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and Debtor in Possession

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

**NOTICE OF FILING OF REVISED DISCLOSURE STATEMENT  
FOR THE REVISED CHAPTER 11 PLAN OF LIQUIDATION  
OF TBAC WIND DOWN, LTD.**

**PLEASE TAKE NOTICE** that on September 15, 2017, TBAC Wind Down, Ltd. (the “**Circus**”) filed the *Disclosure Statement for the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Disclosure Statement**”, Docket No. 244).

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit A** is a revised version of the Disclosure Statement, including all exhibits, that reflects changes made by the Circus as of the date hereof, and attached hereto as **Exhibit B** is a redline comparing the revised Disclosure Statement (including only revised exhibits) to the version filed on September 15, 2017.

Dated: October 30, 2017  
New York, New York

/s/ Christopher Updike  
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**Exhibit A**

**Revised Disclosure Statement**

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

**DISCLOSURE STATEMENT FOR THE  
CHAPTER 11 PLAN OF LIQUIDATION OF TBAC WIND DOWN, LTD.**

**THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE.**

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**DISCLAIMER**

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE CIRCUS' PLAN OF LIQUIDATION AND CERTAIN OTHER DOCUMENTS AND FINANCIAL INFORMATION. THE INFORMATION INCLUDED IN THIS DISCLOSURE STATEMENT IS PROVIDED FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN AND SHOULD NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER AND HOW TO VOTE ON THE PLAN. THE CIRCUS BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE. THE SUMMARIES OF THE FINANCIAL INFORMATION AND THE DOCUMENTS THAT ARE ATTACHED TO, OR INCORPORATED BY REFERENCE IN, THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO SUCH INFORMATION AND DOCUMENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR THE OTHER DOCUMENTS INCORPORATED IN THE DISCLOSURE STATEMENT BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS SHALL GOVERN FOR ALL PURPOSES. EACH HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN SHOULD CAREFULLY REVIEW THIS DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE CASTING A BALLOT.

THE FINANCIAL INFORMATION CONTAINED IN OR INCORPORATED BY REFERENCE INTO THE DISCLOSURE STATEMENT HAS NOT BEEN AUDITED, UNLESS SPECIFICALLY INDICATED OTHERWISE. THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAVE BEEN MADE AS OF THE DATE OF THE DISCLOSURE STATEMENT UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT ASSUME AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH IN THE DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ANY ENTITIES DESIRING ANY SUCH ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS.

NO REPRESENTATIONS CONCERNING THE CIRCUS HAVE BEEN AUTHORIZED BY THE CIRCUS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE DOCUMENTS ATTACHED TO THIS DISCLOSURE STATEMENT. ANY INFORMATION, REPRESENTATIONS, OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE PLAN WHICH ARE OTHER THAN AS SET FORTH, OR INCONSISTENT WITH, THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, THE DOCUMENTS ATTACHED TO THE DISCLOSURE STATEMENT, AND THE PLAN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM.

WITH RESPECT TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING, THREATENED, OR POTENTIAL LITIGATION OR OTHER ACTIONS, THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN THE CONTEXT OF SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE.

PLEASE REFER TO ARTICLE VI AND ARTICLE VII OF THIS DISCLOSURE STATEMENT FOR A DISCUSSION OF CERTAIN RISK FACTORS AND U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN, RESPECTIVELY, THAT SHOULD BE CONSIDERED WHEN VOTING ON THE PLAN.

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**EXHIBITS**

EXHIBIT A Plan

EXHIBIT B Disclosure Statement Order

EXHIBIT C Liquidation Analysis

THE CIRCUS HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN.
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I.

EXECUTIVE SUMMARY

A. Introduction

TBAC Wind Down, Ltd., formerly known as The Big Apple Circus, Ltd. (the “**Circus**”), submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code to holders of Claims against the Circus in connection with the solicitation of acceptances with respect to the Circus’ proposed chapter 11 plan (the “**Plan**”). A copy of the Plan is attached hereto as Exhibit A and incorporated herein by reference. This Disclosure Statement describes certain aspects of the Plan, including the treatment of Claims, the Circus’ operations, financial projections, and other related matters. Capitalized terms used but not otherwise defined in this Disclosure Statement have the meaning given to those terms in the Plan.

Before soliciting acceptances of a proposed chapter 11 plan, section 1125 of the Bankruptcy Code requires a debtor to prepare, and obtain approval of, a disclosure statement that contains information of a kind, and in sufficient detail, to permit a hypothetical claimholder to make an informed judgment regarding acceptance of the plan. On [●], the Court entered an order approving (i) this Disclosure Statement, (ii) the solicitation and notice procedures with respect to confirmation of the Plan, (iii) the form of ballots and notices in connection therewith, and (iv) the scheduling of certain date with respect thereto (including the exhibits thereto, the “**Disclosure Statement Order**”, Docket No. [●]). The Disclosure Statement Order is attached hereto as Exhibit B. **The Court’s approval of this Disclosure Statement does not constitute a guarantee of the accuracy or completeness of the information contained herein or an endorsement by the Court of the merits of the Plan.**

**FOR THE REASONS SET FORTH HEREIN, THE CIRCUS AND THE CREDITORS’ COMMITTEE BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES FOR HOLDERS OF CLAIMS AGAINST THE CIRCUS AND A LARGER RECOVERY FOR SUCH HOLDERS THAN THEY WOULD OTHERWISE RECEIVE OR RETAIN IN A LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE. ACCORDINGLY, THE CIRCUS AND CREDITORS’ COMMITTEE STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

B. Distributions Under the Plan

The Plan provides for distributions to creditors of the Circus, largely from the proceeds of the sale of the Circus’ real property located at 39 Edmunds Lane, Walden, New York (the “**Walden Property**”), which was sold for \$2.5 million, and the sale of the Circus’ circus equipment and other related personal and intellectual property associated with the Circus’ performance unit (the “**Circus Assets**”) which, after an extensive marketing process and auction, were sold for \$1.3 million.<sup>1</sup>

The Plan provides for payment in full of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, Allowed Priority Non-Tax Claims, and Allowed Deposit Claims. Allowed General Unsecured Claims shall receive a pro rata share of the Available Assets (less any valid Plan Expenses), which include any assets of the Estate remaining after (a) payment of all Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, Secured Claims, and Deposit Claims to the extent Allowed as of the Effective Date, (b) establishment of the Disputed Claims Reserve, and (c) any amounts transferred on account of the Foundations Settlement.

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<sup>1</sup> Further details regarding the sales of both the Walden Property and the Circus Assets can be found in Section (II)(C)(iv) of this Disclosure Statement.

The treatment of Claims under the Plan is summarized as follows:

- Unless the applicable creditor agrees to less favorable treatment, holders of **Allowed Administrative Claims, Allowed Priority Tax Claims, Priority Allowed Non-Tax Claims, and Allowed Deposit Claims**, will receive cash in an amount equal to the Allowed but unpaid portion of such Allowed Claim.
- Unless the applicable creditor agrees to less favorable treatment, holders of **Allowed Secured Claims** will receive one of the following treatments, in full satisfaction, settlement, release, and discharge, of such Allowed Secured Claim: (1) payment in cash in an amount equal to the Allowed but unpaid portion of such Allowed Secured Claim, including any interest and any reasonable fees, costs, or charges required under section 506(b) of the Bankruptcy Code; (2) delivery of collateral securing such Allowed Secured Claim or proceeds thereof to the extent of the Allowed but unpaid amount of such Secured Claim; or (3) other treatment rendering such Secured Claim not Impaired.
- Unless the applicable creditor agrees to less favorable treatment, holders of **Allowed General Unsecured Claims** will receive a pro rata share of the Available Assets (less any valid Plan Expenses). The Circus estimates that Available Assets will total approximately \$1.69 million.

Estimated distributions to creditors are summarized in the following table:

Types of Claims	Estimate of Distribution <sup>2</sup>	Estimated Amount of Claims <sup>3</sup>	Percentage Recovery
<b>Secured Claims</b>	\$0 - 4,628	\$0 - 4,628	100%
<b>Administrative Claims</b>	\$10,000	\$10,000	100%
<b>Priority Tax Claims</b>	\$0 – 19,304	\$0 – 19,304	100%
<b>Priority Non-Tax Claims</b>	\$17,037 – 68,640	\$17,037 – 68,640	100%
<b>Deposit Claims</b>	\$0	\$0	100%
<b>General Unsecured Claims</b>	\$1,573,087 – 1,724,157	\$9,416,636 – 10,278,796	15 - 18%

### C. Voting on the Plan

Under the provisions of the Bankruptcy Code, not all holders of claims against a debtor are entitled to vote on a chapter 11 plan. Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified for purposes of voting and are not entitled to vote. Also, under the Plan, holders of Priority Non-Tax Claims, Deposit Claims, and Secured Claims are not Impaired, and, therefore, are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Circus is not soliciting votes from these creditors.

General Unsecured Claims are Impaired under the Plan and holders of such Claims may receive a distribution under the Plan. Therefore, such creditors are entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code. The Circus is soliciting votes from these creditors, to the extent that such creditors' General Unsecured Claims have not been disallowed or are not subject to a pending objection.

<sup>2</sup> These estimates are subject to revision in material ways and should not be considered a representation that actual outcomes will necessarily fall within this range.

<sup>3</sup> Amounts shown are estimates only and remain subject to the claims reconciliation process and Claims filed under future bar dates.

**The deadline to vote on the Plan is 5:00 p.m. (prevailing Eastern Time) on December 1, 2017 (the "Voting Deadline").** In order to be counted as votes to accept or reject the Plan, all ballots must be properly executed, completed and delivered (either by using the return envelope provided, by first class mail, overnight delivery, or personal delivery, or by electronic mail) in accordance with Article IV of this Disclosure Statement so that they are **actually received** on or before the Voting Deadline by the Claims and Noticing Agent at the following addresses:

**If by U.S. Postal Service mail:**  
Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
P.O. Box 199043  
Blythebourne Station, Brooklyn, NY 11219

**If by overnight delivery or personal delivery by hand:**  
Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
6201 15th Avenue  
Brooklyn, NY 11219

**If by electronic mail:**  
tbacballots@donlinrecano.com

Any ballot received after the Voting Deadline will not be counted unless otherwise determined by the Circus in its sole absolute discretion.

If you have any questions on the procedure for voting on the Plan, please call the Claims and Noticing Agent at the following telephone number: (212) 771-1128.

#### **D. Confirmation of the Plan**

A hearing to consider confirmation of the Plan is scheduled to be held before the Honorable Sean H. Lane at **11:00 a.m. (prevailing Eastern Time) on December 12, 2017** at the Court, located at One Bowling Green, New York, New York (the "**Confirmation Hearing**"). The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made before or at the Confirmation Hearing or any adjournment thereof. Effectiveness of the Plan is subject to certain material conditions precedent contained in Article IX of the Plan and described herein. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied will be satisfied or otherwise waived.

**The deadline to object to confirmation of the Plan is December 1, 2017, at 5:00 p.m. (prevailing Eastern Time) (the "Plan Objection Deadline").** All objections to the Plan must be filed with the Court and served on the Circus and certain other parties in interest in accordance with the Disclosure Statement Order so that they are **actually received** on or before the Plan Objection Deadline.

#### **E. Appointment of the Plan Administrator**

Recognizing that the services of an experienced person are necessary and of critical importance to efficiently and expeditiously administer and wind down the Estate, the Plan provides for the appointment of a Plan Administrator to act for the Estate as provided in the Plan. The Plan Administrator may retain such additional persons as he or she may determine are of benefit to the Estate in the capacity for which such persons are retained. The initial Plan Administrator shall be selected by the Circus, in consultation with the Creditors' Committee, and disclosed in the Plan Supplement.

## II.

### RELEVANT BACKGROUND

#### A. History of the Circus

The Circus is a Type B not-for-profit corporation organized under section 201 of the New York Not-for-Profit Corporation Law that is exempt from federal taxes under section 501(c)(3) of the U.S. Internal Revenue Code of 1986 (as amended, the “IRC”). Founded in 1977 by Paul Binder and Michael Christensen to establish a performing circus and school for the instruction and artistic development of circus arts, the Circus was a venerated New York cultural institution renowned for its critically-acclaimed performances and dedicated community programs. During its illustrious history, the Circus performed 38 unique seasons of an annual ring show under the Big Top at venues across the country, featuring circus performers from around the globe and bringing the highest standards of artistic excellence to its multigenerational, multiethnic, and multilingual audience, both on tour and from the Circus’ former home base in New York City’s Lincoln Center.

#### B. Events Leading to the Chapter 11 Case

For decades, the Circus pursued its mission to provide circus performances and programs of the highest quality for the communities it serves. However, like other not-for-profit organizations, the Circus relied on a combination of earned revenue and support from individual donors, government agencies, and private foundations to fund its performances and community programs. Since the financial crisis of 2008, the Circus faced challenging headwinds.

Most significantly the Circus’ earned revenue steadily declined in the years prior to commencement of its Chapter 11 Case, primarily due to a precipitous drop-off in demand for private show performances. Specifically, prior to 2008, over \$2 million of the Circus’ annual income was generated from approximately 20 private performances a year that were typically purchased by companies and financial institutions during the holiday season. In the time since, the number of private performances fell below 10 per year, and annual revenue from private performances correspondingly decreased by nearly half. And while attendance remained essentially flat at Lincoln Center shows (with a downturn in fiscal year 2016), attendance per performance decreased at most venues outside of New York City. Declines in net ticket and concessions revenue were exacerbated by Hurricane Sandy (2012), the Boston Marathon bombing (2013), and a massive and terribly-timed 2014 ice storm in Atlanta, each of which significantly impacted the cities where the Circus was performing at those times. For fiscal year 2016, the Circus generated earned income from performances of only \$10.6 million, down from a peak of over \$18 million during the 2007-08 season.

Accordingly, for fiscal year 2016, the Circus had combined income from earned revenue and contributions of \$17.2 million, while operating expenses during the same period exceeded \$18.1 million. Over time, the Circus incurred various borrowings from lenders, certain insiders, and its endowments totaling approximately \$4.2 million in attempts to fill the growing income gap; nonetheless, the Circus accumulated accounts payable and accrued expenses totaling over \$3.2 million as of the Petition Date.

To address its liquidity issues, the Circus reduced the number of venues for its annual ring show performances from eight in 2013 to four in 2016, focusing on those with the most net income potential, and made great strides in reducing costs per show without sacrificing performance quality. Also, the Circus actively sought contributions to support the organization. Most recently, in June 2016, the Circus launched an emergency fundraising campaign called “Save the Circus” with significant attention in *The New York Times* and other media. The “Save the Circus” campaign utilized online crowd-funding and traditional solicitations for donations in attempts to raise \$2 million by the end of July 2016 – the deadline by which the Circus’ staff needed to design and market the next circus show scheduled to open in October 2016. Proceeds of the campaign would have enabled the Circus to continue to pay down its outstanding debt obligations and start work on a new production. However, despite receiving donations from over 1,400 different donors as well as the continued financial support of the organization’s directors, the Circus was ultimately unable to raise sufficient funds. In July 2016, the Circus made the very difficult decision to cancel the 2016-17 performance season, requiring the unfortunate, but necessary, release of the Circus’ artists and production crew.

Following cancellation of the 2016-17 season, the Circus began considering alternatives that would allow it to restructure its operations around various community programs it operated in hospitals, nursing homes, and schools in New York City and other cities across United States (collectively, the “**Community Programs**”) on a standalone basis in furtherance of its mission. Unfortunately, the Circus subsequently learned that a separate, unaffiliated not-for-profit corporation was formed in June 2016 with the intent to compete with the Circus’ long-standing Clown Care program. After creation of this new organization, several of the hospitals that sponsored and hosted Clown Care elected to terminate their relationship with the Circus. As a result, the scope and sustainability of Clown Care – the centerpiece of the Circus’ Community Programs – was seriously undermined, which, in turn, forced the Circus to reconsider its strategic planning.

Based on the foregoing, and in consultation with the its directors, officers, and advisors, the Circus determined that the best course of action to maximize the Circus’ value for creditors and honor its mission was to commence the Chapter 11 Case to effectuate an orderly wind down of the Circus’ affairs, sell substantially all of its assets, satisfy creditor claims, and transition its Community Programs to other capable not-for-profit organizations. On November 20, 2016 (the “**Petition Date**”), the Circus commenced the Chapter 11 Case.

**C. Events During the Chapter 11 Case**

*(i) First Day Relief*

In connection with commencement of the Chapter 11 Case, the Circus sought and obtained interim and final authorization to, among other things, obtain critical debtor-in-possession financing from certain of the Circus’ directors, continue the Circus’ cash management system, and satisfy certain prepetition employee, tax, and insurance claims necessary to administer this case and preserve the Circus as a going concern [Docket Nos. 15, 16, 17, 20, 47, 48, 49, 50, 51, and 74].

*(ii) Retention of Professionals*

To accomplish the work necessary to administer this case, the Circus retained Debevoise & Plimpton LLP, as bankruptcy counsel, Donlin, Recano & Company, Inc., as claims and noticing agent, and Goldin Associates, LLC, as financial advisor, all of whom agreed to provide their services on a pro bono basis in light of the Circus’ not-for-profit status. On February 15, 2017, the Court entered an order [Docket No. 133] authorizing the Creditors’ Committee to retain Pachulski Stang Ziehl & Jones LLP, who also agreed to serve as legal counsel on a pro bono basis. On May 16, 2017, the Court entered an order authorizing the Circus to retain PKF O’Connor Davies, LLP, as accountant, to provide certain tax advisory and audit services.

*(iii) Schedules and Claims Bar Date*

Following the Petition Date, the Circus prepared and filed its schedules of assets and liabilities and statement of financial affairs (collectively, the “**Schedules**”, Docket Nos. 101-102), which were subsequently amended [Docket Nos. 124-125, 158-159]. Furthermore, on February 1, 2017, the Circus filed a motion seeking entry of an order establishing the bar dates for filing proofs of claim against the Circus that arose prior to the Petition Date, and approving the form and manner of notices of such bar dates (the “**Bar Date Motion**”, Docket No. 103). On February 17, 2017, the Court entered an order [Docket No. 144] granting the Bar Date Motion and establishing March 30, 2017 as the General Bar Date and May 19, 2017 as the Governmental Bar Date (each as defined in the Bar Date Motion). Over 110 proofs of claim (secured and unsecured), asserting claims totaling more than \$8.5 million against the Estate, were submitted. Additionally, the Circus has scheduled claims for creditors who did not independently file proofs of claim. The Circus believes that a number of inaccurate claims were filed and that the actual amount of allowed claims will be lower after claims are reconciled and objections considered.

*(iv) Sale of Substantially All of the Circus’ Assets*

During the Chapter 11 Case, the Circus has sold substantially all of its assets in two material sales: the sale of the Walden Property and the separate sale of its big-top performance business as a going concern (i.e., the Circus Assets).

Shortly after the Petition Date, the Circus filed a motion [Docket No. 32] seeking approval to sell the Walden Property to Polich Tallix Inc. (“**Polich**”) for \$2.5 million, following significant prepetition marketing efforts. Specifically, in April 2016, the Circus’ realtor conducted a review of comparable transactions involving properties similar to the Walden Property in the vicinity of the Village of Walden. On behalf of the Circus, the realtor listed the Walden Property in May 2016 for \$2.75 million, and received two bids to purchase the property for \$2.5 million. Ultimately, the Circus selected Weiner Holdings LLC (“**Weiner Holdings**”) as the successful bidder and entered into a purchase agreement with Weiner memorializing the transaction. Unfortunately, as discussed below, the sale to Weiner Holdings failed to close and the Circus resolicited bids for the purchase of the Walden Property.

On or about October 21, 2016, the Circus then received an expression of interest in the Walden Property from Polich. The Circus and Polich conducted good faith, arm’s length negotiations and agreed upon a purchase agreement that contained terms and conditions substantially similar to those in the purchase agreement entered into between the Circus and Weiner. On January 12, 2017, the Court entered an order [Docket No. 75] approving the sale of the Walden Property to Polich.

On December 23, 2016, the Circus filed a motion seeking, among other things, entry of an order (a) approving procedures (the “**Bidding Procedures**”) for submitting bids and conducting an auction for the sale of the Circus Assets, and (b) authorizing the Circus to employ and retain Stampler Auctions (“**Stampler**”) as auctioneer with respect to the sale of the Circus Assets [Docket No. 59], which the Court granted on January 12, 2017 [Docket No. 76].

The Bidding Procedures contemplated an expeditious and targeted marketing and sale process, which was critical to maximizing the value of the Circus Assets. Prior to and following approval of the Bidding Procedures, the Circus worked closely with Stampler to market and identify qualified bidders for the Circus Assets. Specifically, the Circus, through Stampler, simultaneously mined its extensive industry contacts while building on the considerable media attention already received from the “Save the Circus” campaign and commencement of the Chapter 11 Case by also marketing the sale of the Circus Assets via specific online trade publications, telemarketing, e-marketing, social networking, a dedicated webpage, and other advance auction promotion. The Circus and Stampler also assembled due diligence packages, including assets lists, bidding terms, and other pertinent information, that were distributed to prospective bidders upon request. Based on these efforts, numerous parties were contacted and expressed interest in the Circus Assets, and eight bidders were ultimately qualified by the Circus to participate in the auction for the Circus Assets.

On February 7, 2017, the Circus and Stampler conducted a live auction of the Circus Assets in accordance with the Bidding Procedures, during which the value of bids for substantially all of the Circus Assets nearly tripled. The highest bid was submitted by Compass Partners, L.L.C. (“**Compass**”) in the amount of \$1.3 million. [Docket No. 157]. On February 8, 2017, the Executive Committee of the Circus’ board of directors convened a meeting to consider the bids submitted for the Circus Assets, and selected Compass as the successful bidder for the Circus Assets [Docket No. 154].

On February 15, 2017, the Court entered an order (as amended on February 17, 2017) [Docket Nos. 127, 143] authorizing and approving the sale of the Circus Assets to Compass, which closed on February 23, 2017 [Docket No. 154]. On February 24, 2017, the sale of the Walden Property to Polich closed. Id.

(v) ***Transfer of Community Programs***

The Circus historically served thousands of people each year, creating direct, shared connections through its Community Programs in hospitals, nursing homes, and schools in New York City and other cities across the United States. Most notably, the Circus created “Clown Care,” its signature community outreach program, which was the world’s first professional hospital clowning program that brought laughter and joy to aid the healing process of patients in leading pediatric hospitals. On January 20, 2017, the Circus filed a motion seeking the Court’s approval to transition these programs to other not-for-profit organizations capable of continuing the Community Programs, which was approved on February 24, 2017 [Docket No. 150].



(vi) **Weiner Holdings Adversary Proceeding**

As referenced above, on September 14, 2016, the Circus and Weiner Holdings entered into a Real Estate Purchase and Sale Agreement (“**Purchase Agreement**”) pursuant to which Weiner Holdings agreed to purchase, and the Circus agreed to sell, the Walden Property for an all-cash price of \$2,500,000. In connection with the proposed sale, Weiner Holdings deposited \$250,000.00 (the “**Deposit**”) into escrow to be credited to the purchase price at closing. Subsequently, Weiner Holdings sought termination of the Purchase Agreement, refused to close the transaction, and demanded return of the Deposit. The Circus disputed that Weiner Holdings had a valid reason to seek termination of the Purchase Agreement and objected to the release of the Deposit. On July 3, 2017, the Circus filed a complaint commencing an adversary proceeding against Weiner Holdings in the Court (Adversary Case No. 17-01090) seeking damages for anticipatory breach, turnover, and other relief arising out of Weiner Holdings’ repudiation of the Purchase Agreement. Following a mediation and extensive good faith negotiations, the Circus and Weiner Holdings resolved this matter pursuant to a settlement whereby \$90,000 of the Deposit will be paid to the Circus and \$160,000 of the Deposit will be paid to Weiner Holdings in full and final satisfaction of all related claims.

**III.**

**SUMMARY OF THE PLAN**

**A. Administrative Claims and Priority Tax Claims**

In accordance with section 1123(a)(1) of the Bankruptcy Code, the Plan does not classify Administrative Claims and Priority Tax Claims. These Classes are excluded from the Classes of Claims set forth in Article III of the Plan and have the treatment set forth below.

The Circus estimates that the amount of Administrative Claims and Priority Tax Claims will total approximately \$10,000 – \$30,000 as of the Effective Date. As described below, the projected recovery under the Plan for holders of Allowed Administrative Claims and Priority Tax Claims is 100%.

(i) **Administrative Claims**

**a. Treatment**

The Plan defines an Administrative Claim as any Claim for costs and expenses of administration of the Chapter 11 Case of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (1) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Circus; and (2) all fees and charges assessed against the Estate pursuant to chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

The Plan provides that, except to the extent that a holder of an Allowed Administrative Claim agrees to less favorable treatment, or as otherwise provided in the Plan, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Administrative Claim, cash in an amount equal to the Allowed but unpaid portion of such Administrative Claim, either (i) on the Effective Date; (ii) if such Administrative Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Administrative Claim becomes Allowed; (iii) on the date or dates agreed to by the Circus or the Plan Administrator, as applicable, and the holder of the Allowed Administrative Claim; or (iv) on the date such Administrative Claim becomes due and payable in the ordinary course of the Circus’ business pursuant to the terms and conditions of the transaction or agreement giving rise to such Administrative Claim, on which date such Administrative Claim shall be deemed Allowed (to the extent not otherwise disputed by the Circus, the Plan Administrator, or any other party in interest) without any further action by the holder of such Administrative Claim or any further notice to or action, order, or approval of the Court

**b. Administrative Claim Bar Date**

**Importantly, the Plan provides for the following deadlines with respect to Administrative Claims:**

- Except as otherwise provided in Section 2.1 of the Plan, requests for payment of Administrative Claims, including final applications for payment of accrued compensation for services rendered by Professionals before the Effective Date must be filed and served on the Circus or the Plan Administrator, as applicable, and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other order by the Court, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than twenty-one (21) calendar days after the Effective Date; and
- Objections to such requests, if any, must be filed and served on the Circus or Plan Administrator, as applicable, and the requesting party no later than the Claims Objection Deadline, which will be the first business day that is sixty (60) calendar days after the Effective Date, or such later date the Court may establish upon a motion by the Circus or the Plan Administrator, as applicable, which motion may be approved without notice to any party or a hearing.

**Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Circus, its Estate, the Reorganized Circus, or any property of any of the foregoing, and such Administrative Claims shall be automatically disallowed and deemed forever compromised, settled, and released as of the Effective Date.**

Notwithstanding the foregoing requirements in the Plan, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim that has been previously Allowed by Final Order, including all Administrative Claims expressly Allowed under the Plan.

**(ii) Priority Tax Claims**

The Plan defines a Priority Tax Claim as any Claim entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. The Plan provides that, except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive, in full satisfaction, settlement, release and discharge, of such Allowed Priority Tax Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Priority Tax Claim, either (a) on the Effective Date; (b) if such Priority Tax Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Priority Tax Claim becomes Allowed; or (c) on the date or dates agreed to by the Circus or the Plan Administrator, as applicable, and the holder of such Allowed Priority Tax Claim. To the extent that any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in cash in accordance with the terms of the any agreement between the Circus or the Plan Administrator, as applicable, and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

Any Claim or demand for a penalty relating to any Priority Tax Claim (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed, and the holder of a Priority Tax Claim shall not assess or attempt to collect such penalty from the Circus, its Estate, the Reorganized Circus, or the property of any of the foregoing.

**B. Classification and Treatment of Other Claims**

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, the following table designates the Classes of Claims (other than Administrative Claims and Priority Tax Claims, which shall be treated in accordance with Article II of the Plan) against the Circus for all purposes, including voting on, confirmation of, and distribution pursuant to, the Plan, and specifies which Classes are (a) not Impaired and conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or (b) Impaired and entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code. The classification of any Claim for purposes of



the Plan (including voting) shall not be deemed consent to the allowance of such Claim or preclude any objection thereto for any purpose (including voting).

<b>Class</b>	<b>Claims</b>	<b>Plan Treatment</b>	<b>Voting Status</b>
1	Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Priority Non-Tax Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Deposit Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
4	General Unsecured Claims	Impaired	Entitled to Vote

To the extent a Class contains Allowed Claims with respect to the Circus, the classification and treatment of Allowed Claims is specified below.

**(i) Treatment of Class 1 – Secured Claims**

- a. Classification:** Class 1 consists of all Secured Claims.
- b. Treatment:** Except to the extent that a holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive one of the following treatments (at the sole option of the Circus or the Plan Administrator, as applicable), in full satisfaction, settlement, release, and discharge, of such Allowed Secured Claim:
  - (1) payment in cash in an amount equal to the Allowed but unpaid portion of such Allowed Secured Claim, including any interest and any reasonable fees, costs, or charges required under section 506(b) of the Bankruptcy Code;
  - (2) delivery of collateral securing such Allowed Secured Claim or proceeds thereof to the extent of the Allowed but unpaid amount of such Secured Claim; or
  - (3) other treatment rendering such Secured Claim not Impaired.
- c. Impairment and Voting:** Class 1 is not Impaired. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

**(ii) Treatment of Class 2 Claims – Priority Non-Tax Claims**

- a. Classification:** Class 2 consists of all Priority Non-Tax Claims.
- b. Treatment:** Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Non-Tax Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Priority Non-Tax Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Priority Non-Tax Claim.

- c. *Impairment and Voting:* Class 2 is not Impaired. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

(iii) ***Treatment of Class 3 – Deposit Claims***

- a. *Classification:* Class 3 consists of all Deposit Claims.
- b. *Treatment:* Except to the extent that a holder of an Allowed Deposit Claim agrees to less favorable treatment, each holder of an Allowed Deposit Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Deposit Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Deposit Claim.
- c. *Impairment and Voting:* Class 3 is not Impaired. Holders of Claims in Class 3 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

(iv) ***Treatment of Class 4 – General Unsecured Claims***

- a. *Classification:* Class 4 consists of all General Unsecured Claims.
- b. *Treatment:* Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed General Unsecured Claim, a pro rata share of the Available Assets or proceeds thereof (less any valid Plan Expenses), pursuant to the distribution mechanics set forth in the Plan, including Article VI.
- c. *Impairment and Voting:* Class 4 is Impaired by the Plan. Each holder of a Claim in Class 4 is entitled to vote to accept or reject the Plan.

**C. Means for Implementation of the Plan**

(i) ***Continued Corporate Existence and Dissolution of the Reorganized Circus***

The Plan provides that the Circus shall continue to exist after the Effective Date (during such time, the “**Reorganized Circus**”) and shall retain its not-for-profit status to the same extent as such status existed immediately prior to the Petition Date. On the Effective Date, all current directors of the Circus shall be deemed discharged of and from all further authority, duties, responsibilities and obligations related to, arising from, or in connection with their services as directors, and the Post-Effective Date Board of Directors shall be formed. Members of the Post-Effective Board of Directors shall receive no compensation for their services. The identity and affiliations of each proposed member of the Post-Effective Date Board of Directors and each of the initial officers of the Reorganized Circus (and, to the extent such person is an insider, the nature of any compensation for such person) is set forth on Exhibit A to the Plan. The certificate of incorporation and bylaws of the Circus shall be amended as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code and in form and substance substantially similar to Exhibit B and Exhibit C to the Plan, respectively.

The Plan further provides that, as soon as practicable after the liquidation and the winding down of the Estate, and the completion of distributions under the Plan, the Plan Administrator shall file a certificate of dissolution of the Reorganized Circus with the Secretary of State of the State of New York. For the avoidance of doubt, the Plan shall constitute a plan of dissolution under the New York Not-for-Profit Corporation Law and, as of the Effective Date, the Plan shall be deemed authorized and approved by the Post-Effective Date Board of Directors.

**(ii) Liquidation of the Estate**

The Plan provides that, on and after the Effective Date, the Estate shall be liquidated in accordance with the Plan and applicable law, and the operations of the Reorganized Circus shall become the responsibility of the Plan Administrator, who shall thereafter have responsibility for the management, control and operation thereof, and who may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

**(iii) Plan Administrator**

**a. Appointment and Duties**

As part of the Plan, the Circus seeks to appoint the Plan Administrator. The initial Plan Administrator shall be selected by the Circus, in consultation with the Creditors' Committee, and disclosed in the Plan Supplement, and shall be deemed appointed on the Effective Date, without further motion, application, notice, hearing, or other order of the Court. The Plan Administrator shall act as liquidating and disbursing agent for and on behalf of the Estate from and after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Plan Administrator shall be authorized, as agent for and on behalf of the Estate, to take any and all actions necessary or appropriate to implement the Plan or wind down the Estate in accordance with applicable law, as detailed in Section 4.3(b) of the Plan, without the need to obtain any approval from the Post-Effective Date Board of Directors; provided, however, that the Post-Effective Date Board of Directors retains the right to disapprove of any action or inaction by Plan Administrator that is deemed by the Post-Effective Board of Directors to be inconsistent with its fiduciary duties under applicable law.

**b. Compensation**

The Plan provides that the Plan Administrator shall be compensated on terms agreed to by the Circus, in consultation with the Creditors' Committee, and reimbursed for his or her out-of-pocket expenses incidental to the performance of his or her duties under the Plan. The Plan Administrator shall file with the Court periodic notices of the amount of fees and expenses sought to be paid. Parties in interest shall have ten (10) business days to object to any such notice. In the event that an objection is received by the Plan Administrator and cannot be promptly resolved by the Plan Administrator and the objector, the dispute shall be submitted by the objector to the Court for adjudication.

**(iv) Transfer of the Stern and Kern Foundations Endowment**

Pursuant to section 1129(a)(16) of the Bankruptcy Code and in accordance with section 553(a) of New York Not-For-Profit Corporation Law and the intent of the donors as expressed in the related gift instruments, the Plan provides that the Plan Administrator shall transfer, or cause to be transferred, the Stern and Kern Foundations Endowment to The Children's Aid Society, 105 East 22nd Street, New York, NY 10010, on or as soon as practicable after the Effective Date.

**(v) Foundations Settlement**

Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3) of the Bankruptcy Code, the Plan shall implement the Foundations Settlement, as described below, and shall constitute a motion for approval of, and the Confirmation Order shall constitute approval of, the implementation of the Foundations Settlement.

Pursuant to the Foundations Settlement, as detailed in Section 4.6 of the Plan, on or as soon as practicable after the Effective Date, in full and final satisfaction, settlement, release, and discharge, of all Claims held by the Foundations, the Foundations shall: (a) receive a single Allowed General Unsecured Claim in the aggregate amount of \$151,000 to be allocated amongst themselves as directed by the Foundations; (b) receive funds held in the Circus' account with number ending in 2154 at Bank of America, N.A. totaling \$142,582.73, which must be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those provided by the Circus prior to the Petition Date; (c) receive the funds received by the Circus on account of the DCA Grant totaling \$134,360, which must be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those provided by the Circus prior to the Petition Date; and (d) grant mutual related releases.

**(vi) Destruction and Abandonment of Books and Records**

On or after the Effective Date, pursuant to section 554(a) of the Bankruptcy Code, the Plan Administrator is authorized, from time to time, without further application to the Court or notice to any party, to abandon or otherwise destroy documents and records (whether in electronic or paper format) that he or she determines, in his or her reasonable business judgment, are no longer necessary to the administration of either the Chapter 11 Case or the Plan, notwithstanding any federal, state, or local law or requirement requiring the retention of the applicable documents or records.

**(vii) Preservation of All Causes of Action**

Except as otherwise provided in the Plan or in any contract, instrument, release or agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, all claims, causes or any Cause of Action that the Circus or the Estate may have against any person or entity will be preserved, including any Cause of Action the Circus, the Estate or other appropriate party in interest may assert under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code; provided, however, that the Plan Administrator may only assert Preference Actions as a defense or counterclaim against a creditor party and not as affirmative relief to recover prepetition payments made by the Circus. The Plan Administrator, in his or her sole discretion, will determine whether to bring, settle, release, compromise or enforce such claims, causes or any Cause of Action, and will not be required to seek further approval of the Court for such actions.

**No entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Circus, the Reorganized Circus, or the Plan Administrator will not pursue any and all available Causes of Action against them. The Circus, the Reorganized Circus, and the Plan Administrator expressly reserve all rights to prosecute any and all Causes of Action against any entity, except as otherwise provided in the Plan.**

**(viii) Dissolution of the Creditors' Committee**

The Plan provides that, from and after the Effective Date, the Creditors' Committee shall have no further powers or duties and shall be dissolved for all purposes, and the members of the Creditors' Committee shall be released and discharged from all rights and duties from or related to the Chapter 11 Case.

**(ix) Limitation on Liability; Indemnification**

The Plan provides that no recourse shall ever be had, directly or indirectly, against the Plan Administrator, the Reorganized Circus, the Post-Effective Date Board of Directors, or any of the forgoing's officers, directors, agents, representatives, designees, employees, attorneys, advisors, or professionals, by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge, or note, or upon any promise, contract, instrument undertaking, obligation, covenant, or agreement whatsoever executed by such parties pursuant to the Plan or for any purpose authorized by the Plan, nor shall they be liable for any act or omission taken or omitted to be taken in their respective capacities in the exercise of reasonable judgment and reasonably believed to be within the discretion or power conferred by the Plan, other than acts or omissions resulting from willful misconduct, gross negligence, or fraud by such person, and the fact that such act or omission was done in accordance with advice or opinions rendered by attorneys, accountants, financial advisors and agents retained by such persons shall be conclusive evidence of such reasonable judgment.

The Plan Administrator, the Reorganized Circus, the Post-Effective Date Board of Directors, and any of the forgoing's officers, directors, agents, representatives, designees, employees, attorneys, advisors, or professionals shall be entitled to indemnification and reimbursement for fees and expenses incurred in defending any and all actions or inactions taken in their respective capacities, except for any actions or inactions involving willful misconduct, gross negligence, or fraud. Any indemnification or reimbursement claim of such parties shall be satisfied from the Available Assets, and the Plan Administrator may segregate Available Assets in an amount estimated by the Plan Administrator, in his or her sole discretion, to be necessary to satisfy such indemnification and reimbursement claims that may be incurred until the closing of the Chapter 11 Case, which funds shall no longer

constitute Available Assets solely for purposes of determining distributions of Available Assets to holders of Allowed General Unsecured Claims. Upon the Final Distribution Date, any remaining funds segregated by the Plan Administrator for payment of such indemnification and reimbursement claims shall be released and deemed Available Assets for all purposes.

**(x) Exemption from Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of the Confirmation Order, the appropriate state and local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

**D. Treatment of Executory Contracts and Unexpired Leases**

**(i) Assumption and Rejection of Executory Contracts and Unexpired Leases**

Except as otherwise provided in the Plan and subject to the provisions of Section 5.3 therein, each executory contract and unexpired lease to which the Circus is a party shall be deemed automatically rejected as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, unless such executory contract or unexpired lease (a) shall have been previously assumed or rejected by the Circus pursuant to a Final Order of the Court, (b) is the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date, or (c) is otherwise assumed pursuant to the terms of the Plan. Entry of the Confirmation Order by the Court shall constitute approval of the rejections contemplated by the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

**(ii) Rejection Damages Claims Bar Date**

If a Claim arises from the rejection of any executory contract or unexpired lease (including claims under section 365(d)(3) of the Bankruptcy Code) pursuant to the Plan, the Plan provides that such Claim shall be barred and not be enforceable against the Circus, the Estate, the Reorganized Circus, or the property of the foregoing entities unless a proof of claim asserting such Claim is filed with the Court and served on the Circus or the Plan Administrator, as applicable within twenty-eight (28) days after the Effective Date (or the effective date of such rejection) or such earlier date previously set by order of the Court.

**(iii) Insurance Policies; Indemnification**

The Plan provides that, to the extent that any or all of the insurance policies set forth in Exhibit D to the Plan are considered to be executory contracts, then notwithstanding anything contained in the Plan to the contrary, the Plan shall constitute a motion to assume such insurance policies. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Court that each such assumption is in the best interest of the Circus, the Estate and all parties in interest in the Chapter 11 Case. Unless otherwise determined by the Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments are required to cure any defaults of the Circus existing as of entry of the Confirmation Order with respect to each such insurance policy. To the extent that the Court determines otherwise with respect to any insurance policy, the Circus reserves the right to seek rejection of such insurance policy or other available relief.

Nothing contained in the Plan shall prejudice in any manner the rights of any current or former director or officer of the Circus or the Reorganized Circus to assert any claim for indemnification, reimbursement, or contribution, including any such claim under the certificate of incorporation or bylaws of the Circus or the Reorganized Circus; provided that, except as otherwise provided in the Plan, all rights to object to or seek subordination of such claims are preserved; provided further, that the Circus and the Reorganized Circus shall have

no indemnification obligations to an indemnitee for any losses, liabilities, or expenses arising out of conduct determined by Final Order to have constituted willful misconduct, gross negligence, or fraud.

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**E. Claim Distributions**

**(i) Plan Administrator as Disbursing Agent**

The Plan Administrator shall make all distributions required under the Plan. The appointment of the Plan Administrator as disbursing agent shall be approved by the Court as part of the Plan in the Confirmation Order.

**(ii) Record Date for Distributions**

As of entry of the Confirmation Order, the claims register shall be closed and the Plan Administrator shall be authorized and entitled to recognize only those record holders listed on the claims register as of the close of business on such date.

**(iii) General Unsecured Claim Distributions**

Distributions on account of Allowed General Unsecured Claims shall commence on the Initial Distribution Date and then continue on each Periodic Distribution Date. On the first Periodic Distribution Date following the date when a Disputed Claim becomes an Allowed General Unsecured Claim, the Plan Administrator shall distribute to the holder of such Allowed General Unsecured Claim the distribution(s) that such holder is entitled to under the Plan.

**(iv) No Distributions Pending Allowance**

The Plan provides that, notwithstanding any other provisions of the Plan, no distributions shall be made under the Plan on account of a Disputed Claim, unless and until such Claim becomes an Allowed Claim, and, except as otherwise agreed by the relevant parties, no partial payments or distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order. Distributions made after the Effective Date to holders of Allowed Claims that were Disallowed Claims as of the Effective Date shall be deemed to have been made on the Effective Date, without any interest to be paid on account of such Claim unless required under the Plan or applicable bankruptcy law.

**(v) Final Distributions**

A final distribution under the Plan must be made on or before the Final Distribution Date. The Plan Administrator is not obligated to make a final distribution if he or she determines that there are insufficient Available Assets to make a cost-efficient distribution, taking into account the size of the distribution to be made and the number of recipients of such distribution, in which event such funds, in the Plan Administrator's sole discretion, will be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those of the Circus prior to the Petition Date.

**(vi) Delivery of Distributions**

The Plan provides that distributions to holders of Allowed Claims will be made to holders of record as of the Distribution Record Date by the Plan Administrator:

- at the addresses set forth on the proofs of claim filed by holders of such claims (or at the last known addresses of such the holder of such claim if no motion requesting payment or proof of claim is filed or the Circus has been notified in writing of a change of address);
- at the addresses set forth in any written notices of address change delivered to the Plan Administrator after the date of any related proof of claim; or



- at the addresses reflected in the Schedules if no proof of claim has been filed and the Plan Administrator has not received a written notice of a change of address.

None of the Circus, the Reorganized Circus, the Post-Effective Date Board of Directors, or the Plan Administrator shall incur any liability whatsoever on account of any distributions under the Plan except for gross negligence, willful misconduct, or fraud. At the option of the Plan Administrator, monetary distributions may be made in cash, by wire transfer, or by check.

**(vii) Undeliverable Distributions and Unclaimed Property**

The Plan contemplates that, if any distribution to a holder of a Claim is returned as undeliverable, no further distributions to the holder of such Claim shall be made unless and until the Plan Administrator is notified of the holder's then current address, at which time all missed distributions shall be made to the holder without interest as soon as practicable after such distribution becomes deliverable or has been claimed; provided, however, that such undeliverable distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited upon the expiration of three (3) months after the applicable distribution date. All unclaimed property or interests in property that are forfeited shall revert to the Circus automatically and without the need for a further order by the Court (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) and shall be deemed Available Assets, and the Claim related to such forfeited property or interest in property shall be fully discharged, released, and forever barred.

**(viii) De Minimis and Fractional Distributions**

The Plan provides that no distribution is required to be made to a holder of an Allowed Claim if the amount to be distributed under the Plan on account of such Claim is \$25 or less. Whenever any payment or distribution of cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down. For the avoidance of doubt, any cash not distributed pursuant to Section 6.8 of the Plan shall be deemed Available Assets.

**(ix) Compliance with Tax Requirements and Allocations**

In connection with the Plan, the Circus, the Reorganized Circus, and the Plan Administrator shall comply with all tax withholding and reporting requirements imposed by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Circus, the Reorganized Circus, and the Plan Administrator shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including retaining a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms he or she believes are reasonable and appropriate. The Circus, the Reorganized Circus, and the Plan Administrator reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, other spousal awards, liens, and encumbrances. The holders of Allowed Claims shall be required to provide the Circus, the Reorganized Circus, or the Plan Administrator, as applicable, with any information necessary to effectuate the withholding of taxes and satisfaction of reporting requirements.

For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims.

**(x) Time Bar to Cash Payments**

Checks issued by the Plan Administrator on behalf of the Circus in respect of any distribution of cash made on account of Allowed Claims shall be null and void if not negotiated within sixty (60) calendar days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Plan Administrator by the holder of the Allowed Claim to whom such check originally was issued on or before the later of (a) the six-month anniversary of the Effective Date or (b) ninety (90) calendar days after the date of issuance if the check represents a final

distribution. After that date, all remaining Claims in respect of voided checks shall be disallowed and forever barred and the Plan Administrator shall retain all related funds as unclaimed property under Section 6.7 of the Plan.

**(xi) Claims Payable by Insurance Carriers**

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Circus' or the Reorganized Circus' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Circus' or the Reorganized Circus' insurers agrees to satisfy a Claim or otherwise settle a Claim, then immediately upon such insurers' payment, the applicable portion of such Claim may be expunged without an objection to such Claim having been filed and without any further notice to, or action, order, or approval of, the Court.

**(xii) Setoff**

The Plan provides that the Circus, the Reorganized Circus, and the Plan Administrator may withhold (but not set off except as set forth below) from the distributions to be made pursuant to the Plan on account of any Allowed Claim an amount equal to any claims, interests, rights, and Causes of Action of any nature that the Circus, the Reorganized Circus, or the Plan Administrator may hold against the holder of such Allowed Claim. In the event that any such claims, interests, rights, and Causes of Action are adjudicated by Final Order or otherwise resolved, the Plan contemplates that the Circus, the Reorganized Circus, and the Plan Administrator may, pursuant to section 553 of the Bankruptcy or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim) the amount of any adjudicated or resolved claims, interests, rights, and Causes of Action of any nature that the Circus, the Reorganized Circus, or the Plan Administrator may hold against the holder of such Allowed Claim, but only to the extent of such adjudicated or resolved amount.

**(xiii) Disallowed Claims**

After the applicable deadline to file a Claim, the holder of such Claim must obtain prior authorization from the Court, or the Circus or the Plan Administrator, as applicable, to file or amend such Claim. Any new or amended Claim filed after the applicable deadline to file such Claim without such prior authorization shall not appear on the Claims register and shall be deemed disallowed and expunged in full without any further action required of the Circus, the Reorganized Circus, the Plan Administrator, or the Court.

Except for any Claim that is expressly Allowed herein, any Claims listed in the Schedules as contingent, unliquidated, or disputed as for which no proof of claim has been filed shall be deemed disallowed and expunged in full upon the Effective Date without further action required of the Circus, the Reorganized Circus, the Plan Administrator, or the Court.

Any claim listed in the Schedules that has been superseded by a filed proof of claim pursuant to Bankruptcy Rule 3003(c)(4) shall be deemed disallowed and expunged in full without further action required of the Circus, the Reorganized Circus, the Plan Administrator, or the Court.

**(xiv) Distributions on Account of the Endowment Loan Claim**

Notwithstanding any other provisions of the Plan, on the Effective Date, the Endowment Loan Claim shall be deemed an Allowed General Unsecured Claim, and any distributions made by the Plan Administrator on account of the Endowment Loan Claim shall be donated to a reputable not-for-profit charitable organization selected by the Plan Administrator that is engaged in activities substantially similar to those of the Circus prior to the Petition Date.

**(xv) Distributions Free and Clear**

Except as otherwise provided in the Plan, any distribution or transfer made under the Plan, including, without limitation, distributions to any holder of an Allowed Claim, shall be free and clear of any liens, Claims, encumbrances, charges, and other interests.



**F. Disputed Claims**

**(i) Objections to Claims**

**a. Authority to Object to Claims**

The Plan provides that, after the Effective Date, the Plan Administrator shall have the sole authority to file, settle, compromise, withdraw, or litigate to judgment any objections to Claims as permitted under the Plan. Unless a Claim is specifically Allowed pursuant to or under the Plan, or otherwise Allowed prior to or after the Effective Date, the Plan Administrator reserves all rights to object to any and all Claims and motions or requests for the payment of Claims.

**b. Deadline for, and Service of, Objections to Claims**

Unless otherwise provided in the Plan or ordered by the Court, all objections to Claims must be filed and served by the Claims Objection Deadline. An objection to a Claim shall be deemed properly served on the holder of such Claim if the Circus or the Plan Administrator, as applicable, effect service by any of the following methods: (i) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004; (ii) to the extent counsel for a holder of such Claim is unknown, by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified on the proof of claim or any attachment thereto or (iii) by first class mail, postage prepaid, on any counsel that has appeared on the behalf of the holder of such Claim in the Chapter 11 Case.

**c. Settlement and Compromise of Claims**

From and after the Effective Date, the Plan Administrator may settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Court or any other party in interest whenever the aggregate amount in dispute is less than or equal to \$25,000. If the aggregate amount in dispute exceeds \$25,000, the Plan Administrator shall file a notice of such settlement with the Court, which shall be served on the (i) the U.S. Trustee, (ii) the U.S. Attorney for the Southern District of New York, (iii) the New York State Attorney General, (iv) the New York City Department of Cultural Affairs, (v) the entities holding the twenty (20) largest unsecured Claims against the Circus' estate, and (vi) all parties who have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. Objections to the proposed settlement must be filed with the Court and served on the Plan Administrator and the applicable claimant within fourteen (14) calendar days of service of the settlement notice. If a timely objection is received, the Plan Administrator may either (a) renegotiate the settlement and file and serve a revised notice, or (b) file a motion with the Court seeking approval of the existing settlement under Bankruptcy Rule 9019 on no less than fourteen (14) calendar days' notice. If no timely objection is received, then the Plan Administrator may proceed with the settlement, without any further notice to or action, order, or approval of the Court or any other party in interest.

**(ii) Estimation of Claims**

The Plan provides that, as of the Effective Date, the Disputed Claims identified on Exhibit E to the Plan shall be estimated, for all purposes under the Plan, at the corresponding amounts under the column on Exhibit E entitled "Estimated Amount", and the Plan shall constitute a motion for approval of, and the Confirmation Order shall constitute approval of, such estimation. After the Effective Date, the Reorganized Circus, and Plan Administrator may elect to pursue any supplemental proceedings to estimate or object to the ultimate allowance of any previously estimated claim; provided, however, that the Court shall determine (a) whether such Claims are subject to estimation pursuant to section 502(c) of the Bankruptcy Code and (b) the timing and procedures for such estimation proceedings, if any.

**(iii) Disputed Claims Reserve**

The Plan Administrator shall manage the Disputed Claims Reserve for the treatment of Disputed Claims. The Disputed Claims Reserve shall be held in trust by the Plan Administrator for the benefit of holders of such Disputed Claims pending a determination of such claimants' entitlement thereto pursuant to the terms of the Plan.

For the avoidance of doubt, any amounts remaining in the Disputed Claims Reserve after all Disputed Claims are resolved and satisfied in accordance with the provisions of the Plan shall be deemed Available Assets.

**(iv) No Interest on Disputed Claims**

Unless otherwise specifically provided for in the Plan or as otherwise required by section 506(b) of the Bankruptcy Code, postpetition interest shall not accrue or be paid on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, unless otherwise specifically provided for in the Plan or as otherwise required by section 506(b) of the Bankruptcy Code, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made, when and if such Disputed Claim becomes an Allowed Claim.

**G. Settlement, Release, Exculpation, and Injunction Provisions**

**(i) Compromise and Settlement of Claims and Controversies**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim, or any distribution to be made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Circus, its Estate and holders of Claims and is fair, equitable, and reasonable. In accordance with and subject to the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Court, after the Effective Date, the Reorganized Circus and the Plan Administrator may compromise and settle Claims against the Circus and the Estate and any Cause of Action against other entities.

**(ii) Releases by the Circus**

The Plan contains the following releases by the Circus, which should be read in their entirety:

**Pursuant to section 1123(b) of the Bankruptcy Code, as of the Effective Date, except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the contribution of the Released Parties to facilitate the liquidation of the Circus and the implementation of the Plan, to the fullest extent permitted under applicable law, the Released Parties are deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Circus, the Estate, and the Reorganized Debtor from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Circus, the Estate, or the Reorganized Debtor would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Circus, the Circus' liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Circus' interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.**

*(iii) Releases by Holders of Claims*

The Plan contains the following releases by the Releasing Parties, which should be read in their entirety:

As of the Effective Date, for good and valuable consideration, including the contribution of the Released Parties to facilitate the liquidation of the Circus and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Circus, the Circus' liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Circus' interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Circus and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument or agreement, executed to implement the Plan.

THE CIRCUS WILL REQUEST AT THE CONFIRMATION HEARING THAT THE RELEASING PARTIES INCLUDE ALL HOLDERS OF CLAIMS REGARDLESS OF WHETHER SUCH HOLDERS HAVE CONSENTED TO THE THIRD PARTY RELEASE. IF, AND ONLY IF, THE COURT FINDS THAT THE THIRD PARTY RELEASE MAY ONLY BE APPROVED WITH THE CONSENT OF THE APPLICABLE HOLDER OF A CLAIM, THE RELEASING PARTIES SHALL MEAN, COLLECTIVELY, ALL HOLDERS OF CLAIMS WHO, WITH RESPECT TO SUCH CLAIMS, (A) VOTE TO ACCEPT THE PLAN, (B) VOTE TO REJECT THE PLAN BUT WHO DO NOT ELECT TO OPT OUT OF THE THIRD PARTY RELEASE, (C) RECEIVE A BALLOT PROVIDING THEM WITH THE POTENTIAL RIGHT TO OPT OUT OF THE THIRD PARTY RELEASE BUT ABSTAIN FROM VOTING ON THE PLAN AND DO NOT OPT OUT OF THE THIRD PARTY RELEASE, OR (D) ARE NOT ENTITLED TO VOTE ON THE PLAN BUT RECEIVE A NOTICE ADVISING THEM OF THEIR POTENTIAL RIGHT TO ELECT TO OPT OUT OF THE THIRD PARTY RELEASE AND DO NOT ELECT TO OPT OUT OF THE THIRD PARTY RELEASE.

The Circus believes that the releases set forth in the Plan are appropriate because, among other things, each of the Released Parties afforded value to the Circus and aided in the administration of the Chapter 11 Case. The Circus believes that the Released Parties have expended significant time and resources to ensure an optimal outcome for holders of Allowed Claims and played an integral role in the formulation of the Plan. The Circus reserves the right to make appropriate changes to the Plan to the extent the Court does not approve the releases.

*(iv) Exculpation*

Except as otherwise specifically provided in the Plan or the Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any obligation, Cause of Action or liability for any Exculpated Claim, except for gross negligence, willful misconduct, or fraud, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

(v) *Injunction*

The satisfaction, release, exculpation, and discharge pursuant to Article VIII of the Plan shall act as an injunction against any entity commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released or to be released, exculpated or to be exculpated, or discharged under the Plan or pursuant to the Confirmation Order to the fullest extent permitted by applicable law, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 of the Bankruptcy Code.

(vi) *Limitations on Release, Exculpation, and Injunction Provisions*

Nothing in Sections 8.2, 8.3, 8.4, or 8.5 hereof shall (a) be construed to exculpate any entity from willful misconduct, gross negligence, or fraud, or (b) provide a prospective release of liability for any entity's actions following the Effective Date of the Plan.

**H. Conditions Precedent to the Effective Date**

(i) *Conditions Precedent to the Effective Date*

The Plan shall not become effective unless and until each of the following conditions shall have been satisfied or waived pursuant to the provisions of Section 9.2 of the Plan:

- a. the Court shall have approved by Final Order the Disclosure Statement in form and substance acceptable to the Circus in its sole and absolute discretion;
- b. the Confirmation Order shall have been entered by the Court and shall not be subject to any stay of effectiveness and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending;
- c. the Foundations Settlement shall have been approved by the Court;
- d. the Disputed Claims Reserve shall have been funded;
- e. the Plan Administrator and the Post-Effective Date Board of Directors shall have been selected as contemplated by the Plan; and
- f. all U.S. Trustee Fees then due and payable shall have been paid and satisfied in full.

(ii) *Waiver of Conditions*

The Plan provides that, if after the Confirmation Order is entered, each of the conditions to effectiveness has not been satisfied or duly waived within twenty-eight (28) days after entry of the Confirmation Order, then upon motion by the Circus, the Confirmation Order may be vacated by the Court; provided, however, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to effectiveness is either satisfied or duly waived before the Court enters an order granting the relief requested in such motion. As used in the preceding sentence, a condition to effectiveness may only be waived by a writing executed by the Circus.

(iii) *Effect of Non-occurrence of Effective Date*

Except as expressly set forth in the Plan, if the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release

of any Claims; (ii) prejudice in any manner the rights of the Circus or any other entity; or (iii) constitute an admission, acknowledgement, offer or undertaking of any sort by the Circus or any other entity.

**I. Modification, Revocation or Withdrawal of the Plan**

**(i) Modification and Amendments to the Plan**

The Plan contemplates that the Circus may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to entry of the Confirmation Order. After entry of the Confirmation Order and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan with respect to the Circus, the Reorganized Circus or the Plan Administrator, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan.

**(ii) Effect of Confirmation on Modifications**

The Plan provides that entry of a Confirmation Order will mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

**(iii) Revocation or Withdrawal of the Plan**

Under the Plan, the Circus reserves the right to revoke or withdraw the Plan before entry of the Confirmation Order.

**J. Miscellaneous Provisions**

**(i) Binding Effect**

On and after the Effective Date, the provisions of the Plan shall bind the Circus, the Reorganized Circus, the Plan Administrator, any holder of a Claim, the Estate and their respective successors or assigns, whether or not the Claim of such holders is Impaired under the Plan and whether or not such holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries or guardian, if any, of such entity (including any trustee appointed for the Circus under chapters 7 or 11 of the Bankruptcy Code).

**(ii) Plan Supplement**

The Plan Supplement shall include certain documents and forms of documents, schedules, and exhibits to the Plan, which the Circus shall file on or before the date that is seven (7) calendar days prior to the deadline fixed for objecting to confirmation of the Plan or such later date as may be approved by the Court, and may be amended, modified, or supplemented by the Circus at any time prior to the entry of the Confirmation Order.

**(iii) Service of Documents**

The Plan provides that, after the Effective Date, any pleading, notice or other document required by the Plan to be served on or delivered to the Plan Administrator shall be served on an address to be identified in a notice filed with the Court.

After the Effective Date, the Plan Administrator may, in his or her sole discretion, notify entities that, in order to continue receiving documents pursuant to Bankruptcy Rule 2002, such entities must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Plan Administrator is authorized to limit the list of entities receiving documents pursuant to Bankruptcy Rule 2002 to those entities who have filed such renewed requests.

(iv) *Severability*

The Circus intends all provisions of the Plan to be enforced to the fullest extent permitted by law. If, however, any provision of the Plan is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable, and the Plan shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by the termination thereof.

(v) *Term of Injunctions and Stays*

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and existing as of entry of the Confirmation Order (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms

IV.

**VOTING ON THE PLAN**

On [●], the Court entered the Disclosure Statement Order, approving, among other things, the dates, procedures and forms applicable to the process of soliciting votes on and providing notice of the Plan and certain vote tabulation procedures and establishing the deadline for filing objections to the Plan and scheduling the Confirmation Hearing. A copy of the Disclosure Statement Order is attached hereto as **Exhibit B**. The Disclosure Statement Order is incorporated herein by reference and should be read in conjunction with this Disclosure Statement when deciding to vote to accept or reject the Plan.

**THIS DISCUSSION OF THE SOLICITATION AND VOTING PROCESS IS ONLY A SUMMARY. PLEASE REFER TO THE DISCLOSURE STATEMENT ORDER ATTACHED HERETO FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.**

**A. Holders of Claims Entitled to Vote on the Plan**

Under the provisions of the Bankruptcy Code, not all holders of claims against a debtor are entitled to vote on a chapter 11 plan. As discussed above, the Circus is soliciting votes to accept or reject the Plan only from holders of General Unsecured Claims in Class 4 (the “**Voting Class**”).

Claims in the Voting Class are Impaired under the Plan and holders of such Claims may receive a distribution under the Plan. Accordingly, holders of Claims in the Voting Class have the right to vote to accept or reject the Plan. The Circus is **not** soliciting votes from holders of Claims in Classes 1, 2, or 3.

Additionally, the Disclosure Statement Order provides that certain holders of Claims in the Voting Class, such as those holders whose Claims have been disallowed or are subject to a pending objection, are not entitled to vote to accept or reject the Plan. The table in Section III.B of this Disclosure Statement provides a summary of the status and voting rights of each Class (and, therefore, of each holder within such Class absent an objection to the holder’s Claim) under the Plan.

**B. Voting Record Date**

**The Voting Record Date is October 31, 2017 at 11:00 a.m. (prevailing Eastern Time).** The Voting Record Date is the date on which it will be determined which holders of Claims in the Voting Class are entitled to vote to accept or reject the Plan and whether Claims have been properly assigned or transferred under Bankruptcy Rule 3001(e) such that an assignee can vote as the holder of a Claim.



**C. Submission of Votes**

**The Voting Deadline is 5:00 p.m. (prevailing Eastern Time) on December 1, 2017.** In order to be counted as votes to accept or reject the Plan, all ballots must be properly executed, completed and delivered (either by using the return envelope provided, by first class mail, overnight courier, or personal delivery, or by electronic mail) so that they are **actually received** on or before the Voting Deadline by the Claims and Noticing Agent at the following addresses:

**If by U.S. Postal Service mail:**  
Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
P.O. Box 199043  
Blythebourne Station, Brooklyn, NY 11219

**If by overnight delivery or personal delivery by hand:**  
Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
6201 15th Avenue  
Brooklyn, NY 11219

**If by electronic mail:**  
tbacballot@donlinrecano.com

If you have any questions on the procedure for voting on the Plan, please call the Claims and Noticing Agent at the following telephone number: (212) 7711128

**D. Ballots Not Counted**

**No Ballot will be counted toward confirmation of the Plan if, among other things:** (a) it is illegible or contains insufficient information to permit the identification of the holder of the Claim; (b) it was cast by an entity that does not hold a claim in the Voting Class; (c) it was cast for a claim scheduled as unliquidated, contingent, or disputed for which no proof of claim was timely filed; (d) it was unsigned or lacked an original signature; (e) it was not marked to accept or reject the Plan or marked both to accept and reject the Plan; or (f) it was submitted by any entity not entitled to vote pursuant to the procedures described herein. **Please refer to the Disclosure Statement Order for additional requirements with respect to voting to accept or reject the Plan.**

**IF YOU HAVE ANY QUESTIONS ABOUT THE SOLICITATION OR VOTING PROCESS, PLEASE CONTACT THE CLAIMS AND NOTICING AGENT. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE OR OTHERWISE NOT IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER WILL NOT BE COUNTED.**

**V.**

**CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing**

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

The Confirmation Hearing is scheduled for **December 12, 2017 at 11:00 a.m. (prevailing Eastern Time)** before the Honorable Sean H. Lane, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York. **The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.**

**B. Deadline to Object to Confirmation**

Objections to confirmation of the Plan must be filed and served on or before **5:00 p.m. (prevailing Eastern Time) on December 1, 2017** in accordance with the notice of the Confirmation Hearing that accompanies this Disclosure Statement. **Unless objections to confirmation of the Plan are timely served and filed, they may not be considered by the Court.**

**C. General Confirmation Requirements**

At the Confirmation Hearing, the Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code, which include, among other things, whether:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Circus, as the Plan proponent, has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the Circus for services or for costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable.
- The Circus, as the Plan proponent, has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director of the Circus, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and with public policies.
- The Circus, as the Plan proponent, has disclosed the identity of any insider that will be employed or retained by the Reorganized Circus and the nature of any compensation for such insider.
- Each Class of Claims has either accepted the Plan or is not Impaired under the Plan.
- Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that:
  - with respect to a Claim of a kind specified in sections 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such Claim will receive on account of such Claim cash equal to the Allowed amount of such Claim;
  - with respect to a Class of Claims of a kind specified in sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a Claim of such Class will receive (i) if such Class has accepted the Plan, deferred cash payments of a value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim; or (ii) if such Class has not accepted the Plan, cash on the Effective Date of the Plan equal to the Allowed amount of such Claim;
  - with respect to a Claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such Claim will receive on account of such claim regular installment payments in cash, over a period not exceeding five years after the date of the order for relief under sections 301, 302, or 303 of the Bankruptcy Code, of a total value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim.



- If a Class of Claims is Impaired under the Plan, at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider.
- All fees payable under 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date.

The Circus believes that the Plan satisfies or will satisfy all of these requirements.

#### **D. Best Interests of Creditors/Liquidation Analysis**

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the Circus liquidated on that date under chapter 7 of the Bankruptcy Code. To make these findings, a bankruptcy court must: (i) estimate the cash liquidation proceeds that a chapter 7 trustee would generate if the Circus’ chapter 11 case was converted to a chapter 7 case and the assets of such Circus’ estate were liquidated; (ii) determine the liquidation distribution that each non-accepting holder of a claim or an interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (iii) compare the holder’s liquidation distribution to the distribution under the plan that the holder would receive if the plan were confirmed and consummated.

To satisfy the requirements of section 1129(a)(7) of the Bankruptcy Code, the Circus, together with its advisors, prepared the liquidation analysis attached hereto as Exhibit C (the “**Liquidation Analysis**”). Based upon on the Liquidation Analysis, the Circus believes that holders of Claims will receive equal or greater value as of the Effective Date than such holders would receive in a hypothetical chapter 7 liquidation and that the Plan therefore satisfies the “best interests” test set forth in section 1129(a)(7) of the Bankruptcy Code.

The Liquidation Analysis was prepared for the sole purpose of generating a reasonable, good faith estimate of the proceeds that would available for distribution to creditors if the Chapter 11 Case were converted to a case under chapter 7 of the Bankruptcy Code. The Liquidation Analysis is not intended and should not be used for any other purpose. The underlying financial information was not compiled or examined by any independent accountants.

WHILE DEEMED REASONABLE BASED ON THE FACTS CURRENTLY AVAILABLE, NEITHER THE CIRCUS OR ITS PROFESSIONALS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD APPROXIMATE THE ESTIMATE AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY, INCLUDING THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN THE CHAPTER 11 CASE.

#### **E. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a chapter 11 plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor, or any successor to the debtor (unless such liquidation or reorganization is proposed in the plan). For purposes of determining whether the Plan meets this requirement, the Circus has analyzed its ability to meet its obligations under the Plan.

The Circus anticipates having sufficient cash on hand to make all required payments under the Plan and will otherwise satisfy its obligations thereunder. Accordingly, the Circus believes the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

#### **F. Acceptance by Impaired Class**

With respect to the Plan, the Bankruptcy Code requires that, as a condition of confirmation, the Impaired Class of General Unsecured Claims must accept the Plan in order for it to be confirmed. A Class that is not

“Impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to the class is not required. A class is “Impaired” unless the plan: (i) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of the Claim or (ii) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as applicable, and does not otherwise alter the legal, equitable or contractual rights to which such Claim entitles the holder of such Claim.

Pursuant to section 1126(c) of the Bankruptcy Code, and except as otherwise provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the non-insider holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims that are voted were, in fact, voted to accept the Plan.

## VI.

### **RISK FACTORS**

**Holders of Claims should read and consider carefully the risk factors set forth below, as well as the other information set forth in this Disclosure Statement and the documents delivered together herewith, referred to or incorporated by reference herein, before voting to accept or reject the Plan. These risk factors should not be regarded as constituting the only risks present in connection with the Plan and its implementation.**

#### **A. Certain Bankruptcy Considerations**

##### ***(i) Undue Delay in Confirmation May Diminish Recoveries***

The continuation of the Chapter 11 Case, particularly if the Plan is not confirmed in the time frame currently contemplated, creates a risk that the value of the Estate would be eroded to the detriment of all stakeholders. The distributions to holders of Allowed General Unsecured Claims estimated in this Disclosure Statement are dependent upon the successful confirmation and implementation of the Plan. Failure to obtain this approval in a timely manner could adversely affect the Circus’ ability to maximize value for its Estate and all parties in interest. If confirmation does not occur expeditiously, the Chapter 11 Case could result in, among other things, increased Administrative Claims and similar expenses.

##### ***(ii) Risk of Non-Occurrence of the Effective Date***

Although the Circus believes that the Effective Date will occur shortly after the Confirmation Order is entered, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

##### ***(iii) Failure to Satisfy Vote Requirements***

If votes are received in number and amount sufficient to enable the Court to confirm the Plan, the Circus intends to seek, as promptly as practicable thereafter, confirmation of the Plan. In the event that sufficient votes are not received, the Circus may seek to confirm an alternative chapter 11 plan or convert its case to a case under chapter 7 of the Bankruptcy Code. There can no assurance that the terms of any such alternative chapter 11 plan or recoveries under a chapter 7 case would be similar or as favorable to holders of Allowed Claims as those proposed in the Plan.

##### ***(iv) The Circus May Not Be Able to Secure Confirmation of the Plan***

Even if the Voting Class votes in favor of the Plan, the Court may exercise its discretion, as a court of equity, and choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that the value of distributions to dissenting holders of Claims will not be less than the value such holders would receive if the Circus was liquidated under chapter 7 of the Bankruptcy Code. Although the Circus believes that the Plan will meet such tests, there can be no assurance that the Court will reach the same conclusion.

**(v) *The Foundations Settlement May Not Be Approved***

The Plan also constitutes a motion to approve the Foundations Settlement, and approval of the Foundations Settlement is a condition precedent to the Effective Date. The Circus believes the settlement is fair and reasonable and should be approved. However, there can be no assurance that the Court will approve the Foundations Settlement, and without such approval, the Plan may not become effective.

**(vi) *The Circus Cannot Guarantee What Recovery Will Be Available to Holders of Allowed Claims in the Voting Class***

Recoveries on Allowed Claims in the Voting Class are dependent, among other things: (a) how much money or other distributable value will remain after satisfaction of all Allowed Claims that are unclassified or senior to the Allowed Claims in the Voting Class and (b) the number or amount of Claims in the Voting Class that will ultimately be Allowed. In light of these unknown factors, the Claims estimates set forth in this Disclosure Statement are based on various assumptions. The actual amounts of certain Claims may differ significantly from those estimates should one or more underlying assumptions prove to be incorrect. Such differences may adversely affect the percentage recovery to holders of such Allowed Claims under the Plan.

**B. Disclosure Statement Disclaimer**

**(i) *No Legal or Tax Advice Is Provided to You by This Disclosure Statement***

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

**(ii) *No Admissions Are Made by This Disclosure Statement***

The information and statements contained in this Disclosure Statement will neither constitute an admission of any fact or liability by any entity (including the Circus) nor be deemed evidence of the tax or other legal effects of the Plan on the Circus, the Reorganized Circus, holders of Allowed Claims or any other parties in interest. The vote by a holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Circus, the Reorganized Circus, or the Plan Administrator (or any party in interest, as the case may be) to object to that holder's Allowed Claim, or recover any preferential, fraudulent or other voidable transfer or assets, regardless of whether any Claims or Causes of Action of the Circus or its Estate is specifically or generally identified herein.

In addition, no reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Circus, the Creditors' Committee, the Reorganized Circus or the Plan Administrator may seek to investigate, file and/or prosecute objections to Claims and may object to Claims after entry of the Confirmation Order or the Effective Date irrespective of whether this Disclosure Statement identifies such Claims or objections to such Claims or objections thereto.

**VII.**

**CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**A. Introduction**

The following is a discussion of certain U.S. federal income tax consequences arising from the consummation of the Plan to certain Holders (as defined below) of General Unsecured Claims. This discussion is not a complete analysis of all potential U.S. federal income tax consequences arising from the consummation of the Plan and does not address any U.S. state or local or non-U.S. tax consequences or any U.S. federal tax consequences

other than income tax consequences. This discussion is based on the IRC, U.S. Treasury Regulations promulgated or proposed thereunder and administrative and judicial interpretations thereof, all as in effect on the date hereof, and all of which are subject to change, possibly with retroactive effect, or to different interpretation. No ruling has been or will be sought from the Internal Revenue Service (the “IRS”) with respect to any of the U.S. federal income tax consequences discussed below, and no assurance can be given that the IRS will not take a position contrary to any discussion below or that any such contrary position could not be sustained by a court.

This discussion does not address all of the U.S. federal income tax consequences that may be relevant to specific Holders in light of their particular circumstances or to Holders subject to special treatment under U.S. federal income tax law (such as banks, insurance companies, dealers in securities or other Holders that generally mark their securities to market for U.S. federal income tax purposes, tax-exempt entities, retirement plans, regulated investment companies, real estate investment trusts, Holders that are not “United States persons” (as such term is defined in the IRC), certain former citizens or residents of the United States, Holders that hold their General Unsecured Claims as part of a straddle, hedge, conversion or other integrated transaction or Holders that have a “functional currency” other than the U.S. dollar).

As used in this discussion, the term “**Holder**” means a beneficial owner of a General Unsecured Claim that is entitled to vote on the Plan, which beneficial owner for U.S. federal income tax purposes is (i) an individual who is a citizen or resident of the United States, (ii) a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate the income of which is subject to U.S. federal income tax regardless of its source or (iv) a trust (x) with respect to which a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all of its substantial decisions or (y) that has in effect a valid election under applicable U.S. Treasury Regulations to be treated as a United States person.

If an entity treated as a partnership for U.S. federal income tax purposes holds a General Unsecured Claim, the U.S. federal income tax consequences arising from the consummation of the Plan will depend in part upon the status and activities of such entity and the particular partner. Any such entity should consult its own tax advisor regarding the U.S. federal income tax consequences arising from the consummation of the Plan applicable to it and its partners.

THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED ON THE PARTICULAR CIRCUMSTANCES OF EACH HOLDER OF A GENERAL UNSECURED CLAIM. EACH HOLDER OF A GENERAL UNSECURED CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISORS AS TO THE U.S. FEDERAL INCOME TAX CONSEQUENCES, AS WELL AS OTHER TAX CONSEQUENCES, INCLUDING UNDER ANY APPLICABLE STATE, LOCAL AND FOREIGN LAW, OF THE CONSUMMATION OF THE PLAN TO SUCH HOLDER.

#### **B. Certain U.S. Federal Income Tax Consequences of the Plan to the Circus**

The Circus is a not-for-profit corporation that is exempt from federal income taxation under section 501(c)(3) of the IRC. It is intended that nothing in the Plan shall adversely affect, or be interpreted inconsistently with, the tax-exempt status of the Circus post-Effective Date, and the Plan provides that the Circus will retain its tax-exempt status post-Effective Date to the same extent such status existed immediately prior to the Petition Date. Accordingly, the Circus does not expect the implementation of the Plan to have any adverse federal income tax consequences to the tax-exempt status of the Circus post-Effective Date. If the tax-exempt status of the Circus were to terminate post-Effective Date, the Circus would be subject to tax on its income, which would reduce the amount of distributions payable to holders of Allowed General Unsecured Claims.

#### **C. Certain U.S. Federal Income Tax Consequences of the Plan to Holders of Allowed General Unsecured Claims**

Pursuant to the Plan, each Holder of an Allowed General Unsecured Claim will receive, in satisfaction of its Claim, a pro rata share of the Available Assets or proceeds thereof (less any valid Plan Expenses), pursuant to the distribution mechanics set forth in the Plan.

A Holder of an Allowed General Unsecured Claim will be treated as exchanging such Claim for Available Assets in a taxable exchange under Section 1001 of the IRC. Accordingly, each Holder of an Allowed General Unsecured Claim should recognize gain or loss (subject to the discussion below under “—Bad Debt Deductions”) equal to the difference between (1) the fair market value of the portion of the Available Assets received (determined as of the Effective Date, subject to the discussion below under “—Post-Effective Date Distributions”), in exchange for such Claim and (2) such Holder’s adjusted tax basis, if any, in such Claim. A Holder’s adjusted tax basis in an Allowed General Unsecured Claim is generally (i) the amount such Holder paid for such Claim, (ii) increased by the amount of any original issue discount or market discount previously included in income (including in the year of exchange pursuant to the Plan) with respect to such Claim by such Holder and (iii) decreased by the aggregate amount of payments (other than stated interest) with respect to such Claim previously made to such Holder and any bond premium with respect to such Claim that has been used by such Holder to offset interest income with respect to such Claim. Such gain or loss should be capital in nature (subject to the discussion below under “—Bad Debt Deductions”) so long as the Allowed General Unsecured Claim is held as a capital asset (subject to the “market discount” rules described under “—Market Discount” below) and should be long-term capital gain or loss to the extent that the Holder has a holding period in the debt obligation underlying such Claim of more than one year. To the extent that a portion of the Available Assets received in exchange for an Allowed General Unsecured Claim is allocable to accrued but unpaid interest, the Holder of such Claim may be required to recognize ordinary income as discussed under “—Accrued but Unpaid Interest” below. A Holder’s tax basis in any non-cash property received in exchange for such Holder’s Allowed General Unsecured Claim should equal the fair market value of such non-cash property as of the Effective Date, (subject to the discussion below under “—Post-Effective Date Distributions”). A Holder’s holding period for any non-cash property received in exchange for such Holder’s Allowed General Unsecured Claim should begin on the day following the Effective Date, (subject to the discussion below under “—Post-Effective Date Distributions”).

**(i) *Accrued but Unpaid Interest***

It is expected that a portion of the Available Assets received by Holders of certain General Unsecured Claims may be attributable to accrued but unpaid interest on such Claims for U.S. federal income tax purposes. Such amount should be taxable to a Holder as interest income if such accrued interest has not been previously included in the Holder’s gross income for U.S. federal income tax purposes.

If the fair market value of the Available Assets received by a Holder is not sufficient to fully satisfy all principal and interest on its Claims, the extent to which such Available Assets will be attributable to accrued but unpaid interest for U.S. federal income tax purposes is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Claims in each Class will be treated as first satisfying an amount equal to the stated principal amount of the Allowed Claim of such Holders and any remaining consideration as satisfying accrued, but unpaid, interest, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes and the Circus intends to take this position and follow the Plan for U.S. federal income tax purposes, while certain U.S. Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. Accordingly, the IRS could take the position that the consideration received by a Holder should be allocated in some way other than as provided in the Plan. Each Holder of a General Unsecured Claim should consult its own tax advisors regarding the proper allocation of the consideration received under the Plan.

**(ii) *Market Discount***

Holders who exchange General Unsecured Claims for Available Assets and who purchased their General Unsecured Claims from prior holders may be affected by the “market discount” provisions of sections 1276 through 1278 of the IRC. Under these rules, some or all of the gain realized by a Holder may be treated as ordinary income (instead of capital gain), to the extent of the amount of accrued “market discount” on such Claims.

Generally, a Holder has market discount on a General Unsecured Claim to the extent that the “stated redemption price at maturity” of such Claim exceeds such Holder’s initial tax basis in such Claim by more than a de minimis amount. Under the market discount rules, such Holder generally will be required to treat as ordinary income any principal payment on, or any gain on the sale, exchange, retirement or other disposition of, such Claim to the extent of any accrued market discount on such Claim. For this purpose, market discount generally will accrue

ratably during the period from the date of acquisition of such Claim to the maturity date of such Claim, unless such Holder elects to accrue the market discount on such Claim under the constant yield method, which election, once made, is irrevocable. In addition, such Holder may be required to defer, until the sale, exchange, retirement or other disposition of such Claim, the deduction of all or a portion of the interest expense on any indebtedness incurred or continued to purchase or carry such Claim.

**(iii) *Bad Debt Deductions***

A Holder of a General Unsecured Claim who recognizes a loss as a result of the treatment of its General Unsecured Claim under the Plan may be able to claim a bad debt deduction, which would be ordinary in nature, depending on certain factors. These factors include, among other things, the tax status of such Holder, the nature of the Claim, such Holder's tax accounting method for bad debts, the timing of the consideration received by such Holder, and whether such Holder previously took a worthless security or bad debt deduction for such Claim. For non-business related Claims of a Holder other than a corporation, the deduction is only available if the Claim is worthless. If a Holder is a cash-basis taxpayer, such Holder can only claim a bad debt deduction if either the Claim was already included in income (and then only to the extent of such exclusion) or if an actual cash loss was suffered. If a Holder is an accrual-basis taxpayer, such Holder must use the specific charge-off method for business bad debt deductions.

In addition, a Holder that previously took a worthless security or bad debt deduction for a General Unsecured Claim will be limited in their ability to recognize a loss as a result of the treatment of its General Unsecured Claim under the Plan, to the extent of such previous deduction.

**(iv) *Limitation on Use of Capital Losses***

A Holder of a General Unsecured Claim who recognizes a capital loss as a result of the treatment of its General Unsecured Claim under the Plan will be subject to limits on use of such capital loss. For non-corporate Holders, capital losses may be used to offset any capital gains (without regard to holding periods) plus ordinary income to the extent of the lesser of (a) \$3,000 (\$1,500 for married individuals filing separate returns) and (b) the excess of the capital losses over the capital gains. Holders, other than corporations, may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income for an unlimited number of years. For corporate Holders, losses from the sale or exchange of capital assets may only be used to offset capital gains. Corporate Holders may only carry over unused capital losses to the five taxable years following the year in which the capital loss is recognized, but are allowed to carry back unused capital losses to the three taxable years preceding the year in which the capital loss is recognized.

**(v) *Medicare Tax***

In addition to regular U.S. federal income tax, certain Holders that are individuals, estates or trusts are subject to a 3.8% tax on all or a portion of their "net investment income," which may include all or a portion of their income arising as a result of an exchange of their General Unsecured Claim for Available Assets. Holders that are individuals, estates or trusts should consult their own tax advisors as to the effect, if any, of this tax on their receipt, ownership or disposition of any consideration received pursuant to the Plan.

**(vi) *Post-Effective Date Distributions***

To the extent that a Holder of a General Unsecured Claim, including a Disputed Claim that ultimately becomes an Allowed Claim, receives distributions after the Effective Date, a portion of the subsequent distributions may be treated as interest for U.S. federal income tax purposes. Additionally, to the extent that a Holder of such a Claim receives distributions in a taxable year or years, following the year of initial distribution, a portion of any gain realized by such Holder may be deferred. All Holders of General Unsecured Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.



**(vii) Information Reporting and Backup Withholding**

Information reporting generally will apply to payments to a Holder pursuant to the Plan, unless such Holder is an entity that is exempt from information reporting and, when required, demonstrates this fact. Any such payment to a Holder that is subject to information reporting generally will also be subject to backup withholding, unless such Holder provides the appropriate documentation (generally, IRS Form W-9) to the applicable withholding agent certifying that, among other things, its taxpayer identification number is correct, or otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a Holder's U.S. federal income tax liability if the required information is furnished by such Holder on a timely basis to the IRS.

Treasury regulations generally require disclosure by a taxpayer of its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of certain thresholds. You are urged to consult your own tax advisor regarding these regulations and whether the contemplated transactions under the Plan would be subject to these regulations and require disclosure on your tax return.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A GENERAL UNSECURED CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF GENERAL UNSECURED CLAIMS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

Payments of interest, dividends, and certain other payments are generally subject to backup withholding at the rate of 28% unless the payee of such payment furnishes such payee's correct taxpayer identification number (social security number or employer identification number) to the payor. The Plan Administrator may be required to withhold the applicable percentage of any payments made to a holder who does not provide his, her or its taxpayer identification number. Backup withholding is not an additional tax, but an advance payment that may be refunded to the extent it results in an overpayment of tax.

**VIII.**

**RECOMMENDATION**

The Circus submits that the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for a larger recovery for the Circus' holders of Allowed Claims than such holders would otherwise receive or retain in liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses, resulting in reduced recoveries to holders of Allowed Claims than those proposed under the Plan. Accordingly, the Circus strongly recommends that holders of Claims entitled to vote on the Plan vote to accept the Plan.

Dated: October 30, 2017  
New York, New York

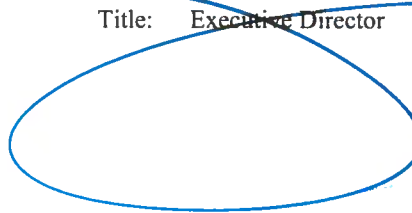
Respectfully submitted,

TBAC WIND DOWN, LTD.

By: 

Name: Will Maitland Weiss

Title: Executive Director



10/30/17



**Exhibit A to the Revised Disclosure Statement**

**Plan**

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

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**CHAPTER 11 PLAN OF LIQUIDATION OF TBAC WIND DOWN, LTD.**

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**DEBEVOISE & PLIMPTON LLP**

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## **INTRODUCTION**

TBAC Wind Down, Ltd., formerly known as The Big Apple Circus, Ltd., respectfully proposes the following chapter 11 plan of liquidation pursuant to section 1121(a) of the Bankruptcy Code. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Section 1.1 hereof.

**Under section 1125(b) of the Bankruptcy Code, a vote to accept or reject the Plan cannot be solicited from a holder of a Claim until a disclosure statement has been approved by the Bankruptcy Court and distributed to holders of Claims. Holders of Claims should refer to the Disclosure Statement for a discussion of the Debtors' history, business, financial information, and events during this chapter 11 case, as well as a summary and description of the Plan. Before voting to accept or reject the Plan, holders of Claims entitled to vote on the Plan are encouraged to carefully read the Plan, the Disclosure Statement, and their respective exhibits and schedules in their entirety.**

## **ARTICLE I**

### **DEFINED TERMS AND RULES OF INTERPRETATION AND CONSTRUCTION**

#### **1.1 Defined Terms**

Unless the context otherwise requires, the following terms shall have the following meanings when used in capitalized form, and any term used in the Plan that is not defined herein, but is defined in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules:

1. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Chapter 11 Case of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor; and (b) all fees and charges assessed against the Estate pursuant to chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

2. “*Allowed*” means, with respect to Claims, (a) any Claim that is listed in the Schedules as not unliquidated, contingent, or disputed and for which no proof of claim has been filed; (b) any properly and timely filed and liquidated Claim with respect to which (i) no objection to the allowance thereof has been timely filed, (ii) all objections to its allowance have been denied by Final Order of the Court, settled, or withdrawn, or (iii) the Plan Administrator has allowed in accordance with the provisions of the Plan; or (c) any Claim allowed pursuant to the Plan or a Final Order of the Court (which may be the Confirmation Order).

3. “*Available Assets*” means, except as otherwise provided in the Plan, any assets of the Estate remaining after (a) payment of all Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, Secured Claims, and Deposit Claims, all to the extent such Claims are Allowed as of the Effective Date; (b) establishment of the Disputed Claims Reserve; and (c) any amounts transferred on account of the Foundations Settlement.

4. “*Bankruptcy Code*” means title 11 of the United States Code, as amended and in effect during the pendency of the Chapter 11 Case.

5. “*Bankruptcy Rules*” means the Federal Rules of Bankruptcy Procedure, as applicable to the Chapter 11 Case.

6. “*Business Day*” means any day other than a Saturday, Sunday, or “legal holiday” (as such term is defined in Bankruptcy Rule 9006(a)).

7. “*Cause of Action*” means any action, claim, cause of action, proceeding, suit, demand, defense, offset, right to legal remedies, right to equitable remedies, and right to payment, of any kind or character

whatsoever, whether known or unknown, liquidated or unliquidated, contingent or noncontingent, matured or unmatured, secured or unsecured, asserted or assertable directly or derivatively, in law, equity or otherwise.

8. “*Chapter 11 Case*” means the case pending under chapter 11 of the Bankruptcy Code in the Court and assigned Case No. 16-13297 (SHL).

9. “*City*” means the City of New York.

10. “*Claim*” means any claim against the Debtor as defined in section 101(5) of the Bankruptcy Code, or an Administrative Claim, as applicable.

11. “*Claims Bar Date*” means, as applicable, (a) March 30, 2017; (b) May 19, 2017 for governmental units; or (c) such other period of limitation as may be specifically fixed by an order of the Court for the filing of certain Claims.

12. “*Claims Objection Deadline*” means the first business day that is sixty (60) calendar days after the Effective Date, subject to the right of the Plan Administrator to seek an extension of such date by motion, which motion may be approved without notice to any party or a hearing.

13. “*Class*” means a category of Claims as set forth in Article III.

14. “*Confirmation Order*” means the order of the Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code, which shall be in form and substance satisfactory to the Debtor.

15. “*Court*” means the United States Bankruptcy Court for the Southern District of New York or such other court as may have jurisdiction over the Chapter 11 Case.

16. “*Creditors’ Committee*” means the statutory committee of unsecured creditors of the Debtor appointed in the Chapter 11 Case pursuant to section 1102 of the Bankruptcy Code by the U.S. Trustee.

17. “*D&O Liability Insurance Policies*” means all insurance policies of the Debtor for directors’, managers’ or officers’ liability resulting from any act, error, omission, breach of duty or any matter claimed against such manager or officer by reason of his or her status as such.

18. “*DCA*” means the New York City Department of Cultural Affairs.

19. “*DCA Grant*” means that certain grant awarded to the Debtor pursuant to an Agreement, dated July 1, 2016, by and between the Debtor and the City, acting by and through the DCA, and as amended from time to time.

20. “*Debtor*” means TBAC Wind Down, Ltd., formerly known as The Big Apple Circus, Ltd., a corporation organized under the New York Not-for-Profit Corporation Law.

21. “*Deposit Claims*” means any Claim entitled to priority in payment pursuant to section 507(a)(7) of the Bankruptcy Code.

22. “*Disclosure Statement*” means the disclosure statement, including all exhibits and schedules thereto, that relates to the Plan, as such disclosure statement may be amended, modified, or supplemented from time to time, and as approved by order of the Court pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017.

23. “*Disputed Claim*” means any Claim that is not yet Allowed and has not yet been disallowed by a Final Order. For the avoidance of doubt, any Claim that is subject, in whole or in part, to a pending objection shall be considered a Disputed Claim in its entirety until that objection has been resolved by Final Order of the Court.

24. “*Disputed Claims Reserve*” means a reserve established on the Effective Date with cash constituting property of the Estate and which shall be maintained by the Plan Administrator in an interest-bearing account in the amount necessary to pay all Disputed Claims arising prior to the Effective Date in accordance with the provisions of the Plan, if such Disputed Claims become Allowed Claims.

25. “*Effective Date*” means the first business day on which all provisions, terms, and conditions specified in Section 9.1 have been satisfied or waived pursuant to Section 9.2, and on which no stay of the Confirmation Order is in effect.

26. “*Endowment Loan Claim*” means the Claim in the amount of \$1,981,870.83 for all amounts owed by the Debtor for funds borrowed from endowments held in account with number ending in 8106 at Bank of America, N.A.

27. “*Estate*” means the estate created for the Debtor in the Chapter 11 Case pursuant to section 541 of the Bankruptcy Code. For the avoidance of doubt, the Estate does not include the Stern and Kern Foundations Endowment.

28. “*Exculpated Claim*” means any claim related to any act or omission in connection with, relating to or arising out of the Chapter 11 Case, formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement or the Plan or any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Case, the pursuit of confirmation or consummation of the Plan, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement. For the avoidance of doubt, no Cause of Action, obligation, or liability expressly preserved by the Plan constitutes an Exculpated Claim.

29. “*Exculpated Party*” means each of: (a) the Debtor; (b) the directors, officers, and employees of the Debtor serving on or after the Petition Date; (c) the Professionals retained by the Debtor; (d) the Creditors’ Committee and the members thereof, solely in their capacity as such; and (e) the Professionals retained by the Creditors’ Committee.

30. “*Final Distribution Date*” means the date that is 270 calendar days after the Effective Date, which date may be extended upon notice to, and approval by, the Attorney General of the State of New York.

31. “*Final Order*” means an order or judgment of the Court, or other court of competent jurisdiction, entered on the docket of such court, that has not been reversed, rescinded, stayed, modified or amended, that is in full force and effect, and with respect to which: (a) the time to appeal, seek review or rehearing, or petition for certiorari has expired and no timely filed appeal or petition for review, rehearing, remand or certiorari is pending; or (b) any appeal taken or petition for certiorari filed has been resolved by the highest court to which the order or judgment was appealed or from which review, rehearing or certiorari was sought; provided, however, that the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code or rule 60 of the Federal Rules of Civil Procedures, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order to not be a Final Order.

32. “*Foundations*” means, collectively, the Taft Foundation and the James E. & Diane W. Burke Foundation Inc.

33. “*Foundations Settlement*” means the settlement by and among the Debtor and the Foundations described in Section 4.6 of the Plan.

34. “*General Unsecured Claim*” means any unsecured Claim that is not (a) an Administrative Claim; (b) a Priority Tax Claim; (c) a Claim for accrued Professional compensation; (d) a Priority Non-Tax Claim; or (e) a Deposit Claim.

35. “*Impaired*” means, with respect to any Class, a Class that is impaired within the meaning of section 1124 of the Bankruptcy Code.

36. “*Initial Distribution Date*” means the date that is twenty-eight (28) calendar days after the Effective Date, subject to extension by the Plan Administrator, in his or her sole discretion.

37. “*Periodic Distribution Date*” means a business day selected by the Plan Administrator, in his or her sole discretion, for making of interim distributions on account of Allowed Claims pursuant to Section 6.3 of the Plan, which shall be no less frequent than once every three (3) months, following the Initial Distribution Date.

38. “*Petition Date*” means November 20, 2016.

39. “*Phone System*” means the phone system acquired by the Debtor with funds provided by the New York City Department of Design and Construction pursuant to a Funding Agreement, dated July 25, 2013 (as amended).

40. “*Plan*” means this *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.*, including all schedules, exhibits, and supplements hereto, which are incorporated herein by reference as if set forth in full herein.

41. “*Plan Administrator*” means the entity or any successor or replacement entity appointed as “Plan Administrator” under the terms of the Plan.

42. “*Plan Expenses*” means all actual and necessary fees, costs, expenses, and obligations incurred by or owed to, the Plan Administrator and his or her respective agents, employees, attorneys, advisors, and other professionals in administering the Plan, including, without limitation, (a) reasonable compensation for services rendered, and reimbursement for actual and necessary expenses incurred, by any of the foregoing after the Effective Date through and including the date upon which the Court enters a final decree closing the Chapter 11 Case, and (b) all fees payable pursuant to Section 12.4 of the Plan.

43. “*Plan Supplement*” means the supplemental appendix to the Plan described in Section 12.2 of the Plan.

44. “*Post-Effective Date Board of Directors*” means the three member board of directors of the Reorganized Debtor.

45. “*Priority Tax Claim*” means any Claim entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code.

46. “*Priority Non-Tax Claim*” means any Claim entitled to priority in payment pursuant to any subsection of section 507(a) of the Bankruptcy Code other than Priority Tax Claims and Deposit Claims.

47. “*Preference Action*” means a Cause of Action pertaining to section 547 of the Bankruptcy Code for recovery of prepetition payments made by the Debtor.

48. “*Professional*” means an entity retained pursuant to a Final Order in accordance with section 327 or 1103 of the Bankruptcy Code.

49. “*Released Parties*” means each of: (a) the Debtor; (b) the current and former directors and officers of the Debtor; (c) the Reorganized Debtor; and (d) any of the representatives, agents, officers, directors, employees, professionals, advisors, attorneys, successors, or assigns of the foregoing (in their capacities as such).

50. “*Releasing Parties*” means, collectively, (a) all holders of Claims; or (b) solely if the Court finds that the Third Party Release may only be approved with the consent of the applicable holder of a Claim, all holders of Claims who, with respect to such Claims, (i) vote to accept the Plan, (ii) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (iii) receive a ballot providing them with the potential right to opt out of the Third Party release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (iv) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release.



51. “*Reorganized Debtor*” means the Debtor on and after the Effective Date.

52. “*Schedules*” means, collectively, the schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs filed by the Debtor pursuant to section 521 of the Bankruptcy Code, as amended from time to time.

53. “*Secured*” means, when referring to a Claim: (a) secured by a lien on property in which the Estate has an interest, which lien is valid, perfected and enforceable pursuant to applicable law or by reason of a Court order, to the extent of the value of the creditor’s interest in the Estate’s interest in such property as determined pursuant to section 506(a) of the Bankruptcy Code; (b) subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the property subject to setoff; or (c) otherwise Allowed pursuant to the Plan as a Secured Claim.

54. “*Stern and Kern Foundations Endowment*” means the endowment fund established prior to the Petition Date from grants provided by The Jean L. and Robert A. Stern Foundation and The Ilma F. Kern Foundation.

55. “*Third Party Release*” means the release provision set forth in Article VIII, Section 3 of the Plan.

56. “*U.S. Trustee*” means the Office of the United States Trustee for the Southern District of New York.

57. “*U.S. Trustee Fees*” means all fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930.

## **1.2 Rules of Interpretation and Construction**

For purposes of the Plan: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been filed or to be filed means that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to “Articles” or “Sections” are references to Articles or Sections, as applicable, hereof; (e) unless otherwise stated, the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (h) any immaterial effectuating provisions may be interpreted by the Debtor in a manner that is consistent with the overall purpose and intent of the Plan without further Court order; (i) any reference to an entity as a holder of a Claim includes that entity’s permitted successors and assigns; (j) to the extent that any schedule, exhibit, or supplement to the Plan is inconsistent with the terms of the Plan, and unless otherwise provided herein or in the Confirmation Order, the terms of the schedule, exhibit, or supplement shall govern; (k) to the extent that the Confirmation Order is inconsistent with the Plan or any schedule, exhibit, or supplement to the Plan, the provisions of the Confirmation Order shall govern; (l) to the extent that the Disclosure Statement is inconsistent with the terms of the Plan, the terms of the Plan shall govern; (m) in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply; (n) if the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day; and (o) the references in the Plan to monetary figures shall refer to currency of the United States of America.

## ARTICLE II

### ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified for the purposes of voting or receiving distributions under the Plan. Rather, all such Claims shall be treated separately on the terms set forth in this Article II.

#### 2.1 Administrative Claims

##### (a) Treatment

Except to the extent that a holder of an Allowed Administrative Claim agrees to less favorable treatment, or as otherwise provided in the Plan, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Administrative Claim, cash in an amount equal to the Allowed but unpaid portion of such Administrative Claim, either (i) on the Effective Date; (ii) if such Administrative Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Administrative Claim becomes Allowed; (iii) on the date or dates agreed to by the Debtor or the Plan Administrator, as applicable, and the holder of the Allowed Administrative Claim; or (iv) on the date such Administrative Claim becomes due and payable in the ordinary course of the Debtor's business pursuant to the terms and conditions of the transaction or agreement giving rise to such Administrative Claim, on which date such Administrative Claim shall be deemed Allowed (to the extent not otherwise disputed by the Debtor, the Plan Administrator, or any other party in interest) without any further action by the holder of such Administrative Claim or any further notice to or action, order, or approval of the Court.

##### (b) Administrative Claim Bar Date

Except for Administrative Claims of governmental units as provided in section 503(b)(1)(D) of the Bankruptcy Code or as otherwise provided in this Section 2.1, requests for payment of Administrative Claims, including final applications for payment of accrued compensation for services rendered by Professionals before the Effective Date, must be filed and served on the Debtor or the Plan Administrator, as applicable, and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other order by the Court, pursuant to the procedures specified in the Confirmation Order no later than twenty-one (21) calendar days after the Effective Date. Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor, its Estate, the Reorganized Debtor, or any property of any of the foregoing, and such Administrative Claims shall be automatically disallowed and deemed forever compromised, settled, and released as of the Effective Date.

Objections to requests for payment of Administrative Claims, if any, must be filed and served on the Debtor or the Plan Administrator, as applicable, and the requesting party no later than the Claims Objection Deadline. Unless an objection to a request for payment of an Administrative Claim is timely filed and served, such Administrative Claim shall be deemed Allowed in the amount requested (to the extent not previously Allowed). No request for payment of an Administrative Claim need be filed with respect to an Administrative Claim previously Allowed by Final Order, including all Administrative Claims expressly Allowed under the Plan.

#### 2.2 Priority Tax Claims

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive, in full satisfaction, settlement, release and discharge, of such Allowed Priority Tax Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Priority Tax Claim, either (a) on the Effective Date; (b) if such Priority Tax Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Priority Tax Claim becomes Allowed; or (c) on the date or dates agreed to by the Debtor or the Plan Administrator, as applicable, and the holder of such Allowed Priority Tax Claim. To the extent that any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in cash in accordance with the terms of the any

agreement between the Debtor or the Plan Administrator, as applicable, and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

Any Claim or demand for a penalty relating to any Priority Tax Claim (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed, and the holder of a Priority Tax Claim shall not assess or attempt to collect such penalty from the Debtor, its Estate, the Reorganized Debtor, or the property of any of the foregoing.

## ARTICLE III

### CLASSIFICATION AND TREATMENT OF CLAIMS

#### 3.1 Classification of Claims

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, the following table designates the Classes of Claims (other than Administrative Claims and Priority Tax Claims, which shall be treated in accordance with Article II) against the Debtor for all purposes, including voting on, confirmation of, and distribution pursuant to, the Plan, and specifies which Classes are (a) not Impaired and conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or (b) Impaired and entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code. The classification of any Claim for purposes of the Plan (including voting) shall not be deemed consent to the allowance of such Claim or preclude any objection thereto for any purpose (including voting).

Class	Claims	Plan Treatment	Voting Status
1	Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Priority Non-Tax Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Deposit Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
4	General Unsecured Claims	Impaired	Entitled to Vote

#### 3.2 Treatment of Claims

##### (a) **Treatment of Class 1 – Secured Claims**

- (i) *Classification:* Class 1 consists of all Secured Claims.
- (ii) *Treatment:* Except to the extent that a holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive one of the following treatments (at the sole option of the Debtor or the Plan Administrator, as applicable), in full satisfaction, settlement, release, and discharge, of such Allowed Secured Claim either (A) on the Effective Date; (B) if such Secured Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Secured Claim becomes Allowed; or (C) on the date or dates agreed to by the Debtor or the Plan Administrator, as applicable, and the holder of such Allowed Secured Claim:
  - (1) payment in cash in an amount equal to the Allowed but unpaid portion of such Allowed Secured Claim, including any interest and any reasonable fees, costs, or charges required under section 506(b) of the Bankruptcy Code;

- (2) delivery of collateral securing such Allowed Secured Claim or proceeds thereof to the extent of the Allowed but unpaid amount of such Secured Claim; or
- (3) other treatment rendering such Secured Claim not Impaired.

(iii) *Impairment and Voting:* Class 1 is not Impaired. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

**(b) Treatment of Class 2 Claims – Priority Non-Tax Claims**

- (i) *Classification:* Class 2 consists of all Priority Non-Tax Claims.
- (ii) *Treatment:* Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Non-Tax Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Priority Non-Tax Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Priority Non-Tax Claim, either (A) on the Effective Date, (B) if such Priority Non-Tax Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Priority Non-Tax Claim becomes Allowed, or (C) on the date or dates agreed to by the Debtor or the Plan Administrator, as applicable, and the holder of such Allowed Priority Non-Tax Claim.
- (iii) *Impairment and Voting:* Class 2 is not Impaired. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

**(c) Treatment of Class 3 – Deposit Claims**

- (i) *Classification:* Class 3 consists of all Deposit Claims.
- (ii) *Treatment:* Except to the extent that a holder of an Allowed Deposit Claim agrees to less favorable treatment, each holder of an Allowed Deposit Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Deposit Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Deposit Claim, either (A) on the Effective Date, (B) if such Deposit Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Deposit Claim becomes Allowed, or (C) on the date or dates agreed to by the Debtor or the Plan Administrator, as applicable, and the holder of such Allowed Deposit Claim.
- (iii) *Impairment and Voting:* Class 3 is not Impaired. Holders of Claims in Class 3 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

**(d) Treatment of Class 4 – General Unsecured Claims**

- (i) *Classification:* Class 4 consists of all General Unsecured Claims.
- (ii) *Treatment:* Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed General Unsecured Claim, a pro rata share of the Available Assets or proceeds thereof (less any valid Plan Expenses), pursuant to the distribution mechanics set forth in the Plan, including Article VI.

- (iii) *Impairment and Voting:* Class 4 is Impaired by the Plan. Each holder of a Claim in Class 4 is entitled to vote to accept or reject the Plan.

### **3.3 Elimination of Vacant Classes**

Any Class of Claims that, as of the commencement of the hearing to consider confirmation of the Plan, does not contain any Allowed Claims or any Claims temporarily allowed for voting purposes under Bankruptcy Rule 3018 shall be considered vacant and deemed eliminated from the Plan for purposes of (a) voting to accept or reject the Plan and (b) determining whether the Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

## **ARTICLE IV**

### **MEANS FOR IMPLEMENTATION OF THE PLAN**

#### **4.1 Continued Corporate Existence; Dissolution of the Reorganized Debtor**

On and after the Effective Date, the Reorganized Debtor shall continue in existence and retain its not-for-profit status to the same extent as such status existed immediately prior to the Petition Date.

On the Effective Date, all current directors of the Debtor shall be deemed discharged of and from all further authority, duties, responsibilities and obligations related to, arising from, or in connection with their services as directors of the Debtor, and the Post-Effective Date Board of Directors shall be formed. The identity and affiliations of each proposed member of the Post-Effective Date Board of Directors and each of the initial officers of the Reorganized Debtor (and, to the extent such person is an insider, the nature of any compensation for such person) is set forth on Exhibit A hereto included in the Plan Supplement. The certificate of incorporation and bylaws of the Debtor shall be amended as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code and in form and substance substantially similar to Exhibit B and Exhibit C hereto, respectively. The Post-Effective Date Board of Directors shall receive no compensation for their services.

As soon as practicable after the liquidation and the winding down of the Estate and the completion of distributions under the Plan, the Plan Administrator shall file a certificate of dissolution of the Reorganized Debtor with the Secretary of State of the State of New York. For the avoidance of doubt, the Plan shall constitute a plan of dissolution under the New York Not-for-Profit Corporation Law and, as of the Effective Date, the Plan shall be deemed authorized and approved by the Post-Effective Date Board of Directors.

#### **4.2 Liquidation of the Estate**

Notwithstanding section 1141(b) of the Bankruptcy Code, all property of the Estate shall remain property of the Estate upon entry of the Confirmation Order. On and after the Effective Date, the Estate shall be liquidated in accordance with the Plan and applicable law, and the operations of the Reorganized Debtor shall become the responsibility of the Plan Administrator who shall thereafter have responsibility for the management, control and operation of the Reorganized Debtor, and who may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

#### **4.3 Plan Administrator**

##### **(a) Appointment**

The Plan Administrator shall be deemed appointed on the Effective Date, without further motion, application, notice, hearing, or other order of the Court. The initial Plan Administrator shall be selected by the Debtor, in consultation with the Creditors' Committee, and disclosed in the Plan Supplement.

**(b) Duties**

The Plan Administrator shall act as liquidating and disbursing agent for and on behalf of the Estate from and after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Plan Administrator shall be authorized, as agent for and on behalf of the Estate, to take any and all actions necessary or appropriate to implement the Plan or wind down the Estate in accordance with applicable law, including any and all actions necessary to (i) liquidate the assets of the Debtor, the Reorganized Debtor, and the Estate, (ii) investigate and, if necessary, litigate, any Cause of Action on behalf of the Debtor, the Reorganized Debtor, and the Estate, (iii) defend, protect, and enforce any and all rights and interests of the Debtor, the Reorganized Debtor, and the Estate, (iv) administer, dispute, object to, and compromise or otherwise resolve Claims, (v) make any and all distributions required or permitted to be made under the Plan, (vi) dissolve the Reorganized Debtor, (vii) file post-Effective Date reports as required pursuant to applicable statute or the Court, and (viii) pay any and all claims, liabilities, losses, damages, costs, and expenses incurred in connection with, or as a result of, the foregoing, including all fees and expenses of the Plan Administrator and his or her professionals, accruing from and after the Effective Date, without any further notice to or action, order, or approval of the Court and without the need to obtain any approval for such actions from the Post-Effective Date Board of Directors; provided, however, that the Post-Effective Date Board of Directors retains the right to disapprove of any action or inaction by Plan Administrator that is deemed by the Post-Effective Board of Directors to be inconsistent with its fiduciary duties under applicable law. The Plan Administrator shall be authorized to execute such documents and take such other action as is necessary to effectuate the Plan and perform his or her duties as liquidating and disbursing agent for and on behalf of the Estate, including authorization to execute such documents and take such other action on behalf of the Debtor or the Reorganized Debtor, as applicable. The Plan Administrator shall also be authorized to retain professionals and may incur and satisfy any reasonable and necessary expenses in the performance of his or her duties as liquidating and disbursing agent for and on behalf of the Estate, without the need for any Court approval except as expressly set forth herein.

**(c) Compensation**

The Plan Administrator shall be compensated on terms agreed to by the Debtor, in consultation with the Creditors' Committee, and reimbursed for his or her out-of-pocket expenses incidental to the performance of his or her duties under the Plan. The Plan Administrator shall file with the Court periodic notices of the amount of fees and expenses sought to be paid. Parties in interest shall have ten (10) business days to object to any such notice. In the event that an objection is received by the Plan Administrator and cannot be promptly resolved by the Plan Administrator and the objector, the dispute shall be submitted by the objector to the Court for adjudication. In the event that no objection is timely received by the Plan Administrator, the applicable fees and expenses shall be promptly paid to the Plan Administrator.

**4.4 Plan Expenses**

Except as otherwise provided herein, the Plan Administrator may, in the ordinary course of business and without the necessity for any application to, or approval of, the Court, pay any accrued but unpaid Plan Expenses, which shall be charged against and paid from the Available Assets. The Plan Administrator may segregate Available Assets in an amount estimated by the Plan Administrator, in his or her sole discretion, to be necessary to satisfy Plan Expenses that may be incurred until the closing of the Chapter 11 Case, which funds shall no longer constitute Available Assets solely for purposes of determining distributions of Available Assets to holders of Allowed General Unsecured Claims. Once all Plan Expenses have been satisfied, any remaining funds segregated by the Plan Administrator for payment of Plan Expenses shall be released and deemed Available Assets for all purposes.

Attorneys, advisors, and any other professionals retained by the Plan Administrator shall submit to the Plan Administrator periodic statements for all reasonable compensation for services rendered, including reimbursement for actual and necessary expenses incurred, by such professionals. The Plan Administrator shall have ten (10) business days to object to any such statement. In the event that an objection is received by a professional and cannot be promptly resolved by such professional and the Plan Administrator, the dispute shall be submitted by such professional to the Court for adjudication. In the event that no objection is timely raised, such statement shall be promptly paid by the Plan Administrator.



#### **4.5 Transfer of the Stern and Kern Foundations Endowment**

Pursuant to section 1129(a)(16) of the Bankruptcy Code and in accordance with section 553(a) of New York Not-For-Profit Corporation Law and the intent of the donors as expressed in the related gift instruments, the Plan Administrator shall transfer, or cause to be transferred, the Stern and Kern Foundations Endowment to The Children's Aid Society, 105 East 22nd Street, New York, NY 10010, on or as soon as practicable after the Effective Date.

#### **4.6 Foundations Settlement**

Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3) of the Bankruptcy Code, the Plan shall implement the Foundations Settlement, as described below, and shall constitute a motion for approval of, and the Confirmation Order shall constitute approval of, the implementation of the Foundations Settlement.

Pursuant to the Foundations Settlement, on or as soon as reasonably practicable after the Effective Date, in full and final satisfaction, settlement, release, and discharge, of all Claims held by the Foundations, the Foundations shall: (a) receive a single Allowed General Unsecured Claim in the aggregate amount of \$151,000 to be allocated amongst themselves as directed by the Foundations; (b) receive the funds held in the Debtor's account with number ending in 2154 at Bank of America, N.A. totaling \$142,582.73, which must be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those provided by the Debtor prior to the Petition Date; and (c) receive the funds received by the Debtor on account of the DCA Grant totaling \$134,360, which must be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those provided by the Debtor prior to the Petition Date.

Further, on the Effective Date, the Foundations shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties, and the Released Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Foundations, from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and the Foundations, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of the Foundations or any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

#### **4.7 Transfer of Phone System to the DCA**

Pursuant to sections 363, 365, 1123(a)(5)(B), and 1123(b)(2) of the Bankruptcy Code, on the Effective Date, in full and final satisfaction of any and all claims arising out of the agreements by and between the Debtor, the City, the DCA, or the New York City Department of Design and Construction regarding the Phone System, the Debtor shall be deemed to have transferred the Debtor's interest in the Phone System to the City, and all such agreements shall be deemed rejected to the extent that such agreements constitute executory contracts or unexpired leases.

#### **4.8 Destruction and Abandonment of Books and Records**

On or after the Effective Date, pursuant to section 554(a) of the Bankruptcy Code, the Plan Administrator, is authorized, from time to time, without further application to the Court or notice to any party, to abandon or otherwise destroy documents and records (whether in electronic or paper format) that he or she determines, in his or her reasonable business judgment, are no longer necessary to the administration of either

the Chapter 11 Case or the Plan, notwithstanding any federal, state, or local law or requirement requiring the retention of the applicable documents or records.

#### **4.9 Preservation of Insurance**

Nothing in the Plan shall diminish, impair, or otherwise affect distributions from the proceeds or the enforceability of any insurance policies that may cover Claims against the Debtor or the Debtor's employees, officers or directors.

#### **4.10 Preservation of All Causes of Action**

Except as otherwise provided in the Plan or in any contract, instrument, release or agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, all Causes of Action that the Debtor or the Estate may have against any person or entity will be preserved, including any Cause of Action the Debtor, the Estate or other appropriate party in interest may assert under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code; provided, however, that the Plan Administrator may only assert Preference Actions as a defense or counterclaim against a creditor party and not as affirmative relief to recover prepetition payments made by the Debtor. The Plan Administrator, in his or her sole discretion, will determine whether to bring, settle, release, compromise or enforce such claims, causes or any Cause of Action, and will not be required to seek further approval of the Court for such actions.

**No entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Debtor, the Reorganized Debtor, or the Plan Administrator will not pursue any and all available Causes of Action against them. The Debtor, the Reorganized Debtor, and the Plan Administrator expressly reserve all rights to prosecute any and all Causes of Action against any entity, except as otherwise provided in the Plan.**

#### **4.11 Dissolution of the Creditors' Committee**

From and after the Effective Date, the Creditors' Committee shall have no further powers or duties and shall be dissolved for all purposes, and the members of the Creditors' Committee shall be released and discharged from all rights and duties related to the Chapter 11 Case.

#### **4.12 Limitation on Liability; Indemnification**

No recourse shall ever be had, directly or indirectly, against the Plan Administrator, the Reorganized Debtor, the Post-Effective Date Board of Directors, or any of the forgoing's officers, directors, agents, representatives, designees, employees, attorneys, advisors, or professionals, by legal or equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge, or note, or upon any promise, contract, instrument undertaking, obligation, covenant, or agreement whatsoever executed by such parties pursuant to the Plan or for any purpose authorized by the Plan, nor shall they be liable for any act or omission taken or omitted to be taken in their respective capacities in the exercise of reasonable judgment and reasonably believed to be within the discretion or power conferred by the Plan, other than acts or omissions resulting from willful misconduct, gross negligence, or fraud by such person, and the fact that such act or omission was done in accordance with advice or opinions rendered by attorneys, accountants, financial advisors and agents retained by such persons shall be conclusive evidence of such reasonable judgment.

The Plan Administrator, the Reorganized Debtor, the Post-Effective Date Board of Directors, and any of the forgoing's officers, directors, agents, representatives, designees, employees, attorneys, advisors, or professionals shall be entitled to indemnification and reimbursement for fees and expenses incurred in defending any and all actions or inactions taken in their respective capacities, except for any actions or inactions involving willful misconduct, gross negligence, or fraud. Any indemnification or reimbursement claim of such parties shall be satisfied from the Available Assets, and the Plan Administrator may segregate Available Assets in an amount estimated by the Plan Administrator, in his or her sole discretion, to be necessary to satisfy such indemnification and reimbursement claims that may be incurred until the closing of the Chapter 11 Case, which funds shall no longer



constitute Available Assets solely for purposes of determining distributions of Available Assets to holders of Allowed General Unsecured Claims. Upon the Final Distribution Date, any remaining funds segregated by the Plan Administrator for payment of such indemnification and reimbursement claims shall be released and deemed Available Assets for all purposes.

#### **4.13 Exemption from Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of the Confirmation Order, the appropriate state and local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

#### **4.14 Corporate Action**

Upon the Effective Date, all actions contemplated by the Plan shall be deemed authorized and approved in all respects, and all matters provided for in the Plan involving the corporate structure or dissolution of the Debtor or the Reorganized Debtor, and any corporate action required by the Debtor or the Reorganized Debtor in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the directors or officers of the Debtor or the Reorganized Debtor.

### **ARTICLE V**

#### **EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

##### **5.1 Assumption and Rejection of Executory Contracts and Unexpired Leases**

Except as otherwise provided in the Plan and subject to the provisions of Section 5.3 herein, each executory contract and unexpired lease to which the Debtor is a party shall be deemed automatically rejected as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, unless such executory contract or unexpired lease (a) shall have been previously assumed or rejected by the Debtor pursuant to a Final Order of the Court, (b) is the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date, or (c) is otherwise assumed pursuant to the terms of the Plan. Entry of the Confirmation Order by the Court shall constitute approval of the rejections contemplated by the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

##### **5.2 Rejection Damages Claims Bar Date**

If a Claim arises from the rejection of any executory contract or unexpired lease (including claims under section 365(d)(3) of the Bankruptcy Code) pursuant to the Plan, then such Claim shall be barred and not be enforceable against the Debtor, the Estate, the Reorganized Debtor, or the property of the foregoing entities unless a proof of claim asserting such Claim is filed with the Court and served on the Debtor or the Plan Administrator, as applicable, within twenty-eight (28) days after the Effective Date (or the effective date of such rejection) or such earlier date previously set by order of the Court.

##### **5.3 Insurance Policies; Indemnification**

To the extent that any or all of the insurance policies set forth in Exhibit D hereto are considered to be executory contracts, then notwithstanding anything contained in the Plan to the contrary, the Plan shall constitute a motion to assume such insurance policies. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Court that each such assumption is in the best interest of the Debtor, the Estate and all parties in interest in the Chapter 11 Case. Unless otherwise determined by the Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments are required to cure any defaults of the Debtor existing as

of entry of the Confirmation Order with respect to each such insurance policy. To the extent that the Court determines otherwise with respect to any insurance policy, the Debtor reserves the right to seek rejection of such insurance policy or other available relief.

Nothing contained in the Plan shall prejudice in any manner the rights of any current or former director or officer of the Debtor or the Reorganized Debtor to assert any claim for indemnification, reimbursement, or contribution, including any such claim under the certificate of incorporation or bylaws of the Debtor or the Reorganized Debtor; provided that, except as otherwise provided in the Plan, all rights to object to or seek subordination of such claims are preserved; provided further, that the Debtor and the Reorganized Debtor shall have no indemnification obligations to an indemnitee for any losses, liabilities, or expenses arising out of conduct determined by Final Order to have constituted willful misconduct, gross negligence, or fraud.

For the avoidance of doubt, any amounts owing under the D&O Liability Insurance Policies that accrued prior to the Petition Date but that have not yet become payable obligations can be billed and paid in the ordinary course of business.

## ARTICLE VI

### DISTRIBUTIONS

#### **6.1 Plan Administrator as Disbursing Agent**

The Plan Administrator shall make all distributions required under the Plan. The appointment of the Plan Administrator as disbursing agent shall be approved by the Court as part of the Plan in the Confirmation Order.

#### **6.2 Record Date for Distributions**

As of entry of the Confirmation Order, the Claims register shall be closed and the Plan Administrator shall be authorized and entitled to recognize only those record holders listed on the Claims register as of the close of business on such date.

#### **6.3 General Unsecured Claim Distributions**

Distributions on account of Allowed General Unsecured Claims shall commence on the Initial Distribution Date and then continue on each Periodic Distribution Date. On the first Periodic Distribution Date following the date when a Disputed Claim becomes an Allowed General Unsecured Claim, the Plan Administrator shall distribute to the holder of such Allowed General Unsecured Claim the distribution(s) that such holder is entitled to under the Plan

#### **6.4 No Distributions Pending Allowance**

Notwithstanding any other provisions of the Plan, no distributions shall be made under the Plan on account of a Disputed Claim, unless and until such Claim becomes an Allowed Claim, and, except as otherwise agreed by the relevant parties, no partial payments or distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by settlement or Final Order. Distributions made after the Effective Date to holders of Allowed Claims that were Disallowed Claims as of the Effective Date shall be deemed to have been made on the Effective Date, without any interest to be paid on account of such Claim unless required under the Plan or applicable bankruptcy law.

#### **6.5 Final Distribution**

A final distribution under the Plan must be made on or before the Final Distribution Date. The Plan Administrator is not obligated to make a final distribution if he or she determines that there are insufficient Available Assets to make a cost-efficient distribution, taking into account the size of the distribution to be made and the number of recipients of such distribution, in which event such funds, in the Plan Administrator's sole discretion,

will be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those provided by the Debtor prior to the Petition Date.

**6.6 Delivery of Distributions**

Distributions to holders of Allowed Claims shall be made by the Plan Administrator (a) at the addresses set forth on the proofs of claim filed by holders of such claims (or at the last known addresses of such the holder of such claim if no motion requesting payment or proof of claim is filed or the Debtor has been notified in writing of a change of address), (b) at the addresses set forth in any written notices of address change delivered to the Plan Administrator after the date of any related proof of claim, or (c) at the addresses reflected in the Schedules if no proof of claim has been filed and the Plan Administrator has not received a written notice of a change of address. None of the Debtor, the Reorganized Debtor, the Post-Effective Date Board of Directors, or the Plan Administrator shall incur any liability whatsoever on account of any distributions under the Plan except for gross negligence, willful misconduct, or fraud. At the option of the Plan Administrator, monetary distributions may be made in cash, by wire transfer, or by check.

**6.7 Undeliverable Distributions and Unclaimed Property**

If any distribution to a holder of a Claim is returned as undeliverable, no further distributions to the holder of such Claim shall be made unless and until the Plan Administrator is notified of the holder's then current address, at which time all missed distributions shall be made to the holder without interest as soon as practicable after such distribution becomes deliverable or has been claimed; provided, however, that such undeliverable distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited upon the expiration of three (3) months after the applicable distribution date. All unclaimed property or interests in property that are forfeited shall revert to the Debtor automatically and without the need for a further order by the Court (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) and shall be deemed Available Assets, and the Claim related to such forfeited property or interest in property shall be fully disallowed, released, and forever barred.

**6.8 De Minimis and Fractional Distributions**

No distribution is required to be made to a holder of an Allowed Claim if the amount to be distributed under the Plan on account of such Claim is \$25 or less. Whenever any payment or distribution of cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down. For the avoidance of doubt, any cash not distributed pursuant to this Section shall be deemed Available Assets.

**6.9 Compliance with Tax Requirements and Allocations**

In connection with the Plan, the Debtor, the Reorganized Debtor, and the Plan Administrator shall comply with all tax withholding and reporting requirements imposed by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Debtor, the Reorganized Debtor, and the Plan Administrator shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including retaining a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms he or she believes are reasonable and appropriate. The Debtor, the Reorganized Debtor, and the Plan Administrator reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, other spousal awards, liens, and encumbrances. The holders of Allowed Claims shall be required to provide the Debtor, the Reorganized Debtor, or the Plan Administrator, as applicable, with any information necessary to effectuate the withholding of taxes and satisfaction of reporting requirements.

For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims.

**6.10 Time Bar to Cash Payments**

Checks issued by the Plan Administrator on behalf of the Debtor in respect of any distribution of cash made on account of Allowed Claims shall be null and void if not negotiated within sixty (60) calendar days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Plan Administrator by the holder of the Allowed Claim to whom such check originally was issued on or before the later of (a) the six-month anniversary of the Effective Date or (b) ninety (90) calendar days after the date of issuance if the check represents a final distribution. After that date, all remaining Claims in respect of voided checks shall be disallowed, released, and forever barred and the Plan Administrator shall retain all related funds as unclaimed property under Section 6.7.

**6.11 Claims Payable by Insurance Carriers**

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtor's or the Reorganized Debtor's insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtor's or the Reorganized Debtor's insurers agrees to satisfy a Claim or otherwise settle a Claim, then immediately upon such insurers' payment, the applicable portion of such Claim may be expunged without an objection to such Claim having been filed and without any further notice to, or action, order, or approval of, the Court.

**6.12 Setoff**

The Debtor, the Reorganized Debtor, and the Plan Administrator may withhold (but not set off except as set forth below) from the distributions to be made pursuant to the Plan on account of any Allowed Claim an amount equal to any claims, interests, rights, and Causes of Action of any nature that the Debtor, the Reorganized Debtor, the Estate, or the Plan Administrator may hold against the holder of such Allowed Claim. In the event that any such claims, interests, rights, and Causes of Action are adjudicated by Final Order or otherwise resolved, the Debtor, the Reorganized Debtor, and the Plan Administrator (in his or her capacity as such) may, pursuant to section 553 of the Bankruptcy or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim) the amount of any adjudicated or resolved claims, interests, rights, and Causes of Action of any nature that the Debtor, the Reorganized Debtor, the Estate, or the Plan Administrator (in his or her capacity as such) may hold against the holder of such Allowed Claim, but only to the extent of such adjudicated or resolved amount. Neither the failure to effect such a setoff nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Reorganized Debtor, the Estate, or the Plan Administrator (in his or her capacity as such) of any claims, interests, rights, and Causes of Action that the Debtor, the Reorganized Debtor, the Estate, or the Plan Administrator (in his or her capacity as such) may possess against any such holder, except as specifically provided herein.

For the avoidance of doubt, nothing in the Plan, including the release and exculpation provisions contained herein, shall discharge, release, or preclude (a) any valid right of setoff timely asserted against the Debtor prior to the hearing to consider confirmation of the Plan in a document filed with the Court explicitly preserving such setoff right, or (b) any valid defense to a claim held by the Debtor, the Estate, or their successors or assigns.

**6.13 Disallowed Claims**

After the applicable deadline to file a Claim, the holder of such Claim must obtain prior authorization from the Court, or the Debtor or the Plan Administrator, as applicable, to file or amend such Claim. Any new or amended Claim filed after the applicable deadline to file such Claim without such prior authorization shall not appear on the Claims register and shall be deemed disallowed and expunged in full without any further action required of the Debtor, the Reorganized Debtor, the Plan Administrator, or the Court.

Except for any Claim that is expressly Allowed herein, any Claims listed in the Schedules as contingent, unliquidated, or disputed as for which no proof of claim has been filed shall be deemed disallowed and expunged in full upon the Effective Date without further action required of the Debtor, the Reorganized Debtor, the Plan Administrator, or the Court.

Any claim listed in the Schedules that has been superseded by a filed proof of claim pursuant to Bankruptcy Rule 3003(c)(4) shall be deemed disallowed and expunged in full without further action required of the Debtor, the Reorganized Debtor, the Plan Administrator, or the Court.

**6.14 Distributions on Account of the Endowment Loan Claim**

Notwithstanding any other provisions of the Plan, on the Effective Date, the Endowment Loan Claim shall be deemed an Allowed General Unsecured Claim, and any distributions made by the Plan Administrator on account of the Endowment Loan Claim shall be donated to a reputable not-for-profit charitable organization selected by the Plan Administrator that is engaged in activities substantially similar to those provided by the Debtor prior to the Petition Date.

**6.15 Distributions Free and Clear**

Except as otherwise provided in the Plan, any distribution or transfer made under the Plan, including, without limitation, distributions to any holder of an Allowed Claim, shall be free and clear of any liens, Claims, encumbrances, charges, and other interests.

**ARTICLE VII**

**DISPUTED CLAIMS**

**7.1 Objections to Claims**

**(a) Authority to Object to Claims**

The Plan Administrator shall have the sole authority to file, settle, compromise, withdraw, or litigate to judgment any objections to Claims as permitted under the Plan. Unless a Claim is specifically allowed pursuant to or under the Plan, or otherwise Allowed prior to or after the Effective Date, the Plan Administrator reserves all rights to object to any and all Claims and motions or requests for the payment of Claims, including any and all objections to the validity or amount of any and all alleged Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, Secured Claims, Deposit Claims, General Unsecured Claims, liens, and security interests, whether under the Bankruptcy Code, other applicable law, or contract, and, after the Effective Date, the Plan Administrator will have and retain any and all rights and defenses held by the Debtor with respect to any Claim as of the Petition Date.

**(b) Deadline for, and Service of, Objections to Claims**

Unless otherwise provided in the Plan or ordered by the Court, all objections to Claims must be filed and served by the Claims Objection Deadline. An objection to a Claim shall be deemed properly served on the holder of such Claim if the Debtor or the Plan Administrator, as applicable, effect service by any of the following methods: (i) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004; (ii) to the extent counsel for a holder of such Claim is unknown, by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified on the proof of claim or any attachment thereto or (iii) by first class mail, postage prepaid, on any counsel that has appeared on the behalf of the holder of such Claim in the Chapter 11 Case.

**(c) Settlement and Compromise of Claims**

From and after the Effective Date, the Plan Administrator may settle, compromise, or withdraw the objection to any Disputed Claim without any further notice to or action, order, or approval of the Court or any other party in interest whenever the aggregate amount in dispute is less than or equal to \$25,000. If the aggregate amount in dispute exceeds \$25,000, the Plan Administrator shall file a notice of such settlement with the Court, which shall be served on the (i) the U.S. Trustee, (ii) the U.S. Attorney for the Southern District of New York, (iii) the New York State Attorney General, (iv) the New York City Department of Cultural Affairs, (v) the entities holding the

twenty (20) largest unsecured Claims against the Debtor's estate, and (vi) all parties who have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. Objections to the proposed settlement must be filed with the Court and served on the Plan Administrator and the applicable claimant within fourteen (14) calendar days of service of the settlement notice. If a timely objection is received, the Plan Administrator may either (a) renegotiate the settlement and file and serve a revised notice, or (b) file a motion with the Court seeking approval of the existing settlement under Bankruptcy Rule 9019 on no less than fourteen (14) calendar days' notice. If no timely objection is received, then the Plan Administrator may proceed with the settlement, without any further notice to or action, order, or approval of the Court or any other party in interest.

## **7.2 Estimation of Claims**

Pursuant to section 502(c) of the Bankruptcy Code, on the Effective Date, the unliquidated Disputed Claims identified on Exhibit E hereto shall be estimated, for all purposes under the Plan, at the corresponding amounts under the column on Exhibit E entitled "Estimated Amount", and the Plan shall constitute a motion for approval of, and the Confirmation Order shall constitute approval of, such estimation. After the Effective Date, the Reorganized Debtor and Plan Administrator may elect to pursue any supplemental proceedings to estimate or object to the ultimate allowance of any previously estimated claim; provided, however, that the Court shall determine (a) whether such Claims are subject to estimation pursuant to section 502(c) of the Bankruptcy Code and (b) the timing and procedures for such estimation proceedings, if any.

## **7.3 Disputed Claims Reserve**

The Plan Administrator shall manage the Disputed Claims Reserve for the treatment of Disputed Claims. The Disputed Claims Reserve shall be held in trust by the Plan Administrator for the benefit of holders of such Disputed Claims pending a determination of such claimants' entitlement thereto pursuant to the terms of the Plan. For the avoidance of doubt, any amounts remaining in the Disputed Claims Reserve after all Disputed Claims are resolved and satisfied in accordance with the provisions of the Plan shall be deemed Available Assets.

## **7.4 No Interest on Disputed Claims**

Unless otherwise specifically provided for in the Plan or as otherwise required by section 506(b) of the Bankruptcy Code, postpetition interest shall not accrue or be paid on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, and without limiting the foregoing, unless otherwise specifically provided for in the Plan or as otherwise required by section 506(b) of the Bankruptcy Code, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made, when and if such Disputed Claim becomes an Allowed Claim.

# **ARTICLE VIII**

## **SETTLEMENT, RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS**

### **8.1 Compromise and Settlement of Claims and Controversies**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim, or any distribution to be made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Debtor, its Estate and holders of Claims and is fair, equitable, and reasonable. In accordance with and subject to the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Court, after the Effective Date, the Reorganized Debtor and the Plan Administrator may compromise and settle Claims against the Debtor and the Estate and any Cause of Action against other entities.



## **8.2 Releases by the Debtor**

Pursuant to section 1123(b) of the Bankruptcy Code, as of the Effective Date, except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted under applicable law, the Released Parties are deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor, the Estate, and the Reorganized Debtor from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, the Estate, or the Reorganized Debtor would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual agreements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

## **8.3 Releases by Holders of Claims**

As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

## **8.4 Exculpation**

Except as otherwise specifically provided in the Plan or the Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any obligation, Cause of Action or liability for any Exculpated Claim, except for gross negligence, willful misconduct, or fraud, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

**8.5 Injunction**

The satisfaction, release, exculpation, and discharge pursuant to this Article shall act as an injunction against any entity commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released or to be released, exculpated or to be exculpated, or discharged under the Plan or pursuant to the Confirmation Order to the fullest extent permitted by applicable law, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 of the Bankruptcy Code.

**8.6 Limitations on Release, Exculpation, and Injunction Provisions**

Nothing in Sections 8.2, 8.3, 8.4, or 8.5 hereof shall (a) be construed to exculpate any entity from willful misconduct, gross negligence, or fraud, or (b) provide a prospective release of liability for any entity's actions following the Effective Date of the Plan.

**ARTICLE IX**

**CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

**9.1 Conditions Precedent to the Effective Date**

This Plan shall not become effective unless and until each of the following conditions shall have been satisfied or waived pursuant to the provisions of Section 9.2:

- (a) the Court shall have approved by Final Order the Disclosure Statement in form and substance acceptable to the Debtor in its sole and absolute discretion;
- (b) the Confirmation Order shall have been entered by the Court and shall not be subject to any stay of effectiveness, and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending;
- (c) the Foundations Settlement shall have been approved by the Court;
- (d) the Disputed Claims Reserve shall have been funded;
- (e) the Plan Administrator and the Post-Effective Date Board of Directors shall have been selected as contemplated by the Plan; and
- (f) all U.S. Trustee Fees then due and payable shall have been paid and satisfied in full.

**9.2 Waiver of Conditions**

If, after the Confirmation Order is entered, each of the conditions to effectiveness has not been satisfied or duly waived within twenty-eight (28) days after the entry of the Confirmation Order then upon motion by the Debtor, the Confirmation Order may be vacated by the Court; provided, however, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to effectiveness is either satisfied or duly waived before the Court enters an order granting the relief requested in such motion. As used in the preceding sentence, a condition to effectiveness may only be waived by a writing executed by the Debtor.

**9.3 Effect of Non-occurrence of Effective Date**

If the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims; (ii) prejudice in any



manner the rights of the Debtor or any other entity; or (iii) constitute an admission, acknowledgement, offer or undertaking of any sort by the Debtor or any other entity.

## **ARTICLE X**

### **MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

#### **10.1 Modification and Amendments to the Plan**

The Debtor may alter, amend, or modify the Plan at any time prior to the entry of the Confirmation Order in accordance with section 1127(a) of the Bankruptcy Code. After the entry of Confirmation Order and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan with respect to the Debtor, the Debtor or the Plan Administrator, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan.

#### **10.2 Effect of Confirmation on Modifications**

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

#### **10.3 Revocation or Withdrawal of the Plan**

The Debtor reserves the right to revoke or withdraw the Plan before the entry of the Confirmation Order.

## **ARTICLE XI**

### **RETENTION OF JURISDICTION**

#### **11.1 Jurisdiction of the Court**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Court shall retain jurisdiction over the Chapter 11 Case and all matters, arising out of or related to, the Chapter 11 Case and the Plan, including, but not limited to, jurisdiction to:

(a) hear and determine motions for the assumption, rejection, or assumption and assignment of executory contracts or unexpired leases, and to hear and determine the allowance of Claims resulting therefrom including the amount of cure, if any, required to be paid;

(b) adjudicate any and all adversary proceedings, motions, applications and contested matters that may be pending or commenced after the Effective Date, including proceedings to adjudicate the allowance of Disputed Claims, proceedings to recover assets of the Debtor, the Reorganized Debtor, its Estate, wherever located, and all controversies and issues arising from or relating to any of the foregoing;

(c) hear and determine matters related to Claims, including the allowance, classification, priority, compromise, estimation, or payment of any Claim;

(d) adjudicate any and all disputes arising from or relating to the distribution or retention of consideration under the Plan;

(e) consider any modifications of the Plan, to cure any defect or omission or to reconcile any inconsistency in any order of the Court, including the Confirmation Order;

(f) hear and determine all applications for allowance of compensation and reimbursement under the Plan or in accordance with sections 330, 331, 503(b), 1103 and 1129(a)(4) of the Bankruptcy Code;

(g) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan or the Confirmation Order including disputes arising under agreements, documents or instruments executed in connection with the Plan;

(h) hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(i) hear any other matter not inconsistent with the Bankruptcy Code;

(j) hear and determine all disputes regarding the reserves required hereunder, including disputes regarding the amounts of such reserves or the amount, allocation, and timing of any releases of such reserved funds;

(k) enter a final decree closing the Chapter 11 Case; and

(l) enforce all orders previously entered by the Court.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

#### 12.1 **Binding Effect**

On and after the Effective Date, the provisions of the Plan shall bind the Debtor, the Reorganized Debtor, the Plan Administrator, any holder of a Claim, the Estate and their respective successors or assigns, whether or not the Claim of such holders is Impaired under the Plan and whether or not such holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries or guardian, if any, of such entity (including any trustee appointed for the Debtor under chapters 7 or 11 of the Bankruptcy Code).

#### 12.2 **Plan Supplement**

The Plan Supplement shall include certain documents and forms of documents, schedules, and exhibits to the Plan, which the Debtor shall file on or before the date that is seven (7) calendar days prior to the deadline fixed for objecting to confirmation of the Plan or such later date as may be approved by the Court, and may be amended, modified, or supplemented by the Debtor at any time prior to the entry of the Confirmation Order.

#### 12.3 **Vacatur of Confirmation Order**

If a Final Order denying confirmation of the Plan is entered, or if the Confirmation Order is vacated, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall (a) constitute a waiver or release of any Claims against the Debtor or (b) prejudice in any manner the rights of the holder of any Claim.

#### 12.4 **Statutory Fees**

All U.S. Trustee Fees payable as of the entry of the Confirmation Order as determined by the Court at the hearing to consider confirmation of the Plan shall be paid on the Effective Date. The Plan Administrator, on behalf of the Reorganized Debtor, shall continue to pay all U.S. Trustee Fees until the Chapter 11 Case is closed by entry of a final decree.

#### **12.5 Service of Documents**

After the Effective Date, any pleading, notice or other document required by the Plan to be served on or delivered to the Plan Administrator shall be served on an address to be identified in a notice filed with the Court, with copies to:

[INSERT]

After the Effective Date, the Plan Administrator may, in its sole discretion, notify entities that, in order to continue receiving documents pursuant to Bankruptcy Rule 2002, such entities must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Plan Administrator is authorized to limit the list of entities receiving documents pursuant to Bankruptcy Rule 2002 to those entities who have filed such renewed requests.

#### **12.6 Entire Agreement**

Except as otherwise indicated, the Plan supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan.

#### **12.7 Severability**

The Debtor intends all provisions of the Plan to be enforced to the fullest extent permitted by law. If, however, any provision of the Plan is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable, and the Plan shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by the termination thereof.

#### **12.8 Closing the Chapter 11 Case**

The Debtor shall, promptly after the full administration of the Chapter 11 Case, file with the Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Court to close the Chapter 11 Case.

#### **12.9 Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and the Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction and implementation of the Plan, any agreements, documents, instruments or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control).

#### **12.10 Term of Injunctions and Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and existing as of entry of the Confirmation Order (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

Dated: October 30, 2017  
New York, New York

Respectfully submitted,

TBAC WIND DOWN, LTD.

By: \_\_\_\_\_  
Name: Will Maitland Weiss  
Title: Executive Director

**Exhibit A to the Plan**

**List of Directors and Officers**

<b>Title</b>	<b>Name</b>	<b>Compensation</b>
Chair of the Board of Directors	[TO COME]	None
Director	[TO COME]	None
Director	[TO COME]	None
Executive Director	Will Weiss	None

**Exhibit B to the Plan**

**Certificate of Incorporation**

**CERTIFICATE OF INCORPORATION**

**OF**

**TBAC WIND DOWN, LTD.**

**UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW**

\*\*\*\*\*

FIRST: the name of the Corporation is TBAC Wind Down, Ltd.

SECOND: The Corporation is a Corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a Type B Corporation under Section 201 of the Not-for-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed are as follows: To conduct activities which are exclusively charitable, literary and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as the same may be amended from time to time, including the establishment and operation of a permanent performing circus and affiliated school for the instruction and artistic development of circus arts, and the conduct of any and all other activities as shall from time to time be found appropriate in connection with the foregoing and as lawful for not-for-profit corporations.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law together with the power to solicit grants and contributions for any corporate purpose and the power to maintain a fund or funds of real or personal property for any corporate purposes. The Corporation shall have the power to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the limitation and condition that, notwithstanding any other provision of this article (4), the Corporation shall not have the power to carry on any activity not permitted to be carried on by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law).

FIFTH: The Corporation is not formed for the pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes.

SIXTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(b), (c), and (e) through (q) the Not-for-Profit Corporation Law or Executive Law, Section 757.

SEVENTH: No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not



participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

EIGHTH: The Office of the Corporation shall be located in the City of New York, State of New York.

NINTH: The Corporation's activities will be conducted principally within the City of New York and State of New York, but the activities of the Corporation shall not be limited to such territory and may be conducted throughout the United States, its territories and possessions, and the rest of the world.

TENTH: The names and addresses of the initial directors of the Corporation are as follows:

Name	Address
Paul Binder	36 Lispenard Street New York, NY 10013
Richard Levy	93 Eighth Avenue Brooklyn, New York, 11215
Alan Rosenthal	301 Dobbs Lane Princeton, New Jersey

ELEVENTH: The Secretary of State is designated as the agent of the Corporation upon whom process against the Corporation may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is: One MetroTech Center North, 3rd Floor, Brooklyn, NY 11201.

TWELVTH: In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed subject to the approval of a Justice of the Supreme Court of the State of New York, sitting in and for the County in which the principal office of the Corporation is then located, but only to such organizations who shall conduct activities and whose purposes are exclusively charitable, literary, and educational and which qualify under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

THIRTEENTH: Prior to delivery to the Department of State for filing, all approvals or consents required by law will be endorsed upon or annexed to this Certificate.

FOURTEENTH: The Corporation shall, to the fullest extent permitted by Article 7 of the Not-for-Profit Corporation Law of the State of New York, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said

Article from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under any By-Law, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Article as to action in any capacity in which he served at the request of the Corporation.

FIFTEENTH: Pursuant to Section 1123(a)(6) of chapter 11 of title 11 of the United States Code, the Corporation shall not issue non-voting equity securities.

**Exhibit C to the Plan**

**Bylaws**

**Third Amended and Restated**

**TBAC Wind Down, Ltd.**

**By-Laws**

**Amended effective as of [DATE]**

**Article I  
Names and Offices**

**Section 1. Name.** The name of the corporation is *TBAC Wind Down, Ltd.* (the “Corporation”).

**Section 2. Main Office.** The office of the Corporation shall be located in the City of New York, Kings County, State of New York.

**Section 3. Other Offices.** The Corporation may also have offices at other such places both within the State of New York as the Board of Directors may from time to time determine or as the business of the Corporation may require.

**Article II  
Members**

**Section 1. No Members.** The Corporation shall have no members.

**Article III  
Board of Directors**

**Section 1. Powers.** The Board of Directors (the “Board”) shall have the general power to control and manage the affairs and property of the Corporation, subject to applicable law and in accordance with the purposes and limitations set forth in the certificate of incorporation and herein.

**Section 2. Number and Qualifications.** The number of Directors shall not be less than three (3) nor more than forty (40) in number. Directors shall be at least eighteen years of age, and need not be residents of the State of New York.

**Section 3. Election and Term of Office.** At each annual meeting, the Board of Directors, by majority vote, shall elect Directors to hold office for a term of one year, and each such Director shall continue in office for such term and until such Director’s successor shall have been elected or qualified, or until such Director’s death, resignation or removal.

**Section 4. Removal.** Any or all of the Directors may be removed, with cause, at any time by the vote of the Directors at any meeting of the Board; provided that there is a quorum of not less than a majority of Directors present at the meeting.

**Section 5. Resignation.** A Director may resign at any time by submitting a written notice of his resignation to the Secretary of the Corporation, effective on receipt thereof by the Secretary, with a copy to the Chair.

**Section 6. Vacancies.** All vacancies among Directors may be filled by the affirmative vote of the remaining Directors, though less than a quorum of the Board of Directors. A Director so elected to fill a vacancy shall serve in accordance with a term designated by the Board of Directors pursuant to Section 3, above.

**Section 7. Bookkeeping.** The Directors may keep the books of the Corporation, except such as are required by law to be kept within the state, outside of the State of New York, at such place or places as they may from time to time determine.

**Section 8. Compensation.** The Directors shall not receive compensation for their service.

#### **Article IV Meetings of the Board of Directors**

**Section 1. Meetings.** Meetings of the Board of Directors, regular or special, may be held either within or without the State of New York.

**Section 2. Time and Place.** The first meeting of each newly elected Board of Directors shall be held at such time and such place as shall be fixed by the consent of the Directors.

**Section 3. Regular Meetings.** Regular meetings of the Board of Directors may be held upon such notice, or without notice, and at such time and at such place as shall from time to time be determined by the Board.

**Section 4. Special meetings.** Special meetings of the Board of Directors may be called by the Chair of the Board of Directors on two days' notice to each Director.

**Section 5. Notice.** Notice of the time and place of each meeting of the Board shall be mailed to each Director, postage prepaid, addressed to such Director at such Director's residence or usual place of business (or at such other address as such Director may have designated in a written request filed with the Secretary), sent by electronic mail or other form of electronic communication or given personally or by telephone no less than forty-eight hours before the time at which such meeting is to be held. Notice of a meeting need not be given to any Director who submits a signed waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice. Neither the business to be transacted at, nor the purpose of, any such regular or special meeting of the Board of Directors need to be specified in the notice or waiver of notice of such meeting.

**Section 6. Quorum and Voting.** A quorum at a meeting of the Board of Directors shall consist of a majority of the Directors. The vote of a majority of the Directors present at any meeting at which quorum is present shall be the act of the Board of Directors, unless the vote of a greater number is required by law or by the certificate of incorporation.

**Section 7. Board Action.** Unless the certificate of incorporation provides otherwise, any action required or permitted to be taken at a meeting of the Directors or a committee thereof, may be taken without a meeting if all Directors entitled to vote with respect to such action consent in writing to the adoption of a resolution authorizing the action, which consent may be given by electronic mail. The resolution and written consents thereto shall be filed with the minutes of the proceedings of the Board.

**Section 8. Tele-conferencing.** Unless otherwise restricted by the certificate of incorporation or these By-Laws, Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or similar communications equipment by means which all persons participating in the meeting can hear each other at the same time, and such participation in a meeting shall constitute presence in person at the meeting.

## **Article V Officers**

**Section 1. Officers.** The officers of the Corporation shall consist of those persons so elected by the Board of Directors. The officers may include a Chair of the Board of Directors, a Secretary, and other officers as the Board may elect from time to time. Each officer shall serve at the pleasure of the Board for a term of one year and shall be eligible for reelection.

**Section 2. Chair.** The Chair of the Board of Directors shall preside at all meetings of the Board of Directors, and shall be responsible for other duties as may be assigned from time to time by the Board of Directors.

**Section 3. Secretary.** The Secretary shall see that the records of the Corporation are kept, including minutes of meetings of the Board of Directors, in hardcopy and electronic files set aside for that purpose and accessible to the full Board. He/she shall see that notice is given to regular and special meetings of the Board of Directors. He/she shall have access to the corporate seal of the Corporation and he/she shall have authority to affix the same to any instrument requiring it and, when so affixed, it may be attested to by his/her signature. The Board of Directors may also give authority to any other officer to affix the seal of the Corporation and to attest to the affixing of his/her signature.

## **Article VI General Provisions**

**Section 1. Checks.** All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

**Section 2. Fiscal Year.** The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

**Section 3. Seal.** The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, New York." The seal may be used by causing it or facsimile thereof to be impressed or affixed or in any manner reproduced.

**Section 4. Equal Opportunity.** The Corporation shall not discriminate on the basis of race, creed color, sex or national or ethnic origin in the administration of educational policies, student admission policies, scholarship and loan programs or any other program administered by the Corporation in connection with the school for circus arts operated by the Corporation.

## **Article VII Indemnification**

**Section 1. Indemnification.** The Corporation shall, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any action or proceeding by reason of the fact that he or she or his or her testator was a Director, officer, employee or agent of the Corporation, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees. No indemnification may be made to or on behalf of any such person if (a) his or her acts were committed in bad faith or were the result of his or her active and deliberate dishonesty and were material to such action or proceeding or (b) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. The Corporation may pay in advance of final disposition of any such action or proceeding, expenses incurred by such person in defending such action or proceeding.

**Section 2. Insurance.** The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation for any obligation which it incurs as a result of its indemnification of Directors, officers and employees pursuant to Section 1 above, or to indemnify such persons in instances in which they may be indemnified pursuant to Section 1 above.

## **Article VIII Amendments**

**Section 1.** These By-Laws may be amended or repealed or new By-Laws may be adopted by the affirmative vote of a majority of the Board present at any meeting of the Board of Directors. Any amendment or repeal of these By-Laws is authorized only at a duly called and held meeting of the Board for which written notice of such meeting, setting forth the proposed alteration, is given in accordance with the notice provisions for special meetings set forth in Article IV of these By-Laws.

## **Article IX Conflicts of Interest**

**Section 1. Disclosure.** (a) Prior to election to the Board, and thereafter on an annual basis, all Directors shall disclose in writing, to the best of their knowledge, any Interest (as defined below) such Director may have in any Corporation, organization, partnership or other entity which provides professional or other goods or services to the Corporation for a fee or other compensation, and any position or other material relationship such Director may have with any other not-for-profit Corporation with which the Corporation has an attorney-client or other business relationship (collectively, a "Conflict of Interest"). A copy of each disclosure statement shall be available to any Director of the Corporation on request.

(b) If at any time during his or her term of service, a Director acquires any Interest or otherwise a circumstance arises which may pose a Conflict of Interest, that Interest or other conflict shall be promptly disclosed in writing to the Chair of the Board.

(c) When any matter for decision or approval comes before the Board or any committee of the Board in which a Director has an Interest or other Conflict, that Interest or other Conflict shall be immediately disclosed to the Board or relevant Committee by that Director.

**Section 2.** Definition of “Interest”. Whether a Director has an Interest in an entity shall be determined by whether that Director would derive a significant individual economic benefit, either directly or indirectly, from any transaction or relationship involving such entity or any decision on a matter involving such entity by the Board or a committee. The fact that an entity may take positions on legislative matters of general impact shall not constitute an Interest or Conflict.

**Section 3.** Voting. No Director shall vote on any matter in which he or she has a Conflict of Interest.

**Section 4.** Non-Participation. Any Director who has a Conflict of Interest in a matter shall leave the room in which discussion regarding that matter is carried on, if so requested by the Board or the relevant Committee; provided, however, that the interested Director may participate in any discussion regarding his or her absence.

**Section 5.** Attempts to Influence. Directors shall not attempt to influence other Directors regarding matters in which they have a Conflict of Interest, without first disclosing that Conflict of Interest.



**Exhibit D to the Plan**

**Assumed Insurance Policies**

<b>Contract Counterparty</b>	<b>Description</b>
New York State Insurance Fund	Worker's Compensation
Great American Insurance Company/ Berkley Specialty Underwriting Management	Package (General Liability/Property)
Aetna	Dental Insurance
Unum	Short Term Disability
Travelers Insurance Company	D&O/Employment Practices Liability

**Exhibit E to the Plan**

**Estimation of Unliquidated Claims**

<b><u>Claim No.</u></b>	<b><u>Holder of Claim</u></b>	<b><u>Estimate</u></b>
82	Anissa Wiley	\$1,621.41

**Exhibit B to the Revised Disclosure Statement**

**Disclosure Statement Order**

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

**ORDER APPROVING (I) THE ADEQUACY OF THE  
CIRCUS' DISCLOSURE STATEMENT, (II) SOLICITATION AND  
NOTICE PROCEDURES WITH RESPECT TO CONFIRMATION OF THE  
CIRCUS' CHAPTER 11 PLAN OF LIQUIDATION, (III) THE FORM OF  
BALLOTS AND NOTICES IN CONNECTION THEREWITH, AND (IV) THE  
SCHEDULING OF CERTAIN DATES WITH RESPECT THERETO**

Upon the motion (the “**Motion**”)<sup>1</sup> of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an order (this “**Order**”) approving: (i) the adequacy of the Disclosure Statement, (ii) solicitation and notice procedures with respect to confirmation of the Plan, (iii) the form of ballots and notices in connection therewith, and (iv) the scheduling of certain dates with respect thereto; all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion before this Court being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties in interest; and the Court having found that the Debtor provided due and sufficient notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the “**Hearing**”); and the

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

Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

**I. Approval of the Disclosure Statement Hearing Notice**

2. The Debtor has provided adequate notice of the time fixed for filing objections to, and the hearing to consider approval of, the Disclosure Statement in accordance with Bankruptcy Rules 2002 and 3017, and Local Bankruptcy Rule 3017-1.

3. The Disclosure Statement Hearing Notice, the form of which is attached hereto as **Exhibit 1**, and incorporated herein by reference, served by the Debtor upon parties of interest in these chapter 11 cases by September 20, 2017 and published in *The New York Times* on September 20, 2017 constitutes adequate and sufficient notice of the time fixed for filing objections to, and the hearing to consider approval of, the Disclosure Statement in accordance with Bankruptcy Rules 2002 and 3017, and Local Bankruptcy Rule 3017-1, and is hereby approved.

**II. Approval of the Disclosure Statement**

4. The Disclosure Statement is approved pursuant to section 1125(a)(1) of the Bankruptcy Code and Bankruptcy Rule 3017(b) as containing adequate information (as defined by section 1125(a) of the Bankruptcy Code). To the extent not withdrawn, settled, or otherwise resolved, any objections to the approval of the Disclosure Statement are overruled.

5. The Debtor is authorized to make non-substantive or immaterial changes to the Disclosure Statement, the Plan, the Solicitation Package, and related documents without

further order of the Court, including changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan, and related documents (including the appendices thereto).

### **III. Approval of the Solicitation and Notice Procedures**

6. Pursuant to Bankruptcy Rule 3018(a), **October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)** will be the Voting Record Date for determining: (a) holders of claims that are entitled to vote on the Plan; and (b) whether claims have been properly transferred, including pursuant to Bankruptcy Rule 3001(e), such that the assignee may vote on the Plan.

7. The form of ballot, substantially in the form attached hereto as **Exhibit 5**, is hereby approved.

8. The Solicitation Package will consist of the following materials, the form of each of which is hereby approved:

- a. the Solicitation Procedures, substantially in the form attached hereto as **Exhibit 2**;
- b. the Confirmation Hearing Notice, substantially in the form attached hereto as **Exhibit 3**;
- c. a cover letter, substantially in the form attached hereto as **Exhibit 4**: (i) describing the contents of the Solicitation Package, and (ii) urging the holders of claims in the Voting Class to vote to accept the Plan;
- d. a form of ballot, substantially in the form attached hereto as **Exhibit 5** (including a pre-addressed, postage paid return envelope);
- e. the approved Disclosure Statement (together with the Plan and other exhibits attached thereto); and
- f. any supplemental documents the Debtor files with the Court and any documents that the Court orders to be made available.

9. The Solicitation Procedures, substantially in the form attached hereto as **Exhibit 2**, and incorporated by reference herein, are approved in their entirety. The procedures for distributing the Solicitation Packages as set forth in the Motion satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

10. The Debtor will commence distribution or cause the Solicitation Packages to be distributed to all entities entitled to vote to accept or reject the Plan on or before three business days following entry of this Order (the “**Solicitation Date**”).

11. The Debtor will not be required to solicit votes from (a) holders of Administrative Claims or Priority Tax Claims (each in their capacities as such) because such claims are unclassified under the Plan and therefore are not entitled to vote on the Plan and (b) holders of claims in the Unimpaired Classes because such claims are not impaired under the Plan and are conclusively presumed to have accepted the Plan. In lieu of distributing a Solicitation Package to such holders of claims, the Debtor will cause the Confirmation Hearing Notice and the Notice of Non-Voting Status to be served on such holders of claims that are not entitled to vote.

12. The Debtor will be excused from mailing Solicitation Packages to those entities to whom the Debtor caused the Disclosure Statement Hearing Notice to be mailed and received a notice from the United States Postal Service or other carrier that such notice was undeliverable unless such entity provides the Debtor, through the Administrative Agent, an accurate address not less than 10 days prior to the Solicitation Date. If an entity has changed its mailing address after the Petition Date, the burden is on such entity, not the Debtor, to advise the Debtor and the Administrative Agent of the new address.

13. The Notice of Non-Voting Status, substantially in the form attached hereto as **Exhibit 6**, is hereby approved, and the Debtor will cause the Notice of Non-Voting Status to be served as set forth in the Solicitation Procedures.

14. The Debtor will mail to counterparties to the Debtor's executory contracts and unexpired leases as soon as reasonably practicable after the entry of this Order (a) the Contract and Lease Counterparties Notice, substantially in the form attached hereto as **Exhibit 7**, notifying them of the forthcoming assumption or rejection of their executory contract or unexpired lease, and (b) the Confirmation Hearing Notice.

15. The Disputed Claim Notice, substantially in the form attached hereto as **Exhibit 8**, is hereby approved.

16. The Disclosure Statement, the Plan, the Confirmation Hearing Notice, the Ballots, the Notice of Non-Voting Status, and the Disputed Claim Notice provide all parties in interest with sufficient notice regarding the release, exculpation, and injunction provisions contained in the Plan in compliance with Bankruptcy Rule 3016(c).

#### **IV. Approval of the Plan Confirmation Schedule**

17. The Voting Deadline will be **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**, unless otherwise extended by the Debtor. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail, in the return envelope provided with each Ballot; (b) overnight delivery; (c) personal delivery; or (d) electronic mail in PDF format, so that the Ballots are **actually received** by the Administrative Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot.



18. The Plan confirmation schedule, as set forth below and in the Motion, is approved.

Event	Date
Date of Service and Publication of Disclosure Statement Notice	September 20, 2017
Disclosure Statement Objection Deadline	October 18, 2017 at 5:00 p.m. (prevailing Eastern Time)
Disclosure Statement Hearing	October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)
Voting Record Date	October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)
Solicitation Date	November 3, 2017
Publication of Confirmation Hearing Notice	November 3, 2017
Deadline to Object to Claims for Voting Purposes	November 17, 2017 at 5:00 p.m. (prevailing Eastern Time)
Voting Resolution Event Deadline	November 27, 2017 at 5:00 p.m. (prevailing Eastern Time)
Voting and Opt-Out Deadline	December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)
Plan Objection Deadline	December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)
Deadline to File Voting Report	December 5, 2017
Confirmation Reply Brief Deadline	December 7, 2017
Confirmation Hearing	December 12, 2017 at 11:00 a.m. (prevailing Eastern Time) or the soonest available date and time thereafter

19. The Confirmation Hearing Notice, substantially in the form attached hereto as **Exhibit 3**, is hereby approved. On a date no fewer than 28 calendar days prior to the

Confirmation Hearing, the Debtor will (a) cause the Confirmation Hearing Notice to be provided to all known holders of claims as set forth in the Motion and (b) publish the Confirmation Hearing Notice (in a format modified for publication) once in *The New York Times*. The Debtor is also authorized to publish the Confirmation Hearing Notice in such trade or other publications (if any) as the Debtor may choose in their sole discretion.

20. The Confirmation Hearing will be held on **December 12, 2017 at 11:00 a.m. (prevailing Eastern Time)**; provided, however, the Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made in open Court or as indicated in a notice of agenda filed with the Court.

21. Any responses or objections to the confirmation of the Plan will (a) be in writing, (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and (c) will set forth the name of the objecting party, the basis for the objection, and the specific grounds thereof, and will be filed with the Bankruptcy Court, so as to be received no later than **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the “**Objection Deadline**”) by: (a) the chambers of the Honorable Sean H. Lane, One Bowling Green, New York, New York 10004; (b) the Debtor, TBAC Wind Down, Ltd., One MetroTech Center North, Brooklyn, New York 11201; (c) counsel for the Debtor, Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022, Attn: M. Natasha Labovitz (nlabovitz@debevoise.com) and Christopher Updike (cupdike@debevoise.com); (d) the Office of the United States Trustee for the Southern District of New York, Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014, Attn: Richard C. Morrissey, Esq. (richard.morrissey@usdoj.gov); (e) counsel to the Official Committee of Unsecured Creditors,

Pachulski Stang Ziehl & Jones LLP, 780 Third Ave, Floor 34, New York, New York 10017, Attn: Robert J. Feinstein, Esq. (rfeinstein@pszjlaw.com), Maria Bove, Esq. (mbove@pszjlaw.com), and Steven Golden, Esq. (sgolden@pszjlaw.com); and (f) the New York State Attorney General, 120 Broadway, New York, NY, 10271, Attn: James Sheehan (james.sheehan@ag.ny.gov).

22. All time periods in this Order will be calculated in accordance with Bankruptcy Rule 9006.

23. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

24. The terms and conditions of this Order will be immediately effective and enforceable upon its entry.

25. The Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2017

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THE HONORABLE SEAN H. LANE  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1 to the Disclosure Statement Order**

**Disclosure Statement Hearing Notice**

M. Natasha Labovitz  
Christopher Updike  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836

Counsel to the Debtor  
and Debtor in Possession

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

**NOTICE OF MOTION FOR ENTRY OF AN  
ORDER APPROVING (I) THE ADEQUACY OF THE CIRCUS'  
DISCLOSURE STATEMENT, (II) SOLICITATION AND NOTICE  
PROCEDURES WITH RESPECT TO CONFIRMATION OF THE  
CIRCUS' CHAPTER 11 PLAN OF LIQUIDATION, (III) THE FORM OF  
BALLOTS AND NOTICES IN CONNECTION THEREWITH, AND  
(IV) THE SCHEDULING OF CERTAIN DATES WITH RESPECT THERETO**

**PLEASE TAKE NOTICE** that the hearing on the *Motion for Entry of an Order Approving (I) the Adequacy of the Circus' Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus' Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* (the "**Motion**") will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"), One Bowling Green, Room 701, New York, New York, 10004 on **October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that a copy of the Motion and the Circus' disclosure statement may be obtained free of charge by visiting the following website: [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus). You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion must (a) be in writing, (b) comply with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and (c) be filed with the Bankruptcy Court and served on the following parties **so as to be actually received no later than 5:00 p.m. (prevailing Eastern Time) on October 18, 2017** (the "**Objection Deadline**"): (a) the Circus, TBAC Wind Down, Ltd., One MetroTech Center North, Brooklyn, NY 11201; (b) counsel for the Circus, Debevoise & Plimpton LLP, 919 Third Avenue, New York, NY 10022, Attn: M. Natasha Labovitz (nlabovitz@debevoise.com) and Christopher Updike (cupdike@debevoise.com); (c) the Office of the United States Trustee for the Southern District of New York, Region 2, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Richard C. Morrissey, Esq. (richard.morrissey@usdoj.gov); (d) Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, NY 11219, Attn: TBAC Wind Down, Ltd.; (e) counsel to the Official Committee of Unsecured Creditors, Pachulski Stang Ziehl & Jones LLP, 780 Third Ave, Floor 34, New York, NY 10017, Attn: Robert J. Feinstein, Esq. (rfeinstein@pszjlaw.com), Maria Bove, Esq. (mbove@pszjlaw.com), and Steven Golden, Esq. (sgolden@pszjlaw.com); (f) counsel to the New York City Department of Cultural Affairs, NYC Department of Cultural Affairs, Attn: General Counsel, 31 Chambers Street, Floor 2, New York, NY 10007; and (g) the New York

State Attorney General, 120 Broadway, New York, NY, 10271, Attn: James Sheehan  
(james.sheehan@ag.ny.gov).

Dated: September 15, 2017  
New York, New York

/s/ Christopher Updike

M. Natasha Labovitz

Christopher Updike

DEBEVOISE & PLIMPTON LLP

919 Third Avenue

New York, New York 10022

Telephone: (212) 909-6000

Facsimile: (212) 909-6836

Email: nlabovitz@debevoise.com  
cupdike@debevoise.com

Counsel to the Debtor  
and Debtor in Possession

**EXHIBIT 2 to the Disclosure Statement Order**

**Solicitation Procedures**



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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

**SOLICITATION PROCEDURES**

On [DATE], 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered its *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. [ ]] (the “**Disclosure Statement Order**”) that, among other things, (a) approved the adequacy of the *Disclosure Statement for Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. [ ]] (as amended and including all exhibits and supplements thereto, the “**Disclosure Statement**”) filed in support of the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. [ ]] (as amended and including all exhibits thereto, the “**Plan**”) and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit acceptances or rejections of the Plan from holders of impaired claims who are (or may be) entitled to receive distributions under the Plan.<sup>1</sup>

**A. The Voting Record Date**

The Court has approved **October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)** as the record date for purposes of determining which holders of claims in the Voting Class are entitled to vote on the Plan (the “**Voting Record Date**”).

**B. The Voting Deadline**

The Court has approved **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)** as the voting deadline (the “**Voting Deadline**”) for the Plan. The Circus may extend the Voting Deadline, in its discretion, without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots sent to registered holders of claims (“**Ballots**”) must be properly executed, completed, and delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic mail in PDF format so that they are **actually received**, in any case, no later than the Voting Deadline by the Administrative Agent. All Ballots should be sent to the following addresses: if by U.S. Postal Service mail, Donlin Recano & Company, Inc.,

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan. Copies of the Plan and the Disclosure Statement may be obtained free of charge by visiting the case website maintained by Donlin, Recano & Company, Inc., the Debtor’s administrative agent for this chapter 11 case (the “**Administrative Agent**”), available at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus). You may also obtain copies of any pleadings by visiting the Court’s website at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) in accordance with the procedures and fees set forth therein.

P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219, Re: TBAC Wind Down, Ltd, if by overnight delivery or personal delivery by hand, Donlin Recano & Co. Inc., Re: TBAC Wind Down, Ltd., 6201 15th Avenue, Brooklyn, NY 11219, and if by electronic mail, in PDF format, to [tbacballots@donlinrecano.com](mailto:tbacballots@donlinrecano.com). Delivery of a Ballot to the Administrative Agent by facsimile will not be valid.

**C. Form, Content, and Manner of Notices**

**1. The Solicitation Package**

The following materials will constitute the solicitation package (the “**Solicitation Package**”):

- (a) a copy of these Solicitation Procedures;
- (b) the *Notice of Hearing to Consider Confirmation of, and Deadline for Objecting to, and Voting on, the Circus’ Chapter 11 Plan of Liquidation*, in substantially the form annexed as **Exhibit 3** to the Disclosure Statement Order (the “**Confirmation Hearing Notice**”);
- (c) a cover letter, in substantially the form annexed as **Exhibit 4** to the Disclosure Statement Order, (i) describing the contents of the Solicitation Package and (ii) urging the holders of claims in the Voting Class to vote to accept the Plan;
- (d) a form of ballot, in substantially the form of the ballot annexed as **Exhibit 5** to the Disclosure Statement Order;
- (e) the approved Disclosure Statement (together with the Plan and other exhibits attached thereto); and
- (f) any supplemental documents the Circus files with the Court and any documents that the Court orders to be made available.

**2. Distribution of the Solicitation Package**

The Solicitation Package will provide the Disclosure Statement, the Plan, and the Solicitation Procedures in and all other contents of the Solicitation Package, including Ballots, in paper format. Any holder of a claim may obtain at no charge a copy of the documents otherwise provided by: (a) accessing the Administrative Agent’s website at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the administrative agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com). You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

The Circus will serve, or cause to be served, all of the materials in the Solicitation Package on: (a) the U.S. Trustee; (b) counsel to the Creditors’ Committee; and (c) all parties who have requested service of papers in these chapter 11 cases pursuant to Bankruptcy Rule

2002. In addition, the Circus will mail, or cause to be mailed, the Solicitation Package to the Voting Creditors (as defined below) on or before November 3, 2017.

### **3. Resolution of Disputed Claims for Voting Purposes**

(a) The holder of a claim in the Voting Class that is the subject of a pending objection on a “reduce and allow” basis will be entitled to vote such claim in the reduced amount contained in such objection.

(b) If a claim in the Voting Class is subject to an objection, other than a “reduce and allow” objection, that is filed with the Court on or prior to 14 days before the Voting Deadline: (i) the Circus will cause the applicable holder to be served with a “**Disputed Claim Notice**” substantially in the form annexed as **Exhibit 8** to the Disclosure Statement Order; and (ii) the applicable holder will not be entitled to vote to accept or reject the Plan on account of such claim unless a Resolution Event (as defined below) occurs as provided herein.

(c) If a claim in the Voting Class is subject to an objection, other than a “reduce and allow” objection, that is filed with the Court less than 14 days prior to the Voting Deadline, the applicable claim will be deemed temporarily allowed for voting purposes only, without further action by the holder of such claim and without further order of the Court, unless the Court orders otherwise.

(d) A “**Resolution Event**” means the occurrence of one or more of the following events no later than three days prior to the Voting Deadline:

(i) an order of the Court is entered allowing such claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;

(ii) an order of the Court is entered temporarily allowing such claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;

(iii) a stipulation or other agreement is executed between the holder of such claim and the Circus temporarily or permanently allowing such claim in an agreed upon amount; or

(iv) the pending objection is voluntarily withdrawn by the objecting party.

(e) No later than two days following the occurrence of a Resolution Event, the Circus will cause the Administrative Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant holder.

### **4. Notice of Non-Voting Status with Respect to Unclassified Claims and Unimpaired Classes**

Certain holders of claims that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are not Impaired

or otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code will receive only the Notice of Non-Voting Status, substantially in the form annexed as **Exhibit 6** to the Disclosure Statement Order, and the Confirmation Hearing Notice, as soon as reasonably practicable after entry of the Disclosure Statement Order. Such notice will instruct these holders as to how they may obtain copies of the documents contained in the Solicitation Package.

**D. Voting and Tabulation Procedures**

**1. Holders of Claims Entitled to Vote**

Only the following holders of claims in the Voting Class (the “**Voting Creditors**”) will be entitled to vote on the Plan with regard to such claims:

(a) all entities who, on or before the Voting Record Date, have filed a proof of claim that: (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date; and (ii) is not the subject of a pending objection other than a “reduce and allow” objection, filed with the Court 14 days prior to the Voting Date; provided that the holder of a claim that is the subject of a pending objection on a “reduce and allow” basis will receive a Solicitation Package and be entitled to vote such claim in the reduced amount contained in such objection;

(b) all entities listed in the Circus’ Schedules as holding a noncontingent, liquidated, undisputed claim as of the Voting Record Date, except to the extent that such claim was paid, expunged, disallowed, disqualified, or superseded by a timely filed proof of claim prior to the Voting Record Date;

(c) all entities that hold claims pursuant to an agreement or settlement with the Circus executed prior to the Voting Record Date, as reflected in a document filed with the Court, in an order entered by the Court, or in a document executed by the Circus pursuant to authority granted by the Court, regardless of whether a proof of claim has been filed;

(d) holders of any Disputed Claims that have been temporarily allowed to vote; and

(e) with respect to any entity described in subparagraphs (a) through (d) above who, on or before the Voting Record Date, has transferred that entity’s claim to another entity, the assignee of that claim; provided that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the claims register on the Voting Record Date.

**2. Establishing Claim Amounts for Voting Purposes**

The claim amount established herein will control for voting purposes only and will not constitute the allowed amount of any claim. Moreover, any amounts filled in on Ballots by the Circus through the Administrative Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy will be used to determine the amount of the claim associated with each claimant’s vote:

(a) the claim amount settled and/or agreed upon by the Circus, as reflected in a document filed with the Court, in an order of the Court, or in a document executed by the Circus pursuant to authority granted by the Court;

(b) the claim amount allowed (temporarily or otherwise) pursuant to a Resolution Event;

(c) the claim amount contained in a proof of claim that has been filed, except for any amounts asserted on account of any interest accrued after the Petition Date; provided, however, that Ballots cast by holders of claims who file a proof of claim in respect of a contingent claim or in a wholly-unliquidated or unknown amount that is not the subject of an objection will count for satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as Ballots for claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and, if a proof of claim is filed as partially liquidated and partially unliquidated, such claim will be allowed for voting purposes only in the liquidated amount; provided further, however, that to the extent the claim amount contained in the proof of claim is different from the claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the claim amount in the document filed with the Court will supersede the claim amount set forth on the respective proof of claim;

(d) the claim amount listed in the Schedules, provided that such claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; and

(e) in the absence of any of the foregoing, such claim will be disallowed for voting purposes.

### **3. General Voting and Ballot Tabulation Procedures**

The following voting procedures and standard assumptions will be used in tabulating Ballots, subject to the Circus's right to waive any of the below specified requirements for completion and submission of Ballots so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Bankruptcy Rules:

(a) except as otherwise provided herein, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Circus), the Circus will reject such Ballot as invalid and, therefore, will not count it in connection with confirmation of the Plan;

(b) the Administrative Agent will date-stamp all Ballots when received and will retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court;

(c) consistent with the requirements of Local Bankruptcy Rule 3018-1, the Circus will file with the Court, at least seven days prior to the Confirmation Hearing, a certification of votes (the "**Voting Report**"). The Voting Report will, among other things, certify to the Court in writing the amount and number of allowed claims of the Voting Class accepting or rejecting the Plan, and delineate every Ballot that does not conform to the voting instructions or

that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible, unidentifiable, lacking signatures or lacking necessary information, received via facsimile, or damaged (“**Irregular Ballots**”). The Voting Report will indicate the Circus’ intentions with regard to each such Irregular Ballot. The Voting Report will be served upon the Creditors’ Committee and the U.S. Trustee;

(d) the method of delivery of Ballots to be sent to the Administrative Agent is at the election and risk of each holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Administrative Agent actually receives the original executed Ballot;

(e) an executed Ballot is required to be submitted by the entity submitting such Ballot. Subject to the other procedures and requirements herein, completed, executed Ballots may be submitted via electronic mail, in PDF format, to the Administrative Agent via electronic mail to [tbacballots@donlinrecano.com](mailto:tbacballots@donlinrecano.com). However, Ballots submitted by facsimile will not be accepted;

(f) no Ballot should be sent to the Circus, the Circus’ agents (other than the Administrative Agent), the Circus’ financial or legal advisors, the Creditors’ Committee, or the Creditors’ Committee’s advisors, and if so sent will not be counted;

(g) if multiple Ballots are received from the same holder with respect to the same claim prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter’s intent and will supersede and revoke any prior Ballot;

(h) holders must vote all of their claims within the Voting Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, the Circus may, in its discretion, aggregate the claims of any particular holder within the Voting Class for the purpose of counting votes;

(i) a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a claim holder must indicate such capacity when signing;

(j) the Circus, subject to contrary order of the Court, may waive any defects or irregularities as to any Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;

(k) neither the Circus, nor any other entity, will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification;

(l) unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;

(m) in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any

vote to accept or reject the Plan cast with respect to that claim will be counted for purposes of determining whether the Plan has been accepted or rejected. Subject to any order of the Court, the Circus reserves the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Circus, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; provided that any such rejections will be documented in the Voting Report;

(n) if a claim has been estimated or otherwise allowed for voting purposes only by order of the Court, such claim will be temporarily allowed in the amount so estimated or allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;

(o) if an objection to a claim is filed, such claim will be treated in accordance with the procedures set forth herein;

(p) the following Ballots will not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of such claim; (ii) any Ballot cast by an entity that does not hold a claim in a Voting Class; (iii) any Ballot cast for a claim scheduled as unliquidated, contingent, or disputed for which no proof of claim was timely filed; (iv) any unsigned Ballot or Ballot lacking an original signature; (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any entity not entitled to vote pursuant to the procedures described herein;

(q) after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Circus; and

(r) the Circus is authorized to enter into stipulations with the holder of any claim agreeing to the amount of a claim for voting purposes.

#### **E. Amendments to the Plan and Solicitation Procedures**

The Circus reserves the right to make non-substantive or immaterial changes to the Disclosure Statement, the Plan, the Ballots, the Confirmation Hearing Notice, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Package before their distribution.

**EXHIBIT 3 to the Disclosure Statement Order**

**Confirmation Hearing Notice**



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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

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**NOTICE OF HEARING TO CONSIDER CONFIRMATION OF,  
AND DEADLINE FOR OBJECTING TO, AND VOTING ON,  
THE CIRCUS' CHAPTER 11 PLAN OF LIQUIDATION**

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**TO ALL HOLDERS OF CLAIMS AND PARTIES IN INTEREST:**

1. **Court Approval of the Disclosure Statement and the Solicitation Procedures.** On [DATE], 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered its *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. [ ]] (the “**Disclosure Statement Order**”) that, among other things: (a) approved the *Disclosure Statement for the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* Docket No. [ ] (as may further be amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”), as containing adequate information, as required under section 1125(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit votes with regard to the acceptance or rejection of the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* Docket No. [ ] (as may further be amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).
2. **Voting Record Date.** The Voting Record Date for purposes of determining (a) which holders of claims are entitled to vote on the Plan and (b) whether claims have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the claim was **October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)**.
3. **Voting Deadline.** If you held a claim against the Circus as of the Voting Record Date and are entitled to vote on the Plan, you have received a ballot and voting instructions appropriate for your claim(s). For your vote to be counted in connection with confirmation of the Plan, you must follow the appropriate voting instructions, complete all required information on the ballot, and execute and return the completed ballot so that it is **actually received** by **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the “**Voting Deadline**”). Any failure to follow the voting instructions included with the

ballot may disqualify your ballot and your vote on the Plan.

4. **Objections to the Plan.** The Court has established **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**, as the deadline for filing and serving objections to the confirmation of the Plan (the “**Plan Objection Deadline**”). Any objection to the Plan must (a) be in writing, (b) conform to the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), (c) state the name and address of the objecting party and the amount and nature of the claim, (d) state with particularity the basis and nature of any objection to the Plan, (e) propose a modification to the Plan that would resolve such objection (if applicable), and (f) be filed, contemporaneously with a proof of service, with the Court and served so that it is **actually received** by each of the notice parties identified herein by the Plan Objection Deadline:

<b>The Circus</b>	<b>Counsel for the Circus</b>
TBAC Wind Down, Ltd. One MetroTech North, 3rd Floor Brooklyn, New York 11201	Debevoise & Plimpton LLP 919 Third Avenue New York, New York 10022 Attn: M. Natasha Labovitz, Esq. and Christopher Updike, Esq.
<b>U.S. Trustee</b>	<b>Counsel for the Creditors’ Committee</b>
Office of the United States Trustee for the Southern District of New York U.S. Federal Office Building 201 Varick Street, Suite 1006 New York, New York 10014 Attn: Richard C. Morrissey	Pachulski Stang Ziehl & Jones LLP 780 Third Avenue New York, New York 10017 Attn: Robert J. Feinstein, Esq.
<b>Administrative Agent</b>	<b>New York City Department of Cultural Affairs</b>
Donlin, Recano & Company, Inc. P.O. Box 199043 Blythebourne Station Brooklyn, New York 11219 Attn: TBAC Wind Down, Ltd.	NYC Department of Cultural Affairs 31 Chambers Street, Floor 2 New York, New York 10007 Attn: General Counsel
<b>New York State Attorney General</b>	
Office of the New York State Attorney General Division of Social Justice Charities Bureau 120 Broadway New York, New York 10271 Attn: James Sheehan	

5. **Confirmation Hearing.** A hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”) will commence on **December 12, 2017 at 11:00 a.m. (prevailing Eastern Time)** before the Honorable Sean H. Lane, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York. Please be advised that the Confirmation Hearing may be continued from time

to time by the Court or the Circus without further notice other than by such adjournment being announced in open court or by a notice of adjournment being filed with the Court and served on parties entitled to notice under Bankruptcy Rule 2002, the Local Bankruptcy Rules or otherwise. In accordance with the Plan, the Plan may be modified, if necessary, prior to, during, or as a result of the Confirmation Hearing without further action by the Circus and without further notice to or action, order, or approval of the Court or any other entity.

6. **Solicitation Packages.** Solicitation packages may be obtained at no charge from the administrative agent retained by the Circus in this chapter 11 cases (the “**Administrative Agent**”) by: (a) accessing the Administrative Agent’s website at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the Administrative Agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com). You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov). The Administrative Agent will answer questions regarding the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, provide additional copies of all materials, and oversee the voting tabulation.
7. **Temporary Allowance of Claims for Voting Purposes.** Holders of claims that are subject, at least 14 days prior to the Voting Deadline, to a pending objection by the Circus cannot vote on the Plan; provided that if the Circus objects to only a portion of a claim, such claim may be voted in the undisputed amount. Moreover, a holder of a disputed claim cannot vote any disputed portion of its claim unless one or more of the following events (each, a “**Resolution Event**”) has taken place by at least three days before the Voting Deadline:
  - (a) an order of the Court is entered allowing such claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
  - (b) an order of the Court is entered temporarily allowing such claim for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
  - (c) a stipulation or other agreement is executed between the holder of such claim and the Circus temporarily or permanently allowing such claim in an agreed upon amount; or
  - (d) the pending objection to such claim is voluntarily withdrawn by the objecting party.
8. **Release, Exculpation, and Injunction Language in the Plan.** Please be advised that Article VIII of the Plan contains the following release, exculpation, and injunction provisions:

**RELEASES BY DEBTOR.** Pursuant to section 1123(b) of the Bankruptcy Code, as of the Effective Date, except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted under applicable law, the Released Parties are deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtor, the Estate, and the Reorganized Debtor from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Debtor, the Estate, or the Reorganized Debtor would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual agreements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

**RELEASES BY HOLDERS OF CLAIMS.** As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or

liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

**EXCULPATION.** Except as otherwise specifically provided in the Plan or the Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any obligation, Cause of Action or liability for any Exculpated Claim, except for gross negligence, willful misconduct, or fraud, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

**INJUNCTION.** The satisfaction, release, exculpation, and discharge pursuant to this Article shall act as an injunction against any entity commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released or to be released, exculpated or to be exculpated, or discharged under the Plan or pursuant to the Confirmation Order to the fullest extent permitted by applicable law, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 of the Bankruptcy Code.

**Defined terms.** As used in the Plan, the terms “Released Parties” and “Releasing Parties” have the meanings set forth below.

“**Released Parties**” means each of: (a) the Debtor, (b) the current and former directors and officers of the Debtor, (c) the Reorganized Debtor, and (d) any of the representatives, agents, officers, directors, employees, professionals, advisors, attorneys, successors, or assigns of the foregoing (in their capacities as such).

“**Releasing Parties**” means, collectively, (a) all holders of Claims or (b) solely if the Court finds that the Third Party Release may only be approved with the consent of the applicable holder of a Claim, all holders of Claims who, with respect to such Claims, (i) vote to accept the Plan, (ii) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (iii) receive a ballot providing them with the potential right to opt out of the Third Party release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (iv) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release.

**YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PLAN,  
INCLUDING THE RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AS  
YOUR RIGHTS MIGHT BE AFFECTED.**

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

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Christopher Updike  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
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cupdike@debevoise.com

Counsel to the Debtor  
and Debtor in Possession

**EXHIBIT 4 to the Disclosure Statement Order**

**Circus' Letter to Voting Creditors**

**In re TBAC Wind Down, Ltd.**  
**Chapter 11 Case No. 16-13297 (SHL)**

[DATE], 2017

To Whom It May Concern:

On [DATE], 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) approved the *Disclosure Statement for the Chapter 11 Liquidation of TBAC Wind Down, Ltd.* [Docket No. [ ]] (as may be amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”) and authorized TBAC Wind Down, Ltd, f/k/a/ The Big Apple Circus, Ltd. (the “**Circus**”), to solicit votes with regard to the acceptance or rejection of the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* Docket No. [ ]] (as may be amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).<sup>1</sup> Copies of the Disclosure Statement and Plan are enclosed as part of the Solicitation Package (as defined below).

You have received this letter and the enclosed materials because you are entitled to vote on the Plan. The enclosed materials constitute the “**Solicitation Package**” which, in addition to this letter, is comprised of:

- (a) a copy of the solicitation procedures with respect to confirmation of the Plan;
- (b) a notice of the deadlines to vote on, and object to, the Plan, as well as the date and time of the hearing to consider confirmation of the Plan;
- (c) a ballot, for voting on the Plan (including a pre-addressed postage paid return envelope);
- (d) the Circus’ disclosure statement; and
- (e) any supplemental documents the Circus filed with the Court or any documents that the Court ordered to be made available.

The Circus believes that the acceptance of the Plan is in the best interests of the holders of claims against the Circus. Moreover, the Circus believes that any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses, thereby resulting in smaller distributions or no distributions on account of allowed claims.

**Therefore, the Circus recommends that all entities entitled to vote on the Plan submit a timely ballot voting to accept the Plan.**

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Plan.



The materials in the Solicitation Package are intended to be self-explanatory. However, if you have any questions, please feel free to contact the Circus' administrative agent, Donlin, Recano & Company, Inc., by: (a) accessing the administrative agent's website at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the administrative agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the administrative agent at (212) 771-1128; or (d) emailing [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com). You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

Regards,

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TBAC Wind Down, Ltd.

**EXHIBIT 5 to the Disclosure Statement Order**

**Form of Ballot for Claims**

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

**BALLOT FOR ACCEPTING OR REJECTING THE  
CHAPTER 11 PLAN OF LIQUIDATION OF TBAC WIND DOWN, LTD.**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR  
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THE BALLOT.**

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS DECEMBER 1,  
2017 BY 5:00 P.M. (PREVAILAING EASTERN TIME) (THE “VOTING DEADLINE”)**

**YOUR BALLOT MUST BE ACTUALLY RECEIVED BY THE VOTING DEADLINE  
IN ORDER TO BE COUNTED.**

The above-captioned debtor and debtor in possession (the “**Circus**”) has sent this ballot to you because its records indicate that you are a holder of a Class 4 General Unsecured Claim, and accordingly, you have a right to vote to accept or reject the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).<sup>1</sup>

Your rights are described in the *Disclosure Statement for the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* [Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”) and the *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. [ ]] (the “**Disclosure Statement Order**”). The Disclosure Statement, the Plan, the Disclosure Statement Order, and certain other solicitation materials are included in the packet you are receiving with this Ballot. If you need to obtain additional solicitation materials, you may contact Donlin, Recano & Company, Inc., the administrative agent retained by the Circus in this chapter 11 case (the “**Administrative Agent**”); by: (a) accessing the Administrative Agent’s website [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the administrative agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219,

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

Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing drcvote@donlinrecano.com. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

The Court has approved the Disclosure Statement as containing adequate information, as required under section 1125 of the Bankruptcy Code. Court approval of the Disclosure Statement does not indicate approval of the Plan by the Court. This Ballot may not be used for any purpose other than to vote to accept or reject the Plan. If you believe you have received this Ballot in error, please contact the Administrative Agent at the address or telephone number set forth above.

**You are strongly encouraged to review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan's classification and treatment of your claim.**

**If the Administrative Agent does not receive your Ballot on or before the Voting Deadline, which is December 1, 2017 at 5:00 p.m. (prevailing Eastern Time), and if the Voting Deadline is not extended, your vote will not count. If the Court confirms the Plan, it will bind you regardless of whether you vote.**

**Item 1. Principal Amount of Class 4 General Unsecured Claim**

The undersigned hereby certifies that as of the Voting Record Date, October 31, 2017, at 11:00 a.m. (prevailing Eastern Time), the undersigned was the holder of a Class 4 General Unsecured Claim against the Circus in the following amount (insert amount in box below):

Amount of Claim: \$
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**Item 2. Vote on Plan**

The holder of the Class 4 General Unsecured Claim set forth in Item 1 votes to (please check one):

<p style="text-align: center;"><b><u>ACCEPT THE PLAN</u></b></p> <p style="text-align: center;"><input type="checkbox"/></p>	<p style="text-align: center;"><b><u>REJECT THE PLAN</u></b></p> <p style="text-align: center;"><input type="checkbox"/></p>
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Any Ballot that is executed by the holder of a claim, but that indicates both an acceptance and a rejection of the Plan, or does not indicate either an acceptance or rejection of the Plan, will not be counted.

**IMPORTANT INFORMATION REGARDING THE THIRD PARTY RELEASE:**

**Item 3.** Article VIII, Section 3 of the Plan provides for the following third party release the “*Third Party Release*”):

As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor’s liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor’s interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments, or other documents, or any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

**Defined terms.** As used in the Plan, the terms “Released Parties” and “Releasing Parties” have the meanings set forth below.

“Released Parties” means each of: (a) the Debtor, (b) the current and former directors and officers of the Debtor, (c) the Reorganized Debtor, and (d) any of the representatives, agents, officers, directors, employees, professionals, advisors, attorneys, successors, or assigns of the foregoing (in their capacities as such).

The Circus will request at the Confirmation Hearing that the “Releasing Parties” include all holders of Claims regardless of whether such holders have consented to the Third Party Release. The Circus believes that the Third Party Release is appropriate because, among other things, each of the Released Parties afforded value to the Circus and aided in the administration of the Chapter 11 Case. The Circus believes that the Released Parties have expended significant time and resources to ensure an optimal outcome for holders of Allowed Claims and played an integral role in the formulation of the Plan. However, parties may object to the Third Party Release and the Court may find that such release may only be approved

**with consent of the applicable claim holder. If, and only if, the Court makes such a finding, the Release Parties shall mean, collectively, all holders of Claims who, with respect to such Claims, (a) vote to accept the Plan, (b) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (c) receive a ballot providing them with the potential right to opt out of the Third Party release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (d) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release.**

The below election is intended to be used, and will only be considered, if the Court finds that the consent of the applicable Claim holder is required for the Third Party Release to be effective against such entity. If you have checked the "Accept the Plan" box above, you are deemed to have consented to the Third Party Release. If you have not checked the "Accept the Plan" box above, you should check the box below if you do not consent to the Third Party Release. If you have not checked the "Accept the Plan" box above and you fail to return this Ballot with the box set forth below checked, you will be deemed to evidence your consent to the Third Party Release.

The holder of the Claim set forth in Item 1 elects to (optional):

☐

Opt Out of the Plan's Third Party Release  
with Respect to the Released Parties

#### **Item 4. Certifications**

By signing this Ballot, the undersigned certifies to the Court and the Circus:

1. that either: (a) the entity is the holder of the Class 4 claim(s) being voted; or (b) the entity is an authorized signatory for an entity that is a holder of the Class 4 claim(s) being voted;
2. that the entity has received a copy of the Disclosure Statement, the Plan, and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
3. that the entity has cast the same vote with respect to all Class 4 claims; that no other Ballots with respect to the Class 4 claim(s) identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such claim(s), then any such Ballots dated earlier are hereby revoked;
4. that the entity acknowledges that a vote to accept the Plan constitutes an acceptance of the treatment of such entity's Class 4 claim(s);
5. that the entity acknowledges and agrees that the Circus may make conforming changes to the Plan to the extent provided by Bankruptcy Rule 3019 as may be

reasonably necessary; provided that the Circus will not re-solicit acceptances or rejections of the Plan in the event of such conforming changes.

Name of Holder: \_\_\_\_\_  
(Please print or type)

Social Security Number or Federal Tax  
Identification Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(If other than Holder)<sup>2</sup>

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

**PLEASE COMPLETE, SIGN, AND DATE THIS BALLOT AND RETURN IT  
PROMPTLY IN THE RETURN ENVELOPE PROVIDED. YOUR BALLOT MUST BE  
ACTUALLY RECEIVED BY THE VOTING DEADLINE, WHICH IS DECEMBER 1,  
2017 AT 5:00 P.M. (PREVAILING EASTERN TIME).**

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<sup>2</sup> If you are completing this Ballot on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing. You may be required to provide additional information or documentation with respect to such relationship.

**INSTRUCTIONS FOR COMPLETING BALLOTS**

1. The Circus is soliciting the votes of holders of claims with respect to the Plan attached as **Exhibit A** to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions (the “**Ballot Instructions**”) but not otherwise defined therein or herein will have the meaning set forth in the Plan.
2. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, your ballot must be properly executed, completed, and delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic mail in PDF format so that they are **actually received** by the Administrative Agent, in any case, no later than the Voting Deadline, which is **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**. All Ballots should be sent to the following addresses: if by U.S. Postal Service mail, Donlin Recano & Company, Inc., P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219, Re: TBAC Wind Down, Ltd, if by overnight delivery or personal delivery by hand, Donlin Recano & Co. Inc., Re: TBAC Wind Down, Ltd., 6201 15th Avenue, Brooklyn, NY 11219, and if by electronic mail, in PDF format, to [tbacballots@donlinrecano.com](mailto:tbacballots@donlinrecano.com). Delivery of a Ballot to the Administrative Agent by facsimile will not be valid.
4. You must vote all of your claims either to accept or reject the Plan and may not split your vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, if a holder has multiple claims within the Voting Class, the Circus may, in its discretion, aggregate the claims of any particular holder within the Voting Class for the purpose of counting votes.
5. If a Ballot is received after the Voting Deadline, it will not be counted unless the Circus determines otherwise. The method of delivery of Ballots to the Administrative Agent is at the election and risk of each holder of a claim. Except as otherwise provided herein, such delivery will be deemed made only when the Administrative Agent actually receives the originally executed Ballot. Instead of effecting delivery by mail, it is recommended, though not required, that holders use an overnight or hand delivery service. In all cases, holders should allow sufficient time to assure timely delivery. Delivery of a Ballot to the Administrative Agent by facsimile will not be valid. No Ballot should be sent to the Circus, the Circus’ agents (other than the Administrative Agent), the Circus’ financial or legal advisors, the Creditors’ Committee, or the Creditors’ Committee’s advisors, and if so sent will not be counted.
6. If multiple Ballots are received from the same holder of a claim with respect to the same claim prior to the Voting Deadline, the last valid Ballot timely received will supersede and revoke any earlier received Ballots.
7. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, holders of claims should not surrender certificates or instruments representing or evidencing their claims, and neither



the Circus nor the Administrative Agent will accept delivery of any such certificates or instruments surrendered together with a Ballot.

8. This Ballot does not constitute, and will not be deemed to be: (a) a proof of a claim; or (b) an assertion or admission of a claim.
9. Please be sure to sign and date your Ballot. If you are signing a Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Administrative Agent, the Circus, or the Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
10. The following Ballots will not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the claim; (b) any Ballot cast by an entity that does not hold a claim in a Class that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; and (e) any Ballot submitted by any entity not entitled to vote pursuant to the Solicitation Procedures.
11. If you believe you have received the wrong Ballot, you should contact the Administrative Agent immediately at (212) 771-1128.

**PLEASE SUBMIT YOUR BALLOT PROMPTLY!**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT THE ADMINISTRATIVE AGENT AT (212) 771-1128.**

**EXHIBIT 6 to the Disclosure Statement Order**

**Notice of Non-Voting Status and Release Opt-Out Form**

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

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**NOTICE OF NON-VOTING STATUS AND RELEASE OPT-OUT FORM  
FOR UNCLASSIFIED CLAIMS AND UNIMPAIRED CLASSES**

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**PLEASE TAKE NOTICE THAT** on [DATE], 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered its *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. [ ]] (the “**Disclosure Statement Order**”) that, among other things, (a) approved the *Disclosure Statement for the Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* [Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”) as containing adequate information, as required under section 1125(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit votes with regard to the acceptance or rejection of the *Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the Disclosure Statement, the Disclosure Statement Order, the Plan, and other documents and materials included in the Solicitation Package may be obtained at no charge from Donlin, Recano & Company, Inc., the administrative agent retained by the Circus in this chapter 11 case (the “**Administrative Agent**”) by: (a) accessing the Administrative Agent’s website at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the administrative agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com). You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**PLEASE TAKE FURTHER NOTICE THAT** you are receiving this notice because, pursuant to the terms of Article III of the Plan and the applicable provisions of the Bankruptcy Code, your claim(s) against the Circus are not Impaired and, therefore, pursuant to section

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

1126(f) of the Bankruptcy Code, you are conclusively presumed to have accepted the Plan and, therefore, are **not entitled to vote on the Plan**. Accordingly, this notice and the *Notice of Hearing to Consider Confirmation of, and Deadline for Objecting to, and Voting on, the Circus' Chapter 11 Plan of Liquidation* are being sent to you for informational purposes and to provide you with the potential ability to elect to opt out of the Third Party Release (as defined below) in the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** Article VIII, Section 3 of the Plan provides for the following third party release (the “**Third Party Release**”):

**As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor's interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument or agreement, executed to implement the Plan.**

**Defined terms.** As used in the Plan, the terms “Released Parties” and “Releasing Parties” have the meanings set forth below.

“**Released Parties**” means each of: (a) the Debtor, (b) the current and former directors and officers of the Debtor, (c) the Reorganized Debtor, and (d) any of the representatives, agents, officers, directors, employees, professionals, advisors, attorneys, successors, or assigns of the foregoing (in their capacities as such).

**The Circus will request at the Confirmation Hearing that the “Releasing Parties” include all holders of Claims regardless of whether such holders have consented to the Third Party Release. The Circus believes that the Third Party Release is appropriate because, among other things, each of the Released Parties afforded**

value to the Circus and aided in the administration of the Chapter 11 Case. The Circus believes that the Released Parties have expended significant time and resources to ensure an optimal outcome for holders of Allowed Claims and played an integral role in the formulation of the Plan. However, parties may object to the Third Party Release and the Court may find that such release may only be approved with consent of the applicable claim holder. If, and only if, the Court makes such a finding, the Release Parties shall mean, collectively, all holders of Claims who, with respect to such Claims, (a) vote to accept the Plan, (b) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (c) receive a ballot providing them with the potential right to opt out of the Third Party release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (d) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release.

**PLEASE COMPLETE ITEMS 1 AND 2 ONLY IF YOU WISH TO OPT-OUT OF THE THIRD PARTY RELEASE**

**Item 1. Optional Release Election.**

The below election is intended to be used, and will only be considered, if the Court finds that the consent of the applicable Claim holder is required for the Third Party Release to be effective against such entity. If you do not consent to the Third Party Release, you may elect to opt-out and not grant such release by checking the box below. If you do not return this release opt-out form or you return this release opt-out form but do not check the box below, you will be bound by the Third Party Release. Election to withhold consent is at your option.

REGARDLESS OF WHETHER YOU ELECT TO OPT-OUT OF THE PLAN'S THIRD PARTY RELEASE, YOUR RECOVERY UNDER THE PLAN REMAINS UNAFFECTED.

The holder of the Claim set forth in Item 1 elects to (optional):

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Opt Out of the Plan's Third Party Release  
with Respect to the Released Parties.

**You are strongly encouraged to review the Disclosure Statement and the Plan before you make an election. You may wish to seek legal advice concerning the Plan and the treatment of your Claim.**

**Item 2. Certifications.** By signing this Ballot, the undersigned certifies to the Court and the Circus that either: (a) the entity is the holder of the claim(s) electing to opt-out of the Third Party Release; or (b) the entity is an authorized signatory for an entity that is a holder of the claim(s) making such election.

Name of Holder: \_\_\_\_\_

(Please print or type)

Social Security Number or Federal Tax  
Identification Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_

(If other than Holder)<sup>1</sup>

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

**IF YOU WISH TO OPT-OUT OF THE THIRD PARTY RELEASE,  
PLEASE COMPLETE, SIGN, AND DATE THIS RELEASE OPT-OUT FORM AND  
RETURN IT PROMPTLY. YOUR RELEASE OPT-OUT FORM MUST BE ACTUALLY  
RECEIVED BY THE OPT-OUT DEADLINE, WHICH IS DECEMBER 1, 2017 AT  
5:00 P.M. (PREVAILING EASTERN TIME).**

<sup>1</sup> If you are completing this election on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing. You may be required to provide additional information or documentation with respect to such relationship.

**INSTRUCTIONS FOR COMPLETING THE RELEASE OPT-OUT FORM**

1. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information. If you abstain from returning this release opt-out form or you do not check the box in Item 2, you will be bound by the Third Party Release. To ensure that your election to opt-out of the Third Party Release is sufficient, you must: (i) complete your release opt-out form by providing all the information requested in accordance with these instructions; (ii) clearly indicate your decision to opt-out of the releases contained in Article VIII Section 3 of the Plan; (iii) review and complete Items 1 and 2 in accordance with the instructions therein; and (iv) clearly sign, date and return an original of your release opt-out form to the address set forth below.
2. To opt out of the Third Party Release, your release opt-out form must be properly executed, completed, and delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic mail in PDF format so that they are **actually received** by the Administrative Agent, in any case, no later than **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**. All release opt-out forms should be sent to the following addresses: if by U.S. Postal Service mail, Donlin Recano & Company, Inc., P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219, Re: TBAC Wind Down, Ltd, if by overnight delivery or personal delivery by hand, Donlin Recano & Co. Inc., Re: TBAC Wind Down, Ltd., 6201 15th Avenue, Brooklyn, NY 11219, and if by electronic mail, in PDF format, to [tbacballots@donlinrecano.com](mailto:tbacballots@donlinrecano.com). Delivery of a release opt-out form to the Administrative Agent by facsimile will not be valid.
3. **If a release opt-out form is received after the deadline above, it will not qualify as an opt-out of the Third Party Release.** No release opt-out form should be sent to the Circus, the Circus' agents (other than the Administrative Agent), the Circus' financial or legal advisors, the Creditors' Committee, or the Creditors' Committee's advisors, and if so sent will not be effective.
4. The release opt-out form is not a letter of transmittal and may not be used for any purpose other than to opt out of the Third Party Release. Accordingly, at this time, holders of claims should not surrender certificates or instruments representing or evidencing their claims, and neither the Circus nor the Administrative Agent will accept delivery of any such certificates or instruments surrendered together with a release opt-out form.
5. This release opt-out form does not constitute, and will not be deemed to be: (a) a proof of a claim; or (b) an assertion or admission of a claim.
6. Please be sure to sign and date your release opt-out form. If you are signing an release opt-out form in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Administrative Agent, the Circus, or the Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing

label is attached to the release opt-out form.

**PLEASE SUBMIT YOUR RELEASE OPT-OUT FORM PROMPTLY!**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS  
RELEASE OPT-OUT FORM OR THE VOTING PROCEDURES,  
PLEASE CONTACT THE ADMINISTRATIVE AGENT AT (212) 771-1128.**

**PLEASE TAKE FURTHER NOTICE THAT** if you have any questions about the status of any of your claims, you should contact the Administrative Agent in accordance with the instructions provided above.

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

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M. Natasha Labovitz  
Christopher Updike  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836  
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cupdike@debevoise.com

Counsel to the Debtor  
and Debtor in Possession



**EXHIBIT 7 to the Disclosure Statement Order**

**Contract and Lease Counterparties Notice**

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

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**NOTICE TO CONTRACT AND LEASE COUNTERPARTIES**

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**PLEASE TAKE NOTICE THAT** on [DATE], 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered its *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. [ ]] (the “**Disclosure Statement Order**”) that, among other things, (a) approved the *Disclosure Statement for the Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* [Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”) as containing adequate information, as required under section 1125(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit votes with regard to the acceptance or rejection of the *Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* [Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE THAT** you are receiving this notice because you are a party to a contract or lease with the Circus that may be an executory contract or unexpired lease. Your rights may be affected by the Plan. If you are a party to a contract or lease with the Circus that may be an executory contract or unexpired lease, then your contract or lease might be assumed or rejected by the Circus.

**YOUR STATUS AS A COUNTERPARTY TO AN EXECUTORY CONTRACT OR AN UNEXPIRED LEASE DOES NOT, IN AND OF ITSELF ENTITLE YOU TO VOTE ON THE PLAN.** Accordingly, this notice and the *Notice of Hearing to Consider Confirmation of, and Deadline for Objecting to, and Voting on, the Circus’ Chapter 11 Plan of Liquidation* are being sent to you for informational purposes only.

**PLEASE TAKE FURTHER NOTICE THAT** under the terms of Article V of the Plan, except as otherwise provided in the Plan, each executory contract and unexpired lease to which the Circus is a party will be deemed automatically rejected as of the Effective Date, unless such executory contract or unexpired lease:

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

1. will have been previously assumed or rejected by the Circus pursuant to a Final Order of the Court;
2. is the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date; or
3. is otherwise assumed pursuant to the terms of the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** if you are a holder of a claim in the Voting Class as of the Voting Record Date, you will receive a Solicitation Package in accordance with the Solicitation Procedures. The Disclosure Statement, the Disclosure Statement Order, the Plan, and other documents and materials included in the Solicitation Package may be obtained at no charge from Donlin, Recano & Company, Inc., the administrative agent retained by the Circus in this chapter 11 case (the “**Administrative Agent**”) by: (a) accessing the Administrative Agent’s website at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the administrative agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com). You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**PLEASE REVIEW THE PLAN AND THE DISCLOSURE STATEMENT FOR DETAILS REGARDING THE ASSUMPTION, ASSUMPTION AND ASSIGNMENT, AND REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

**YOU MAY WISH TO SEEK LEGAL ADVICE CONCERNING THE PLAN AND THE PLAN’S TREATMENT OF YOUR CONTRACT OR LEASE.**

**PLEASE TAKE FURTHER NOTICE THAT** if you have any questions about this Notice you should contact the Administrative Agent in accordance with the instructions provided above.

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

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M. Natasha Labovitz  
Christopher Updike  
DEBEVOISE & PLIMPTON LLP  
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New York, New York 10022  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836  
Email: nlabovitz@debevoise.com  
cupdike@debevoise.com

Counsel to the Debtor  
and Debtor in Possession

**EXHIBIT 8 to the Disclosure Statement Order**

**Disputed Claim Notice and Release Opt-Out Form**

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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

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**NOTICE OF NON-VOTING STATUS AND RELEASE  
OPT-OUT FORM WITH RESPECT TO DISPUTED CLAIMS**

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**PLEASE TAKE NOTICE THAT** on [DATE], 2017, the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) entered its *Order Approving (I) the Adequacy of the Circus’ Disclosure Statement, (II) Solicitation and Notice Procedures with Respect to Confirmation of the Circus’ Chapter 11 Plan of Liquidation, (III) the Form of Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* [Docket No. [ ]] (the “**Disclosure Statement Order**”) that, among other things, (a) approved the *Disclosure Statement for the Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* [Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Disclosure Statement**”) as containing adequate information, as required under section 1125(a) of title 11 of the United States Code (the “**Bankruptcy Code**”), and (b) authorized the above-captioned debtor and debtor in possession (the “**Circus**”) to solicit votes with regard to the acceptance or rejection of the *Chapter 11 Plan of Liquidation for TBAC Wind Down, Ltd.* Docket No. [ ]] (as may be further amended from time to time and including all exhibits and supplements thereto, the “**Plan**”).<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE THAT** the Disclosure Statement, the Disclosure Statement Order, the Plan, and other solicitation materials may be obtained at no charge from Donlin, Recano & Company, Inc., the administrative agent retained by the Circus in this chapter 11 case (the “**Administrative Agent**”) by: (a) accessing the Administrative Agent’s website at [www.donlinrecano.com/bigapplecircus](http://www.donlinrecano.com/bigapplecircus); (b) writing to the administrative agent, by first-class mail to Donlin, Recano & Company, Inc., P.O. Box 199043, Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd. or by hand delivery or overnight mail to Donlin, Recano & Company, Inc., 6201 15th Ave., Blythebourne Station, Brooklyn, New York 11219, Re: TBAC Wind Down, Ltd.; (c) calling the Administrative Agent at (212) 771-1128; or (d) emailing [drcvote@donlinrecano.com](mailto:drcvote@donlinrecano.com). You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov).

**PLEASE TAKE FURTHER NOTICE THAT** you are receiving this notice because you are the holder of a claim that is subject to a pending objection by the Circus. **You are not entitled to vote any disputed portion of your claim on the Plan unless one or more of the following events have taken place before November 27, 2017 at 5:00 p.m. (prevailing**

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

**Eastern Time), a date that is four days before the Voting Deadline** (each, a “**Resolution Event**”):

- (a) an order of the Court is entered allowing such claim pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
- (b) an order of the Court is entered temporarily allowing such claim for voting purposes only pursuant to 3018(a) of the Federal Rules of Bankruptcy Procedure, after notice and a hearing;
- (c) a stipulation or other agreement is executed between the holder of such claim and the Circus temporarily or permanently allowing such claim in an agreed upon amount; or
- (d) the pending objection to such claim is voluntarily withdrawn by the objecting party.

Accordingly, this notice and the *Notice of Hearing to Consider Confirmation of, and Deadline for Objecting to, and Voting on, the Circus’ Chapter 11 Plan of Liquidation* are being sent to you for informational purposes and to provide you with the potential ability to elect to opt out of the Third Party Release (as defined below) in the Plan.

**PLEASE TAKE FURTHER NOTICE THAT** Article VIII, Section 3 of the Plan provides for the following third party release (the “**Third Party Release**”):

**As of the Effective Date, for good and valuable consideration, including the contributions of the Released Parties to facilitate the liquidation of the Debtor and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor’s liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Debtor’s interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date**

**obligations of any Released Party under the Plan or any document, instrument or agreement, executed to implement the Plan.**

**Defined terms.** As used in the Plan, the terms “Released Parties” and “Releasing Parties” have the meanings set forth below.

“Released Parties” means each of: (a) the Debtor, (b) the current and former directors and officers of the Debtor, (c) the Reorganized Debtor, and (d) any of the representatives, agents, officers, directors, employees, professionals, advisors, attorneys, successors, or assigns of the foregoing (in their capacities as such).

**The Circus will request at the Confirmation Hearing that the “Releasing Parties” include all holders of Claims regardless of whether such holders have consented to the Third Party Release. The Circus believes that the Third Party Release is appropriate because, among other things, each of the Released Parties afforded value to the Circus and aided in the administration of the Chapter 11 Case. The Circus believes that the Released Parties have expended significant time and resources to ensure an optimal outcome for holders of Allowed Claims and played an integral role in the formulation of the Plan. However, parties may object to the Third Party Release and the Court may find that such release may only be approved with consent of the applicable claim holder. If, and only if, the Court makes such a finding, the Release Parties shall mean, collectively, all holders of Claims who, with respect to such Claims, (a) vote to accept the Plan, (b) vote to reject the Plan but who do not elect to opt out of the Third Party Release, (c) receive a ballot providing them with the potential right to opt out of the Third Party release but abstain from voting on the Plan and do not opt out of the Third Party Release, or (d) are not entitled to vote on the Plan but receive a notice advising them of their potential right to elect to opt out of the Third Party Release and do not elect to opt out of the Third Party Release.**

**PLEASE COMPLETE ITEMS 1 AND 2 ONLY IF YOU WISH TO OPT-OUT OF THE THIRD PARTY RELEASE**

**Item 1. Optional Release Election.**

The below election is intended to be used, and will only be considered, if the Court finds that the consent of the applicable Claim holder is required for the Third Party Release to be effective against such entity. If you do not consent to the Third Party Release, you may elect to opt-out and not grant such release by checking the box below. If you do not return this election form or you return this release opt-out form but do not check the box below, you will be bound by the Third Party Release. Election to withhold consent is at your option.

**REGARDLESS OF WHETHER YOU ELECT TO OPT-OUT OF THE PLAN’S THIRD PARTY RELEASE, YOUR RECOVERY UNDER THE PLAN REMAINS UNAFFECTED.**



The holder of the Claim set forth in Item 1 elects to (optional):

☐

Opt Out of the Plan's Third Party Release  
with Respect to the Released Parties.

**You are strongly encouraged to review the Disclosure Statement and the Plan before you make an election. You may wish to seek legal advice concerning the Plan and the treatment of your Claim.**

**Item 2. Certifications.** By signing this Ballot, the undersigned certifies to the Court and the Circus that either: (a) the entity is the holder of the claim(s) electing to opt-out of the Third Party Release; or (b) the entity is an authorized signatory for an entity that is a holder of the claim(s) making such election.

*[Signature Page Follows]*

Name of Holder: \_\_\_\_\_  
(Please print or type)

Social Security Number or Federal Tax  
Identification Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(If other than Holder)<sup>2</sup>

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

**IF YOU WISH TO OPT-OUT OF THE THIRD PARTY RELEASE,  
PLEASE COMPLETE, SIGN, AND DATE THIS RELEASE OPT-OUT FORM AND  
RETURN IT PROMPTLY. YOUR RELEASE OPT-OUT FORM MUST BE ACTUALLY  
RECEIVED BY THE OPT-OUT DEADLINE, WHICH IS DECEMBER 1, 2017 AT  
5:00 P.M. (PREVAILING EASTERN TIME).**

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<sup>2</sup> If you are completing this election on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing. You may be required to provide additional information or documentation with respect to such relationship.

**INSTRUCTIONS FOR COMPLETING THE RELEASE OPT-OUT FORM**

1. The Court may confirm the Plan and thereby bind you by the terms of the Plan. Please review the Disclosure Statement for more information. If you abstain from returning this release opt-out form or you do not check the box in Item 2, you will be bound by the Third Party Release. To ensure that your election to opt-out of the Third Party Release is sufficient, you must: (i) complete your release opt-out form by providing all the information requested in accordance with these instructions; (ii) clearly indicate your decision to opt-out of the Third Party Release contained in Article VIII, Section 3 of the Plan; (iii) review and complete Items 1 and 2 in accordance with the instructions therein; and (iv) clearly sign, date and return an original of your release opt-out form to the address set forth below.
2. To opt out of the Third Party Release, your release opt-out form must be properly executed, completed, and delivered by: (1) first class mail; (2) overnight courier; (3) personal delivery; or (4) electronic mail in PDF format so that they are **actually received** by the Administrative Agent, in any case, no later than **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**. All release opt-out forms should be sent to the following addresses: if by U.S. Postal Service mail, Donlin Recano & Company, Inc., P.O. Box 192016, Blythebourne Station, Brooklyn, NY 11219, Re: TBAC Wind Down, Ltd, if by overnight delivery or personal delivery by hand, Donlin Recano & Co. Inc., Re: TBAC Wind Down, Ltd., 6201 15th Avenue, Brooklyn, NY 11219, and if by electronic mail, in PDF format, to [tbacballots@donlinrecano.com](mailto:tbacballots@donlinrecano.com). Delivery of a release opt-out form to the Administrative Agent by facsimile will not be valid.
3. **If a release opt-out form is received after the deadline above, it will not qualify as an opt-out of the Third Party Release.** No release opt-out form should be sent to the Circus, the Circus' agents (other than the Administrative Agent), the Circus' financial or legal advisors, the Creditors' Committee, or the Creditors' Committee's advisors, and if so sent will not be effective.
4. The release opt-out form is not a letter of transmittal and may not be used for any purpose other than to opt out of the Third Party Release. Accordingly, at this time, holders of claims should not surrender certificates or instruments representing or evidencing their claims, and neither the Circus nor the Administrative Agent will accept delivery of any such certificates or instruments surrendered together with a release opt-out form.
5. This release opt-out form does not constitute, and will not be deemed to be: (a) a proof of a claim; or (b) an assertion or admission of a claim.
6. Please be sure to sign and date your release opt-out form. If you are signing an release opt-out form in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Administrative Agent, the Circus, or the Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing

label is attached to the release opt-out form.

**PLEASE SUBMIT YOUR RELEASE OPT-OUT FORM PROMPTLY!**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS RELEASE OPT-OUT FORM OR THE VOTING PROCEDURES, PLEASE CONTACT THE ADMINISTRATIVE AGENT AT (212) 771-1128.**

**PLEASE TAKE FURTHER NOTICE THAT** if a Resolution Event occurs, then no later than two days thereafter, the Administrative Agent will distribute, via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to you, which must be returned to the Administrative Agent no later than the Voting Deadline, which is **5:00 p.m. (prevailing Eastern Time) on December 1, 2017.**

**PLEASE TAKE FURTHER NOTICE THAT** if you have any questions about the status of any of your claims, you should contact the Administrative Agent in accordance with the instructions provided above.

**PLEASE TAKE FURTHER NOTICE THAT** if you have any questions about the status of any of your claims, you should contact the Administrative Agent in accordance with the instructions provided above.

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

---

M. Natasha Labovitz  
Christopher Updike  
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Counsel to the Debtor  
and Debtor in Possession

**Exhibit C to the Revised Disclosure Statement**

**Liquidation Analysis**

**TBAC Wind Down, Ltd.**

*Liquidation Analysis (\$)*

	Value in the Plan	Notes	Chapter 11 - Plan Recovery			Chapter 7 - Liquidation Recovery		
			Value	%	Notes	Value	%	Notes
<b>Cash Available for Distribution</b>	<b>2,152,323</b>	<b>A</b>	<b>2,152,323</b>			<b>2,152,323</b>		
<b>Proceeds from Weiner Settlement</b>	<b>90,000</b>		<b>90,000</b>			<b>90,000</b>		
Expected Wind-down Expenses			(474,093)			(486,780)		B
	<b>2,242,323</b>		<b>1,768,230</b>			<b>1,755,543</b>		
Chapter 7 Trustee Fees	-		-			52,666		C
Other Chapter 7 Admin Fees	-		-			100,000		D
Chapter 11 Professional Fees	-	E	6,500			-		
<b>Net Proceeds Available for Distribution</b>	<b>2,242,323</b>		<b>1,761,730</b>			<b>1,602,877</b>		
<b>DIP Lender Claims</b>	-		-	-		-	-	
<b>Secured Claims</b>	4,628		4,628	100%		4,628	100%	
<b>Administrative Claims</b>	10,000		10,000	100%		10,000	100%	
<b>Priority Claims</b>	60,957		60,957	100%		60,957	100%	
<b>General Unsecured Claims</b>	10,204,193		1,686,146	17%		1,527,292	15%	
<b>Subordinated Claims</b>	1,016		-	-		-	-	
<b>Net Assets Available After Distribution to all Creditors</b>			<b>\$ -</b>			<b>\$ -</b>		

Notes to Liquidation Analysis:

A. Cash consists of all unrestricted cash in bank accounts of the Debtor.

B. It is anticipated that the Chapter 7 Trustee and any newly retained professionals will require at least 2 months to familiarize themselves with the assets, the claims and related matters. The Chapter 7 Trustee would need to retain a number of individuals currently employed by the Debtor to maintain the assets, provide historical knowledge and insight and conclude the administrative wind-down of the estate.

C. The Chapter 7 Trustee fees are estimated to be 3% of proceeds distributed to creditors, in accordance with section 326 of the Bankruptcy Code.

D. Chapter 7 professional fees include the cost of attorneys, accountants and other professionals retained by the Chapter 7 Trustee.

E. As the Debtor's professionals have all been retained on a *pro bono* basis, fees are limited to estimates of reimbursable expenses.

All physical assets were sold pursuant to 363 sales. Because the case will be completed through liquidation of the cash balances remaining at confirmation, and no other assets remain in the Debtor's estate, no scenarios for asset valuation are necessary.

**Exhibit B**

**Redline of Disclosure Statement**

**Exhibit B**

**Redline of Disclosure Statement**



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

**In re:**

**TBAC WIND DOWN, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 16-13297 (SHL)**

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**DISCLOSURE STATEMENT FOR THE  
CHAPTER 11 PLAN OF LIQUIDATION OF TBAC WIND DOWN, LTD.**

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**THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE.**

**DEBEVOISE & PLIMPTON LLP**

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Christopher Updike  
919 Third Avenue  
New York, New York 10022  
Telephone: (212) 909-6000  
Facsimile: (212) 909-6836

Counsel to the Debtor  
and Debtor in Possession

**DISCLAIMER**

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE CIRCUS' PLAN OF LIQUIDATION AND CERTAIN OTHER DOCUMENTS AND FINANCIAL INFORMATION. THE INFORMATION INCLUDED IN THIS DISCLOSURE STATEMENT IS PROVIDED FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN AND SHOULD NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN TO DETERMINE WHETHER AND HOW TO VOTE ON THE PLAN. THE CIRCUS BELIEVES THAT THESE SUMMARIES ARE FAIR AND ACCURATE. THE SUMMARIES OF THE FINANCIAL INFORMATION AND THE DOCUMENTS THAT ARE ATTACHED TO, OR INCORPORATED BY REFERENCE IN, THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO SUCH INFORMATION AND DOCUMENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR THE OTHER DOCUMENTS INCORPORATED IN THE DISCLOSURE STATEMENT BY REFERENCE, THE PLAN OR THE OTHER DOCUMENTS SHALL GOVERN FOR ALL PURPOSES. EACH HOLDER OF A CLAIM ENTITLED TO VOTE ON THE PLAN SHOULD CAREFULLY REVIEW THIS DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE CASTING A BALLOT.

THE FINANCIAL INFORMATION CONTAINED IN OR INCORPORATED BY REFERENCE INTO THE DISCLOSURE STATEMENT HAS NOT BEEN AUDITED, UNLESS SPECIFICALLY INDICATED OTHERWISE. THE STATEMENTS AND FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAVE BEEN MADE AS OF THE DATE OF THE DISCLOSURE STATEMENT UNLESS OTHERWISE SPECIFIED. HOLDERS OF CLAIMS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT ASSUME AT THE TIME OF SUCH REVIEW THAT THERE HAVE BEEN NO CHANGES IN THE FACTS SET FORTH IN THE DISCLOSURE STATEMENT SINCE THE DATE OF THIS DISCLOSURE STATEMENT. THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. ANY ENTITIES DESIRING ANY SUCH ADVICE SHOULD CONSULT WITH THEIR OWN ADVISORS.

NO REPRESENTATIONS CONCERNING THE CIRCUS HAVE BEEN AUTHORIZED BY THE CIRCUS OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE DOCUMENTS ATTACHED TO THIS DISCLOSURE STATEMENT. ANY INFORMATION, REPRESENTATIONS, OR INDUCEMENTS MADE TO OBTAIN AN ACCEPTANCE OF THE PLAN WHICH ARE OTHER THAN AS SET FORTH, OR INCONSISTENT WITH, THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, THE DOCUMENTS ATTACHED TO THE DISCLOSURE STATEMENT, AND THE PLAN SHOULD NOT BE RELIED UPON BY ANY HOLDER OF A CLAIM.

WITH RESPECT TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS, AND OTHER PENDING, THREATENED, OR POTENTIAL LITIGATION OR OTHER ACTIONS, THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER, BUT RATHER AS A STATEMENT MADE IN THE CONTEXT OF SETTLEMENT NEGOTIATIONS PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE.

PLEASE REFER TO ARTICLE VI AND ARTICLE VII OF THIS DISCLOSURE STATEMENT FOR A DISCUSSION OF CERTAIN RISK FACTORS AND U.S. FEDERAL TAX CONSEQUENCES OF THE PLAN, RESPECTIVELY, THAT SHOULD BE CONSIDERED WHEN VOTING ON THE PLAN.

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**EXHIBITS**

EXHIBIT A Plan

EXHIBIT B Disclosure Statement Order

EXHIBIT C Liquidation Analysis

THE CIRCUS HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH FULLY SET FORTH HEREIN.
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I.

EXECUTIVE SUMMARY

A. Introduction

TBAC Wind Down, Ltd., formerly known as The Big Apple Circus, Ltd. (the “**Circus**”), submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code to holders of Claims against the Circus in connection with the solicitation of acceptances with respect to the Circus’ proposed chapter 11 plan (the “**Plan**”). A copy of the Plan is attached hereto as Exhibit A and incorporated herein by reference. This Disclosure Statement describes certain aspects of the Plan, including the treatment of Claims, the Circus’ operations, financial projections, and other related matters. Capitalized terms used but not otherwise defined in this Disclosure Statement have the meaning given to those terms in the Plan.

Before soliciting acceptances of a proposed chapter 11 plan, section 1125 of the Bankruptcy Code requires a debtor to prepare, and obtain approval of, a disclosure statement that contains information of a kind, and in sufficient detail, to permit a hypothetical claimholder to make an informed judgment regarding acceptance of the plan. On [●], the Court entered an order approving (i) this Disclosure Statement, (ii) the solicitation and notice procedures with respect to confirmation of the Plan, (iii) the form of ballots and notices in connection therewith, and (iv) the scheduling of certain date with respect thereto (including the exhibits thereto, the “**Disclosure Statement Order**”, Docket No. [●]). The Disclosure Statement Order is attached hereto as Exhibit B. **The Court’s approval of this Disclosure Statement does not constitute a guarantee of the accuracy or completeness of the information contained herein or an endorsement by the Court of the merits of the Plan.**

**FOR THE REASONS SET FORTH HEREIN, THE CIRCUS AND THE CREDITORS’ COMMITTEE BELIEVE THAT THE PLAN PROVIDES THE BEST RECOVERIES FOR HOLDERS OF CLAIMS AGAINST THE CIRCUS AND A LARGER RECOVERY FOR SUCH HOLDERS THAN THEY WOULD OTHERWISE RECEIVE OR RETAIN IN A LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE. ACCORDINGLY, THE CIRCUS AND CREDITORS’ COMMITTEE STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.**

B. Distributions Under the Plan

The Plan provides for distributions to creditors of the Circus, largely from the proceeds of the sale of the Circus’ real property located at 39 Edmunds Lane, Walden, New York (the “**Walden Property**”), which was sold for \$2.5 million, and the sale of the Circus’ circus equipment and other related personal and intellectual property associated with the Circus’ performance unit (the “**Circus Assets**”) which, after an extensive marketing process and auction, were sold for \$1.3 million.<sup>1</sup>

The Plan provides for payment in full of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Secured Claims, Allowed Priority Non-Tax Claims, and Allowed Deposit Claims. Allowed General Unsecured Claims shall receive a pro rata share of the Available Assets (less any valid Plan Expenses), which include any assets of the Estate remaining after (a) payment of all Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, Secured Claims, and Deposit Claims to the extent Allowed as of the Effective Date, (b) establishment of the Disputed Claims Reserve, and (c) any amounts transferred on account of the Foundations Settlement.

<sup>1</sup> Further details regarding the sales of both the Walden Property and the Circus Assets can be found in Section (II)(C)(iv) of this Disclosure Statement.

The treatment of Claims under the Plan is summarized as follows:

- Unless the applicable creditor agrees to less favorable treatment, holders of **Allowed Administrative Claims, Allowed Priority Tax Claims, Priority Allowed Non-Tax Claims, and Allowed Deposit Claims**, will receive cash in an amount equal to the Allowed but unpaid portion of such Allowed Claim.
- Unless the applicable creditor agrees to less favorable treatment, holders of **Allowed Secured Claims** will receive one of the following treatments, in full satisfaction, settlement, release, and discharge, of such Allowed Secured Claim: (1) payment in cash in an amount equal to the Allowed but unpaid portion of such Allowed Secured Claim, including any interest and any reasonable fees, costs, or charges required under section 506(b) of the Bankruptcy Code; (2) delivery of collateral securing such Allowed Secured Claim or proceeds thereof to the extent of the Allowed but unpaid amount of such Secured Claim; or (3) other treatment rendering such Secured Claim not Impaired.
- Unless the applicable creditor agrees to less favorable treatment, holders of **Allowed General Unsecured Claims** will receive a pro rata share of the Available Assets (less any valid Plan Expenses). The Circus estimates that Available Assets will total approximately ~~\$1.81~~1.69 million.

Estimated distributions to creditors are summarized in the following table:

Types of Claims	Estimate of	Estimated Amount of	Percentage Recovery
<b>Secured Claims</b>	\$0 - 4,628	\$0 - 4,628	100%
<b>Administrative Claims</b>	\$10,000	\$10,000	100%
<b>Priority Tax Claims</b>	\$0 – 19,304	\$0 – 19,304	100%
<b>Priority Non-Tax Claims</b>	<del>\$225 – 51,828</del> <u>17,037 – 68,640</u>	<del>\$225 – 51,828</del> <u>17,037 – 68,640</u>	100%
<b>Deposit Claims</b>	\$0	\$0	100%
<b>General Unsecured Claims</b>	<del>\$1,710,377 –</del> <del>\$1,861,447</del> <u>1,573,087 –</u>	<del>\$9,433,448 –</del> <del>10,420,608</del> <u>9,416,636 –</u>	<del>16</del> <u>15</u> - <del>20</del> <u>18</u> %

### C. Voting on the Plan

Under the provisions of the Bankruptcy Code, not all holders of claims against a debtor are entitled to vote on a chapter 11 plan. Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified for purposes of voting and are not entitled to vote. Also, under the Plan, holders of Priority Non-Tax Claims, Deposit Claims, and Secured Claims are not Impaired, and, therefore, are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Circus is not soliciting votes from these creditors.

General Unsecured Claims are Impaired under the Plan and holders of such Claims may receive a distribution under the Plan. Therefore, such creditors are entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code. The Circus is soliciting votes from these creditors, to the

<sup>2</sup> These estimates are subject to revision in material ways and should not be considered a representation that actual outcomes will necessarily fall within this range.

<sup>3</sup> Amounts shown are estimates only and remain subject to the claims reconciliation process and Claims filed under future bar dates.



extent that such creditors' General Unsecured Claims have not been disallowed or are not subject to a pending objection.

**The deadline to vote on the Plan is 5:00 p.m. (prevailing Eastern Time) on December 1, 2017 (the "Voting Deadline").** In order to be counted as votes to accept or reject the Plan, all ballots must be properly executed, completed and delivered (either by using the return envelope provided, by first class mail, overnight delivery, or personal delivery, or by electronic mail) in accordance with Article IV of this Disclosure Statement so that they are **actually received** on or before the Voting Deadline by the Claims and Noticing Agent at the following addresses:

**If by U.S. Postal Service mail:**

Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
P.O. Box 199043  
Blythebourne Station, Brooklyn, NY 11219

**If by overnight delivery or personal delivery by hand:**

Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
6201 15th Avenue  
Brooklyn, NY 11219

**If by electronic mail:**

tbacballots@donlinrecano.com

Any ballot received after the Voting Deadline will not be counted unless otherwise determined by the Circus in its sole absolute discretion.

If you have any questions on the procedure for voting on the Plan, please call the Claims and Noticing Agent at the following telephone number: (212) 771-1128.

**D. Confirmation of the Plan**

A hearing to consider confirmation of the Plan is scheduled to be held before the Honorable Sean H. Lane at **11:00 a.m. (prevailing Eastern Time) on December 12, 2017** at the Court, located at One Bowling Green, New York, New York (the "**Confirmation Hearing**"). The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made before or at the Confirmation Hearing or any adjournment thereof. Effectiveness of the Plan is subject to certain material conditions precedent contained in Article IX of the Plan and described herein. There is no assurance that the Plan will be confirmed, or if confirmed, that the conditions required to be satisfied will be satisfied or otherwise waived.

**The deadline to object to confirmation of the Plan is December 1, 2017, at 5:00 p.m. (prevailing Eastern Time) (the "Plan Objection Deadline").** All objections to the Plan must be filed with the Court and served on the Circus and certain other parties in interest in accordance with the Disclosure Statement Order so that they are **actually received** on or before the Plan Objection Deadline.

**E. Appointment of the Plan Administrator**

Recognizing that the services of an experienced person are necessary and of critical importance to efficiently and expeditiously administer and wind down the Estate, the Plan provides for the appointment of a Plan Administrator to act for the Estate as provided in the Plan. The Plan Administrator may retain such additional persons as he or she may determine are of benefit to the Estate in the capacity for which such persons are retained. The initial Plan Administrator shall be selected by the Circus, in consultation with the Creditors' Committee, and disclosed in the Plan Supplement.

## II.

### RELEVANT BACKGROUND

#### A. History of the Circus

The Circus is a Type B not-for-profit corporation organized under section 201 of the New York Not-for-Profit Corporation Law that is exempt from federal taxes under section 501(c)(3) of the U.S. Internal Revenue Code of 1986 (as amended, the “**TRC**”). Founded in 1977 by Paul Binder and Michael Christensen to establish a performing circus and school for the instruction and artistic development of circus arts, the Circus was a venerated New York cultural institution renowned for its critically-acclaimed performances and dedicated community programs. During its illustrious history, the Circus performed 38 unique seasons of an annual ring show under the Big Top at venues across the country, featuring circus performers from around the globe and bringing the highest standards of artistic excellence to its multigenerational, multiethnic, and multilingual audience, both on tour and from the Circus’ former home base in New York City’s Lincoln Center.

#### B. Events Leading to the Chapter 11 Case

For decades, the Circus pursued its mission to provide circus performances and programs of the highest quality for the communities it serves. However, like other not-for-profit organizations, the Circus relied on a combination of earned revenue and support from individual donors, government agencies, and private foundations to fund its performances and community programs. Since the financial crisis of 2008, the Circus faced challenging headwinds.

Most significantly the Circus’ earned revenue steadily declined in the years prior to commencement of its Chapter 11 Case, primarily due to a precipitous drop-off in demand for private show performances. Specifically, prior to 2008, over \$2 million of the Circus’ annual income was generated from approximately 20 private performances a year that were typically purchased by companies and financial institutions during the holiday season. In the time since, the number of private performances fell below 10 per year, and annual revenue from private performances correspondingly decreased by nearly half. And while attendance remained essentially flat at Lincoln Center shows (with a downturn in fiscal year 2016), attendance per performance decreased at most venues outside of New York City. Declines in net ticket and concessions revenue were exacerbated by Hurricane Sandy (2012), the Boston Marathon bombing (2013), and a massive and terribly-timed 2014 ice storm in Atlanta, each of which significantly impacted the cities where the Circus was performing at those times. For fiscal year 2016, the Circus generated earned income from performances of only \$10.6 million, down from a peak of over \$18 million during the 2007-08 season.

Accordingly, for fiscal year 2016, the Circus had combined income from earned revenue and contributions of \$17.2 million, while operating expenses during the same period exceeded \$18.1 million. Over time, the Circus incurred various borrowings from lenders, certain insiders, and its endowments totaling approximately \$4.2 million in attempts to fill the growing income gap; nonetheless, the Circus accumulated accounts payable and accrued expenses totaling over \$3.2 million as of the Petition Date.

To address its liquidity issues, the Circus reduced the number of venues for its annual ring show performances from eight in 2013 to four in 2016, focusing on those with the most net income potential, and made great strides in reducing costs per show without sacrificing performance quality. Also, the Circus actively sought contributions to support the organization. Most recently, in June 2016, the Circus launched an emergency fundraising campaign called “Save the Circus” with significant attention in *The New York Times* and other media. The “Save the Circus” campaign utilized online crowd-funding and traditional solicitations for donations in attempts to raise \$2 million by the end of July 2016 – the deadline by which the Circus’ staff needed to design and market the next circus show scheduled to open in October 2016. Proceeds of the campaign would have enabled the Circus to continue to pay down its outstanding debt obligations and start work on a new production. However, despite receiving donations from over 1,400 different donors as well as the continued financial support of the organization’s directors, the Circus was ultimately unable to raise sufficient funds. In July 2016, the Circus

made the very difficult decision to cancel the 2016-17 performance season, requiring the unfortunate, but necessary, release of the Circus' artists and production crew.

Following cancellation of the 2016-17 season, the Circus began considering alternatives that would allow it to restructure its operations around various community programs it operated in hospitals, nursing homes, and schools in New York City and other cities across United States (collectively, the "**Community Programs**") on a standalone basis in furtherance of its mission. Unfortunately, the Circus subsequently learned that a separate, unaffiliated not-for-profit corporation was formed in June 2016 with the intent to compete with the Circus' long-standing Clown Care program. After creation of this new organization, several of the hospitals that sponsored and hosted Clown Care elected to terminate their relationship with the Circus. As a result, the scope and sustainability of Clown Care – the centerpiece of the Circus' Community Programs – was seriously undermined, which, in turn, forced the Circus to reconsider its strategic planning.

Based on the foregoing, and in consultation with the its directors, officers, and advisors, the Circus determined that the best course of action to maximize the Circus' value for creditors and honor its mission was to commence the Chapter 11 Case to effectuate an orderly wind down of the Circus' affairs, sell substantially all of its assets, satisfy creditor claims, and transition its Community Programs to other capable not-for-profit organizations. On November 20, 2016 (the "**Petition Date**"), the Circus commenced the Chapter 11 Case.

### **C. Events During the Chapter 11 Case**

#### **(i) First Day Relief**

In connection with commencement of the Chapter 11 Case, the Circus sought and obtained interim and final authorization to, among other things, obtain critical debtor-in-possession financing from certain of the Circus' directors, continue the Circus' cash management system, and satisfy certain prepetition employee, tax, and insurance claims necessary to administer this case and preserve the Circus as a going concern [Docket Nos. 15, 16, 17, 20, 47, 48, 49, 50, 51, and 74].

#### **(ii) Retention of Professionals**

To accomplish the work necessary to administer this case, the Circus retained Debevoise & Plimpton LLP, as bankruptcy counsel, Donlin, Recano & Company, Inc., as claims and noticing agent, and Goldin Associates, LLC, as financial advisor, all of whom agreed to provide their services on a pro bono basis in light of the Circus' not-for-profit status. On February 15, 2017, the Court entered an order [Docket No. 133] authorizing the Creditors' Committee to retain Pachulski Stang Ziehl & Jones LLP, who also agreed to serve as legal counsel on a pro bono basis. On May 16, 2017, the Court entered an order authorizing the Circus to retain PKF O'Connor Davies, LLP, as accountant, to provide certain tax advisory and audit services.

#### **(iii) Schedules and Claims Bar Date**

Following the Petition Date, the Circus prepared and filed its schedules of assets and liabilities and statement of financial affairs (collectively, the "**Schedules**", Docket Nos. 101-102), which were subsequently amended [Docket Nos. 124-125, 158-159]. Furthermore, on February 1, 2017, the Circus filed a motion seeking entry of an order establishing the bar dates for filing proofs of claim against the Circus that arose prior to the Petition Date, and approving the form and manner of notices of such bar dates (the "**Bar Date Motion**", Docket No. 103). On February 17, 2017, the Court entered an order [Docket No. 144] granting the Bar Date Motion and establishing March 30, 2017 as the General Bar Date and May 19, 2017 as the Governmental Bar Date (each as defined in the Bar Date Motion). Over 110 proofs of claim (secured and unsecured), asserting claims totaling more than \$8.5 million against the Estate, were submitted. Additionally, the Circus has scheduled claims for creditors who did not independently file proofs of claim. The Circus believes that a number of inaccurate claims were filed and that the actual amount of allowed claims will be lower after claims are reconciled and objections considered.

*(iv) Sale of Substantially All of the Circus' Assets*

During the Chapter 11 Case, the Circus has sold substantially all of its assets in two material sales: the sale of the Walden Property and the separate sale of its big-top performance business as a going concern (i.e., the Circus Assets).

Shortly after the Petition Date, the Circus filed a motion [Docket No. 32] seeking approval to sell the Walden Property to Polich Tallix Inc. ("**Polich**") for \$2.5 million, following significant prepetition marketing efforts. Specifically, in April 2016, the Circus' realtor conducted a review of comparable transactions involving properties similar to the Walden Property in the vicinity of the Village of Walden. On behalf of the Circus, the realtor listed the Walden Property in May 2016 for \$2.75 million, and received two bids to purchase the property for \$2.5 million. Ultimately, the Circus selected Weiner Holdings LLC ("**Weiner Holdings**") as the successful bidder and entered into a purchase agreement with Weiner memorializing the transaction. Unfortunately, as discussed below, the sale to Weiner Holdings failed to close and the Circus resolicited bids for the purchase of the Walden Property.

On or about October 21, 2016, the Circus then received an expression of interest in the Walden Property from Polich. The Circus and Polich conducted good faith, arm's length negotiations and agreed upon a purchase agreement that contained terms and conditions substantially similar to those in the purchase agreement entered into between the Circus and Weiner. On January 12, 2017, the Court entered an order [Docket No. 75] approving the sale of the Walden Property to Polich.

On December 23, 2016, the Circus filed a motion seeking, among other things, entry of an order (a) approving procedures (the "**Bidding Procedures**") for submitting bids and conducting an auction for the sale of the Circus Assets, and (b) authorizing the Circus to employ and retain Stampler Auctions ("**Stampler**") as auctioneer with respect to the sale of the Circus Assets [Docket No. 59], which the Court granted on January 12, 2017 [Docket No. 76].

The Bidding Procedures contemplated an expeditious and targeted marketing and sale process, which was critical to maximizing the value of the Circus Assets. Prior to and following approval of the Bidding Procedures, the Circus worked closely with Stampler to market and identify qualified bidders for the Circus Assets. Specifically, the Circus, through Stampler, simultaneously mined its extensive industry contacts while building on the considerable media attention already received from the "Save the Circus" campaign and commencement of the Chapter 11 Case by also marketing the sale of the Circus Assets via specific online trade publications, telemarketing, e-marketing, social networking, a dedicated webpage, and other advance auction promotion. The Circus and Stampler also assembled due diligence packages, including assets lists, bidding terms, and other pertinent information, that were distributed to prospective bidders upon request. Based on these efforts, numerous parties were contacted and expressed interest in the Circus Assets, and eight bidders were ultimately qualified by the Circus to participate in the auction for the Circus Assets.

On February 7, 2017, the Circus and Stampler conducted a live auction of the Circus Assets in accordance with the Bidding Procedures, during which the value of bids for substantially all of the Circus Assets nearly tripled. The highest bid was submitted by Compass Partners, L.L.C. ("**Compass**") in the amount of \$1.3 million. [Docket No. 157]. On February 8, 2017, the Executive Committee of the Circus' board of directors convened a meeting to consider the bids submitted for the Circus Assets, and selected Compass as the successful bidder for the Circus Assets [Docket No. 154].

On February 15, 2017, the Court entered an order (as amended on February 17, 2017) [Docket Nos. 127, 143] authorizing and approving the sale of the Circus Assets to Compass, which closed on February 23, 2017 [Docket No. 154]. On February 24, 2017, the sale of the Walden Property to Polich closed. Id.

*(v) Transfer of Community Programs*

The Circus historically served thousands of people each year, creating direct, shared connections through its Community Programs in hospitals, nursing homes, and schools in New York City and other cities across the United States. Most notably, the Circus created "Clown Care," its signature community outreach program, which was the world's first professional hospital clowning program that brought laughter and joy to aid the healing

process of patients in leading pediatric hospitals. On January 20, 2017, the Circus filed a motion seeking the Court's approval to transition these programs to other not-for-profit organizations capable of continuing the Community Programs, which was approved on February 24, 2017 [Docket No. 150].

**(vi) *Weiner Holdings Adversary Proceeding***

As referenced above, on September 14, 2016, the Circus and Weiner Holdings entered into a Real Estate Purchase and Sale Agreement ("**Purchase Agreement**") pursuant to which Weiner Holdings agreed to purchase, and the Circus agreed to sell, the Walden Property for an all-cash price of \$2,500,000. In connection with the proposed sale, Weiner Holdings deposited \$250,000.00 (the "**Deposit**") into escrow to be credited to the purchase price at closing. Subsequently, Weiner Holdings sought termination of the Purchase Agreement, refused to close the transaction, and demanded return of the Deposit. The Circus disputed that Weiner Holdings had a valid reason to seek termination of the Purchase Agreement and objected to the release of the Deposit. On July 3, 2017, the Circus filed a complaint commencing an adversary proceeding against Weiner Holdings in the Court (Adversary Case No. 17-01090) seeking damages for anticipatory breach, turnover, and other relief arising out of Weiner Holdings' repudiation of the Purchase Agreement. Following a mediation and extensive good faith negotiations, the Circus and Weiner Holdings resolved this matter pursuant to a settlement whereby \$90,000 of the Deposit will be paid to the Circus and \$160,000 of the Deposit will be paid to Weiner Holdings in full and final satisfaction of all related claims.

**III.**

**SUMMARY OF THE PLAN**

**A. *Administrative Claims and Priority Tax Claims***

In accordance with section 1123(a)(1) of the Bankruptcy Code, the Plan does not classify Administrative Claims and Priority Tax Claims. These Classes are excluded from the Classes of Claims set forth in Article III of the Plan and have the treatment set forth below.

The Circus estimates that the amount of Administrative Claims and Priority Tax Claims will total approximately \$10,000 – \$30,000 as of the Effective Date. As described below, the projected recovery under the Plan for holders of Allowed Administrative Claims and Priority Tax Claims is 100%.

**(i) *Administrative Claims***

**a. *Treatment***

The Plan defines an Administrative Claim as any Claim for costs and expenses of administration of the Chapter 11 Case of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (1) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Circus; and (2) all fees and charges assessed against the Estate pursuant to chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911-1930.

The Plan provides that, except to the extent that a holder of an Allowed Administrative Claim agrees to less favorable treatment, or as otherwise provided in the Plan, each holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Administrative Claim, cash in an amount equal to the Allowed but unpaid portion of such Administrative Claim, either (i) on the Effective Date; (ii) if such Administrative Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Administrative Claim becomes Allowed; (iii) on the date or dates agreed to by the Circus or the Plan Administrator, as applicable, and the holder of the Allowed Administrative Claim; or (iv) on the date such Administrative Claim becomes due and payable in the ordinary course of the Circus' business pursuant to the terms and conditions of the transaction or agreement giving rise to such Administrative Claim, on which date such Administrative Claim shall be deemed Allowed (to the extent not otherwise disputed by the Circus, the Plan

Administrator, or any other party in interest) without any further action by the holder of such Administrative Claim or any further notice to or action, order, or approval of the Court

**b. Administrative Claim Bar Date**

**Importantly, the Plan provides for the following deadlines with respect to Administrative Claims:**

- Except as otherwise provided in Section 2.1 of the Plan, requests for payment of Administrative Claims, including final applications for payment of accrued compensation for services rendered by Professionals before the Effective Date must be filed and served on the Circus or the Plan Administrator, as applicable, and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other order by the Court, pursuant to the procedures specified in the Confirmation Order and the notice of entry of the Confirmation Order no later than twenty-one (21) calendar days after the Effective Date; and
- Objections to such requests, if any, must be filed and served on the Circus or Plan Administrator, as applicable, and the requesting party no later than the Claims Objection Deadline, which will be the first business day that is sixty (60) calendar days after the Effective Date, or such later date the Court may establish upon a motion by the Circus or the Plan Administrator, as applicable, which motion may be approved without notice to any party or a hearing.

**Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by such date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Circus, its Estate, the Reorganized Circus, or any property of any of the foregoing, and such Administrative Claims shall be automatically disallowed and deemed forever compromised, settled, and released as of the Effective Date.**

Notwithstanding the foregoing requirements in the Plan, no request for payment of an Administrative Claim need be filed with respect to an Administrative Claim that has been previously Allowed by Final Order, including all Administrative Claims expressly Allowed under the Plan.

**(ii) Priority Tax Claims**

The Plan defines a Priority Tax Claim as any Claim entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. The Plan provides that, except to the extent that a holder of an Allowed Priority Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority Tax Claim due and payable on or before the Effective Date shall receive, in full satisfaction, settlement, release and discharge, of such Allowed Priority Tax Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Priority Tax Claim, either (a) on the Effective Date; (b) if such Priority Tax Claim is not Allowed as of the Effective Date, on or as soon as practicable after the date such Priority Tax Claim becomes Allowed; or (c) on the date or dates agreed to by the Circus or the Plan Administrator, as applicable, and the holder of such Allowed Priority Tax Claim. To the extent that any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in cash in accordance with the terms of the any agreement between the Circus or the Plan Administrator, as applicable, and the holder of such Claim, or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business.

Any Claim or demand for a penalty relating to any Priority Tax Claim (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code) shall be disallowed, and the holder of a Priority Tax Claim shall not assess or attempt to collect such penalty from the Circus, its Estate, the Reorganized Circus, or the property of any of the foregoing.

**B. Classification and Treatment of Other Claims**

Pursuant to sections 1122 and 1123 of the Bankruptcy Code, the following table designates the Classes of Claims (other than Administrative Claims and Priority Tax Claims, which shall be treated in accordance with



Article II of the Plan) against the Circus for all purposes, including voting on, confirmation of, and distribution pursuant to, the Plan, and specifies which Classes are (a) not Impaired and conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or (b) Impaired and entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code. The classification of any Claim for purposes of the Plan (including voting) shall not be deemed consent to the allowance of such Claim or preclude any objection thereto for any purpose (including voting).

Class	Claims	Plan Treatment	Voting Status
1	Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
2	Priority Non-Tax Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
3	Deposit Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
4	General Unsecured Claims	Impaired	Entitled to Vote

To the extent a Class contains Allowed Claims with respect to the Circus, the classification and treatment of Allowed Claims is specified below.

(i) ***Treatment of Class 1 – Secured Claims***

- a. *Classification:* Class 1 consists of all Secured Claims.
- b. *Treatment:* Except to the extent that a holder of an Allowed Secured Claim agrees to less favorable treatment, each holder of an Allowed Secured Claim shall receive one of the following treatments (at the sole option of the Circus or the Plan Administrator, as applicable), in full satisfaction, settlement, release, and discharge, of such Allowed Secured Claim:
  - (1) payment in cash in an amount equal to the Allowed but unpaid portion of such Allowed Secured Claim, including any interest and any reasonable fees, costs, or charges required under section 506(b) of the Bankruptcy Code;
  - (2) delivery of collateral securing such Allowed Secured Claim or proceeds thereof to the extent of the Allowed but unpaid amount of such Secured Claim; or
  - (3) other treatment rendering such Secured Claim not Impaired.
- c. *Impairment and Voting:* Class 1 is not Impaired. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

(ii) ***Treatment of Class 2 Claims – Priority Non-Tax Claims***

- a. *Classification:* Class 2 consists of all Priority Non-Tax Claims.
- b. *Treatment:* Except to the extent that a holder of an Allowed Priority Non-Tax Claim agrees to less favorable treatment, each holder of an Allowed Priority

Non-Tax Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Priority Non-Tax Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Priority Non-Tax Claim.

- c. *Impairment and Voting:* Class 2 is not Impaired. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

(iii) ***Treatment of Class 3 – Deposit Claims***

- a. *Classification:* Class 3 consists of all Deposit Claims.
- b. *Treatment:* Except to the extent that a holder of an Allowed Deposit Claim agrees to less favorable treatment, each holder of an Allowed Deposit Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed Deposit Claim, cash in an amount equal to the Allowed but unpaid portion of such Allowed Deposit Claim.
- c. *Impairment and Voting:* Class 3 is not Impaired. Holders of Claims in Class 3 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, not entitled to vote to accept or reject the Plan.

(iv) ***Treatment of Class 4 – General Unsecured Claims***

- a. *Classification:* Class 4 consists of all General Unsecured Claims.
- b. *Treatment:* Except to the extent that a holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each holder of an Allowed General Unsecured Claim shall receive, in full satisfaction, settlement, release, and discharge, of such Allowed General Unsecured Claim, a pro rata share of the Available Assets or proceeds thereof (less any valid Plan Expenses), pursuant to the distribution mechanics set forth in the Plan, including Article VI.
- c. *Impairment and Voting:* Class 4 is Impaired by the Plan. Each holder of a Claim in Class 4 is entitled to vote to accept or reject the Plan.

**C. Means for Implementation of the Plan**

(i) ***Continued Corporate Existence and Dissolution of the Reorganized Circus***

The Plan provides that the Circus shall continue to exist after the Effective Date (during such time, the “**Reorganized Circus**”) and shall retain its not-for-profit status to the same extent as such status existed immediately prior to the Petition Date. On the Effective Date, all current directors of the Circus shall be deemed discharged of and from all further authority, duties, responsibilities and obligations related to, arising from, or in connection with their services as directors, and the Post-Effective Date Board of Directors shall be formed. Members of the Post-Effective Board of Directors shall receive no compensation for their services. The identity and affiliations of each proposed member of the Post-Effective Date Board of Directors and each of the initial officers of the Reorganized Circus (and, to the extent such person is an insider, the nature of any compensation for such person) is set forth on Exhibit A to the Plan. The certificate of incorporation and bylaws of the Circus



shall be amended as may be required to be consistent with the provisions of the Plan and the Bankruptcy Code and in form and substance substantially similar to Exhibit B and Exhibit C to the Plan, respectively.

The Plan further provides that, as soon as practicable after the liquidation and the winding down of the Estate, and the completion of distributions under the Plan, the Plan Administrator shall file a certificate of dissolution of the Reorganized Circus with the Secretary of State of the State of New York. For the avoidance of doubt, the Plan shall constitute a plan of dissolution under the New York Not-for-Profit Corporation Law and, as of the Effective Date, the Plan shall be deemed authorized and approved by the Post-Effective Date Board of Directors.

**(ii) *Liquidation of the Estate***

The Plan provides that, on and after the Effective Date, the Estate shall be liquidated in accordance with the Plan and applicable law, and the operations of the Reorganized Circus shall become the responsibility of the Plan Administrator, who shall thereafter have responsibility for the management, control and operation thereof, and who may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules.

**(iii) *Plan Administrator***

**a. *Appointment and Duties***

As part of the Plan, the Circus seeks to appoint the Plan Administrator. The initial Plan Administrator shall be selected by the Circus, in consultation with the Creditors' Committee, and disclosed in the Plan Supplement, and shall be deemed appointed on the Effective Date, without further motion, application, notice, hearing, or other order of the Court. The Plan Administrator shall act as liquidating and disbursing agent for and on behalf of the Estate from and after the Effective Date. Notwithstanding anything to the contrary in the Plan, the Plan Administrator shall be authorized, as agent for and on behalf of the Estate, to take any and all actions necessary or appropriate to implement the Plan or wind down the Estate in accordance with applicable law, as detailed in Section 4.3(b) of the Plan, without the need to obtain any approval from the Post-Effective Date Board of Directors; provided, however, that the Post-Effective Date Board of Directors retains the right to disapprove of any action or inaction by Plan Administrator that is deemed by the Post-Effective Board of Directors to be inconsistent with its fiduciary duties under applicable law.

**b. *Compensation***

The Plan provides that the Plan Administrator shall be compensated on terms agreed to by the Circus, in consultation with the Creditors' Committee, and reimbursed for his or her out-of-pocket expenses incidental to the performance of his or her duties under the Plan. The Plan Administrator shall file with the Court periodic notices of the amount of fees and expenses sought to be paid. Parties in interest shall have ten (10) business days to object to any such notice. In the event that an objection is received by the Plan Administrator and cannot be promptly resolved by the Plan Administrator and the objector, the dispute shall be submitted by the objector to the Court for adjudication.

**(iv) *Transfer of the Stern and Kern Foundations Endowment***

Pursuant to section 1129(a)(16) of the Bankruptcy Code and in accordance with section 553(a) of New York Not-For-Profit Corporation Law and the intent of the donors as expressed in the related gift instruments, the Plan provides that the Plan Administrator shall transfer, or cause to be transferred, the Stern and Kern Foundations Endowment to The Children's Aid Society, 105 East 22nd Street, New York, NY 10010, on or as soon as practicable after the Effective Date.

*(v) Foundations Settlement*

Pursuant to Bankruptcy Rule 9019 and section 1123(b)(3) of the Bankruptcy Code, the Plan shall implement the Foundations Settlement, as described below, and shall constitute a motion for approval of, and the Confirmation Order shall constitute approval of, the implementation of the Foundations Settlement.

Pursuant to the Foundations Settlement, as detailed in Section 4.6 of the Plan, on or as soon as practicable after the Effective Date, in full and final satisfaction, settlement, release, and discharge, of all Claims held by the Foundations, the Foundations shall: (a) receive a single Allowed General Unsecured Claim in the aggregate amount of \$151,000 to be allocated amongst themselves as directed by the Foundations; (b) receive funds held in the Circus' account with number ending in 2154 at Bank of America, N.A. totaling \$142,582.73, which must be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those provided by the Circus prior to the Petition Date; (c) receive the funds received by the Circus on account of the DCA Grant totaling \$134,360, which must be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those provided by the Circus prior to the Petition Date; and (d) grant mutual related releases.

*(vi) Destruction and Abandonment of Books and Records*

On or after the Effective Date, pursuant to section 554(a) of the Bankruptcy Code, the Plan Administrator is authorized, from time to time, without further application to the Court or notice to any party, to abandon or otherwise destroy documents and records (whether in electronic or paper format) that he or she determines, in his or her reasonable business judgment, are no longer necessary to the administration of either the Chapter 11 Case or the Plan, notwithstanding any federal, state, or local law or requirement requiring the retention of the applicable documents or records.

*(vii) Preservation of All Causes of Action*

Except as otherwise provided in the Plan or in any contract, instrument, release or agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, all claims, causes or any Cause of Action that the Circus or the Estate may have against any person or entity will be preserved, including any Cause of Action the Circus, the Estate or other appropriate party in interest may assert under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code; provided, however, that the Plan Administrator may only assert Preference Actions as a defense or counterclaim against a creditor party and not as affirmative relief to recover prepetition payments made by the Circus. The Plan Administrator, in his or her sole discretion, will determine whether to bring, settle, release, compromise or enforce such claims, causes or any Cause of Action, and will not be required to seek further approval of the Court for such actions.

**No entity may rely on the absence of a specific reference in the Plan or the Disclosure Statement to any Cause of Action against them as any indication that the Circus, the Reorganized Circus, or the Plan Administrator will not pursue any and all available Causes of Action against them. The Circus, the Reorganized Circus, and the Plan Administrator expressly reserve all rights to prosecute any and all Causes of Action against any entity, except as otherwise provided in the Plan.**

*(viii) Dissolution of the Creditors' Committee*

The Plan provides that, from and after the Effective Date, the Creditors' Committee shall have no further powers or duties and shall be dissolved for all purposes, and the members of the Creditors' Committee shall be released and discharged from all rights and duties from or related to the Chapter 11 Case.

*(ix) Limitation on Liability; Indemnification*

The Plan provides that no recourse shall ever be had, directly or indirectly, against the Plan Administrator, the Reorganized Circus, the Post-Effective Date Board of Directors, or any of the forgoing's officers, directors, agents, representatives, designees, employees, attorneys, advisors, or professionals, by legal or

equitable proceedings or by virtue of any statute or otherwise, or any deed of trust, mortgage, pledge, or note, or upon any promise, contract, instrument undertaking, obligation, covenant, or agreement whatsoever executed by such parties pursuant to the Plan or for any purpose authorized by the Plan, nor shall they be liable for any act or omission taken or omitted to be taken in their respective capacities in the exercise of reasonable judgment and reasonably believed to be within the discretion or power conferred by the Plan, other than acts or omissions resulting from willful misconduct, gross negligence, or fraud by such person, and the fact that such act or omission was done in accordance with advice or opinions rendered by attorneys, accountants, financial advisors and agents retained by such persons shall be conclusive evidence of such reasonable judgment.

The Plan Administrator, the Reorganized Circus, the Post-Effective Date Board of Directors, and any of the foregoing's officers, directors, agents, representatives, designees, employees, attorneys, advisors, or professionals shall be entitled to indemnification and reimbursement for fees and expenses incurred in defending any and all actions or inactions taken in their respective capacities, except for any actions or inactions involving willful misconduct, gross negligence, or fraud. Any indemnification or reimbursement claim of such parties shall be satisfied from the Available Assets, and the Plan Administrator may segregate Available Assets in an amount estimated by the Plan Administrator, in his or her sole discretion, to be necessary to satisfy such indemnification and reimbursement claims that may be incurred until the closing of the Chapter 11 Case, which funds shall no longer constitute Available Assets solely for purposes of determining distributions of Available Assets to holders of Allowed General Unsecured Claims. Upon the Final Distribution Date, any remaining funds segregated by the Plan Administrator for payment of such indemnification and reimbursement claims shall be released and deemed Available Assets for all purposes.

**(x) Exemption from Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any stamp tax or other similar tax or governmental assessment in the United States to the fullest extent contemplated by section 1146(a) of the Bankruptcy Code, and upon entry of the Confirmation Order, the appropriate state and local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation instruments or other documents pursuant to such transfers of property without the payment of any such tax or governmental assessment.

**D. Treatment of Executory Contracts and Unexpired Leases**

**(i) Assumption and Rejection of Executory Contracts and Unexpired Leases**

Except as otherwise provided in the Plan and subject to the provisions of Section 5.3 therein, each executory contract and unexpired lease to which the Circus is a party shall be deemed automatically rejected as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, unless such executory contract or unexpired lease (a) shall have been previously assumed or rejected by the Circus pursuant to a Final Order of the Court, (b) is the subject of a separate motion to assume or reject under section 365 of the Bankruptcy Code pending on the Effective Date, or (c) is otherwise assumed pursuant to the terms of the Plan. Entry of the Confirmation Order by the Court shall constitute approval of the rejections contemplated by the Plan pursuant to sections 365 and 1123 of the Bankruptcy Code as of the Effective Date.

**(ii) Rejection Damages Claims Bar Date**

If a Claim arises from the rejection of any executory contract or unexpired lease (including claims under section 365(d)(3) of the Bankruptcy Code) pursuant to the Plan, the Plan provides that such Claim shall be barred and not be enforceable against the Circus, the Estate, the Reorganized Circus, or the property of the foregoing entities unless a proof of claim asserting such Claim is filed with the Court and served on the Circus or the Plan Administrator, as applicable within twenty-eight (28) days after the Effective Date (or the effective date of such rejection) or such earlier date previously set by order of the Court.

**(iii) Insurance Policies; Indemnification**

The Plan provides that, to the extent that any or all of the insurance policies set forth in Exhibit D to the Plan are considered to be executory contracts, then notwithstanding anything contained in the Plan to the contrary, the Plan shall constitute a motion to assume such insurance policies. Subject to the occurrence of the Effective Date, the entry of the Confirmation Order shall constitute approval of such assumption pursuant to section 365(a) of the Bankruptcy Code and a finding by the Court that each such assumption is in the best interest of the Circus, the Estate and all parties in interest in the Chapter 11 Case. Unless otherwise determined by the Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments are required to cure any defaults of the Circus existing as of entry of the Confirmation Order with respect to each such insurance policy. To the extent that the Court determines otherwise with respect to any insurance policy, the Circus reserves the right to seek rejection of such insurance policy or other available relief.

~~The Plan further provides that, from and after the Effective Date, the Plan Administrator, on behalf of Nothing contained in the Plan shall prejudice in any manner the rights of any current or former director or officer of the Circus or the Reorganized Circus, will indemnify each applicable indemnitee under the insurance policies set forth in Exhibit D to the Plan and to assert any claim for indemnification, reimbursement, or contribution, including any such claim under the certificate of incorporation and/or bylaws of the Circus or the Reorganized Circus to the same extent of such indemnification obligation in effect prior to the Effective Date, and such indemnification obligations shall remain in full force and effect, shall not be modified, reduced, discharged, impaired, or otherwise affected in any way; provided, however, provided that, except as otherwise provided in the Plan, all rights to object to or seek subordination of such claims are preserved; provided further,~~ that the Circus and the Reorganized Circus shall have no indemnification obligations to an indemnitee for any losses, liabilities, or expenses arising out of conduct determined by Final Order to have constituted willful misconduct, gross negligence, or fraud.

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**E. Claim Distributions**

**(i) Plan Administrator as Disbursing Agent**

The Plan Administrator shall make all distributions required under the Plan. The appointment of the Plan Administrator as disbursing agent shall be approved by the Court as part of the Plan in the Confirmation Order.

**(ii) Record Date for Distributions**

As of entry of the Confirmation Order, the claims register shall be closed and the Plan Administrator shall be authorized and entitled to recognize only those record holders listed on the claims register as of the close of business on such date.

**(iii) General Unsecured Claim Distributions**

Distributions on account of Allowed General Unsecured Claims shall commence on the Initial Distribution Date and then continue on each Periodic Distribution Date. On the first Periodic Distribution Date following the date when a Disputed Claim becomes an Allowed General Unsecured Claim, the Plan Administrator shall distribute to the holder of such Allowed General Unsecured Claim the distribution(s) that such holder is entitled to under the Plan.

**(iv) No Distributions Pending Allowance**

The Plan provides that, notwithstanding any other provisions of the Plan, no distributions shall be made under the Plan on account of a Disputed Claim, unless and until such Claim becomes an Allowed Claim, and, except as otherwise agreed by the relevant parties, no partial payments or distributions shall be made with respect to a Disputed Claim until all such disputes in connection with such Disputed Claim have been resolved by

settlement or Final Order. Distributions made after the Effective Date to holders of Allowed Claims that were Disallowed Claims as of the Effective Date shall be deemed to have been made on the Effective Date, without any interest to be paid on account of such Claim unless required under the Plan or applicable bankruptcy law.

**(v) Final Distributions**

A final distribution under the Plan must be made on or before the Final Distribution Date. The Plan Administrator is not obligated to make a final distribution if he or she determines that there are insufficient Available Assets to make a cost-efficient distribution, taking into account the size of the distribution to be made and the number of recipients of such distribution, in which event such funds, in the Plan Administrator's sole discretion, will be donated to a reputable not-for-profit charitable organization engaged in activities substantially similar to those of the Circus prior to the Petition Date.

**(vi) Delivery of Distributions**

The Plan provides that distributions to holders of Allowed Claims will be made to holders of record as of the Distribution Record Date by the Plan Administrator:

- at the addresses set forth on the proofs of claim filed by holders of such claims (or at the last known addresses of such the holder of such claim if no motion requesting payment or proof of claim is filed or the Circus has been notified in writing of a change of address);
- at the addresses set forth in any written notices of address change delivered to the Plan Administrator after the date of any related proof of claim; or
- at the addresses reflected in the Schedules if no proof of claim has been filed and the Plan Administrator has not received a written notice of a change of address.

None of the Circus, the Reorganized Circus, the Post-Effective Date Board of Directors, or the Plan Administrator shall incur any liability whatsoever on account of any distributions under the Plan except for gross negligence, willful misconduct, or fraud. At the option of the Plan Administrator, monetary distributions may be made in cash, by wire transfer, or by check.

**(vii) Undeliverable Distributions and Unclaimed Property**

The Plan contemplates that, if any distribution to a holder of a Claim is returned as undeliverable, no further distributions to the holder of such Claim shall be made unless and until the Plan Administrator is notified of the holder's then current address, at which time all missed distributions shall be made to the holder without interest as soon as practicable after such distribution becomes deliverable or has been claimed; provided, however, that such undeliverable distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code and forfeited upon the expiration of three (3) months after the applicable distribution date. All unclaimed property or interests in property that are forfeited shall revert to the Circus automatically and without the need for a further order by the Court (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property laws to the contrary) and shall be deemed Available Assets, and the Claim related to such forfeited property or interest in property shall be fully discharged, released, and forever barred.

**(viii) De Minimis and Fractional Distributions**

The Plan provides that no distribution is required to be made to a holder of an Allowed Claim if the amount to be distributed under the Plan on account of such Claim is \$25 or less. Whenever any payment or distribution of cash of a fraction of a dollar pursuant to the Plan would otherwise be required, the actual payment shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars or less being rounded down. For the avoidance of doubt, any cash not distributed pursuant to Section 6.8 of the Plan shall be deemed Available Assets.

**(ix) Compliance with Tax Requirements and Allocations**

In connection with the Plan, the Circus, the Reorganized Circus, and the Plan Administrator shall comply with all tax withholding and reporting requirements imposed by any governmental unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Circus, the Reorganized Circus, and the Plan Administrator shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including retaining a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms he or she believes are reasonable and appropriate. The Circus, the Reorganized Circus, and the Plan Administrator reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, other spousal awards, liens, and encumbrances. The holders of Allowed Claims shall be required to provide the Circus, the Reorganized Circus, or the Plan Administrator, as applicable, with any information necessary to effectuate the withholding of taxes and satisfaction of reporting requirements.

For tax purposes, distributions in full or partial satisfaction of Allowed Claims shall be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims.

**(x) Time Bar to Cash Payments**

Checks issued by the Plan Administrator on behalf of the Circus in respect of any distribution of cash made on account of Allowed Claims shall be null and void if not negotiated within sixty (60) calendar days after the date of issuance thereof. Requests for reissuance of any check shall be made to the Plan Administrator by the holder of the Allowed Claim to whom such check originally was issued on or before the later of (a) the six-month anniversary of the Effective Date or (b) ninety (90) calendar days after the date of issuance if the check represents a final distribution. After that date, all remaining Claims in respect of voided checks shall be disallowed and forever barred and the Plan Administrator shall retain all related funds as unclaimed property under Section 6.7 of the Plan.

**(xi) Claims Payable by Insurance Carriers**

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Circus' or the Reorganized Circus' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Circus' or the Reorganized Circus' insurers agrees to satisfy a Claim or otherwise settle a Claim, then immediately upon such insurers' payment, the applicable portion of such Claim may be expunged without an objection to such Claim having been filed and without any further notice to, or action, order, or approval of, the Court.

**(xii) Setoff**

The Plan provides that the Circus, the Reorganized Circus, and the Plan Administrator may withhold (but not set off except as set forth below) from the distributions to be made pursuant to the Plan on account of any Allowed Claim an amount equal to any claims, interests, rights, and Causes of Action of any nature that the Circus, the Reorganized Circus, or the Plan Administrator may hold against the holder of such Allowed Claim. In the event that any such claims, interests, rights, and Causes of Action are adjudicated by Final Order or otherwise resolved, the Plan contemplates that the Circus, the Reorganized Circus, and the Plan Administrator may, pursuant to section 553 of the Bankruptcy or applicable non-bankruptcy law, set off against any Allowed Claim and the distributions to be made pursuant hereto on account of such Allowed Claim (before any distribution is made on account of such Allowed Claim) the amount of any adjudicated or resolved claims, interests, rights, and Causes of Action of any nature that the Circus, the Reorganized Circus, or the Plan Administrator may hold against the holder of such Allowed Claim, but only to the extent of such adjudicated or resolved amount.



**(xiii) Disallowed Claims**

After the applicable deadline to file a Claim, the holder of such Claim must obtain prior authorization from the Court, or the Circus or the Plan Administrator, as applicable, to file or amend such Claim. Any new or amended Claim filed after the applicable deadline to file such Claim without such prior authorization shall not appear on the Claims register and shall be deemed disallowed and expunged in full without any further action required of the ~~Debtor~~Circus, the Reorganized Circus, the Plan Administrator, or the Court.

Except for any Claim that is expressly Allowed herein, any Claims listed in the Schedules as contingent, unliquidated, or disputed as for which no proof of claim has been filed shall be deemed disallowed and expunged in full upon the Effective Date without further action required of the Circus, the Reorganized Circus, the Plan Administrator, or the Court.

Any claim listed in the Schedules that has been superseded by a filed proof of claim pursuant to Bankruptcy Rule 3003(c)(4) shall be deemed disallowed and expunged in full without further action required of the ~~Debtor~~Circus, the Reorganized Circus, the Plan Administrator, or the Court.

**(xiv) Distributions on Account of the Endowment Loan Claim**

Notwithstanding any other provisions of the Plan, on the Effective Date, the Endowment Loan Claim shall be deemed an Allowed General Unsecured Claim, and any distributions made by the Plan Administrator on account of the Endowment Loan Claim shall be donated to a reputable not-for-profit charitable organization selected by the Plan Administrator that is engaged in activities substantially similar to those of the Circus prior to the Petition Date.

**(xv) Distributions Free and Clear**

Except as otherwise provided in the Plan, any distribution or transfer made under the Plan, including, without limitation, distributions to any holder of an Allowed Claim, shall be free and clear of any liens, Claims, encumbrances, charges, and other interests.

**F. Disputed Claims**

**(i) Objections to Claims**

**a. Authority to Object to Claims**

The Plan provides that, after the Effective Date, the Plan Administrator shall have the sole authority to file, settle, compromise, withdraw, or litigate to judgment any objections to Claims as permitted under the Plan. Unless a Claim is specifically Allowed pursuant to or under the Plan, or otherwise Allowed prior to or after the Effective Date, the Plan Administrator reserves all rights to object to any and all Claims and motions or requests for the payment of Claims.

**b. Deadline for, and Service of, Objections to Claims**

Unless otherwise provided in the Plan or ordered by the Court, all objections to Claims must be filed and served by the Claims Objection Deadline. An objection to a Claim shall be deemed properly served on the holder of such Claim if the Circus or the Plan Administrator, as applicable, effect service by any of the following methods: (i) in accordance with Rule 4 of the Federal Rules of Civil Procedure, as modified and made applicable by Bankruptcy Rule 7004; (ii) to the extent counsel for a holder of such Claim is unknown, by first class mail, postage prepaid, on the signatory on the proof of claim or other representative identified on the proof of claim or any attachment thereto or (iii) by first class mail, postage prepaid, on any counsel that has appeared on the behalf of the holder of such Claim in the Chapter 11 Case.

**c. Settlement and Compromise of Claims**

From and after the Effective Date, the Plan Administrator may settle or compromise any Disputed Claim without any further notice to or action, order, or approval of the Court or any other party in interest whenever the aggregate amount in dispute is less than or equal to \$25,000. If the aggregate amount in dispute exceeds \$25,000, the Plan Administrator shall file a notice of such settlement with the Court, which shall be served on the (i) the U.S. Trustee, (ii) the U.S. Attorney for the Southern District of New York, (iii) the New York State Attorney General, (iv) the New York City Department of Cultural Affairs, (v) the entities holding the twenty (20) largest unsecured Claims against the Circus' estate, and (vi) all parties who have requested notice in the Chapter 11 Case pursuant to Bankruptcy Rule 2002. Objections to the proposed settlement must be filed with the Court and served on the Plan Administrator and the applicable claimant within fourteen (14) calendar days of service of the settlement notice. If a timely objection is received, the Plan Administrator may either (a) renegotiate the settlement and file and serve a revised notice, or (b) file a motion with the Court seeking approval of the existing settlement under Bankruptcy Rule 9019 on no less than fourteen (14) calendar days' notice. If no timely objection is received, then the Plan Administrator may proceed with the settlement, without any further notice to or action, order, or approval of the Court or any other party in interest.

**(ii) Estimation of Claims**

The Plan provides that, as of the Effective Date, the Disputed Claims identified on Exhibit E to the Plan shall be estimated, for all purposes under the Plan, at the corresponding amounts under the column on Exhibit E entitled "Estimated Amount", and the Plan shall constitute a motion for approval of, and the Confirmation Order shall constitute approval of, such estimation. After the Effective Date, the Reorganized Circus, and Plan Administrator may elect to pursue any supplemental proceedings to estimate or object to the ultimate allowance of any previously estimated claim; provided, however, that the Court shall determine (a) whether such Claims are subject to estimation pursuant to section 502(c) of the Bankruptcy Code and (b) the timing and procedures for such estimation proceedings, if any.

**(iii) Disputed Claims Reserve**

The Plan Administrator shall manage the Disputed Claims Reserve for the treatment of Disputed Claims. The Disputed Claims Reserve shall be held in trust by the Plan Administrator for the benefit of holders of such Disputed Claims pending a determination of such claimants' entitlement thereto pursuant to the terms of the Plan. For the avoidance of doubt, any amounts remaining in the Disputed Claims Reserve after all Disputed Claims are resolved and satisfied in accordance with the provisions of the Plan shall be deemed Available Assets.

**(iv) No Interest on Disputed Claims**

Unless otherwise specifically provided for in the Plan or as otherwise required by section 506(b) of the Bankruptcy Code, postpetition interest shall not accrue or be paid on Claims and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on any Claim. Additionally, unless otherwise specifically provided for in the Plan or as otherwise required by section 506(b) of the Bankruptcy Code, interest shall not accrue or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made, when and if such Disputed Claim becomes an Allowed Claim.

**G. Settlement, Release, Exculpation, and Injunction Provisions**

**(i) Compromise and Settlement of Claims and Controversies**

Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good faith compromise of all Claims and controversies relating to the contractual, legal and subordination rights that a holder of a Claim may have with respect to any Allowed Claim, or any distribution to be made on account of such Allowed Claim. The entry of the Confirmation Order shall constitute the Court's approval of the compromise or settlement of all such Claims and controversies, as well as a finding by the Court that such compromise or settlement is in the best interests of the Circus, its Estate and holders of Claims and is fair,



equitable, and reasonable. In accordance with and subject to the provisions of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a), without any further notice to or action, order or approval of the Court, after the Effective Date, the Reorganized Circus and the Plan Administrator may compromise and settle Claims against the Circus and the Estate and any Cause of Action against other entities.

**(ii) Releases by the Circus**

The Plan contains the following releases by the Circus, which should be read in their entirety:

Pursuant to section 1123(b) of the Bankruptcy Code, as of the Effective Date, except as otherwise specifically provided in the Plan or the Plan Supplement, for good and valuable consideration, including the contribution of the Released Parties to facilitate the liquidation of the Circus and the implementation of the Plan, to the fullest extent permitted under applicable law, the Released Parties are deemed conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Circus, the Estate, and the Reorganized Debtor from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that the Circus, the Estate, or the Reorganized Debtor would have been legally entitled to assert in their own right or on behalf of the holder of any Claim or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Circus, the Circus' liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Circus' interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument, or agreement executed to implement the Plan.

**(iii) Releases by Holders of Claims**

The Plan contains the following releases by the Releasing Parties, which should be read in their entirety:

As of the Effective Date, for good and valuable consideration, including the contribution of the Released Parties to facilitate the liquidation of the Circus and the implementation of the Plan, to the fullest extent permitted by applicable law, the Releasing Parties shall be deemed to have conclusively, absolutely, unconditionally, irrevocably and forever, released and discharged the Released Parties from any and all claims, interests, obligations, rights, suits, damages, Causes of Action, remedies and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Circus, the Circus' liquidation, the Chapter 11 Case, any postpetition financing, any sale of the Circus' interests in property, the subject matter of, or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between the Circus and any Released Party, the restructuring of a Claim before or during the Chapter 11 Case, the negotiation, formulation or preparation of the Plan, the Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, or any other act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, other than Claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, gross negligence, or fraud. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any Released Party under the Plan or any document, instrument or agreement, executed to implement the Plan.

**THE CIRCUS WILL REQUEST AT THE CONFIRMATION HEARING THAT THE RELEASING PARTIES INCLUDE ALL HOLDERS OF CLAIMS REGARDLESS OF WHETHER SUCH**

**HOLDERS HAVE CONSENTED TO THE THIRD PARTY RELEASE. IF, AND ONLY IF, THE COURT FINDS THAT THE THIRD PARTY RELEASE MAY ONLY BE APPROVED WITH THE CONSENT OF THE APPLICABLE HOLDER OF A CLAIM, THE RELEASING PARTIES SHALL MEAN, COLLECTIVELY, ALL HOLDERS OF CLAIMS WHO, WITH RESPECT TO SUCH CLAIMS, (A) VOTE TO ACCEPT THE PLAN, (B) VOTE TO REJECT THE PLAN BUT WHO DO NOT ELECT TO OPT OUT OF THE THIRD PARTY RELEASE, (C) RECEIVE A BALLOT PROVIDING THEM WITH THE POTENTIAL RIGHT TO OPT OUT OF THE THIRD PARTY RELEASE BUT ABSTAIN FROM VOTING ON THE PLAN AND DO NOT OPT OUT OF THE THIRD PARTY RELEASE, OR (D) ARE NOT ENTITLED TO VOTE ON THE PLAN BUT RECEIVE A NOTICE ADVISING THEM OF THEIR POTENTIAL RIGHT TO ELECT TO OPT OUT OF THE THIRD PARTY RELEASE AND DO NOT ELECT TO OPT OUT OF THE THIRD PARTY RELEASE.**

The Circus believes that the releases set forth in the Plan are appropriate because, among other things, each of the Released Parties afforded value to the Circus and aided in the administration of the Chapter 11 Case. The Circus believes that the Released Parties have expended significant time and resources to ensure an optimal outcome for holders of Allowed Claims and played an integral role in the formulation of the Plan. The Circus reserves the right to make appropriate changes to the Plan to the extent the Court does not approve the releases.

*(iv) Exculpation*

**Except as otherwise specifically provided in the Plan or the Plan Supplement, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from, any obligation, Cause of Action or liability for any Exculpated Claim, except for gross negligence, willful misconduct, or fraud, but in all respects such entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and distributions pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.**

*(v) Injunction*

**The satisfaction, release, exculpation, and discharge pursuant to Article VIII of the Plan shall act as an injunction against any entity commencing or continuing any action, employment of process, or act to collect, offset, or recover any Claim or Cause of Action satisfied, released or to be released, exculpated or to be exculpated, or discharged under the Plan or pursuant to the Confirmation Order to the fullest extent permitted by applicable law, including, without limitation, to the extent provided for or authorized by sections 524 and 1141 of the Bankruptcy Code.**

*(vi) Limitations on Release, Exculpation, and Injunction Provisions*

Nothing in Sections 8.2, 8.3, 8.4, or 8.5 hereof shall (a) be construed to exculpate any entity from willful misconduct, gross negligence, or fraud, or (b) provide a prospective release of liability for any entity's actions following the Effective Date of the Plan.

**H. Conditions Precedent to the Effective Date**

*(i) Conditions Precedent to the Effective Date*

The Plan shall not become effective unless and until each of the following conditions shall have been satisfied or waived pursuant to the provisions of Section 9.2 of the Plan:

- a. the Court shall have approved by Final Order the Disclosure Statement in form and substance acceptable to the Circus in its sole and absolute discretion;

- b. the Confirmation Order shall have been entered by the Court and shall not be subject to any stay of effectiveness and no request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code shall have been made, or, if made, shall remain pending;
- c. the Foundations Settlement shall have been approved by the Court;
- d. the Disputed Claims Reserve shall have been funded;
- e. the Plan Administrator and the Post-Effective Date Board of Directors shall have been selected as contemplated by the Plan; and
- f. all U.S. Trustee Fees then due and payable shall have been paid and satisfied in full.

**(ii) Waiver of Conditions**

The Plan provides that, if after the Confirmation Order is entered, each of the conditions to effectiveness has not been satisfied or duly waived within twenty-eight (28) days after entry of the Confirmation Order, then upon motion by the Circus, the Confirmation Order may be vacated by the Court; provided, however, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to effectiveness is either satisfied or duly waived before the Court enters an order granting the relief requested in such motion. As used in the preceding sentence, a condition to effectiveness may only be waived by a writing executed by the Circus.

**(iii) Effect of Non-occurrence of Effective Date**

Except as expressly set forth in the Plan, if the Effective Date does not occur, then: (a) the Plan shall be null and void in all respects; (b) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (c) nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims; (ii) prejudice in any manner the rights of the Circus or any other entity; or (iii) constitute an admission, acknowledgement, offer or undertaking of any sort by the Circus or any other entity.

**I. Modification, Revocation or Withdrawal of the Plan**

**(i) Modification and Amendments to the Plan**

The Plan contemplates that the Circus may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to entry of the Confirmation Order. After entry of the Confirmation Order and prior to substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of the Plan with respect to the Circus, the Reorganized Circus or the Plan Administrator, as applicable, may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects of the Plan.

**(ii) Effect of Confirmation on Modifications**

The Plan provides that entry of a Confirmation Order will mean that all modifications or amendments to the Plan occurring after the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

**(iii) Revocation or Withdrawal of the Plan**

Under the Plan, the Circus reserves the right to revoke or withdraw the Plan before entry of the Confirmation Order.

**J. Miscellaneous Provisions**

**(i) Binding Effect**

On and after the Effective Date, the provisions of the Plan shall bind the Circus, the Reorganized Circus, the Plan Administrator, any holder of a Claim, the Estate and their respective successors or assigns, whether or not the Claim of such holders is Impaired under the Plan and whether or not such holder has accepted the Plan. The rights, benefits and obligations of any entity named or referred to in the Plan shall be binding on and shall inure to the benefit of any heir, executor, administrator, successor, assign, affiliate, officer, director, manager, agent, representative, attorney, beneficiaries or guardian, if any, of such entity (including any trustee appointed for the Circus under chapters 7 or 11 of the Bankruptcy Code).

**(ii) Plan Supplement**

The Plan Supplement shall include certain documents and forms of documents, schedules, and exhibits to the Plan, which the Circus shall file on or before the date that is seven (7) calendar days prior to the deadline fixed for objecting to confirmation of the Plan or such later date as may be approved by the Court, and may be amended, modified, or supplemented by the Circus at any time prior to the entry of the Confirmation Order.

**(iii) Service of Documents**

The Plan provides that, after the Effective Date, any pleading, notice or other document required by the Plan to be served on or delivered to the Plan Administrator shall be served on an address to be identified in a notice filed with the Court, ~~with copies to:~~

~~[TO BE INSERTED]~~

After the Effective Date, the Plan Administrator may, in his or her sole discretion, notify entities that, in order to continue receiving documents pursuant to Bankruptcy Rule 2002, such entities must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Plan Administrator is authorized to limit the list of entities receiving documents pursuant to Bankruptcy Rule 2002 to those entities who have filed such renewed requests.

**(iv) Severability**

The ~~Debtor~~Circus intends all provisions of the Plan to be enforced to the fullest extent permitted by law. If, however, any provision of the Plan is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable, and the Plan shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by the termination thereof.

**(v) Term of Injunctions and Stays**

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Court, and existing as of entry of the Confirmation Order (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms

IV.

**VOTING ON THE PLAN**

On [●], the Court entered the Disclosure Statement Order, approving, among other things, the dates, procedures and forms applicable to the process of soliciting votes on and providing notice of the Plan and certain vote tabulation procedures and establishing the deadline for filing objections to the Plan and scheduling the Confirmation Hearing. A copy of the Disclosure Statement Order is attached hereto as **Exhibit B**. The Disclosure Statement Order is incorporated herein by reference and should be read in conjunction with this Disclosure Statement when deciding to vote to accept or reject the Plan.

**THIS DISCUSSION OF THE SOLICITATION AND VOTING PROCESS IS ONLY A SUMMARY. PLEASE REFER TO THE DISCLOSURE STATEMENT ORDER ATTACHED HERETO FOR A MORE COMPREHENSIVE DESCRIPTION OF THE SOLICITATION AND VOTING PROCESS.**

**A. Holders of Claims Entitled to Vote on the Plan**

Under the provisions of the Bankruptcy Code, not all holders of claims against a debtor are entitled to vote on a chapter 11 plan. As discussed above, the Circus is soliciting votes to accept or reject the Plan only from holders of General Unsecured Claims in Class 4 (the “**Voting Class**”).

Claims in the Voting Class are Impaired under the Plan and holders of such Claims may receive a distribution under the Plan. Accordingly, holders of Claims in the Voting Class have the right to vote to accept or reject the Plan. The Circus is **not** soliciting votes from holders of Claims in Classes 1, 2, or 3.

Additionally, the Disclosure Statement Order provides that certain holders of Claims in the Voting Class, such as those holders whose Claims have been disallowed or are subject to a pending objection, are not entitled to vote to accept or reject the Plan. The table in Section III.B of this Disclosure Statement provides a summary of the status and voting rights of each Class (and, therefore, of each holder within such Class absent an objection to the holder’s Claim) under the Plan.

**B. Voting Record Date**

**The Voting Record Date is October 31, 2017 at 11:00 a.m. (prevailing Eastern Time).** The Voting Record Date is the date on which it will be determined which holders of Claims in the Voting Class are entitled to vote to accept or reject the Plan and whether Claims have been properly assigned or transferred under Bankruptcy Rule 3001(e) such that an assignee can vote as the holder of a Claim.

**C. Submission of Votes**

**The Voting Deadline is 5:00 p.m. (prevailing Eastern Time) on December 1, 2017.** In order to be counted as votes to accept or reject the Plan, all ballots must be properly executed, completed and delivered (either by using the return envelope provided, by first class mail, overnight courier, or personal delivery, or by electronic mail) so that they are **actually received** on or before the Voting Deadline by the Claims and Noticing Agent at the following addresses:

**If by U.S. Postal Service mail:**

Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
P.O. Box 199043  
Blythebourne Station, Brooklyn, NY 11219

**If by overnight delivery or personal delivery by hand:**

Donlin Recano & Co. Inc.  
Re: TBAC Wind Down, Ltd.  
6201 15th Avenue  
Brooklyn, NY 11219

**If by electronic mail:**

tbacballot@donlinrecano.com

If you have any questions on the procedure for voting on the Plan, please call the Claims and Noticing Agent at the following telephone number: (212) 7711128

**D. Ballots Not Counted**

**No Ballot will be counted toward confirmation of the Plan if, among other things:** (a) it is illegible or contains insufficient information to permit the identification of the holder of the Claim; (b) it was cast by an entity that does not hold a claim in the Voting Class; (c) it was cast for a claim scheduled as unliquidated, contingent, or disputed for which no proof of claim was timely filed; (d) it was unsigned or lacked an original signature; (e) it was not marked to accept or reject the Plan or marked both to accept and reject the Plan; or (f) it was submitted by any entity not entitled to vote pursuant to the procedures described herein. **Please refer to the Disclosure Statement Order for additional requirements with respect to voting to accept or reject the Plan.**

**IF YOU HAVE ANY QUESTIONS ABOUT THE SOLICITATION OR VOTING PROCESS, PLEASE CONTACT THE CLAIMS AND NOTICING AGENT. ANY BALLOT RECEIVED AFTER THE VOTING DEADLINE OR OTHERWISE NOT IN COMPLIANCE WITH THE DISCLOSURE STATEMENT ORDER WILL NOT BE COUNTED.**

**V.**

**CONFIRMATION OF THE PLAN**

**A. Confirmation Hearing**

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

The Confirmation Hearing is scheduled for **December 12, 2017 at 11:00 a.m. (prevailing Eastern Time)** before the Honorable Sean H. Lane, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York, located at One Bowling Green, New York, New York. **The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.**

**B. Deadline to Object to Confirmation**

Objections to confirmation of the Plan must be filed and served on or before **5:00 p.m. (prevailing Eastern Time) on December 1, 2017** in accordance with the notice of the Confirmation Hearing that accompanies this Disclosure Statement. **Unless objections to confirmation of the Plan are timely served and filed, they may not be considered by the Court.**

**C. General Confirmation Requirements**

At the Confirmation Hearing, the Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code, which include, among other things, whether:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Circus, as the Plan proponent, has complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made by the Circus for services or for costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable.
- The Circus, as the Plan proponent, has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director of the Circus, and the appointment to, or continuance in, such office of such individual is consistent with the interests of creditors and with public policies.
- The Circus, as the Plan proponent, has disclosed the identity of any insider that will be employed or retained by the Reorganized Circus and the nature of any compensation for such insider.
- Each Class of Claims has either accepted the Plan or is not Impaired under the Plan.
- Except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that:
  - with respect to a Claim of a kind specified in sections 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the Effective Date of the Plan, the holder of such Claim will receive on account of such Claim cash equal to the Allowed amount of such Claim;
  - with respect to a Class of Claims of a kind specified in sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a Claim of such Class will receive (i) if such Class has accepted the Plan, deferred cash payments of a value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim; or (ii) if such Class has not accepted the Plan, cash on the Effective Date of the Plan equal to the Allowed amount of such Claim;
  - with respect to a Claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such Claim will receive on account of such claim regular installment payments in cash, over a period not exceeding five years after the date of the order for relief under sections 301, 302, or 303 of the Bankruptcy Code, of a total value, as of the Effective Date of the Plan, equal to the Allowed amount of such Claim.
- If a Class of Claims is Impaired under the Plan, at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan by any insider.



- All fees payable under 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date.

The Circus believes that the Plan satisfies or will satisfy all of these requirements.

**D. Best Interests of Creditors/Liquidation Analysis**

Often called the “best interests” test, section 1129(a)(7) of the Bankruptcy Code requires that a bankruptcy court find, as a condition to confirmation, that a chapter 11 plan provides, with respect to each class, that each holder of a claim or an interest in such class either (i) has accepted the plan or (ii) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the Circus liquidated on that date under chapter 7 of the Bankruptcy Code. To make these findings, a bankruptcy court must: (i) estimate the cash liquidation proceeds that a chapter 7 trustee would generate if the Circus’ chapter 11 case was converted to a chapter 7 case and the assets of such Circus’ estate were liquidated; (ii) determine the liquidation distribution that each non-accepting holder of a claim or an interest would receive from such liquidation proceeds under the priority scheme dictated in chapter 7; and (iii) compare the holder’s liquidation distribution to the distribution under the plan that the holder would receive if the plan were confirmed and consummated.

To satisfy the requirements of section 1129(a)(7) of the Bankruptcy Code, the Circus, together with its advisors, prepared the liquidation analysis attached hereto as **Exhibit C** (the “**Liquidation Analysis**”). Based upon on the Liquidation Analysis, the Circus believes that holders of Claims will receive equal or greater value as of the Effective Date than such holders would receive in a hypothetical chapter 7 liquidation and that the Plan therefore satisfies the “best interests” test set forth in section 1129(a)(7) of the Bankruptcy Code.

The Liquidation Analysis was prepared for the sole purpose of generating a reasonable, good faith estimate of the proceeds that would available for distribution to creditors if the Chapter 11 Case were converted to a case under chapter 7 of the Bankruptcy Code. The Liquidation Analysis is not intended and should not be used for any other purpose. The underlying financial information was not compiled or examined by any independent accountants.

WHILE DEEMED REASONABLE BASED ON THE FACTS CURRENTLY AVAILABLE, NEITHER THE CIRCUS OR ITS PROFESSIONALS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD APPROXIMATE THE ESTIMATE AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY, INCLUDING THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN THE CHAPTER 11 CASE.

**E. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that confirmation of a chapter 11 plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor, or any successor to the debtor (unless such liquidation or reorganization is proposed in the plan). For purposes of determining whether the Plan meets this requirement, the Circus has analyzed its ability to meet its obligations under the Plan.

The Circus anticipates having sufficient cash on hand to make all required payments under the Plan and will otherwise satisfy its obligations thereunder. Accordingly, the Circus believes the Plan satisfies the feasibility standard of section 1129(a)(11) of the Bankruptcy Code.

**F. Acceptance by Impaired Class**

With respect to the Plan, the Bankruptcy Code requires that, as a condition of confirmation, the Impaired Class of General Unsecured Claims must accept the Plan in order for it to be confirmed. A Class that is not “Impaired” under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to the class is not required. A class is “Impaired” unless the plan: (i) leaves unaltered the legal, equitable and contractual rights to which the claim or the interest entitles the holder of the Claim or (ii) cures any default, reinstates the original terms of such obligation, compensates the holder for certain damages or losses, as



applicable, and does not otherwise alter the legal, equitable or contractual rights to which such Claim entitles the holder of such Claim.

Pursuant to section 1126(c) of the Bankruptcy Code, and except as otherwise provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims has accepted the Plan if the non-insider holders of at least two-thirds in dollar amount and more than one-half in number of the Allowed Claims that are voted were, in fact, voted to accept the Plan.

## **VI.**

### **RISK FACTORS**

**Holders of Claims should read and consider carefully the risk factors set forth below, as well as the other information set forth in this Disclosure Statement and the documents delivered together herewith, referred to or incorporated by reference herein, before voting to accept or reject the Plan. These risk factors should not be regarded as constituting the only risks present in connection with the Plan and its implementation.**

#### **A. Certain Bankruptcy Considerations**

##### ***(i) Undue Delay in Confirmation May Diminish Recoveries***

The continuation of the Chapter 11 Case, particularly if the Plan is not confirmed in the time frame currently contemplated, creates a risk that the value of the Estate would be eroded to the detriment of all stakeholders. The distributions to holders of Allowed General Unsecured Claims estimated in this Disclosure Statement are dependent upon the successful confirmation and implementation of the Plan. Failure to obtain this approval in a timely manner could adversely affect the Circus' ability to maximize value for its Estate and all parties in interest. If confirmation does not occur expeditiously, the Chapter 11 Case could result in, among other things, increased Administrative Claims and similar expenses.

##### ***(ii) Risk of Non-Occurrence of the Effective Date***

Although the Circus believes that the Effective Date will occur shortly after the Confirmation Order is entered, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

##### ***(iii) Failure to Satisfy Vote Requirements***

If votes are received in number and amount sufficient to enable the Court to confirm the Plan, the Circus intends to seek, as promptly as practicable thereafter, confirmation of the Plan. In the event that sufficient votes are not received, the Circus may seek to confirm an alternative chapter 11 plan or convert its case to a case under chapter 7 of the Bankruptcy Code. There can no assurance that the terms of any such alternative chapter 11 plan or recoveries under a chapter 7 case would be similar or as favorable to holders of Allowed Claims as those proposed in the Plan.

##### ***(iv) The Circus May Not Be Able to Secure Confirmation of the Plan***

Even if the Voting Class votes in favor of the Plan, the Court may exercise its discretion, as a court of equity, and choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that the value of distributions to dissenting holders of Claims will not be less than the value such holders would receive if the Circus was liquidated under chapter 7 of the Bankruptcy Code. Although the Circus believes that the Plan will meet such tests, there can be no assurance that the Court will reach the same conclusion.

##### ***(v) The Foundations Settlement May Not Be Approved***

The Plan also constitutes a motion to approve the Foundations Settlement, and approval of the Foundations Settlement is a condition precedent to the Effective Date. The Circus believes the settlement is fair

and reasonable and should be approved. However, there can be no assurance that the Court will approve the Foundations Settlement, and without such approval, the Plan may not become effective.

(vi) ***The Circus Cannot Guarantee What Recovery Will Be Available to Holders of Allowed Claims in the Voting Class***

Recoveries on Allowed Claims in the Voting Class are dependent, among other things: (a) how much money or other distributable value will remain after satisfaction of all Allowed Claims that are unclassified or senior to the Allowed Claims in the Voting Class and (b) the number or amount of Claims in the Voting Class that will ultimately be Allowed. In light of these unknown factors, the Claims estimates set forth in this Disclosure Statement are based on various assumptions. The actual amounts of certain Claims may differ significantly from those estimates should one or more underlying assumptions prove to be incorrect. Such differences may adversely affect the percentage recovery to holders of such Allowed Claims under the Plan.

**B. Disclosure Statement Disclaimer**

(i) ***No Legal or Tax Advice Is Provided to You by This Disclosure Statement***

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

(ii) ***No Admissions Are Made by This Disclosure Statement***

The information and statements contained in this Disclosure Statement will neither constitute an admission of any fact or liability by any entity (including the Circus) nor be deemed evidence of the tax or other legal effects of the Plan on the Circus, the Reorganized Circus, holders of Allowed Claims or any other parties in interest. The vote by a holder of an Allowed Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Circus, the Reorganized Circus, or the Plan Administrator (or any party in interest, as the case may be) to object to that holder's Allowed Claim, or recover any preferential, fraudulent or other voidable transfer or assets, regardless of whether any Claims or Causes of Action of the Circus or its Estate is specifically or generally identified herein.

In addition, no reliance should be placed on the fact that a particular litigation Claim or projected objection to a particular Claim is, or is not, identified in this Disclosure Statement. The Circus, the Creditors' Committee, the Reorganized Circus or the Plan Administrator may seek to investigate, file and/or prosecute objections to Claims and may object to Claims after entry of the Confirmation Order or the Effective Date irrespective of whether this Disclosure Statement identifies such Claims or objections to such Claims or objections thereto.

**VII.**

**CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

**A. Introduction**

The following is a discussion of certain U.S. federal income tax consequences arising from the consummation of the Plan to certain Holders (as defined below) of General Unsecured Claims. This discussion is not a complete analysis of all potential U.S. federal income tax consequences arising from the consummation of the Plan and does not address any U.S. state or local or non-U.S. tax consequences or any U.S. federal tax consequences other than income tax consequences. This discussion is based on the IRC, U.S. Treasury Regulations promulgated or proposed thereunder and administrative and judicial interpretations thereof, all as in effect on the date hereof, and all of which are subject to change, possibly with retroactive effect, or to different

interpretation. No ruling has been or will be sought from the Internal Revenue Service (the “**IRS**”) with respect to any of the U.S. federal income tax consequences discussed below, and no assurance can be given that the IRS will not take a position contrary to any discussion below or that any such contrary position could not be sustained by a court.

This discussion does not address all of the U.S. federal income tax consequences that may be relevant to specific Holders in light of their particular circumstances or to Holders subject to special treatment under U.S. federal income tax law (such as banks, insurance companies, dealers in securities or other Holders that generally mark their securities to market for U.S. federal income tax purposes, tax-exempt entities, retirement plans, regulated investment companies, real estate investment trusts, Holders that are not “United States persons” (as such term is defined in the IRC), certain former citizens or residents of the United States, Holders that hold their General Unsecured Claims as part of a straddle, hedge, conversion or other integrated transaction or Holders that have a “functional currency” other than the U.S. dollar).

As used in this discussion, the term “**Holder**” means a beneficial owner of a General Unsecured Claim that is entitled to vote on the Plan, which beneficial owner for U.S. federal income tax purposes is (i) an individual who is a citizen or resident of the United States, (ii) a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia, (iii) an estate the income of which is subject to U.S. federal income tax regardless of its source or (iv) a trust (x) with respect to which a court within the United States is able to exercise primary supervision over its administration and one or more United States persons have the authority to control all of its substantial decisions or (y) that has in effect a valid election under applicable U.S. Treasury Regulations to be treated as a United States person.

If an entity treated as a partnership for U.S. federal income tax purposes holds a General Unsecured Claim, the U.S. federal income tax consequences arising from the consummation of the Plan will depend in part upon the status and activities of such entity and the particular partner. Any such entity should consult its own tax advisor regarding the U.S. federal income tax consequences arising from the consummation of the Plan applicable to it and its partners.

THE FOLLOWING DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED ON THE PARTICULAR CIRCUMSTANCES OF EACH HOLDER OF A GENERAL UNSECURED CLAIM. EACH HOLDER OF A GENERAL UNSECURED CLAIM IS URGED TO CONSULT ITS OWN TAX ADVISORS AS TO THE U.S. FEDERAL INCOME TAX CONSEQUENCES, AS WELL AS OTHER TAX CONSEQUENCES, INCLUDING UNDER ANY APPLICABLE STATE, LOCAL AND FOREIGN LAW, OF THE CONSUMMATION OF THE PLAN TO SUCH HOLDER.

**B. Certain U.S. Federal Income Tax Consequences of the Plan to the Circus**

The Circus is a not-for-profit corporation that is exempt from federal income taxation under section 501(c)(3) of the IRC. It is intended that nothing in the Plan shall adversely affect, or be interpreted inconsistently with, the tax-exempt status of the Circus post-Effective Date, and the Plan provides that the Circus will retain its tax-exempt status post-Effective Date to the same extent such status existed immediately prior to the Petition Date. Accordingly, the Circus does not expect the implementation of the Plan to have any adverse federal income tax consequences to the tax-exempt status of the Circus post-Effective Date. If the tax-exempt status of the Circus were to terminate post-Effective Date, the Circus would be subject to tax on its income, which would reduce the amount of distributions payable to holders of Allowed General Unsecured Claims.

**C. Certain U.S. Federal Income Tax Consequences of the Plan to Holders of Allowed General Unsecured Claims**

Pursuant to the Plan, each Holder of an Allowed General Unsecured Claim will receive, in satisfaction of its Claim, a pro rata share of the Available Assets or proceeds thereof (less any valid Plan Expenses), pursuant to the distribution mechanics set forth in the Plan.

A Holder of an Allowed General Unsecured Claim will be treated as exchanging such Claim for Available Assets in a taxable exchange under Section 1001 of the IRC. Accordingly, each Holder of an Allowed

General Unsecured Claim should recognize gain or loss (subject to the discussion below under “—Bad Debt Deductions”) equal to the difference between (1) the fair market value of the portion of the Available Assets received (determined as of the Effective Date, subject to the discussion below under “—Post-Effective Date Distributions”), in exchange for such Claim and (2) such Holder’s adjusted tax basis, if any, in such Claim. A Holder’s adjusted tax basis in an Allowed General Unsecured Claim is generally (i) the amount such Holder paid for such Claim, (ii) increased by the amount of any original issue discount or market discount previously included in income (including in the year of exchange pursuant to the Plan) with respect to such Claim by such Holder and (iii) decreased by the aggregate amount of payments (other than stated interest) with respect to such Claim previously made to such Holder and any bond premium with respect to such Claim that has been used by such Holder to offset interest income with respect to such Claim. Such gain or loss should be capital in nature (subject to the discussion below under “—Bad Debt Deductions”) so long as the Allowed General Unsecured Claim is held as a capital asset (subject to the “market discount” rules described under “—Market Discount” below) and should be long-term capital gain or loss to the extent that the Holder has a holding period in the debt obligation underlying such Claim of more than one year. To the extent that a portion of the Available Assets received in exchange for an Allowed General Unsecured Claim is allocable to accrued but unpaid interest, the Holder of such Claim may be required to recognize ordinary income as discussed under “—Accrued but Unpaid Interest” below. A Holder’s tax basis in any non-cash property received in exchange for such Holder’s Allowed General Unsecured Claim should equal the fair market value of such non-cash property as of the Effective Date, (subject to the discussion below under “—Post-Effective Date Distributions”). A Holder’s holding period for any non-cash property received in exchange for such Holder’s Allowed General Unsecured Claim should begin on the day following the Effective Date, (subject to the discussion below under “—Post-Effective Date Distributions”).

**(i) *Accrued but Unpaid Interest***

It is expected that a portion of the Available Assets received by Holders of certain General Unsecured Claims may be attributable to accrued but unpaid interest on such Claims for U.S. federal income tax purposes. Such amount should be taxable to a Holder as interest income if such accrued interest has not been previously included in the Holder’s gross income for U.S. federal income tax purposes.

If the fair market value of the Available Assets received by a Holder is not sufficient to fully satisfy all principal and interest on its Claims, the extent to which such Available Assets will be attributable to accrued but unpaid interest for U.S. federal income tax purposes is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Claims in each Class will be treated as first satisfying an amount equal to the stated principal amount of the Allowed Claim of such Holders and any remaining consideration as satisfying accrued, but unpaid, interest, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes and the ~~Debtor~~Circus intends to take this position and follow the Plan for U.S. federal income tax purposes, while certain U.S. Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. Accordingly, the IRS could take the position that the consideration received by a Holder should be allocated in some way other than as provided in the Plan. Each Holder of a General Unsecured Claim should consult its own tax advisors regarding the proper allocation of the consideration received under the Plan.

**(ii) *Market Discount***

Holders who exchange General Unsecured Claims for Available Assets and who purchased their General Unsecured Claims from prior holders may be affected by the “market discount” provisions of sections 1276 through 1278 of the IRC. Under these rules, some or all of the gain realized by a Holder may be treated as ordinary income (instead of capital gain), to the extent of the amount of accrued “market discount” on such Claims.

Generally, a Holder has market discount on a General Unsecured Claim to the extent that the “stated redemption price at maturity” of such Claim exceeds such Holder’s initial tax basis in such Claim by more than a de minimis amount. Under the market discount rules, such Holder generally will be required to treat as ordinary income any principal payment on, or any gain on the sale, exchange, retirement or other disposition of, such Claim to the extent of any accrued market discount on such Claim. For this purpose, market discount generally will accrue ratably during the period from the date of acquisition of such Claim to the maturity date of such

Claim, unless such Holder elects to accrue the market discount on such Claim under the constant yield method, which election, once made, is irrevocable. In addition, such Holder may be required to defer, until the sale, exchange, retirement or other disposition of such Claim, the deduction of all or a portion of the interest expense on any indebtedness incurred or continued to purchase or carry such Claim.

**(iii) *Bad Debt Deductions***

A Holder of a General Unsecured Claim who recognizes a loss as a result of the treatment of its General Unsecured Claim under the Plan may be able to claim a bad debt deduction, which would be ordinary in nature, depending on certain factors. These factors include, among other things, the tax status of such Holder, the nature of the Claim, such Holder's tax accounting method for bad debts, the timing of the consideration received by such Holder, and whether such Holder previously took a worthless security or bad debt deduction for such Claim. For non-business related Claims of a Holder other than a corporation, the deduction is only available if the Claim is worthless. If a Holder is a cash-basis taxpayer, such Holder can only claim a bad debt deduction if either the Claim was already included in income (and then only to the extent of such exclusion) or if an actual cash loss was suffered. If a Holder is an accrual-basis taxpayer, such Holder must use the specific charge-off method for business bad debt deductions.

In addition, a Holder that previously took a worthless security or bad debt deduction for a General Unsecured Claim will be limited in their ability to recognize a loss as a result of the treatment of its General Unsecured Claim under the Plan, to the extent of such previous deduction.

**(iv) *Limitation on Use of Capital Losses***

A Holder of a General Unsecured Claim who recognizes a capital loss as a result of the treatment of its General Unsecured Claim under the Plan will be subject to limits on use of such capital loss. For non-corporate Holders, capital losses may be used to offset any capital gains (without regard to holding periods) plus ordinary income to the extent of the lesser of (a) \$3,000 (\$1,500 for married individuals filing separate returns) and (b) the excess of the capital losses over the capital gains. Holders, other than corporations, may carry over unused capital losses and apply them to capital gains and a portion of their ordinary income for an unlimited number of years. For corporate Holders, losses from the sale or exchange of capital assets may only be used to offset capital gains. Corporate Holders may only carry over unused capital losses to the five taxable years following the year in which the capital loss is recognized, but are allowed to carry back unused capital losses to the three taxable years preceding the year in which the capital loss is recognized.

**(v) *Medicare Tax***

In addition to regular U.S. federal income tax, certain Holders that are individuals, estates or trusts are subject to a 3.8% tax on all or a portion of their "net investment income," which may include all or a portion of their income arising as a result of an exchange of their General Unsecured Claim for Available Assets. Holders that are individuals, estates or trusts should consult their own tax advisors as to the effect, if any, of this tax on their receipt, ownership or disposition of any consideration received pursuant to the Plan.

**(vi) *Post-Effective Date Distributions***

To the extent that a Holder of a General Unsecured Claim, including a Disputed Claim that ultimately becomes an Allowed Claim, receives distributions after the Effective Date, a portion of the subsequent distributions may be treated as interest for U.S. federal income tax purposes. Additionally, to the extent that a Holder of such a Claim receives distributions in a taxable year or years, following the year of initial distribution, a portion of any gain realized by such Holder may be deferred. All Holders of General Unsecured Claims are urged to consult their tax advisors regarding the possible application of (or ability to elect out of) the "installment method" of reporting with respect to their Claims.

**(vii) Information Reporting and Backup Withholding**

Information reporting generally will apply to payments to a Holder pursuant to the Plan, unless such Holder is an entity that is exempt from information reporting and, when required, demonstrates this fact. Any such payment to a Holder that is subject to information reporting generally will also be subject to backup withholding, unless such Holder provides the appropriate documentation (generally, IRS Form W-9) to the applicable withholding agent certifying that, among other things, its taxpayer identification number is correct, or otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules generally will be allowed as a refund or a credit against a Holder's U.S. federal income tax liability if the required information is furnished by such Holder on a timely basis to the IRS.

Treasury regulations generally require disclosure by a taxpayer of its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of certain thresholds. You are urged to consult your own tax advisor regarding these regulations and whether the contemplated transactions under the Plan would be subject to these regulations and require disclosure on your tax return.

THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER OF A GENERAL UNSECURED CLAIM IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF GENERAL UNSECURED CLAIMS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

Payments of interest, dividends, and certain other payments are generally subject to backup withholding at the rate of 28% unless the payee of such payment furnishes such payee's correct taxpayer identification number (social security number or employer identification number) to the payor. The Plan Administrator may be required to withhold the applicable percentage of any payments made to a holder who does not provide his, her or its taxpayer identification number. Backup withholding is not an additional tax, but an advance payment that may be refunded to the extent it results in an overpayment of tax.

**VIII.**

**RECOMMENDATION**

The Circus submits that the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for a larger recovery for the Circus' holders of Allowed Claims than such holders would otherwise receive or retain in liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses, resulting in reduced recoveries to holders of Allowed Claims than those proposed under the Plan. Accordingly, the Circus strongly recommends that holders of Claims entitled to vote on the Plan vote to accept the Plan.

| Dated: ~~September 15~~October, 2017  
New York, New York

Respectfully submitted,

TBAC WIND DOWN, LTD.

By: \_\_\_\_\_  
Name: Will Maitland Weiss  
Title: Executive Director

**Exhibit A to the Revised Disclosure Statement**

**Plan**



**Exhibit B to the Revised Disclosure Statement**

**Disclosure Statement Order**

**Exhibit C to the Revised Disclosure Statement**

**Liquidation Analysis**

**TBAC Wind Down, Ltd.**

*Liquidation Analysis (\$)*

	Value in the Plan	Notes	Chapter 11 - Plan Recovery			Chapter 7 - Liquidation Recovery		
			Value	%	Notes	Value	%	Notes
Cash Available for Distribution	2,152,323,091,441	A	2,091,442,152,323			2,091,442,152,323		
Proceeds from Weiner Settlement	90,000		90,000			90,000		
Expected Wind-down Expenses			(309,545)(474,093)			(317,700)(486,780)		B
	2,242,323,218,141		1,871,897,176,230			1,863,741,755,543		
Chapter 7 Trustee Fees	-		-			55,912,522,566		C
Other Chapter 7 Admin Fees	-		-			100,000		D
Chapter 11 Professional Fees	-	E	6,500			-		
Net Proceeds Available for Distribution	2,242,323,218,141		1,865,397,176,730			1,707,829,160,287		
DIP Lender Claims	-		-	-		-	-	
Secured Claims	4,628		4,628	100%		4,628	100%	
Administrative Claims	10,000		10,000	100%		10,000	100%	
Priority Claims	60,957,441,445		44,145,609,957	100%		44,145,609,957	100%	
General Unsecured Claims	10,204,193,10,346,005		1,806,624,168,146	17%		1,649,056,152,292	4615%	
Subordinated Claims	1,016		-	-		-	-	
Net Assets Available After Distribution to all Creditors			\$ -			\$ -		

Notes to Liquidation Analysis :

A. Cash consists of all unrestricted cash in bank accounts of the Debtor.

B. It is anticipated that the Chapter 7 Trustee and any newly retained professionals will require at least 2 months to familiarize themselves with the assets, the claims and related matters. The Chapter 7 Trustee would need to retain a number of individuals currently employed by the Debtor to maintain the assets, provide historical knowledge and insight and conclude the administrative wind-down of the estate.

C. The Chapter 7 Trustee fees are estimated to be 3% of proceeds distributed to creditors, in accordance with section 326 of the Bankruptcy Code.

D. Chapter 7 professional fees include the cost of attorneys, accountants and other professionals retained by the Chapter 7 Trustee.

E. As the Debtor's professionals have all been retained on a *pro bono* basis, fees are limited to estimates of reimbursable expenses.

All physical assets were sold pursuant to 363 sales. Because the case will be completed through liquidation of the cash balances remaining at confirmation, and no other assets remain in the Debtor's estate, no scenarios for asset valuation are necessary.