor other than as set forth in this Disclosure Statement, the Plan and the exhibits hereto. The Debtor recommends reading the Plan for a complete understanding of its provisions.

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 Holders of Claims and Interests to make an informed decision about the Plan. Each holder of a Claim and Interest should review this Disclosure Statement, the Plan and all exhibits hereto. Holders of Claims and Interests are urged to consult with their own legal and financial advisors.

No solicitation of votes to accept or reject the Plan may be made except pursuant to this Disclosure Statement and section 1125 of the Bankruptcy Code. No Person has been authorized to use or promulgate any information concerning the Debtor or its business 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 its business or the Plan other than that contained in this Disclosure Statement and the exhibits hereto.

### **RECOMMENDATION**

In the Debtor's opinion, the treatment of Creditors and Interests under the Plan provides a greater recovery than is likely to be achieved under any other alternatives, including liquidation under Chapter 7. See "ALTERNATIVES TO THE PLAN." In particular, the Debtor believes that in a Chapter 7 liquidation, administrative costs will be greater, the purchase price for the Property would be lower, and only the Debtor's Secured Creditors would recover on account of their Claims in a chapter 7 liquidation. In that event, only Secured Creditors would receive a recovery, the Unsecured Creditors and Interest Holders will not receive any distribution on account of their Claims and Interests. Further, the Debtor believes that the value of any distribution in a chapter 7 liquidation case will be discounted by the litigation and delays which will precede any such distribution.

**THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF CREDITORS AND INTEREST HOLDERS AND URGES EACH CREDITOR TO SUPPORT THE PLAN.**

### **EVENTS LEADING TO CHAPTER 11**

The Debtor's primary asset is real property located at 624 East 222nd Street, Bronx, New York, which consists of a six-story multiple-dwelling residential building with approximately forty-three (43) rental apartment units (the "Property").

More than ten (10) years ago, the Debtor executed an Amended, Restated and Consolidated Modification and Extension Agreement, dated August 7, 2003, together with certain Promissory Notes consolidated therein, and Assignment of Rents (collectively, the "Loan Documents"), for purposes of borrowing the principal amount of \$1,600,000.00 (the "Loan") from Dime Savings Bank of Williamsburg ("Dime").

Pursuant to the Loan Documents, the Debtor pledged its Property as collateral to secure, among other things, payments which would be due to Dime over the course of the Loan (the “Mortgage”). Additionally, to further secure the Debtor’s obligations to Dime, the Debtor executed an Assignment of Rents and Leases (the “Assignment of Rents”) wherein the Debtor absolutely assigned to Dime all of its rights, title and interest in and to all leases and rents related to the Property.

The Dime assigned the Mortgage and the Assignment of Rents to Allerton by an Assignment of Mortgage dated March 14, 2008. As a result, Allerton held, and continues to hold, a valid, perfected, first priority mortgage and security interest on the Property, and its rents.

In 2008, the Debtor defaulted on its obligations to Allerton. As a result of the Debtor’s default, Allerton commenced an action by filing a Summons and Verified Complaint in the Supreme Court of New York, Bronx County (the “Foreclosure Action”) against the Debtor. Initially, the Foreclosure Action was acrimonious. Allerton believed that the Debtor was diverting rents from the Property. Therefore, during the Foreclosure Action, Allerton sought and obtained the appointment of a receiver, Dominick Calderoni (the “Receiver”), to preserve and protect the Property.

The Receiver, obtained authority to hire a management company, DJA Management Corp. (“DJA”), to assist him with operating the Property. Gary S. Basso, Esq. was appointed as referee (the “Referee”) to, among other things, liquidate the Property. The Receiver, through DJA, had been managing and operating the Property since 2010.

On April 14, 2011, the Referee, filed his report with the state court determining that the amount then due to Allerton was \$2,299,046, with default interest and related charges continuing to accrue, as provided in the Loan Documents. Approximately one year later, on March 20, 2012,

after a period of further litigation between the parties, a Judgment of Foreclosure was entered by the state court (the “Foreclosure Judgment”). Among other things, the Foreclosure Judgment affirmed the amount due Allerton, and set the Property up for public auction.

Three (3) days before the last scheduled sale date, of September 24, 2012, the Debtor commenced this case.

### **SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE**

#### **RECEIVER MOTION**

On November 12, 2012, the Debtor issued a letter to the Receiver for “turnover” of the Property and rents to the Debtor, and copied Allerton thereon. Two (2) days after receiving the letter, on November 14, 2012, Allerton filed a motion seeking an order authorizing the Receiver to maintain possession and control of the Debtor’s assets, pursuant to section 543 of the Bankruptcy Code (the “543 Motion”). The primary purpose of 543 Motion was to excuse the Receiver from giving up control up of the Property to the Debtor for several reasons, including, but not limited to Allerton’s belief that (I) the Debtor’s representative Deanne Rodney (“Rodney”), had no experience managing commercial real estate (she inherited the Property from her father) Therefore she could not adequately manage the Property, (ii) the Debtor disregarded its fiduciary duties by, deliberately failing to turn over books and records to the Receiver, and purposely failing to turn over rents to the Receiver despite the existence of state court order(s) requiring turnover, and (iii) in filing a chapter 11 proceeding immediately prior to a foreclosure sale, the Debtor was acting in “bad faith,” an attempt to restructure its operations in the face of what was essentially a two-party dispute.

The Debtor stipulated to the relief sought by Allerton and agreed to allow the Receiver, and DJA, to continue to manage the Property throughout the chapter 11 process. Since that time, the Receiver has managed the Property, and has filed the monthly operating reports, which provide necessary disclosure regarding the operations of the Property.

#### **PRIOR ATTEMPTS TO SELL THE PROPERTY**

Approximately six (6) months after the Debtor's filing, Allerton believed that the Debtor had made no meaningful progress toward proposing a viable Plan or reorganization. Therefore, on March 7, 2013, Allerton filed its first Liquidating Plan and Disclosure Statement. Shortly thereafter, on April 19, 2013, in response to certain requested modifications and clarifications by the United States Trustee, Allerton filed a First Amended Disclosure Statement and First Amended Liquidating Plan. Both Plans sought approval of a sale of the Property to Allerton in exchange for payment in full to all creditors, and a release/waiver of Allerton's claim(s) against the Debtor.

Possibly in response to Allerton's Plan, the Debtor, on July 1, 2013, filed a motion seeking approval of a sale of the Property to Steven Finkelstein (the "Interested Buyer") for an aggregate price of \$3,800,000.00 (the "Sale Motion").

The Bankruptcy Court denied the Sale Motion, agreeing with Allerton, which had objected to the sale (docket no. 48), raising, among other things, a plethora of problematic issues, including that (i) a sale for 3,800,000.00, after payment of broker fees in the approximate amount of \$160,000.00 and significant transfer taxes, would not necessarily pay all creditors in full, (ii) the Sale Motion was procedurally deficient and did not contain adequate notice, (iii) the sale was not subject to any higher or better offers, (iv) the contingencies and closing date of the potential sale were unclear, (v) the existence of an excessive stalking horse fee to the buyer, and (vi) there were several other concerns relating to disclosure.

The Bankruptcy Court also agreed with Allerton that the better way to sell the Property was pursuant to a Plan and Disclosure Statement, instead of using motion practice. The Bankruptcy Court later instructed Allerton to re-work its Amended Plan to incorporate a set of sale bidding and noticing procedures therein, and to seek input on those procedures from the Interested Buyer.



At the Court's urging, and after consultation with the Debtor, on October 22, 2013, Allerton filed a Second Amended Joint Plan and Disclosure Statement with the Debtor (the "Joint Plan"). The Joint Plan provided for an orderly liquidation of the Property through a set of sale and bidding procedures. The Joint Plan also supposedly incorporated the terms of an agreement between the Debtor and Allerton as to the amount of Allerton's claim. The Debtor had listed Allerton's claims as "disputed," but had apparently never been able to articulate the basis of any real dispute. Under the Joint Plan, however, the Debtor withdrew its dispute and agreed to the amount of Allerton's claims. This was necessary to help establish the bidding procedures, including a possible partial credit bid from Allerton.

On January 28, 2014, Allerton filed a supplement to the Joint Plan and Disclosure Statement with a finalized set of bidding procedures (approved by both the Debtor and the Interested Buyer), pursuant to which Allerton acted as a "stalking horse" buyer at a purchase price of \$3,610,000.00, which consisted of a partial credit bid (the "Allerton Bid"). Under the Plan, Allerton deemed its bid the highest and best offer.

In or about December 2013, the Debtor announced it was retaining new counsel. At around the same time, Allerton was advised that the Debtor was considering withdrawing its support for the proposed Joint Plan, and approval of the Joint Plan was delayed, pending retention of new counsel for the Debtor.

In March, 2014, the Debtor, with its new counsel, and Allerton, with its counsel, met to discuss the terms of yet another amended plan that the Debtor would support. That meeting allegedly concluded with an oral agreement between the parties, that Allerton would memorialize the terms of the parties' understanding into an agreement, which in turn would be incorporated into a third amended plan (the "Plan Agreement"). The Plan Agreement provided for the transfer of the

Property to Allerton, in exchange for payment on all Allowed Claims, and the unconditional guarantee of a substantial payment to Equity.

Allerton memorialized the Plan Agreement and sent it to Debtor's counsel for review. Allerton also requested that the Debtor execute the Plan Agreement prior to Allerton incurring additional expense associated with drafting yet another amended plan, which was an appropriate request, given the fact that the Debtor had previously reneged on its support for the Joint Plan. Despite repeated requests from Allerton during the month of April, 2014, the Debtor did not return an executed Plan Agreement.

On June 15, 2014, the Court conducted a continued status conference wherein the Debtor conveyed a different position, noting that it again disputed Allerton's claim and that the Debtor was not in a position to move forward with a plan.

In response, Allerton drafted and filed a Third Amended Disclosure Statement and correlating Third Amended Plan of Liquidation, modified several days later through a Fourth Amended Disclosure Statement and a Fourth Amended Plan, which provides for (I) full and immediate payment to Creditors on all Allowed Claims (as of the Petition Date, without interest), and (ii) notwithstanding Equity's actions during this case, the possibility of a very substantial payment thereto. The Third Amended Plan of Liquidation was subsequently amended and upon filing of the Fourth Amended Plan of Liquidation, Allerton subsequently sought approval of the Fourth Amended Disclosure Statement. The Court never entered an order approving the Fourth Amended Disclosure Statement

Thereafter, the Debtor, through the Public Administrator of Bronx County, negotiated a new contract for the sale of the Property. That formed the basis of another plan of reorganization (the "Phoenix Plan").

The Debtor and Phoenix sought expedited confirmation of the Phoenix Plan.

Allerton objected to the Phoenix Plan and the expedited process. Allerton also believed it could make a higher and better offer for the Property than the Phoenix Plan proposed. Allerton made , what the Debtor agreed is, the highest and best offer to purchase the Property.

As noted earlier, the Debtor's original owner died. His equity interests in the Debtor went to his estate which is being administered by his daughter, Deanna Rodney and the Office of the Public Administrator of Bronx County, New York (the "Public Administrator")..

To insure the *bona fides* of this case and the Property's proposed sale, the Court directed its own investigation. The Debtor provided proof that this case was filed with the proper authority. Deanna Rodney and the Public Administrator appeared before the Court discussing the competing offers and options for the Property's sale. They ultimately agreed that Allerton or its designee should be the Purchaser for the terms stated in the Sale Contract annexed to the Plan as Exhibit A. Phoenix has informed the Debtor that it is interested in bidding at an auction. Accordingly, the Sale Contract is subject to higher and better offers under the Plan's sale procedures.

#### **RETENTION OF PROFESSIONALS**

Bankruptcy Code § 327(a) authorizes debtors, with court approval, to employ professionals to represent or assist the debtor in carrying out its duties under the Bankruptcy Code.

On January 28, 2013, the Debtor sought authority from the Bankruptcy Court to retain the law firm of Flaum & Associates, P.C., ("Flaum") as its counsel. No order was entered approving Flaum's retention.

On December 13, 2013, the Debtor sought authority from the Bankruptcy Court to retain

the law firm of Wayne Greenwald P.C. (“Greenwald”) as replacement counsel for Flaum. An order approving Greenwald’s retention was entered on April 17, 2014.

On March 6, 2013, the Debtor sought authority from the Bankruptcy Court to retain Keller Williams Realty (“Keller”) as real estate broker for the Debtor. No order was entered approving Keller’s retention

#### **BAR DATE**

Pursuant to Bankruptcy Code § 521 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. Pursuant to section 501 of the Bankruptcy Code, any creditor may file a Proof of Claim. Unless disputed, that filed Proof of Claim supersedes the amount and priority set forth in the Debtor’s schedules. By order of the Bankruptcy Court dated January 31, 2014, March 17, 2014 was set as the last day for creditors to file Proofs of Claim in the Debtor’s Chapter 11 case.

There can be no assurance that the Allowed Claims as determined by the Bankruptcy Court will be in the amounts and priorities stated in the Schedules filed by the Debtor or the Proofs of Claim filed by the Creditors.

#### **OPERATING REPORTS**

Pursuant to the requirements of the Office of the United States Trustee for the Southern District of New York, the Receiver has been preparing and filing monthly operating reports with the Bankruptcy Court. Copies of such reports may be obtained (I) from the Bankruptcy Court during normal business hours, (ii) upon written request made to counsel for the Debtor, or (iii) from the Bankruptcy Court’s Electronic Case Filing System (“ECF”) which may be accessed at the Bankruptcy Court’s Internet website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

### **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 is filed with the Clerk of the Bankruptcy Court and which is incorporated herein by reference.

#### **CLASSIFICATION 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.”

The Plan classifies the various Claims against and Interests in the Debtor into five classes of Claims and one class of Interests:

- Class 1 – Priority Non-Tax
- Claims Class 2 – Allerton Secured Claim
- Class 3 – Other Secured Claims
- Class 4 – Unsecured Claims
- Class 5 – Interests

Pursuant to section 1123(a)(1) of the Bankruptcy Code, certain Administrative Claims against the Debtor are not classified. See “SUMMARY OF THE PLAN -- Treatment of Non-Classified Claims.”

Class 1 is unimpaired and the Holders of Class 1 Priority Non-Tax Claims shall not be entitled to vote on the Plan. Class 2 is unimpaired and the Holder of the Class 2 Allerton

Secured Claim shall be not entitled to vote on the Plan. Class 3 is unimpaired and the Holders of the Class 3 Other Secured Claims shall not be entitled to vote on the Plan. Class 4 is unimpaired and the Holders of the Class 4 Unsecured Claims shall not be entitled to vote on the Plan. Class 5 is unimpaired and the Holders of Class 5 Interests are unimpaired and not entitled to vote on the Plan. Because classes 1-5 are all unimpaired and not entitled to vote on the Plan, they are deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.

**Class 1 – Priority Non-Tax Claims.** Class 1 consists of all Priority Claims, other than Administrative Claims, Priority Tax Claims, or Bankruptcy Fees, to the extent entitled to priority under section 507 of the Bankruptcy Code. Certain Claims for taxes and the payment of expenses incurred by the Debtor subsequent to the Petition Date are entitled to priority under section 507 of the Bankruptcy Code, and are treated elsewhere as non-classified Claims. See “SUMMARY OF THE PLAN -- Treatment of Non-classified Claims.” The Debtor does not believe that any such Priority Non-Tax Claims exist, as no entity filed a proof of claim asserting a priority claim that would fall within Class 1.

**Class 2 – Allerton Secured Claim.** Class 2 consists of the Allowed Secured Claim of Allerton. Allerton’s Allowed Secured Claim is \$3,898,791 as of March 31, 2017 plus \$680 per day thereafter.

**Class 3 – Other Secured Claims.** Class 3 consists of other Allowed Secured Claims asserted against the Property. New York City filed a water Claim for \$20,027, real estate tax Claim for \$29,735, Environmental Control Board Claims for \$33,796, and a Housing Preservation and Development Claim for \$22,038. Class 3 Claims as asserted total \$122,485 as of the Petition Date plus statutory 18% interest until paid for an estimated amount of \$213,200 as of March 31, 2017 plus \$60 per day thereafter.

**Class 4 - Unsecured Claims.** Class 4 consists of Allowed Unsecured Claims total \$118,288. Class 4 Claims include Hunts Point Fuel for \$11,927, Rose Green for \$30,000, Stuyvesant Fuel for \$23,000, Doyle & Broumand, LLP for \$26,773, and Seven Star Fuel for \$26,588.

**Class 5 – Interests.** Class 5 consists of all Interests in the Debtor.

#### **TREATMENT OF CLAIMS CLASSIFIED UNDER THE PLAN**

The Plan provides for the treatment of unimpaired Claims as follows:

**Class 1 – Priority Non-Tax Claims.** In full satisfaction, release and discharge of the Priority Non-Tax Claims, each Holder of a Priority Non-Tax Claim shall receive, on the Effective Date, or as soon as practicable after each such Claim becomes an Allowed Claim, payment from the Disbursing Agent, (I) in Cash in the full amount of its Priority Non-Tax Claim, or (ii) as may be otherwise agreed in writing between the Plan Administrator and the Holder of such Priority Non-Tax Claim.

**Class 2 – Allerton Secured Claim.** If Allerton or its designee is not the Purchaser, in full satisfaction, release and discharge of the Allerton Secured Claim, Allerton shall receive from the Disbursing Agent at the Closing, Cash, in the full amount of the Allerton Secured Claim. If Allerton or its designee is the Purchaser, in full satisfaction, release and discharge of the Allerton Secured Claim, Allerton or its designee may receive credit at closing toward the purchase price of the Property, in the amount of the Allerton Secured Claim.

**Class 3 – Other Secured Claims.** In full satisfaction, release and discharge of each Other Secured Claim, each Holder of an Other Secured Claim shall receive from the Disbursing Agent at the Closing, or as soon as practicable after each such Other Secured Claim becomes an Allowed Claim, (I) Cash, in the full amount of the Allowed Secured Claim, or (ii) such other

treatment as to which the Debtor and/or Plan Administrator and each Holder of such Other Secured Claim shall have agreed upon in writing.

**Class 4 – Unsecured Claims** In full satisfaction, settlement, release and discharge of the Class 4 Unsecured Claims, each Holder of an Allowed Class 4 Unsecured Claims against the Debtor shall receive, on the Effective Date or as soon thereafter as practicable, Cash equal to 100% of its Allowed Unsecured Claim, with interest at the federal judgment rate, from the Disbursing Agent.

**Class 5 - Interests.** After all Holders of Allowed Claims of Classes 1 through 4 are paid in full, or provision is made for payment of Disputed Claims, the Interest Holders shall receive \$1.36 million. plus all Sale Proceeds above the Stalking Horse Bid no earlier than the Effective Date.

#### **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)(1) of the Bankruptcy Code or Claims of Governmental Units entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code. However, the Plan provides for the manner of treatment of such nonclassified 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 services to the Debtor after the Petition Date, the liabilities incurred in the ordinary course of the Debtor's business (other than claims of governmental units for taxes or interest or penalties related to such taxes) after the Petition Date, Claims of professionals, such as attorneys, 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 through and including the Closing.

Subject to the provisions of the Plan with respect to Disputed Claims, each Administrative Claim, to the extent not previously paid, shall be paid by the Disbursing Agent in Cash in full by the Disbursing Agent on (I) the later of (x) the Effective Date, (y) the date payment of such Claim is due under the terms thereof or applicable law; (ii) as may be otherwise mutually agreed in writing between the Debtor and the Holder of such Claim; *provided, however*, that any Administrative Claim incurred by the Debtor in the ordinary course of its business shall be paid in full or performed by the Plan Administrator in accordance with the terms and conditions of the particular transaction giving rise to such Administrative Claim and any agreements relating thereto.

The Plan refers to a final date for the filing of Administrative Claims against the Debtor. The Administrative Bar Date, set by Order of the Bankruptcy Court is \_\_\_\_\_, 2017.

**Professionals' 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 a 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).

With respect to Professionals' Fees, the Plan provides that, subject to the approval of compensation and reimbursement of expenses pursuant to sections 330 and 331 of the Bankruptcy Code, the Debtor shall pay the Administrative Claims held by Bankruptcy

Professionals as follows:

Each Person seeking an award by the Bankruptcy Court of Professional Fees shall file its final application for approval of its Professional Fees, but shall provide the Debtor with an estimate of any Professional Fees it might be seeking within three (3) days prior to the hearing on Confirmation. Each Holder of an Allowed Claim for Professional Fees shall receive from the Disbursing Agent, in full satisfaction of such Allowed Claim, Cash in the amount of such Allowed Claim within three days of the entry of a Final Order Allowing such Claim.

**Administrative Tax Claims.** All Allowed Administrative Tax Claims held by Governmental Units shall be paid, in Cash by the Disbursing Agent, in full either (I) on or as soon after the Effective Date as practicable, or (ii) upon such other terms as may be agreed to, in writing, between the Debtor and/or Plan Administrator and such Governmental Units on or after the Confirmation Date.

**Priority Tax Claims.** In full satisfaction, release and discharge of Priority Tax Claims, and except as may be otherwise mutually agreed in writing between the Debtor and such Governmental Units, all Allowed Priority Tax Claims shall be paid by the Plan Administrator in Cash in full, together with interest on the Effective Date or as soon thereafter as practicable.

**Bankruptcy Fees.** All fees and charges assessed against the Debtor under section 1930 of title 28 of the United States Code and any applicable interest thereon shall be paid by the Plan Administrator, in full, in Cash on the Effective Date or as soon thereafter as practicable, until the closing, conversion or dismissal of this Case, whichever is earlier.

#### **DISPUTED CLAIMS AND INTERESTS**

The Plan contains a mechanism for resolving disputes concerning the amount of certain Claims or Interests asserted against the Debtor by any entity.

### **DISTRIBUTIONS UNDER THE PLAN**

The Plan contains provisions governing making distributions on account of Claims. In general, any payments, distributions or other performance to be made pursuant to the Plan on account of any Allowed Claim shall be deemed to be timely made if made on or within five days following the later of (I) the Effective Date or (ii) the expiration of any applicable objection deadline with respect to Disputed Claims or (iii) such other times provided in the Plan. All Cash payments to be made by the Debtor pursuant to the Plan shall be made by check drawn on a domestic bank. To the extent that any distribution is not paid on the Effective Date, funds in an amount necessary to satisfy any such unpaid claim shall be maintained in an escrow account for distribution thereafter.

**Disbursing Agent.** The Disbursing Agent shall distribute all Cash, the proceeds of the Sale or other property to be distributed under the Plan and may employ or contract such third parties as may be necessary to assist in or perform the distribution of Cash or other property under the Plan. Pending the final distribution of all sums distributable under the terms of the Plan, the Disbursing Agent shall have full authority to sign checks on any bank account of the Liquidating Debtor to the extent necessary to make any payment or distribution contemplated by the Plan. Wayne Greenwald will be appointed the Disbursing Agent pursuant to the Plan and Confirmation Order. Wayne Greenwald as Disbursing Agent and such professionals as he may retain shall receive compensation pursuant to the same terms as the Plan Administrator.

The Disbursing Agent and his professionals shall be compensated from the Plan Administrator Fund at a rate of \$250 per hour. The Disbursing Agent agreed to retain Wayne Greenwald, P.C.. as his counsel. The Disbursing Agent's counsel shall be compensated at the rate of \$400 per hour, and any other professionals shall be compensated at their customary rates. Any

professionals retained by the Disbursing Agent shall not be required to file a fee application, but shall file a notice with the Bankruptcy Court if there is to be a change in their billable rate[s]. The payment of the fees and expenses of the Disbursing Agent and the Disbursing Agent's retained professionals shall be made from the Plan Administrator Fund.

**Timing of Distributions Under the Plan.** Any payments, distributions or other performance to be made pursuant to the Plan on account of any Disputed Claim, shall be deemed to be timely made if made on or within five days following the later of (I) the expiration of any applicable objection deadline with respect to such Disputed Claim or (ii) such other times provided in the Plan.

**Method of Payment.** Unless otherwise expressly agreed, in writing, all Cash payments to be made pursuant to the Plan shall be made by check drawn on a domestic bank.

**Claims Objection Deadline.** Unless otherwise ordered by the Bankruptcy Court for cause, objections to the allowance of any Claim may be filed no later than the later to occur of (I) 60 days after the Effective Date or (ii) 60 days after the date proof of such Claim or Interest or a request for payment of such Claim is filed. Until the earlier of (I) the filing of an objection to a Proof of Claim or (ii) the last date to file objections to Claims as established by the Plan or by Final Order, Claims shall be deemed to be Disputed in their entirety if, (I) the amount specified in a Proof of Claim exceeds the amount of any corresponding Claim listed in the Schedules; (ii) any corresponding Claim listed in the Schedules has been scheduled as disputed, contingent or unliquidated; or (iii) no corresponding Claim has been listed in the Schedules.

**Prosecution of Objections.** After the Confirmation Date, only the Plan Administrator shall have authority to file, settle, compromise, withdraw or litigate to judgment objections to Disputed Claim. The Plan Administrator may comprise any objections to Disputed Claims without further order of the Court. Notwithstanding anything to the contrary in the Plan or the Disclosure Statement,

Allerton's Claim which is deemed an Allowed Claim under the Plan.

**No Distribution Pending Allowance.** Notwithstanding any other provision of the Plan, no payment or distribution of any kind shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Claim are resolved by Final Order.

**Escrow of Cash Distributions.** (a) On any date that distributions are to be made under the terms of the Plan, the Plan Administrator shall make available any and all funds required under Plan to be disbursed on that date, and the Disbursing Agent shall deposit in one or more segregated accounts, Cash or property equal to 100% of the Cash that would be distributed on such date on account of Disputed Claims as if each such Disputed Claim were an Allowed Claim but for the pendency of a dispute with respect thereto, including, but not limited to (a) Disputed Claims that may be entitled to treatment as Administrative Claims or as Priority Non-Tax Claims pursuant to sections 503 and 507 of the Bankruptcy Code, (b) claims of Governmental Units for any tax, ( c ) any disputed Cure Amount, and (d) any amount due but not payable on the Effective Date on account of Administrative Claims or claims entitled to priority pursuant to section 503 and 507 of the Bankruptcy Code. The Disbursing Agent shall also segregate any interest, dividends or other proceeds of such Cash. Such Cash together with any interest, dividends or proceeds thereof, be held in trust for the benefit of the Holders of all such Disputed Claims pending determination of their entitlement thereto.

(b) The Plan Administrator shall have the right to seek an Order of the Bankruptcy Court, after notice and hearing, estimating or limiting the amount of Cash that must be so deposited on account of any Disputed Claim. Any Creditor whose Claim is so estimated shall have no recourse to any assets theretofore distributed on account of any Allowed Claim if the Allowed Claim of that Creditor as determined by Final Order exceeds the amount so deposited.

Such Creditor shall have recourse first, to the undistributed assets in the Disputed Claims Reserve (on a Pro Rata basis with other Creditors of the same Class who are similarly situated) that exceed the aggregate amount of all Disputed Claims allowed by Final Order, or not yet resolved, and second any unpaid amount shall be an obligation of the Liquidating Debtor.

**Distribution After Allowance.** Within 15 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.

**Investment of Segregated Cash.** To the extent practicable, the Disbursing Agent may but is not required to invest any Cash segregated on account of a Disputed Claim, disputed Interest, undeliverable distribution, or any proceeds thereof (I) in a manner that will yield a reasonable net return taking into account the safety of the investment or (ii) in any manner permitted by section 345 of the Bankruptcy Code; *provided, however*, that the Disbursing Agent shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any investment made or any omission to invest such Cash or proceeds. Segregated Cash shall be maintained in an authorized depository.

**Distribution After Disallowance.** Within 15 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..

**Surrender of Instruments; Execution of Satisfactions and Releases.**

(a) Notwithstanding any other provision of the Plan, no Creditor that holds a note or other instrument evidencing such Creditor's Claim may receive any distribution with respect to such Claim

unless and until the original note or other original instrument evidencing such Claim shall have been validly surrendered to the Disbursing Agent at the sole cost and expense of such Creditor.

(b) Any Cash or property to be distributed pursuant to the Plan on account of any such Claim shall, pending surrender, be treated as an undeliverable distribution .

(c) In the event any Creditor is unable to surrender a note or other instrument evidencing a Claim against the Debtor that has been destroyed, lost or stolen, such entity may receive a distribution with respect to such Claim by presenting to the Disbursing Agent, in a form acceptable to the Disbursing Agent: (I) proof of such entity's title to such Claim; (ii) an affidavit to the effect that the same has been lost and after diligent search cannot be located; and (iii) such indemnification as may be required by the Disbursing Agent and all other entities deemed appropriate by the Disbursing Agent from any loss, action, suit or any claim whatsoever which may be made as a result of such entity's receipt of a distribution under the Plan.

(d) All questions as to the validity, form or eligibility of any note or other instrument evidencing a Claim so surrendered shall be resolved by Final Order of the Bankruptcy Court. The Disbursing Agent shall not be under any duty to give notification of defects in such tender or shall incur liability for failure to give notification of such defects.

**Delivery of Distributions.** Distributions to Holders of Allowed Claims and Allowed Interests 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 or Proof of Interest is filed and the Disbursing Agent has not received a written notice of a change of address.

**Undeliverable Distributions.** (a) If the distribution to the Holder of any Claim or

Interest 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. Undeliverable distributions shall remain in the possession of the Disbursing Agent until the earlier of (I) such time as a distribution becomes deliverable or (ii) such undeliverable distribution becomes an unclaimed distribution. (b) Until such time as an undeliverable distribution becomes an unclaimed distribution, within 30 days after the end of each calendar quarter following the Effective Date, the Disbursing Agent shall make distributions of all Cash that has become deliverable during the preceding quarter. Each such distribution shall include the net return yielded from the investment of any undeliverable Cash, from the date such distribution would have been due had it then been deliverable to the date that such distribution becomes deliverable.

(c) Nothing contained in the Plan shall require the Liquidating Debtor, Plan Administrator or Disbursing Agent to attempt to locate any Holder of an Allowed Claim or an Allowed Interest.

**Unclaimed Distributions.** Any Cash or other assets to be distributed under the Plan shall revert to the Purchaser if it is not claimed by the entity entitled thereto before the later of (I) one year after the Effective Date; (ii) one year after such scheduled payment to such entity; or (iii) one year after an Order allowing the Claim of that entity becomes a Final Order, and such entity's claim shall be reduced to zero.

**Set-offs.** The Plan Administrator or Disbursing Agent, may, but shall not be required to, set-off against the distributions to be made pursuant to the Plan, the claims, obligations, rights, causes of action and liabilities of any nature that the Debtor may hold against the Holder of an Allowed Claim, *provided, however,* that neither the failure to effect such a set-off nor the



allowance of any claim hereunder shall constitute a waiver or release of any such claims, obligations, rights, causes of action and liabilities that the Debtor has or may have against such Holder. To the extent the Plan Administrator elects to effectuate a set-off, it shall notify the Holder of the Allowed Claim in writing at least ten (10) days prior to effectuating the set-off. To the extent the Holder of an Allowed Claim objects to the set-off, a written objection shall be provided to the Liquidating Debtor, as Disbursing Agent, no later than three (3) days prior to the set-off date or the objection shall be waived.

#### **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 Debtor may seek an order of the Bankruptcy Court estimating or limiting the amount of Cash or property that must be or has been 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 15 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 practicable, the Disbursing Agent shall hold such cash in a segregated account in accordance with section 345 of the Bankruptcy Code, and may invest any cash or other property segregated on account of a Disputed Claim, Disputed Interest, undeliverable distribution, or any proceeds thereof; however, the Disbursing Agent shall be under no obligation to so invest such Cash or proceeds and shall have no liability to any party for any

investment made or any omission to invest such Cash, other property or proceeds. Any segregated amounts remaining after all Disputed Claims have been resolved will be retained by Debtor.

#### **COMPLIANCE WITH TAX REQUIREMENTS**

In connection with the Plan, the Liquidating Debtor 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 provided, however, that the transfer of any Cash, property or other interest under the Plan shall not be subject to any federal, state or local tax to the fullest extent provided under section 1146 of the Bankruptcy Code.

#### **EFFECTIVE DATE**

The Effective Date of the Plan shall be the first Business Day after which all of the conditions to the Effective Date, specified in the Plan, have been satisfied.

#### **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Effective on and as of the Effective Date, all Executory Contracts and the Unexpired Leases to which the Debtor is a party to shall be deemed rejected in accordance with 365 of the Bankruptcy Code, except for the Unexpired Leases between the Debtor and any of their Tenants which Unexpired Leases shall be assumed by the Debtor and assigned to the Purchaser.

**Assumption Cure Payments.** Except as otherwise agreed to by the parties, on the Effective Date, the Plan Administrator shall cure any and all undisputed defaults under any Unexpired Lease that is assumed pursuant to the Plan in accordance with 365 of the Bankruptcy Code. Unless the parties to the contract or lease agree otherwise, all disputed defaults that are required to be cured shall be cured by the later to occur of (I) ten (10) days after the entry of a Final Order determining the amount, if any, of the Liquidating Debtor's liability with respect thereto and

(ii) the Effective Date.

**Notice to Counterparties.** At least 21 days prior to the Confirmation Hearing, the Debtor shall designate (a) cure amounts, if any, due upon assumption and (b) those Executory Contracts, if any, that the Debtor seeks to reject. Each designation shall be made by filing a notice in the docket and by service by overnight delivery to the counterparties to such agreements. Objections to assumption, cure amounts, or rejection are due at least 7 days prior to the Confirmation hearing. Objections shall be in writing, filed with the clerk of court, and served upon the undersigned with a courtesy copy delivered to Judge Garrity's chambers.

**Rejection Claims.** Allowed Claims arising from the rejection of any Executory Contract or Unexpired Lease shall be treated as Unsecured Claims.

A Proof of Claim with respect to any Unsecured Claim for damages arising from the rejection of an Executory Contract or Unexpired Leases pursuant to the Plan shall not be timely filed unless it is filed with the Bankruptcy Court and served so that it is received by the Debtor no later than 30 days after the later of (I) the date of entry of a Final Order approving such rejection (unless such Final Order expressly provides a Bar Date with respect to such Claim, in which event no Proof of Claim with respect to such Claim shall be deemed timely filed unless it is filed with the Bankruptcy Court and served in the manner provided in such Final Order), or (ii) the Effective Date. Any such Proof of Claim not timely filed and served shall be forever barred from assertion and may not be enforced against the Debtor, the Purchaser or their respective properties.

#### **IMPLEMENTATION OF THE PLAN**

**Implementation.** The Plan Administrator shall be appointed on the Confirmation Date and the Plan Administrator, on behalf of the Debtor, shall take all necessary steps, and perform all necessary acts, to consummate the terms and conditions of the Plan. The Confirmation Order shall

contain appropriate provisions, consistent with 1142 of the Bankruptcy Code, authorizing and directing the Plan Administrator and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property required by the Plan and to perform any act, including the satisfaction of any Lien, that is necessary for the consummation of the Plan. Pursuant to 1146 of the Bankruptcy Code, the 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 shall not be subject to tax under any law imposing a stamp tax, real estate transfer tax, mortgage recording tax or similar tax. The Purchaser shall have the protections afforded under the “good faith” purchase provisions of § 363(m) of the Bankruptcy Code and all stay provisions under Bankruptcy Rule 6004(h) or elsewhere will be waived. The Plan Administrator is designated a party in fact to execute all documents in the name of the Debtor as may be required to consummate the sale pursuant to the Contract of Sale.

**Sale of Assets.** The Contract of Sale is subject to higher and better offers, as specifically set forth in the Bidding Procedures attached to the Plan as Exhibit “B.” In order to fund the distributions under the Plan, the Plan Administrator shall consummate the closing and sale of the Property to the Purchaser and such sale shall not be taxed under any law imposing a stamp or similar tax as provided for in § 1146(a) of the Bankruptcy Code. Pursuant to § 1123(a)(5)(D) of the Bankruptcy Code, the Debtor’s Property shall be sold to the Purchaser, free and clear of any and all liens, claims, encumbrances, interests, bills, or charges whatsoever, other than the usual and customary utility easements, if any, appearing as of record or as preserved in the Plan.

**Plan Funding.** The Plan shall be funded by the Sale Proceeds, which Sale Proceeds, as set forth on Exhibit C to the Plan, includes the Debtor’s Available Cash on the Effective Date and all amounts presently maintained by the Receiver for the Debtor’s benefit after deducting the Receiver’s

fees, expenses and commission. These funds shall be utilized to satisfy payments due consistent with the terms of the Plan.

**Vesting of Assets.** Except as otherwise provided in the Plan, on the Effective Date the Property shall vest in the Purchaser free and clear of all liens, claims and encumbrances and any and all liens, claims and encumbrances that have not been expressly preserved under the Plan shall be deemed extinguished as of such date.

**Execution of Documents.** (a) On the Effective Date, the Plan Administrator, and any necessary party thereto, shall execute, release and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of the Plan.

(b) Pursuant to s 105, 1141(c) and 1142(b) of the Bankruptcy Code, the Debtor and/or Plan Administrator shall be authorized to execute, in the name of any necessary party any estoppel certificate, or any notice of satisfaction, release or discharge of any Lien, Claim or encumbrance (including, any Lien, Claim or encumbrance that is to be released and satisfied upon the Debtor's compliance with the Plan) not expressly preserved in the Plan and deliver such notices to any and all federal, state and local governmental agencies or departments for filing and recordation, and the Confirmation Order shall expressly so provide.

**Filing of Documents.** Pursuant to s 105, 1141© and 1142(b) of the Bankruptcy Code, each and every federal, state and local governmental agency or department, shall be directed to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by the Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by the Plan.

**Distributions.** Except as set forth elsewhere in the Plan, all payments required to be made

under the Plan shall be made by the Disbursing Agent for disbursement in accordance with the terms of the Plan.

**Transfer Taxes.** Pursuant to 1146(a) of the Bankruptcy Code, the 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 not be subject to tax under any law imposing a stamp tax, real estate Transfer Tax, mortgage recording tax or similar tax, including any such taxes due on the refinancing or sale of the Property as contemplated by the Plan, and to the extent provided by 1146(a), if any, shall not be subject to any state, local or federal law imposing such tax.

**Post-Confirmation Management and Compensation.**

**Plan Administrator Duties and Obligations; Compensation.**

(a) On the Confirmation Date, the Plan Administrator shall succeed to the rights and obligation of the Debtor.

(b) Following the Confirmation Date, the Plan Administrator shall be responsible for the filing of all post-Confirmation reports required during such periods with the U.S. Trustee and payment of all post-Confirmation fees charged or assessed against the Estate under 28 U.S.C. § 1930 during such periods.

(c) The Plan Administrator shall be deemed a “party-in-interest” for purposes of filing and prosecuting objections to claims.

(d) The Plan Administrator shall have the duty to implement the sale of the Property under this Plan and accordingly shall exercise the rights and obligations of the Debtor in accordance with the Plan.

(e) The Plan Administrator and his professionals shall be compensated from the Plan Administrator Fund at a rate of \$250 per hour. The Plan Administrator has agreed to retain Backenroth Frankel & Krinsky, LLP, as his counsel. The Plan Administrator counsel shall be compensated at the rate of \$400 per hour, and any other professionals shall be compensated at their customary rates. Any professionals retained by the Plan Administrator shall not be required to file a fee application, but shall file a notice with the Bankruptcy Court if there is to be a change in their billable rate[s]. The payment of the fees and expenses of the Plan Administrator and the Plan Administrator's retained professionals shall be made from the Plan Administrator Fund.

(f) The Plan Administrator shall be authorized to obtain and pay for out of the Plan Administrator Fund all reasonably necessary insurance coverage for himself, his agents, representatives, employees, or other independent contractors, if necessary.

(h) The Plan Administrator may resign by giving not less than thirty (30) days' prior written notice to the Disbursing Agent. Such resignation shall become effective upon the Bankruptcy Court approval of a successor Plan Administrator in accordance with 7.9(j) hereof.

(i) Upon the request of any party in interest, the Bankruptcy Court may remove the Plan Administrator for cause. For purposes of this, "cause" shall mean (I) an act of fraud, embezzlement or theft in connection with the Plan Administrator's duties or in the course of its engagement in such capacity, (ii) the intentional wrongful damage to the property of the Debtor, or (iii) gross neglect by the Plan Administrator of his duties under the Plan. Unless the Bankruptcy Court orders immediate removal, the Plan Administrator shall continue to serve until a successor Plan Administrator is appointed, and such appointment becomes effective, in accordance with the Plan.

(j) In the event of a vacancy by reason of the death, incapacity or immediate removal of

the Plan Administrator or prospective vacancy by reason of resignation or removal, the Disbursing Agent shall appoint a successor Plan Administrator, which appointment shall be effective upon the approval of the Bankruptcy Court on not less than twenty (20) days' notice to parties who have filed a notice of appearance with the Bankruptcy Court during the chapter 11 case pursuant to Bankruptcy Rule 2002 and to all creditors of the Debtor, unless the Bankruptcy Court authorizes otherwise. Every successor Plan Administrator appointed hereunder shall execute, acknowledge, and file with the Bankruptcy Court an instrument accepting such appointment subject to the terms and provisions of the Plan. The successor Plan Administrator, without any further act, shall become vested with all the rights, powers, and duties of the Plan Administrator, provided, however, that no Plan Administrator shall be liable for the acts or omissions of any prior or later Plan Administrator.

(k) Unless otherwise ordered by the Bankruptcy Court, the death, resignation, or removal of the Plan Administrator shall not operate to terminate any agency or employment created by the Plan or invalidates any action theretofore taken by the Plan Administrator.

(l) The Plan Administrator shall have the right at any time to seek and rely upon instructions from the Bankruptcy Court concerning his duties under the Plan or any other document executed in connection therewith, and the Plan Administrator shall be entitled to rely upon such instructions in acting or failing to act and shall not be liable for any act taken or not taken in reliance thereon. In the absence of actual knowledge to the contrary, any person dealing with the Plan Administrator shall be entitled to rely on the authority of the Plan Administrator to act on behalf of the Debtor's estate and the Debtor, and shall have no obligation to inquire into the existence of such authority.

(m) After the Effective Date, the Plan Administrator shall maintain books and records but



the Interest Holder shall remain responsible for preparing and filing such tax forms and returns as are required to be filed under applicable law.

(n) The Plan Administrator shall turnover to the Interest Holder all books, records, and files that shall have been delivered to or created by the Plan Administrator when such books, records, and files are no longer required.

(o) The Plan Administrator's duties shall cease upon the closing of this Case.

**Discharge of Receiver.** On the Closing Date, the Receiver shall be deemed automatically discharged from his duties. Any claim of the Receiver with respect to compensation earned shall be subject to the jurisdiction of the Supreme Court of the State of New York which appointed the Receiver.

## MISCELLANEOUS PROVISIONS

### MODIFICATION AND REVOCATION OF THE PLAN

The Plan may be altered, amended or modified by the Debtor, at any time before the substantial consummation of the Plan, as provided in s 1101(a) and 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. 1127 of the Bankruptcy Code authorizes the proponent of a plan of reorganization 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 s 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 a proponent files modifications to a plan, pursuant to 1127(a) "the plan as modified becomes the plan." No order of the Court is required to modify the Plan under the terms of 1127(a); however, the proponent of a modification to a plan must comply with 1125 of the Bankruptcy Code with respect to the plan as modified. In other words, if a modification materially

alters the treatment of any Creditor, the Debtor will be required to make additional disclosures to those Creditors whose treatment has been materially and adversely altered and give such Creditors notice and an opportunity to object.

Subject to Bankruptcy Court approval, the Debtor may revoke or withdraw the Plan at any time prior to entry of the Confirmation Order. If the Plan is revoked or withdrawn or if no Confirmation Order is entered, the Plan shall be null and void, and nothing contained in the Plan shall (I) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtor; or (ii) prejudice in any manner the rights of the Debtor or any other party in any further proceedings involving the Debtor or its Estate, except that the Debtor's exclusive period within which to file a plan of reorganization pursuant to Bankruptcy Code § 1121 will be deemed to have terminated as of the date and time the Plan is revoked or withdrawn.

#### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order or the occurrence of the Effective Date, until the Case is closed, the Bankruptcy Court shall retain and have original, but not exclusive, jurisdiction to:

1. Insure that the Plan is consummated, and to enter any Order pursuant to 1142(b) of the Bankruptcy Code, to compel the Debtor, the Interest Holder and any other necessary party, to take such action and execute such documents to effectuate the Plan;
2. Consider any modification of the Plan proposed pursuant to 1127 of the Bankruptcy Code and Bankruptcy Rule 3019;
3. Allow, disallow, determine, liquidate, classify or establish the priority, secured or unsecured status of any Claim or Interest, including, without limitation, the resolution of any request for payment of any Administrative Expense, the resolution of any and all

objections to the allowance or priority of Claims or Interests, and the resolution of any adversary proceeding;

4. Grant or deny any and all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for any period ending on or before the Closing;

5. Resolve any motions pending on the Closing to assume, assume and assign or reject any Executory Contract or Unexpired Lease to which the Debtor is a party or with respect to which the Debtor may be liable and to hear, determine and if necessary, liquidate, any and all Claims arising therefrom;

6. Ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished in accordance with the provisions of the Plan;

7. Decide or otherwise resolve any and all applications, motions, adversary proceedings, contested or litigated matters, and any other matters or grant or deny any applications involving the Debtor that may be pending on the Effective Date;

8. Enter such Orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents created in connection with the Plan or Disclosure Statement or to enforce all orders, judgments, injunctions, and rulings entered in connection with the Case.

9. Resolve any and all controversies, suits or issues 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;

10. Modify the Plan before or after the Effective Date pursuant to 1127 of the Bankruptcy Code, or to modify the Disclosure Statement or any contract, Instrument, release or other agreement or document created in connection with the Plan or Disclosure Statement;
11. Remedy any defect or omission or reconcile any inconsistency in any Order, the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created in connection with the Plan, to the extent authorized herein or in the Bankruptcy Code;
12. Issue any injunctions, 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;
13. Enter and implement such Orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
14. Determine any dispute arising under or related to the Plan, including, without limitation, any dispute concerning the scope or effect of any release or discharge provided for by the Plan or the Confirmation Order.
15. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan or Disclosure Statement; and
16. Enter an Order or Final Decree concluding the Case.

### **RISK FACTORS**

Although the Debtor believes that they will be able to meet all of the obligations that it is undertaking pursuant to the Plan there can be no assurance that future events will not cause the Debtor or the Purchaser to default on one or more of its obligations under the Plan or that the Closing will occur.

### **CONFIRMATION OF THE PLAN**

All distributions to Creditors are contingent on the Plan being confirmed by this Court. Otherwise, the Debtor is not obligated, in any way, to make the payments required hereunder.

### **VOTING INSTRUCTIONS**

As noted herein, Claims in Classes 1-4 and Interests in Class 5 are not impaired by the Plan. Accordingly, holders of Claims in Classes 1-4 and Interests in Class 5 are deemed to have accepted the Plan and votes of holders of Claims in each class will not be solicited.

### **ACCEPTANCE AND CONFIRMATION**

#### **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 , 2017 at :00 .m. in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004. 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.

Any party in interest may object to Confirmation of the Plan by filing a written objection, setting forth their identity and standing and the facts and authorities upon which any objection is

based, in the Office of the Clerk of the Bankruptcy Court, no later than the deadline fixed by the Court and by delivering a courtesy copy to the Chambers of the presiding judge. Copies of all objections must also be served so that they are received, as required by the Court upon (I) Wayne Greenwald, P.C., 475 Park Avenue South, 26<sup>th</sup> Floor, New York, New York 10016, Attn: Wayne Greenwald, Esq., (ii) Backenroth Frankel & Krinsky, LLP , 800 Third Avenue, New York, New York 10022, Attn Mark Frankel. Esq., and (iii) the Office of the United States Trustee, 201 Varick Street, Suite 1006, New York, New York 10014. Any objection that is not timely filed and served as required by any order of this Court, may not be considered by this Court at the Confirmation Hearing.

#### **REQUIREMENTS FOR CONFIRMATION**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of 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 Debtor has proposed the Plan in good faith, (iv) the Debtor 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 interest” of all Creditors, (vi) the Plan is feasible, and (vii) the Plan has been accepted by the requisite number and amount of Creditors in each Class entitled to vote on the Plan, or that the Plan may be confirmed without such acceptances. The Debtor believes that all of these conditions have been or will be met prior to the Confirmation Hearing.

**Best Interest Test/Liquidation Analysis.** 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 was to be liquidated under chapter 7 of the Bankruptcy Code.

To determine what the holders in each Impaired Class of Claims or Interest would receive if the Debtor was liquidated under chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in a chapter 7 liquidation case. The amount that would be available for satisfaction of Allowed Claims against the Debtor would consist of the proceeds resulting from the disposition of the Debtor's assets, augmented by the cash held by the Debtor at the commencement of the chapter 7 case. 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 such additional Administrative Claims and Priority Claims that may have accrued. 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 a 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 the Case was pending under chapter 11, including compensation for attorneys, financial advisors, appraisers, accountants and other professionals retained by the Debtor or any official committee appointed pursuant to 1102 of the Bankruptcy Code.

After consideration of the effects that a chapter 7 liquidation would have on the proceeds available for distribution including (i) the increased costs and expenses of a chapter 7 liquidation arising from fees payable to a Trustee in bankruptcy and professional advisors to such Trustee, (ii) the erosion in value of the Debtor's assets in a chapter 7 case in the context of the expeditious liquidation required under chapter 7 and the "forced sale" atmosphere that would prevail, and (iii) the potential increases in Claims which would be satisfied on a priority basis or on a parity with the Claims of general Unsecured Creditors, and (iv) the substantial amount of Secured Claims in this case, which, the Debtor believes that Holders of Claims and Interests would receive considerably less in a chapter 7 liquidation, especially considering that the Plan provides to each Creditor recovery with a present value at least equal to the present value of the distribution which such person would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. Pursuant to the Plan, all holders of claims will receive a 100% of the value of their Allowed Claim, with Holders of Interests receiving a \$1.36 million Cash payment.

The Plan contemplates full payment to all Creditors. In a chapter 7 liquidation there may be insufficient funds to satisfy all of the secured creditors and other classes of claims, nor would there be any guarantees that a sale of the Property under a chapter 7 liquidation would yield a higher sale price. Accordingly, the Debtor believes that the Plan provides Creditors with at least as much as they would be entitled to receive in a chapter 7 liquidation.



**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 unless such liquidation is set forth in the Plan. The Plan calls for the sale of the Property, distributions to Creditors from Sale Proceeds and the dissolution of the Debtor. Based on the Summary of the Plan, the Plan meets the feasibility requirements of the Bankruptcy Code.

#### **EFFECT OF CONFIRMATION**

##### **INJUNCTION**

Except (I) as otherwise provided in the Plan or (ii) in any Final Order, all persons who have held, hold, or may hold Claims, or Interests, are permanently enjoined, on and after the Effective Date, from the commencement or continuation of any action, the employment of process, from taking any act to collect, enforce, attach, recover or offset against such claim and taking any act to create, perfect or enforce any lien or encumbrance against property of the Estate retained by the Liquidating Debtor or distributed to Creditors under the Plan.

##### **RELEASE**

Except as otherwise provided in the Plan, upon the Effective Date, in consideration of the Cash and other property to be distributed to or on behalf of the holders of Claims and Interests under the Plan, the Plan shall be deemed to resolve all disputes and constitute a settlement and release, between and among the Debtor, on the one hand, and each Creditor and Interest Holder, on the other, from any claim or liability, whether legal, equitable, contractual, secured, unsecured, liquidated, unliquidated, disputed, undisputed, matured, unmatured, fixed or contingent, known or unknown, that the Debtor, its Creditors or Interest Holder ever had or now have through the Effective Date in connection with their Claim or Interest (including, without limitation, any claims the Debtor may assert on its own behalf or on behalf of Creditors or Interest Holder pursuant to s 510 and 542

through 553 of the Bankruptcy Code, any claims Creditors or Interest Holder may have asserted derivatively on behalf of the Debtor absent bankruptcy, any claims based on the conduct of the Debtor's business affairs prior or subsequent to the commencement of the Case or any claims based on the negotiation, submission and confirmation of the Plan), provided however that nothing in the Plan or the Confirmation Order shall effect a release of any claim for any debt owed to the United States Government arising under the Internal Revenue Code; any state, city or municipality arising under any state, city or municipal tax code; any environmental laws or any criminal laws of the United States or any state, city or municipality. Nothing in the Confirmation Order or the Plan shall enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Parties for any claim, suit or action arising under the Internal Revenue Code, any state, city or municipal tax code, the environmental laws or any criminal laws of the United States or any state, city or municipality. Nothing in the Confirmation Order or the Plan shall exculpate any party from any liability to the United States Government or any of its agencies or any state, city or municipality arising under the Internal Revenue Code, any state, city or municipal tax code, the environmental laws or any criminal laws of the United States or any state.

#### **LIMITATION OF LIABILITY**

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 plans of reorganization or participating in the offer, issuance, sale or purchase of a security under the Plan. Pursuant to 1125(e), neither the Debtor, the Interest Holder, Allerton, nor any of their respective officers, directors, members, general partner, managers or employees (acting in such capacity), nor any professional person employed by any of them, if an, (the "Released Parties") 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 contract, instrument, release or other agreement or document created or entered into, 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 Debtor's professionals pursuant to Rule 1.8(h)(1) of the New York State Rules of 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 pursuant to the Plan.

**No Estate Tax Liability.** Any estate taxes, interest, and penalties which may be due and payable by reason of the death of Harvey Rodney, deceased shall remain the responsibility of the Estate of Harvey Rodney, deceased, and the Public Administrator shall hold sufficient funds in reserve from the proceeds of the sale of the Property to discharge same and he will continue to hold the reserve until all estate taxes, interest and penalties are paid. Also excepted from payment under the Chapter 11 Plan and are any income tax or gains tax the Debtor may owe for any period of time, since such taxes shall be due at the Seller's member ownership level.

#### **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; (b) the formulation, promulgation and confirmation of an alternative plan of reorganization involving a sale; or © dismissal of the Debtor's case.

The Debtor believes that the Plan provides a recovery to all Creditors equal to or greater than would be obtainable in a chapter 7 liquidation. See Best Interest Test/Liquidation Analysis.

The Debtor believes that the Plan enables Creditors to realize the most value under the circumstances.

#### **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 Debtor has not requested any ruling from the Internal Revenue Service or any other taxing authority with respect to such matters nor will the Debtor, 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 Debtor 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 Creditor and Interest Holder will differ and will depend on factors specific to each Creditor and 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 and Interest Holder in exchange for the Claim; (iv) whether the Creditor and Interest Holder is a United States person or foreign person for tax purposes; (v) whether the Creditor and Interest Holder reports income on the accrual or cash basis method; (vi) whether the Creditor and Interest Holder has taken a bad debt deduction or otherwise recognized loss with respect to a Claim.

**THERE ARE MANY FACTORS WHICH WILL DETERMINE THE TAX CONSEQUENCES TO EACH CREDITOR AND INTEREST HOLDER. FURTHERMORE, THE TAX CONSEQUENCES OF THE PLAN ARE COMPLEX, AND IN SOME CASES, UNCERTAIN. THEREFORE IT IS IMPORTANT THAT EACH CREDITOR AND INTEREST HOLDER OBTAIN HIS, HER OR ITS OWN TAX ADVICE REGARDING THE TAX CONSEQUENCES TO SUCH CREDITOR AND 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 AND 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 AND INTEREST HOLDER SHOULD SEEK ADVICE BASED UPON THE CREDITOR AND INTEREST HOLDER'S PARTICULAR CIRCUMSTANCES FROM**

**AN INDEPENDENT TAX ADVISOR.**

**ADDITIONAL INFORMATION**

Requests for information and additional copies of this Disclosure Statement, the Ballots 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 the Debtor's counsel, Wayne Greenwald, 475 Park Avenue South, New York, NY 10016, Attn. Wayne Greenwald Esq., 212-983-1922.

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 at One Bowling Green, New York, New York, and are available for public inspection Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m. and are also available for viewing on the Internet at <http://www.nysb.uscourts.gov>.

**CONCLUSION**

The Debtor believes the Plan is in the best interests of all Creditors and strongly encourages all holders of Claims against the Debtor to support the Plan.

**DATED:** New York, New York  
February 15, 2017

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**By: /s/ Wayne M. Greenwald Pres**  
**Wayne M. Greenwald**