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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE: Chapter 11 Reorganization  
(Jointly Administered)  
SWANKE HAYDEN CONNELL LTD., Case No. 15-10009 (SCC)  
DESIGN 360 INC., Case No. 15-10010 (SCC)  
SWANKE HAYDEN CONNELL Case No. 15-10011 (SCC)  
& PARTNERS LLP,  
Debtors.

-----X  
**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF  
THE PLAN. THIS DISCLOSURE STATEMENT CONCERNS A  
CHAPTER 11 LIQUIDATING PLAN OF REORGANIZATION WHICH  
DOES NOT REQUIRE SOLICITATION OR VOTING BUT IS BASED ON  
ALL CLASSES RECEIVING THAT WHICH THE LAW PROVIDES FOR  
THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR  
APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT**

**DEBTORS' DISCLOSURE STATEMENT DATED MAY 19, 2017**

**INTRODUCTION**

1. The above-captioned Debtor<sup>1</sup> submits this Disclosure Statement pursuant to § 1125 of the Bankruptcy Code to its known Creditors in order to disclose that information deemed by the Debtor to be material, important, and necessary for Creditors to arrive at a reasonably informed decision in connection with the Liquidating Plan of Reorganization (hereafter the "Plan"), on file with the Bankruptcy Court. Only "impaired" Creditors, as that term is defined in the Bankruptcy Code, are entitled to vote for the Plan or to reject the Plan. This Plan does not

<sup>1</sup> Capitalized terms used herein shall have the same meaning as defined in the Plan.

impair the rights of any creditors. A full definition of what constitutes impairment is contained in § 1124 of the Bankruptcy Code.

2. A copy of the Plan accompanies this Disclosure Statement and Notice and Order conditionally approving the adequacy of the information contained in the Disclosure Statement and for a hearing on Confirmation of the Plan.

3. The Court has set \_\_\_\_\_, 2017 at \_:\_0\_.m. for a hearing on the confirmation of the Plan.

4. A claim or interest is impaired unless the Plan: (1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or (2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default; (A) cures or provides for a cure subject to Court approval of any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in § 365 (b)(2) of this title; (B) reinstates the maturity of such claim or interest as such maturity existed before such default; (C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and (D) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

**NO REPRESENTATIONS CONCERNING THE DEBTOR ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS STATEMENT.**

**THE INFORMATION CONTAINED HEREIN HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT. THE DEBTOR IS UNABLE TO WARRANT OR REPRESENT THAT THE INFORMATION CONTAINED HEREIN IS WITHOUT ANY INACCURACY, ALTHOUGH GREAT EFFORT HAS BEEN MADE TO BE ACCURATE.**

**APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT BY THE COURT DOES NOT CONSTITUTE A RECOMMENDATION BY THE COURT AS TO THE MERITS OF THE PLAN.**

**CREDITORS ARE URGED TO READ THE PLAN IN FULL. THE PLAN REPRESENTS A PROPOSED LEGALLY BINDING AGREEMENT BETWEEN THE DEBTOR, ITS CREDITORS, AND INTERESTED PARTIES, AND IT SHOULD BE READ TOGETHER WITH THIS DISCLOSURE STATEMENT SO THAT AN INTELLIGENT AND INFORMED JUDGMENT CONCERNING THE PLAN CAN BE MADE.**

<b>Summary of Classification and Treatment of Classified Claims and Equity Interests</b>			
<b>Class</b>	<b>Claim</b>	<b>Status</b>	<b>Voting Rights</b>
1	General Unsecured Creditors	Unimpaired	Deemed to Accept

**OVERVIEW**

5. The Debtors filed this Plan based on the fact that the Debtors are liquidating their assets and it appears there are insufficient assets to pay the Chapter 11 administration expenses in full after the payment of certain creditors based on a settlement reached with such creditors in the Bankruptcy Court. Accordingly, general unsecured creditors and certain priority creditors will not be paid because there are no assets left to pay such creditors.

**BACKGROUND**

6. On January 6, 2015, the Debtors commenced a voluntary Chapter 11 case in the United States Bankruptcy Court for the Southern District of New York. No receiver, examiner or creditors committee had been appointed in this Chapter 11 case.

7. The Debtor is not a small business debtor within the meaning of the Bankruptcy Code. The Debtor is a Delaware corporation.

8. The Debtor was an architectural and interior design firm and with offices at 100 Broadway, New York, New York 10005, Washington D.C. and Moscow, Russia. The Debtor's business has been in existence since 1989 and is a successor firm to the original partnership founded in 1906.

9. The Debtors had two wholly owned subsidiaries entitled Design 360, Inc. ("Design 360, Inc."), which also filed a petition under Chapter 11 (Case No. 15-10010), in this Court, simultaneously with to the Chapter 11 filing herein. Design 360, Inc. occupied premises at the Debtors' offices and shares administrative and overhead costs. It had two employees and utilized outside contractors. It has supported graphic design needs of the Debtors.

10. The Debtors had an affiliate named Swanke Hayden Connell & Partners LLP (Case No. 15-10011), a New York partnership (the "Partnership") which was a licensed architect in New York State and several other jurisdictions. The Partnership engaged the Debtors to render all the architectural services required by the Partnership. The Partnership had no assets or liabilities.

11. The Debtors has suffered certain reverses as follows. In 2014, the Debtors lost two of its principals, one in charge of its health care sector and the other in charge of its public/municipal sectors. These two sectors represented approximately 50% of its gross business. The Debtors were also involved to a great extent in projects in Russia which constituted its highest fee generating source over the past 18 months.

#### **SUBSTANTIVE CONSOLIDATION**

12. The Debtors have continually operated under a single name and in a coordinated way. The three cases were procedurally consolidated. The Debtors will seek, at confirmation,

for the cases to be substantively consolidated on the grounds that the cases meet the requirements for a substantive consolidation.

13. The Schedules reflect that assets and liabilities of the three entities (Ltd, 360 and LLP) are such that they should be substantively consolidated. Nearly all of the assets of the three Debtors are located in the main case consisting of \$4,855,061 (Ltd), \$126,000 (360) and \$15.17 (LLP). All of the liabilities are contained in Ltd (scheduled at \$5,238,951 and claims filed at \$8,728,287). Claims filed in 360 (scheduled at \$0 and claims filed at \$451,388), are duplicative of the Ltd claims including claims of Selnick at \$386,000. Claims filed in LLP (scheduled at \$0 and claims filed at \$2,174,897) are also duplicative of the claims filed in Ltd (with M-E Vogel, Selinck and Lilker exceeding \$1,400,000 being filed in this case). Thus, the administration costs owed in the three cases of in excess of \$900,000 exceeds by far the minimal assets in 360 of \$126,000. No creditor will be prejudiced by a substantive consolidation which will eliminate duplicative claims.

14. It is well established that:

“Substantive consolidation derives from the bankruptcy court’s general equitable powers provided in section 105(a) of the Bankruptcy Code. Federal Deposit Ins. Corp. v. Colonial Realty Co., 966 F.2d 57, 58 (2d Cir.1992); In re Deltacorp, Inc., 179 B.R. 773, 777 (Bankr. S.D.N.Y.1995) (citations omitted). “The substantive consolidation of estates in bankruptcy effects the combination of the assets and the liabilities of distinct, bankrupt entities and their treatment as if they belonged to a single entity.” Colonial Realty Co., 966 F.2d at 58 (citing 5 L. King Collier on Bankruptcy, ¶ 1100.06 at 1100–33 (15 ed. 1991)).” In Re Leslie Fay Companies, Inc., 207 B.R. 764, 779 (Bankr. S.D.N.Y. 1997).

15. When estates are substantively consolidated, the separate estates are merged “into one estate for distributive purposes. Usually, the assets and liabilities are shared, with duplicate claims being eliminated and intercompany claims being extinguished. In re Deltacorp, Inc., 179 B.R. at 777 (footnote and citation omitted). Leslie Fay, 207 B.R. at 779. Indeed the “sole

purpose of substantive consolidation is to ensure the equitable treatment of creditors.” Id.

16. The factors to be considered in determining whether a substantive consolidation is warranted includes:

- (a) The presence or absence of consolidated financial statements.
- (b) The unity of interests and ownership between the various corporate entities.
- (c) The degree of difficulty in segregating and ascertaining individual assets and liabilities.
- (d) The existence of transfers of assets without formal observance of corporate formalities.
- (e) The comingling of assets and business functions.
- (f) The profitability of consolidation at a single physical location.

17. In re Donut Queen Ltd., 41 B.R. 706, 709 (Bkrcty. E.D.N.Y. 1984). The objective criteria are not exhaustive and no set of factors automatically mandates substantive consolidation In re Cooper, 147 B.R. 678 (Bkrcty. D.N.J. 1992). Although the factors are guide posts established to assist the judgment of the Bankruptcy Court in reaching a finding on the issue of substantive consolidation. First Nat’l Bank of El Dorado v. Giller, 962 F.2d 796, 799 (8<sup>th</sup> Cir. 1992).

18. Thus, in Leslie Fay, the Southern District of New York explained that an examination of cases in which substantive consolidation was considered reveals that there are “two critical factors in assessing whether substantive consolidation is appropriate:

(i) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or

(ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors.” Id. at 780.

19. In Leslie Fay, the Court found that the record was clear that the creditors dealt with the Leslie Fay companies as a consolidated unit. Such creditors did not rely upon the separate

identities of the subsidiaries in extending credit. Further “the record is also clear that the debtors’ operations, cash, and decision-making were all shared such that it would be detrimental to the estates to attempt to disentangle those operations.” *Id* at 780. Thus, the *Leslie Fay* court approved substantive consolidation.

20. Moreover, “[t]he court is afforded a good deal of discretion in constructing its order of substantive consolidation, and its appropriateness is determined by the court on a *sui generis* basis. See William H. Thornton, *The Continuing Presumption Against Substantive Consolidation*, 15 Banking L.J. 448, 449 (1988).” *In Re Deltacorp, Inc.*, 179 B.R. 773, 777 (Bankr. S.D.N.Y. 1995). “The court retains the power to order a less than complete consolidation, preserving avoidance claims by the formerly separate estates...[citations omitted].” *Id* Such consolidation does not amount to a corporate merger but creates a “single creditor pool” which benefits from all assets and shares in all liabilities. *Id* at 778. (In *Deltacorp*, estates were substantively consolidated but the Court held that such consolidation would not bar the Trustee from pursuing claims for avoidance of fraudulent transfer on actual fraud theory).

21. Likewise, in *FDIC v. Colonial Realty Company*, 966 F.2d 57 (2d Cir. 1992), the Second Circuit Court of Appeals affirmed the Bankruptcy Court and held that the Bankruptcy Court had the authority to permit substantive consolidation of estates of a general partnership and two of its general partners who were individuals.

#### **CHAPTER 11 CASE**

22. More recently, the Debtors were involved in seeking to resolve issues with respect to the receivable owed by its Russian client representing its single largest project at the present time. This client alleged that it has suffered damages as a result of the Debtors alleged delays and omissions and refused to make payments due on the project in the amount of \$2,296,505 dollars.

The Debtors engaged counsel in Moscow to seek resolution of this matter through mediation. The Debtors believed that it has properly performed and would be vindicated and was therefore entitled to payment with respect to this receivable.

23. The Debtors retained attorneys (Leo Fox, Esq.), a consultant (Robert Strasser), who was fully familiar with the operations of the Debtors pre-Chapter 11 filing, accountants (Morris Teper CPA) for the specialized tax accounting services required. The Creditors Committee was officially formed and retained Platzer, Swergold, Levine, Goldberg, Katz & Jazlow LLP as their attorneys, Klinger and Klinger LLP as their accountants.

24. In the meantime, the Debtors analyzed their existing contracts and made decisions on which contracts to proceed and which ones to negotiate a settlement. The Debtors had retained significant amounts of its employees in order to complete these contracts converting the work to accounts receivable which would redound to the benefit of the estate. The Debtors were also busy collecting accounts receivable during this period through its accounts receivable department. Thus, the Debtors had entered into agreement or stipulations with such major creditors as Dormitory Authority of the State of New York (“DASNY”), North Shore-Long Island Jewish (“NSLIJ”), Weill Cornell Medical College (“Weill”).

25. In addition, the Debtors entered into stipulations with JP Morgan Chase Bank regarding its cash management system, Flatiron Capital regarding insurance premium financing.

26. Similarly, the Debtors negotiated with the Debtors’ landlord located in Washington D.C. and arranged for a similar stipulation to be executed. Stipulations with these landlords were submitted to the Court.

27. The Debtors have been involved in litigation with New York Presbyterian (“NYP”), New York Downtown Hospital. Litigation ensued early in the Chapter 11 case



whereby NYP sought to compel the Debtors to either assume or reject the contracts with NYP. The Debtors opposed on various grounds. Ultimately, a partial settlement was reached which “capped” the outside damages asserted by NYP and permitted the Debtors to walk away from the contracts with NYP. The Debtors invoices to NYP approximate \$350,000 and NYP’s claims and counterclaims exceed the receivables by well in excess of such amounts. The Court has ordered a mediation to deal with these issues. It appears, so far, that the mediation has been unsuccessful. Since the Debtors do not have any assets to pay an attorney to continue to represent the Debtors, the Debtors may retain attorneys on a contingency basis to pursue this claim.

### **RUSSIAN ARBITRATION**

28. As noted, prior to the Chapter 11 proceedings, the Debtors had been involved in a very extensive project arising from a construction project located in Moscow, Russia consisting of an extensive and multi-towered housing project. The total bill for the project owed to the Debtors was in excess of \$2,000,000. The Debtors had not been paid for their work despite the Debtors having received the approvals from the municipality for the construction project. The Debtors appeared at a mediation in Moscow having retained Moscow attorneys to represent the Debtors in connection with this project. The Debtors consulted with their Moscow attorneys during the course of the mediation and assisted in the preparation of the necessary paperwork to submit to the arbitrators. Ultimately a decision was issued by the Arbitration Panel that disallowed the Debtors claims. The Creditors Committee determined not to pursue this claim any further.

### **LITIGATION AND SETTLEMENT WITH CERTAIN CREDITORS**

29. Subsequent to the Filing Date, M-E/Vogel, Selnick Harwood and Lilker Associates commenced an action in the Supreme Court of the State of New York, County of New York (the “Trust Fund Creditors”). The Debtors moved to remand the State Court action

to the Bankruptcy Court on the grounds inter alia that the Debtors were made the subject of subpoena and contempt to be issued by the State Court. The Court determined to remand the State Court action back to the State Court. Subsequently, a settlement was reached with these three and one additional creditor ENG pursuant to which such creditors received payments on account of the insurance proceeds of an insurance policy which covered the Debtors' officers and directors. A portion of their claim was left remaining in the Bankruptcy Court. These claims have been resolved as provided in this Disclosure Statement pursuant to which the estate would retain \$75,000 to be shared among the Chapter 11 administration claims. The Trust Fund Creditors and Bladykas Engineering, P.C. ("Bladykas") will release and assign to the Bankruptcy Estate any further rights in and to the assets of the Debtors' estate to the Debtors to the proceeds of any settlement or recovery with respect to NYP and these creditors would receive a total of \$322,232.08 in full satisfaction and settlement of their claims, payable \$157,232.08 upon approval of the settlement paid from the Debtors' attorneys Escrow Account, and the balance of \$165,000 upon entry of an Order confirming this Plan, which sums are to be paid in accordance with the provisions of the Settlement Agreement attached hereto (Exhibit A). The Debtors accordingly request that the Court approve the settlement described herein and enter an Order on confirmation approving such settlement.

#### **ASSETS AND LIABILITIES**

30. The Debtor's balance sheet on a consolidated basis is attached as Exhibit B. This balance sheet reflects that there are administrative claims, consisting of unpaid attorneys and accountants' fees accruing in this Chapter 11 case, which exceed the amount of cash in the Debtors' bank accounts and any possible recovery on account of the NYP account receivable.

**SOURCE OF FUNDS FOR PLAN**

31. The Debtors will have obtained the necessary funds for Confirmation to pay a portion of the administrative costs of this bankruptcy case from the balance of the cash in the Debtors accounts and from the NYP settlement or recovery. The Debtors project that there will be no full recovery to these professionals and there will be no recovery to the unsecured creditors.

32. The Debtor expects that the confirmation of the Plan will probably take place on or about June 30, 2017 on the basis of a single hearing by the Court which conditionally approves the Disclosure Statement and has a joint hearing on Disclosure Statement and Confirmation. This is a liquidating plan which will not require any voting whatsoever.

33. To summarize in tabular form:

**FUNDS NECESSARY FOR CONFIRMATION OF PLAN**  
(payable on the Effective Date):

34. Chapter 11 administration expenses consisting of unpaid fees subject to fee awards are as follows.

NAME	AMOUNT	TOTAL (undetermined)
Robert Strasser	\$37,120	
Leo Fox, Esq.	\$131,300	
Klinger & Klinger LLP	\$10,500	
Henry Swergold, Esq.	\$114,000	
Morris Teper, CPA	\$4,500	
		\$297,620

**SOURCES**

Amounts on Deposit at Debtors' Accounts available for administration Expense	\$75,000
Estimated recoveries with respect to NYP accounts receivable	Undetermined

### **SUMMARY OF PLAN**

35. The Plan is composed of one (1) class of Creditors. Class 1 representing the Allowed unsecured claim of all creditors including contractors, trade creditors and any other unsecured creditors. The Debtors scheduled general unsecured creditors in the amount of \$5,238,951.67 (which include duplicative claims filed in each of the three cases but which are not relevant or significant in light of the fact that this liquidating plan will probably never provide for any payments to general unsecured creditors at all). A total of \$11,354,572.58 in claims were filed.

36. **Class 1** shall receive all distributions on a pro rata basis after payments of all priority creditors asserting claims in the following priority Section 507(a)(2), (4), (8) of the Bankruptcy Code. This Class is not impaired pursuant to Section 1124 of the Bankruptcy Code in that such classes legal, equitable and contractual rights and claims are not altered under this Plan.

### **ADMINISTRATION EXPENSES AND UNCLASSIFIED CLAIMS**

37. Chapter 11 administration creditors, include the attorneys for the Debtors, consultant for the Debtors and accountants for the Debtors as well as attorneys for the Creditors Committee, who have rendered services and who are entitled to compensation under §§ 327 and 503(b) of the Bankruptcy Code. The professional fees may be paid under a different agreement reached with the Debtor. The Debtors propose to pay Robert Strasser the first \$5,500 of his claim on the same level of priority as the United States Trustee. These professionals shall be paid in full or on a pro rata basis from the funds in the estate and any recovery from the NYP account receivable, and after all the United States Trustee fees are paid in full.

38. In addition, there may be due fees payable to the Office of the United States Trustee under 28 U.S.C. § 1930, which are not classified. All post-confirmation quarterly

reports and quarterly fees required by the United States Trustee under 28 U.S.C. § 1930 shall be filed and paid on a quarterly basis until entry of a final decree, dismissal of the case or conversion to Chapter 7.

39. Unless otherwise provided for in the Confirmation Order or other award of the Court, fees and expenses incurred for services after the Confirmation Date to the Debtor by one or more professionals retained in these proceedings in furtherance of carrying out the terms and conditions of this Plan shall be paid by written invoice or statement accompanied by supporting time records and an itemization of time records to be submitted by the professional to (1) attorneys for the Debtors and (2) the Debtors. The Debtors may reserve a portion of the amounts which it holds to permit payment on account of these invoices. The bills shall be paid by the Debtor within 20 business days on account thereof, unless the Debtors objects to the fees within that time. This objection shall be served on counsel for the Debtor. In the event that such objections cannot be resolved consensually, any fees requested in excess of the amount for which an objection is raised shall be resolved at a hearing before the Bankruptcy Court who is in the best position to determine the dispute regarding the payment of such fees.

#### **THE REORGANIZED DEBTOR**

40. The reorganized Debtors shall continue to operate and conduct its affairs, with its present management. The Debtors shall either settle or litigate the NYP account receivable.

#### **EXECUTORY CONTRACTS**

41. The Debtors hereby rejects all contracts as of the Filing Date. Creditors holding claims may file such claims within 30 days after an entry of an Order confirming the Plan.

### **TAX IMPLICATIONS**

42. The Debtors are not aware of any significant tax implication which would inure to the Debtors as a result of the filing and confirming of this Plan other than as stated herein. The Debtors suggest that Creditors consult their tax advisors with respect to the implication of the Plan and the Confirmation upon such creditors.

### **LIQUIDATION ANALYSIS**

43. This Chapter 11 Plan is a liquidating Plan but it is nonetheless a better Plan to those creditors who will be paid under the Plan than any liquidation in a Chapter 7 case. The Liquidation Analysis (Exhibit C) establishes that the liquidation expenses of a Chapter 7 Trustee will eat into the few remaining assets that are here and available for Chapter 11 administrative expenses. Accordingly, the Chapter 11 Plan provides a greater return than would a liquidation in a Chapter 7 case.

### **PREFERENCE AND FRAUDULENT CONVEYANCE ACTIONS**

44. The Debtors have consulted with the Committee to conduct an investigation as to whether there are any valid causes of action, including proceedings to avoid transfers and invalidate claims including, but not limited to, proceedings under §§ 505, 506 544(b), 547, 548, 549, or 550 of the Bankruptcy Code or other applicable state law. After analyzing the risks and expenses related to the prosecution of and the limited recovery, if any, which would inure to the benefit of the creditors in the event that the Debtors would be successful, and the ability to collect on any judgments obtained, the Debtors determined that it does not intend to institute any causes of action for preference or fraudulent conveyance.

**RETENTION OF JURISDICTION BY THE COURT**

45. Notwithstanding Confirmation, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- (a) Determination of the allowability of Claims upon objections filed to such Claims;
- (b) Determination of requests for payment of Claims and fees entitled to priority under § 507;
- (c) Resolution of any disputes concerning the interpretation of the Plan;
- (d) Implementation of the provisions of the Plan;
- (e) Entry of Orders in aid of Consummation of the Plan;
- (f) Modification of the Plan pursuant to § 1127 of the Code;
- (g) Adjudication of any causes of action including voiding powers actions commenced by the Debtor-in-Possession; and
- (h) Entry of a Final Order of Consummation and closing the case.

**EFFECTS OF COURT'S CONFIRMATION AND FEASIBILITY OF THE PLAN**

46. Pursuant to Section 1141(d) of the Bankruptcy Code, the Debtors shall not receive a discharge of any of their claims.

**ANTICIPATED CONFIRMATION DATE**

47. It is anticipated the Plan will be confirmed by the Bankruptcy Court within forty (40) days, assuming the following events take place:

- A. The Plan is duly accepted by creditors;
- B. The Bankruptcy Court finds that the Plan is feasible and in the best interests of creditors;
- C. The Court finds that the Plan is fair and equitable and does not discriminate unfairly;

D. The Debtor has made arrangement with the professionals  
for the payment of these professional fees.

Dated: New York, New York  
May 19, 2017

***SWANKE HAYDEN CONNELL LTD.  
DESIGN 360, INC.  
SWANKE HAYDEN CONNELL  
& PARTNERS LLP***

By: */s/ Richard Seth Hayden*  
Richard Seth Hayden

*/s/ Leo Fox*

Leo Fox, Esq. (LF-1947)  
Attorney for Debtor  
630 Third Avenue  
New York, New York 10017  
(212) 867-9595



***EXHIBIT A***  
***TO BE PROVIDED***

# ***EXHIBIT B***

**EXHIBIT A**

**SWANKE HAYDEN CONNELL ET. AL.  
BALANCE SHEET**

**Assets**

Cash (after settlement with Trust Fund Creditors)	\$75,000
Accounts Receivable-NYP (face amount \$350,000) (estimated approximate)	\$200,000
<b>TOTAL</b>	<b><u>\$275,000</u></b>

**Liabilities**

Chapter 11 Administration Expense	\$297,000
General Unsecured Creditors	\$6,500,000
<b>TOTAL</b>	<b><u>\$6,797,000</u></b>

# ***EXHIBIT C***

**EXHIBIT B**

**SWANKE HAYDEN CONNELL ET AL.  
LIQUIDATION ANALYSIS  
(Estimated and Approximate)**

**Assets**

Cash (after settlement with Trust Fund Creditors)	\$75,000
Accounts Receivable-NYP (face amount \$350,000) (estimated approximate)	\$200,000
<b>TOTAL</b>	<b><u>\$275,000</u></b>

**Liabilities**

Chapter 7 Trustee	\$22,500
Chapter 7 Trustee's Attorneys	\$35,000
Chapter 11 Administration Expense	\$297,000
<b>TOTAL</b>	<b><u>\$354,500</u></b>

Leo Fox, Esq.  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

SWANKE HAYDEN CONNELL LTD.,  
DESIGN 360 INC.,  
SWANKE HAYDEN CONNELL  
& PARTNERS LLP,

Chapter 11 Reorganization  
(Jointly Administered)  
Case No. 15-10009 (SCC)  
Case No. 15-10010 (SCC)  
Case No. 15-10011 (SCC)

Debtors.

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**FIRST AMENDED LIQUIDATING PLAN  
OF REORGANIZATION DATED MAY 19, 2017**

The above captioned Debtors and Debtors-in-Possession proposes this Plan of Reorganization pursuant to Section 1121 of the Bankruptcy Code providing for the payment of the limited Assets of this estate to the creditors under the priority set forth under Section 507 of the Bankruptcy Code, with any balance paid to any general unsecured creditors.

**ARTICLE I**

**DEFINITIONS**

1.1 All terms used in this Plan, unless the context otherwise requires, are as defined in Title 11 of the United States Code. The following terms have the meaning set forth in this Article I.

“Administrative Claim”

An Allowed Claim or requests for payment under Section 503(b) entitled to priority under Section 507(a)(2) of the Bankruptcy Code, administrative expenses approved by the Court pursuant to Bankruptcy Code Section 503(b), and United States Trustee fees under 28 U.S.C. § 1930 (United States

Trustee fees are not required to have been filed as a request for payment).

“Allowed”

Means: (a) with respect to an Administrative Claim of the kind described in Section 503(b), (2), (3), (4) or (5) of the Bankruptcy Code, an Administrative Claim that has been Allowed, in whole or in part, by a Final Order; (b) with respect to any other Administrative Claim, including an Administrative Claim of the kind described in Section 503(b), an Administrative Claim as to which no objection has been filed; (c) with respect to any Claim that is not an Administrative Claim, a Claim that is either (i) listed on the Schedules or (ii) is not a Disputed Claim or (iii) has been allowed by a Final Order; or (d) with respect to any Equity Security Interest, an Equity Security Interest that is not Disputed.

“Assets”

Cash of \$75,000 and the proceeds of recovery or settlement of the NYP receivables for distribution to the Estate, Administration and Priority claims under Section 507 of the Bankruptcy Code.

“Bankruptcy Code”

Title 11 of the United States Code, Sections 101, et seq. or as amended thereafter in effect as of the Filing Date.

“Chapter 11 Case”

The Chapter 11 Case Nos. 15-10009 (SCC), 15-10010 (SCC) and 15-10011 (SCC) commenced by the Debtors on the Filing Date.

“Claim”

A Claim, as defined in Section 101(5) of the Bankruptcy Code, against the Debtors including, without limitation, claims allowable under Section 502 of the Bankruptcy Code or requests for payment of administrative expenses allowed under Section 503 of the Bankruptcy Code.

“Claimant” or “Creditor”	The holder of a Claim, including the holder of a claim for damages resulting from the rejection of an unexpired executory contract or lease.
“Closing”	The date on which an Order confirming this Plan is entered by the Court, provided that such Order has not been stayed.
“Confirmation Date”	The date on which an Order confirming this Plan is entered by the Court, provided that such Order has not been stayed.
“Confirmation Order”	An Order of the Bankruptcy Court confirming the Plan in accordance with the Bankruptcy Code.
“Court”	The United States Bankruptcy Court for the Southern District of New York, or such other court as may from time to time have original jurisdiction over this Chapter 11 proceeding.
“Debtors”	Swanke Hayden Connell Ltd. Design 360, Inc. Swanke Hayden Connell & Partners LLP
“Disallowed Claim”	Any Claim or portion thereof that is determined in a Final Order of the Court not to be allowed pursuant to Section 502 and 503 of the Bankruptcy Code.
“Disclosure Statement”	Any disclosure statement required by Section 1125 of the Bankruptcy Code, and approved by the Court.
“Disputed”	Means, (1) with respect to any Claim other than an Administrative Claim, a Claim (i) that would be deemed filed pursuant to Section 1111(a) of the Bankruptcy Code but as to which (A) a proof of claim has been timely filed that is inconsistent in any way with the description or treatment of such Claim in the Schedules, or (B) as to which an objection has been filed, or (ii) that



would not be deemed filed pursuant to Section 111(a) of the Bankruptcy Code, whether by reason of its exclusion from the Schedules or its description therein as disputed, contingent or unliquidated, but as to which a proof of claim has been filed; or (2) with respect to an Administrative Claim, an Administrative Claim as to which an objection has been filed.

“Distribution”

A distribution of cash or cash equivalents to the holders of Allowed Claims under the Plan.

“Effective Date”

Shall be thirty (30) days after the Confirmation Date.

“Estate”

The estate created in this case pursuant to Section 541 of the Bankruptcy Code.

“Filing Date”

January 6, 2015.

“Final Distribution”

The date on which all Distributions provided for under this Plan have been made.

“Final Order”

An Order of a court as to which (a) any appeal that has been taken has been determined finally or dismissed, (b) the time for appeal has expired and (i) no timely Notice of Appeal has been filed and (ii) no Order of any Court having the affect of tolling or otherwise extending the effect of the Order or the appeal period of such Order.

“NYP”

New York Presbyterian and its affiliates.

“Plan”

Debtors’ Plan of Reorganization or as modified in accordance with the Bankruptcy Code.

**ARTICLE II**

**DESIGNATION OF CLAIMS AND INTEREST**

2.1 **Class 1:** The allowed claims of unsecured creditors.

**ARTICLE III**

**TREATMENT OF CLAIMS UNDER THE PLAN**

**CLASS 1**

3.1 The allowed claims of unsecured creditors shall be paid pro rata from the proceeds of the Assets, net after payments in full or pro rata as the case may be to all Allowed Administrative Claims and other Allowed Claims having priority under Section 507 of the Bankruptcy Code, in full satisfaction and settlement of such claims.

**ARTICLE IV**

**ADMINISTRATION EXPENSES AND UNCLASSIFIED CLAIMS**

4.1 Chapter 11 priority creditors holding Allowed Claims for administration under Section 507(a)(1) including the consultant, attorneys and any other professionals of the Debtors who have rendered services and who are entitled to compensation under Sections 327 and 503(b) of the Bankruptcy Code shall be paid in full or on a pro rata basis based upon their awarded fees, after payment of the fees payable to the Office of the United States Trustee under 28 U.S.C. § 1930. All of the professional claims may be paid under a different agreement reached with the Debtors prior to confirmation, on the later of 30 days after confirmation or 30 days after the Effective Date. The Debtors proposed to pay Robert Strasser the first \$5,500 of his claim on the same level of priority as the United States Trustee fees. The United States Trustees shall be paid and shall accrue and continue to be paid up through the conversion to Chapter 7, or closing date of this Chapter 11 Case.

**ARTICLE V**

**MEANS FOR EXECUTION OF PLAN**

5.1 Debtors shall arrange to complete the collection of its accounts receivable against NYP.

5.2. The Debtors shall seek approval of this Court for the settlement entered into with a trust fund creditors M-E Vogel, Selnick, Lilker and Bladykas and shall arrange for distribution of the settlement funds of \$157,232.08 plus \$165,000 to be paid to such creditors in accordance with the percentages and amount set out in the Settlement Agreement attached to the Disclosure Statement.

5.3 Fee Applications, if any, shall be filed on notice to creditors and the United States Trustee.

**ARTICLE VI**

**PROCEDURES FOR RESOLVING DISPUTED CLAIMS**

6.1 Time Limit for Objections to Claims. Objections to Claims shall be filed by the Debtors with the Court and served upon each holder of each of the Claims to which objections are made not later than thirty (30) days subsequent to the Confirmation Date or within such other time period as may be fixed by the Court. Unless otherwise extended by Order of the Court, the Debtors may file an objection to the allowance of any Claim filed resulting from the rejection of an executory contract on the later of sixty (60) days following the Confirmation Date or within thirty (30) days after the filing of such Claim and service of a copy of such Claim upon the Debtors as provided for in the Plan.

6.3 Resolution of Disputed Claims. Unless otherwise ordered by the Court, the Debtors shall litigate to judgment, settle or withdraw objections to Disputed Claims, in their sole

discretion, without notice to any party in interest, other than notice of not less than ten (10) days notice, as between the Debtors and the Creditor of the claim who is being objected to.

6.4 Payments and distributions to each holder of a Disputed Claim that ultimately becomes an Allowed Claim shall be made in accordance with the provisions of the Plan with respect to the class of Creditors to which the respective holder of an Allowed Claim belongs. Reserves will be maintained in amounts not less than the filed amount of such claim plus interests, fees and costs provided by statute up until payment and the Bankruptcy Code pending determination of any disputed claim. Such payments and distributions shall be made as soon as practicable after the date that the Court enters a Final Order allowing such Claim, but not later than fifteen (15) days thereafter. Payments shall be made as and when a Disputed Claim has become, in whole or in part, an Allowed Claim or a Disallowed Claim, pursuant to a Final Order or agreement between the Debtors and such Claimant or as allowed by this Plan, with the Allowed claim to be paid on the later of fifteen (15) days after the Effective Date or after the Closing of the sale of the real property or after a final Order is entered allowing the claim.

## **ARTICLE VII**

### **THE REORGANIZED DEBTORS**

7.1 The reorganized Debtors shall continue to operate and conduct its affairs with its present management, officers and directors. However, the Debtors may have no assets and may cease operations.

## **ARTICLE VIII**

### **EXECUTORY CONTRACTS**

8.1 The Debtors hereby rejects all contracts as of the Filing Date, except as otherwise provided herein. Persons holding claims as a result of the rejection of an executory contract may file claims with the Bankruptcy Court within thirty (30) days of the Confirmation.

**ARTICLE IX**

**MODIFICATION OF PLAN**

9.1 The Debtors may amend and modify this Plan in any nonmaterial way (or upon consent of the creditor affected), at any time, prior to the Confirmation Order, without approval of the Court; after Confirmation, the Debtors may modify this Plan before a substantial consummation of this Plan, with the approval of this Court and upon any creditors' right to respond.

**ARTICLE X**

**PROVISIONS FOR CLASSES OR HOLDERS OF CLAIMS  
WHICH ARE AFFECTED BY AND DO NOT ACCEPT THE PLAN**

10.1 Any class or holders of claims or interests which are affected by and do not vote to accept the Plan in accordance with the provisions of Bankruptcy Code Section 1126 shall be treated in a fair and equitable fashion as provided by Bankruptcy Code Section 1129(b).

**ARTICLE XI**

**EVENT OF DEFAULT**

11.1 The occurrence of any one of the following shall constitute a default by the Debtors under the Plan.

(a) The Debtors fails to make any distribution or payment due under the Plan unless such default has been waived,

(b) The Debtors seeks relief under any Federal or State insolvency, and

(c) If a receiver, liquidator, custodian or trustee is appointed or substantially all of the Property of the Debtors prior to completion of the payments due.

11.2 Upon the occurrence of an Event of Default, on application may be made to the Court on ten (10) days business notice, to the Debtors and to the United States Trustee, the

Section 362 stay of the Bankruptcy Code shall be vacated, and the Creditors shall otherwise have all rights available to them under state law or the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or under this Plan

## **ARTICLE XII**

### **DISCHARGE AND RELEASE**

12.1 Pursuant to Section 1141(d) of the Bankruptcy Code these Debtors shall not obtain a discharge. Professionals in this case who have acted in good faith shall not be liable to any creditor or party for any act or forbearance or exercise of discretion from the Petition Date to the Effective Date other than for willful misconduct or gross negligence.

## **ARTICLE XIII**

### **RETENTION OF JURISDICTION AND DISCHARGE**

13.1 Notwithstanding Confirmation, the Bankruptcy Court shall retain jurisdiction for the following purposes:

- (a) Determination of the allowability of Claims upon objections filed to such Claims and to any litigation commenced by the Debtors post-confirmation related to the Chapter 11 Case, the Plan or any creditor claims, except that Debtors shall not commence any litigation with respect to any Claims;
- (b) Determination of requests for payment of Claims and fees entitled to priority under Section 507;
- (c) Resolution of any disputes concerning the interpretation of the Plan;
- (d) Implementation of the provisions of the Plan;
- (e) Entry of Orders in aid of consummation of the Plan;
- (f) Modification of the Plan pursuant to Section 1127 of the Code;

(g) Adjudication of any causes of action including voiding powers actions commenced by the Debtors-in-Possession; and

(h) Entry of a Final Order of Consummation and closing the case.

Dated: New York, New York  
May 19, 2017

***SWANKE HAYDEN CONNELL LTD.  
DESIGN 360, INC.  
SWANKE HAYDEN CONNELL & PARTNERS LTD.***

By: */s/ Richard Seth Hayden*  
Richard Seth Hayden

*/s/ Leo Fox*  
Leo Fox (LF-1947)  
Attorney for Debtors and  
Debtors-in-Possession  
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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
IN RE:

SWANKE HAYDEN CONNELL LTD.,  
DESIGN 360 INC.,  
SWANKE HAYDEN CONNELL  
& PARTNERS LLP,

Chapter 11 Reorganization  
(Jointly Administered)  
Case No. 15-10009 (SCC)  
Case No. 15-10010 (SCC)  
Case No. 15-10011 (SCC)

Debtors.  
-----X

**ORDER AND NOTICE APPROVING THE MOTION FOR  
CONDITIONAL APPROVAL OF THE  
DISCLOSURE STATEMENT AND FIXING THE DATE  
FOR OBJECTIONS TO THE DISCLOSURE STATEMENT AND CONFIRMATION**

A Liquidating Plan of Reorganization, dated May 19, 2017 (the "Plan") and a Disclosure Statement, dated May 19, 2017 (the "Disclosure Statement"), having been filed with the Clerk of this Court, and this Court having conditionally approved the adequacy of the information contained in the Disclosure Statement.

Now, on motion of Leo Fox, Esq., counsel for the Debtor;

***IT IS HEREBY ORDERED AND NOTICE IS GIVEN THAT:***

1. The Disclosure Statement is conditionally approved.
2. A hearing on confirmation of the Debtors' Plan and on confirmation (the "Confirmation Hearing Date") of the Plan and on any objections to confirmation of the Plan will be held on June \_\_, 2017 at 10:00 a.m. or as soon thereafter as counsel may be heard, in the Courtroom of the Honorable Shelley C. Chapman, United States Bankruptcy Judge, United



States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408. The hearing may be adjourned from time to time without further notice other than the announcement in open court at the Confirmation Hearing Date or at any adjourned Confirmation Hearing Date;

3. On or before a date which is no later than four days after entry of the within Order of the Court, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), the Debtor is hereby authorized and directed to transmit by first class mail, postage prepaid, to all known holders of claims against the Debtor and to all equity interest holders of the Debtor, and to other parties in interest having filed a Notice of Appearance and Demand for Service of Papers, (a) this Order, (b) the Plan and (c) the Disclosure Statement.

4. Service made as provided in the preceding paragraph shall be deemed good and sufficient notice and service pursuant to Federal Rules of Bankruptcy Procedure Rule 3017.

5. Any objection the Confirmation of the Plan must be in writing, must set forth in detail the grounds and facts of such objection and the legal basis therefore, and in accordance with Federal Rule of Bankruptcy Procedure 3020(b)(1), must be filed on or before seven days before the Confirmation Hearing Date with the Clerk of the Bankruptcy Court, Old Customs House, One Bowling Green, New York, New York, electronically in accordance with General Order M-242 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers) and served in accordance with General Order M-242, and served so as to be received by (1) Leo Fox, Esq., as counsel to Debtor; and (2) The Office of the United States Trustee for the Southern District of New York, 201 Varick Street, Suite 1006, New York, New York 10014 and (3) Henry G. Swergold, Esq., Platzer, Swergold, Levine, Goldberg, Katz &

Jaslow, LLP, 475 Park Avenue South, 18<sup>th</sup> Floor, New York, New York 10016 on or before seven days before the Confirmation Date (the “Objections Deadline”).

Dated: New York, New York  
\_\_\_\_\_, 2017

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Honorable Shelley C. Chapman  
United States Bankruptcy Judge