

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

74 GRAND ST. EQUITIES, LLC

Case No. 17-13295 (SCC)

Debtor.

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**DEBTOR'S COMBINED CHAPTER 11
PLAN OF LIQUIDATION AND DISCLOSURE STATEMENT**

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Dated: March 1, 2018

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NOTICE

THERE HAS BEEN NO INDEPENDENT AUDIT OF THE FINANCIAL INFORMATION CONTAINED IN THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE COMBINED PLAN AND DISCLOSURE STATEMENT WAS COMPILED FROM INFORMATION OBTAINED FROM NUMEROUS SOURCES BELIEVED TO BE ACCURATE TO THE BEST OF THE DEBTOR'S KNOWLEDGE, INFORMATION, AND BELIEF. NO GOVERNMENTAL AUTHORITY HAS PASSED ON, CONFIRMED, OR DETERMINED THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED HEREIN.

NOTHING STATED HEREIN SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE TAX OR OTHER LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT ON THE DEBTOR OR HOLDERS OF CLAIMS OR EQUITY INTERESTS. CERTAIN STATEMENTS CONTAINED HEREIN, BY NATURE, ARE FORWARD-LOOKING AND CONTAIN ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.

THE STATEMENTS CONTAINED HEREIN ARE MADE AS OF THE DATE HEREOF, UNLESS ANOTHER TIME IS SPECIFIED. THE DELIVERY OF THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR CONSTRUED TO CREATE ANY IMPLICATION THE INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME AFTER THE DATE HEREOF.

HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD NOT CONSTRUE THE CONTENTS OF THE COMBINED PLAN AND DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE. THEREFORE, EACH SUCH HOLDER SHOULD CONSULT WITH ITS OWN LEGAL, BUSINESS, FINANCIAL, AND TAX ADVISORS AS TO ANY SUCH MATTERS CONCERNING THE COMBINED PLAN AND DISCLOSURE STATEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE COMBINED PLAN AND DISCLOSURE STATEMENT, EACH HOLDER OF A CLAIM OR EQUITY INTEREST THAT IS ENTITLED TO VOTE SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THE COMBINED PLAN AND DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

I. INTRODUCTION

74 Grand Street Equities (the “Debtor”) hereby proposes the Debtor’s Combined Plan and Disclosure Statement (the “Combined Plan and Disclosure Statement”) pursuant to sections 1125 and 1129 of the Bankruptcy Code. The Combined Plan and Disclosure Statement constitutes a liquidating chapter 11 plan for the Debtor and provides for the distribution of the Debtor’s assets to creditors following an Auction sale of the Debtor’s real property located at 74 Grand Street in New York (the “Property”), which sale is to take place under the Plan. Except as otherwise provided by Order of the Bankruptcy Court, Distributions will occur on the Effective Date or as soon thereafter as is practicable and at various intervals thereafter.

II. DEFINITIONS AND CONSTRUCTION OF TERMS

For the purposes of this Plan, and to the extent not otherwise provided herein, the terms below shall have the respective meanings set forth and designated herein, and, unless otherwise indicated, the singular shall include the plural, the plural shall include the singular.

1. “**Administrative Claims Bar Date**” means the date thirty (30) days after entry of the Confirmation Order by which requests for payment of Administrative Claims, including Professional Fee Claims, must be filed with the Bankruptcy Court.

2. “**Acquisition Loan**” means the loan from Churchill to the Debtor evidenced by the Acquisition Loan Agreement.

3. “**Acquisition Loan Agreement**” means that certain Acquisition Loan and Security Agreement, dated as of March 3, 2016 (as extended, renewed, supplemented, amended, or modified from time to time) by and between the Debtor and Churchill.

4. **“Administrative Claim”** means a Claim for the costs and expenses of administering the Chapter 11 Case. An Administrative Claim shall be subject to allowance by the Bankruptcy Court after notice and application under section 503(b)(1)(A) of the Bankruptcy Code.

5. **“Allowed”** means with reference to any Claim or Interest: (a) any Claim or Interest as to which no objection to allowance has been interposed on or before the Effective Date or such other applicable period of limitation fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective holder; (b) any Claim or Interest expressly deemed allowed by the Debtor’s Bankruptcy Schedules; or (c) any Claim or Interest deemed allowed by agreement of the holder of such Claim or Interest and the Debtor.

6. **“Auction”** means an Auction to be conducted on April 11, 2018 in the event the Debtor receives at least one Qualified Bid for the Property in accordance with the Bid Procedures.

7. **“Auction Date”** means April 11, 2018 or any other date shortly thereafter scheduled on notice to Qualified Bidders.

8. **“Bankruptcy Code”** means Title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to this Chapter 11 Case.

9. **“Bankruptcy Court”** means the United States Bankruptcy Court for the Southern District of New York, which has jurisdiction over this Chapter 11 Case, or such other court exercising bankruptcy jurisdiction.

10. “Bankruptcy Rules” means (a) the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended and promulgated under section 2075 of title 28 of the United States Code, (b) the Federal Rules of Civil Procedure, as amended and promulgated under section 2072 of Title 28 of the United States Code, (c) the Local Bankruptcy Rules of the Bankruptcy Court, and (d) any standing orders governing practice and procedure issued by the Bankruptcy Court, each as in effect on the Petition Date, together with all amendments and modifications thereto to the extent applicable to this Chapter 11 Case or proceedings therein, as the case may be.

11. “Bankruptcy Schedules” means the schedules of assets and liabilities, lists, and statements of financial affairs, together with any amendments thereto filed by the Debtor pursuant to Bankruptcy Rule 1007.

12. “Bar Date” means March 19, 2018, the deadline established by the Bankruptcy Court for non-governmental entities to file proofs of claim, and June 18, 2018, the deadline established by the Bankruptcy Court for governmental entities to file proofs of claim.

13. “Bid Procedures” means the bid procedures and terms and conditions of sale for which Court approval is pending, and which, upon approval, will govern any Auction Sale and function as a sale contract under this Plan.

14. “Building Loan” means the loan from Churchill to the Debtor evidenced by the Building Loan Agreement.

15. “Building Loan Agreement” means that certain Building Loan and Security Agreement, dated as of March 3, 2016 (as extended, renewed, supplemented, amended, or modified from time to time) by and between the Debtor and Churchill.

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

17. “Cash” means money, currency and coins, negotiable checks, balances in bank accounts, and other lawful currency of the United States of America and its equivalents.

18. “Causes of Action” means, without limitation, all claims, actions, causes of action, suits, debts, dues, damages, judgments, third-party claims, counterclaims, and cross claims (including, but not limited to, all claims arising under state, federal, or other non-bankruptcy law) of the Debtor that are or may be pending or existing on the Effective Date.

19. “Chapter 11 Case” means the bankruptcy case of 74 Grand Street Equities, LLC, pending in the Bankruptcy Court for the Southern District of New York, Case No. 17-13295 (SCC).

20. “Churchill” means Churchill Credit Holdings LLC.

21. “Churchill Claim” means the Claim of Churchill, fixed and Allowed in the amount of \$13,500,000 as of the Petition Date, arising from that certain Acquisition Loan and Security Agreement, dated as of March 3, 2016 (as extended, renewed, supplemented, amended, or modified from time to time); that certain Building Loan and Security Agreement, dated as of March 3, 2016 (as extended, renewed, supplemented, amended, or modified from time to time); and that certain Project Loan and Security Agreement, dated as of March 3, 2016 (as extended, renewed, supplemented, amended, or modified from time to time).

22. “Claim” means a right to payment as set forth in § 101(5) of the Code.

23. “Claimant” means the holder of a Claim.

24. “Class” means a category of holders of Claims or Equity Interests as set forth in this Plan.

25. “Confirmation” means entry by the Bankruptcy Clerk of the Confirmation Order on its docket, within the meaning of Bankruptcy Rules 5003 and 9021.

26. “Confirmation Date” means the date of the entry of the Confirmation Order.

27. “Confirmation Hearing” means the hearing(s) at which the Bankruptcy Court considers entry of the Confirmation Order.

28. “Confirmation Order” means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

29. “Creditor” means any entity that holds a Claim against the Debtor.

30. “Disallowed” means a Claim or any portion thereof that (a) has been disallowed by a Final Order including without limitation pursuant to the Confirmation Order, (b) has been listed on the Schedules as zero or as contingent, disputed, or unliquidated and as to which Bar Date has been established but no proof of claim or equity interest has been timely filed or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely filed under applicable law, or (c) is not listed on the Schedules and as to which the Bar Date has been set and no proof of claim or interest has been timely filed or deemed timely filed pursuant to either the Bankruptcy Code or any Final Order or otherwise deemed timely filed under applicable law.

31. “Disclosure Statement Order” means the order dated March __, 2018 conditionally approving the Combined Plan and Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code and authorizing the Debtor to solicit acceptances of the Combined Plan and Disclosure Statement.

32. “Disputed” means any Claim that is listed in the Debtor’s Bankruptcy Schedules as being disputed, contingent, or unliquidated with respect to which no proof of claim has been

timely filed; and any Claim with respect to which an objection to the allowance thereof, in whole or in part, has been interposed within the applicable period fixed by the Bankruptcy Court.

33. “Disputed Claims Reserve” means the Cash reserved by the Debtor equal in amount to any Disputed Claim until such time as the Disputed Claim becomes either Allowed or Disallowed.

34. “Distributions” means the payments to holders of Allowed Claims and others (e.g., Professionals) of Cash pursuant to and required by the Plan.

35. “Effective Date” means the post-confirmation date on which the conditions precedent under Article XII herein have been satisfied and upon which the terms of the Plan become effective.

36. “Equity Interests” means any membership interests in the Debtor as of the Petition Date.

37. “Final Order” means an order or judgment entered by the Bankruptcy Court, or another court of competent jurisdiction, in connection with the Chapter 11 Case, which has not been reversed, stayed, modified, or amended, and as to which the time to appeal or to seek certiorari, review, or rehearing has expired and as to which no appeal or petition for certiorari, review, or rehearing is pending or as to which any right to appeal or to seek certiorari, review, or rehearing has been waived in writing in a manner satisfactory to the Debtor and Churchill.

38. “General Unsecured Claim” means any Claim that is not a Secured Claim, Administrative Claim, or Priority Claim.

39. “Impaired” when used in this Plan with reference to a Claim or an Interest, has the meaning assigned to such term in section 1124 of the Bankruptcy Code.

40. “Interest” means (a) all rights arising from any equity (as the term is defined in section 101(16) of the Bankruptcy Code) of the Debtor, and (b) the legal, equitable, contractual or other rights of any person or entity to acquire or receive any of the foregoing or any right thereto or interest therein, including, but not limited to, all issued, unissued, authorized or outstanding shares.

41. “Loans” means the Acquisition Loan, the Building Loan, and the Project Loan.

42. “Loan Agreements” means the Acquisition Loan Agreement, the Building Loan Agreement, and the Project Loan Agreement.

43. “Marketing Period” shall be between approximately March 5, 2018 and April 8, 2018.

44. “Mechanics Lien Claim” means any claim filed by a materialman, subcontractor, contractor, vendor, or otherwise relating to improvements to the Property.

45. “Petition Date” means November 20, 2017.

46. “Plan” means this Combined Plan and Disclosure Statement, including all modifications, supplements, appendices, and schedules hereto.

47. “Plan Fund” means \$250,000 funded by Churchill in the event that Churchill acquires the Property at the Auction solely through a credit bid.

48. “Priority Claim” means all Claims that are entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

49. “Professional” means a person or entity retained in the Chapter 11 Case pursuant to section 327 of the Bankruptcy Code.

50. “Professional Fees” means the fees and expenses incurred by a Professional.

51. “Professional Fee Claim” means a Claim for Professional Fees pursuant to section 330 and 331 of the Bankruptcy Code.

52. “Project Loan” means the loan from Churchill to the Debtor evidenced by the Project Loan Agreement.

53. “Project Loan Agreement” means that certain Project Loan and Security Agreement, dated as of March 3, 2016 (as extended, renewed, supplemented, amended, or modified from time to time)

54. “Property” means the certain lot and parcel of land located at 74 Grand Street, New York, New York, Block 475, Lot 60 together with all improvements thereon and fixtures attached thereto.

55. “Pro Rata” means with respect to the holder of an Allowed Claims in Classes 3 and 4, the same proportion that the amount of such Allowed Claim bears to the aggregate amount of all Class 3 and Class 4 Allowed Claims.

56. “Qualified Bid” shall have the meaning ascribed as such term in the Bid Procedures.

57. “Sale” refers to the sale of the estate’s right, title, and interest in the Property, subject to Bankruptcy Court approval, to the person or entity submitting the highest and best offer at an Auction preliminarily scheduled to be held on the Auction Date.

58. “Secured Claim” means an Allowed Claim, including all amounts, if any, allowed pursuant to section 506(b) of the Bankruptcy Code, to the extent that it is secured by a lien on property in which the estate has an interest or that is subject to set-off under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder’s interest in the estate’s

interest in such property or to the extent of the amount subject to set-off, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code.

59. “Unsecured Creditor” means the holder of a General Unsecured Claim.

60. “U.S. Trustee Fees” means fees payable pursuant to 28 U.S.C. § 1930 with interest as may be due.

III. BACKGROUND AND DISCLOSURES

On the Petition Date, three unsecured creditors commenced an involuntary petition for relief pursuant to chapter 11 of the Bankruptcy Code initiating this Chapter 11 Case. After the Petition Date, the Debtor consented to the entry of an order for relief. At all relevant times, the Debtor has remained in possession of its assets and management of its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

A. Company Background and Events Precipitating the Chapter 11 Filing

1. The Property’s History

The Property is, at present, a partially developed lot within the borders of the Cast Iron Historic District in the Soho area of Manhattan. In 2004, a series of hasty excavations to the adjacent lot resulted in the building previously on the Property beginning to slowly tip over. The building became an instant tourist attraction, and was even nicknamed the “Leaning Tower of Soho.”

In most cases, a building that “leans” would be quickly demolished; however, the building featured one of the first cast-iron façades that gave the district its name (the “Façade”). Given the perceived importance of the structure, the Landmarks Preservation Commission (“LPC”) protected the building and the Façade.

Despite efforts to save the building and prevent its collapse, in 2010, the building was demolished. As required by the LPC, the Façade was removed and stored in order to be used on any replacement building erected on the Property.

2. The Debtor Acquires the Property

The Debtor was founded in 2016 as a special purpose vehicle for the sole purpose of acquiring and developing the Property. The Debtor's sole equity holder is 74 Grand Street Holdings LLC ("Holdings"), which is in turn wholly-owned by Paul McDonnell.¹

On March 3, 2016, the Debtor closed on the purchase of the Property from TJD 21 LLC ("TJD") for \$12,500,000 pursuant to a contract executed on January 12, 2016 between TJD as seller and Paul McDonnell and Greg Kavanagh as purchasers. As is customary, Paul McDonnell and Greg Kavanagh took title in the name of the Debtor. At the closing, TJD took back a note for \$520,000 and received \$11,986,000 in Cash. Churchill asserts that it was unaware of this note and that this note is in violation of the Loan Agreements. The Debtor believes Churchill was aware of the \$520,000 note as it approved the closing statement. In or about June 2016, the \$520,000 was fully satisfied. On March 9, 2016, the deed dated March 3, 2016, evidencing this purchase was recorded with the New York City Department of Finance.

3. The Debtor's Pre-Petition Capital Structure

In order to support the purchase and construction on the Property, the Debtor and Churchill entered into a series of three secured loan agreements providing for up to \$17,500,000 in aggregate financing:

¹ At or near the closing, Paul McDonnell and Greg Kavanagh may have entered into a nominee agreement which provided Paul McDonnell was acting as the nominal owner of Holdings and Greg Kavanagh was the beneficial owner. However, pursuant to a subsequent agreement executed almost immediately thereafter, the nominee agreement was superseded. As such, the Debtor believes and the documents reflect, Paul McDonnell as the sole owner of Holdings.

- On March 3, 2016, the Debtor and Churchill entered into the Acquisition Loan Agreement which provided that Churchill would lend \$9 million to the Debtor for the purposes of purchasing the Property. As of the Petition Date, the outstanding principal balance due and owing to Churchill on account of the Acquisition Loan was \$9 million.
- Also on March 3, 2016, Churchill and the Debtor entered into the Building Loan Agreement whereby Churchill agreed to loan up to \$6 million to fund the costs of developing the Property. As of the Petition Date, Churchill asserts the outstanding balance due and owing to Churchill on account of the Building Loan was \$2,932,557.48.
- Also on March 3, 2016, the Debtor and Churchill entered into the Project Loan Agreement whereby Churchill agreed to loan up to an additional \$2,500,000 to fund certain additional costs associated with the development of the Property. As of the Petition Date, Churchill asserts the outstanding amount due and owing to Churchill on account of the Project Loan was \$584,677.70.

As of the Petition Date, Churchill asserts accrued but unpaid interest due and owing on account of the Loans was \$998,485.00. Churchill asserts it is owed an additional \$193,259.86 on account of unpaid fees, expenses, and protective advances. As such, as of the Petition Date, Churchill asserts it was owed \$13,708,003.52.²

² On or around October 5, 2016, Churchill syndicated the Loans. Each Loan was split into an A-1 Loan and an A-2 Loan. Square Grand Street SARL (“Square”), an unrelated third party, purchased the A-2 Loans. Pursuant to an Agency and Co-Lender Agreement, Churchill controls the Loans. Square has no ties to the Debtor or its principals.

Each of the Loans was properly secured by a recorded mortgage on the Property as well as by UCC filings that encompassed, among other things, the Façade. Each of the Loans matured on October 1, 2017.

The \$12,500,000 purchase price paid for the Property consisted of \$9,000,000 funded by Churchill and the balance funded by loans made by an entity named Mustardside Limited, an Ireland business entity (“Mustardside”). Churchill asserts it was unaware of Mustardside loan and that this loan is in violation of the Loan Agreements. Upon information and belief, Mustardside is owned and/or controlled by Greg Kavanagh. The Mustardside Loan was made as an unsecured loan. The Debtor reserves its rights regarding the characterization of this loan as either a loan or an equity contribution.

4. Events Leading to Bankruptcy

This is a single-asset real estate (SARE) case. After demolition of the Property’s previous structure, despite receiving funding from Churchill to develop the Property, the project stagnated and remains dormant and unprotected. Almost two years have passed since financing for construction on was secured, yet the Property remains a vacant lot. A “stop-work” order was placed on the Property in May 2017 but was lifted a few weeks later. However, no work has been performed at the Property in the last six months.

In August of 2017, the Debtor failed to make scheduled payments to Churchill, and the Loans fell into default. Each Loan matured on October 1, 2017. The Debtor failed to make the required payments on account of the Loans.

Additionally, there are eight active violations issued against the Property by the Department of Buildings totaling in at least \$104,600 in unpaid fines. These violations arguably imperil the Property and create a risk of liability to third parties.

The Debtor has no cash flow and minimal assets apart from the Property. There is growing debt and no prospect of finding additional sources of funds to complete the buildout. While the Debtor and Churchill worked in good faith to attempt to restructure the Loans, the parties were unable to come to terms. One of the reasons the Debtor and Churchill were unable to come to terms was because Gayle Dunne, a relative of the owner of TJD, retained counsel and advised Churchill she believed that notwithstanding the closing on the sale of the Property, she or the entity she controlled retained an equitable ownership in the Property. Frustrated with the stalled development and the dispute between the Debtor and the Dunne family, Churchill and other trade creditors commenced an involuntary chapter 11 in order to institute an orderly process for dealing with the Debtor's claims and assets.

5. Mountbrook/Dunne Allegations

On March 3, 2016 (the same day as the closing), the Debtor, Holdings, along with Greg Kavanagh and Paul McDonnell, entered into an agreement with Mountbrook USA Inc. ("MUSA") and Gayle Dunne individually (the "MUSA Agreement") under which MUSA would act as project manager, owner's representative, and supervisor of the construction, and would be reimbursed for overhead directly attributable to the project provided it was agreed to in advance. Churchill asserts it was unaware of the MUSA Agreement.

On September 15, 2017, Gayle Dunne and MUSA demanded compensation from the Debtor purporting to be due under the MUSA Agreement, and threatened to file a lien, *lis pendens*, and/or commence an action if the issue was not resolved.

MUSA and Gayle Dunne have also claimed they are entitled to an equitable ownership interest in either the Debtor or the Property. The Debtor vigorously disputes this claim. However,

the Debtor does not dispute that MUSA would be entitled to 50% of any net profits upon the completion of the development.

B. Significant Events in the Chapter 11 Case

1. The Involuntary Petition and Debtor's Consent to Order for Relief

On November 20, 2017, Churchill and two other creditors filed an involuntary petition against the Debtor. On December 15, 2017, the Debtor consented to entry of an order for relief, which was entered on December 19, 2017.

2. Retention of Professional

On February 12, 2018, the Bankruptcy Court entered an order approving the retention of Tarter Krinsky & Drogin LLP as counsel for the Debtor. No other professionals have been retained and approved in this case.

3. Dismissal Motion

Early in this case, before the Debtor consented to the order for relief, Gayle Dunne and MUSA filed a motion to dismiss the involuntary petition or for relief from the automatic stay to permit them to exercise their purported right to control the Property (the "Dismissal Motion"). The Debtor believes the Dismissal Motion is moot because of the entry of the order for relief. MUSA has indicated that it may file, in the future, additional similar motions in this case to which the Debtor would vigorously oppose.

4. The Claims Process and Bar Date

a. Section 341 Meeting of Creditors.

On February 8, 2018, the U.S. Trustee held the meeting of Creditors in this Chapter 11 Case pursuant to section 341(a) of the Bankruptcy Code.

b. Debtor's Schedules and Statements

The Debtor filed its Schedules and Statement of Financial Affairs with the Bankruptcy Court on January 18, 2018.

c. Bar Dates

Pursuant to the Bar Date Order, the Bankruptcy Court established (i) March 19, 2018 at 5:00 p.m. (prevailing Eastern Time) as the deadline for Creditors (other than Governmental Units) to file proofs of claim in the Case, and (ii) June 18, 2018 at 5:00 p.m. (prevailing Eastern Time) as the deadline for Governmental Units to file proofs of claim in this Case (collectively, the “Bar Dates”).

5. The Plan Process

Shortly after the Petition Date, the Debtor and the Debtor’s Equity Interest holders began working with Churchill and other parties in interest to outline the terms of a plan. Initially, the Debtor was optimistic it would be able to obtain financing from Greg Kavanagh or other sources, but ultimately agreed upon the proposed sale Plan, which will avoid costly litigation, allow for an orderly sale of the Property, and provide some recovery for Unsecured Creditors.

C. Certain Federal Income Tax Consequences

The confirmation and execution of the Combined Plan and Disclosure Statement may have tax consequences to holders of Claims and Equity Interests. The Debtor does not offer an opinion as to any federal, state, local, or other tax consequences to holders of Claims and Equity Interests as a result of the confirmation of the Combined Plan and Disclosure Statement. All holders of Claims and Equity Interests are urged to consult their own tax advisors with respect to the federal, state, local, and foreign tax consequences of the Combined Plan and Disclosure Statement. The Combined Plan and Disclosure Statement is not intended, and should not be construed, as legal or tax advice to any Creditor, Equity Interest holder, or other party in interest.

D. Alternate Plan

If the Combined Plan and Disclosure Statement is not confirmed, the Debtor or any other party in interest could attempt to formulate a different plan. The additional costs, including, among other amounts, additional Professional fees or asserted substantial contribution claims, all of which would constitute Administrative Claims (subject to allowance), however, may be so significant that one or more parties in interest could request the Chapter 11 Case be converted to chapter 7. Accordingly, the Debtor believes the Combined Plan and Disclosure Statement enables Creditors to realize the best return under the circumstances.

E. Best Interests Test and Liquidation Analysis

Section 1129(a)(7) of the Bankruptcy Code requires that each holder of an Impaired Claim or Equity Interest either (a) accept the Combined Plan and Disclosure Statement or (b) receive or retain under the Combined Plan and Disclosure Statement property of a value, as of the Effective Date, that is not less than the value such holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code. Because of the cooperation between the Debtor and Churchill, the Debtor has been able to arrange for favorable fee arrangements from the proposed broker/Auctioneer as well as a consensual reduction in the amount of the Churchill Claim. Moreover, the Debtor estimates the value of the Property is less than the value of the Churchill Claim.³

Here, the value of any Distributions if the Debtor's Case was converted to a case under chapter 7 of the Bankruptcy Code would be less than the value of Distributions under the Combined Plan and Disclosure Statement. This is because conversion of the Case to a chapter 7 case would require the appointment of a chapter 7 trustee, and in turn, such chapter 7 trustee's

³ Churchill has obtained an appraisal of the Property as of November 17, 2017 indicating the fair market value of the Property to be \$12,600,000.

likely retention of new Professionals, including a new Auctioneer at an increased cost. The trustee and new professionals would impose potential additional costs to the estate and with a delay compared to the time of sale under the Combined Plan and Disclosure Statement. Furthermore, a chapter 7 trustee would be entitled to statutory commissions.

Churchill is only willing to contribute the Plan Fund under this Combined Plan and Disclosure Statement, and therefore there is the potential that at Auction there will be no funds available for either administrative or Unsecured Creditors. As a result, in the absence of this Plan, the Debtor believes the estate would have fewer funds to be distributed in a hypothetical chapter 7 liquidation than it would if the Combined Plan and Disclosure Statement is confirmed, and therefore holders of Claims in all impaired Classes will recover less than in the hypothetical chapter 7 case. Accordingly, the Debtor believes the “best interest” test of Bankruptcy Code section 1129 is satisfied.

F. Certain Risk Factors Considered

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

1. Risk Factors that May Affect the Debtor’s Ability to Consummate the Combined Plan and Disclosure Statement

a. Debtor May Not Be Able to Secure Confirmation of the Combined Plan and Disclosure Statement

Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a chapter 11 plan. While, as set forth below, the Debtor believes the Combined Plan and Disclosure Statement complies with or will comply with all such requirements, there can be no guarantee that the Bankruptcy Court will agree.

b. Delays or Non-Occurrence of Confirmation or of the Effective Date

Although the Debtor believes the Effective Date will occur and should occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur. Any delay in confirmation and effectiveness of the Combined Plan and Disclosure Statement could result in, among other things, increased Administrative Claims and Professional Fee Claims.

c. Parties May Object to the Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code provides that a plan may place a Claim or an Equity Interest in a particular class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such class. The Debtor believes the classification of Claims and Equity Interests under the Combined Plan and Disclosure Statement complies with the requirements set forth in the Bankruptcy Code. Nevertheless, there can be no assurance the Bankruptcy Court will reach the same conclusion.

d. Risk Factors that May Affect Distributions Under the Combined Plan and Disclosure Statement

The estimates of Allowed Claims and recoveries for holders of Allowed Claims set forth in the Combined Plan and Disclosure Statement are based on various assumptions. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may vary significantly from the estimated Claims contained in the Combined Plan and

Disclosure Statement. Moreover, the Debtor cannot determine with any certainty at this time the number or amount of Claims that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the recoveries to holders of Allowed Claims under the Combined Plan and Disclosure Statement.

IV. TREATMENT OF UNCLASSIFIED CLAIMS

A. Administrative Claims

Requests for Administrative Claims must be filed by no later than the Administrative Claims Bar Date. On the Effective Date or as soon thereafter as is practicable, each holder of an Allowed Administrative Claim shall receive payment in full in Cash of the Allowed amount of such Claim (as determined by settlement or Final Order of the Bankruptcy Court) or such other treatment as may be agreed upon by such holder of an Allowed Administrative Claim. Notwithstanding anything to the contrary herein, all Administrative Claims based on the fees and expenses of Professionals shall only be paid after Court authorization. The Debtor estimates Professional Fees will be approximately \$100,000.00 net of retainers.

B. Priority Tax Claims

On the Effective Date or as soon thereafter as is practicable, each holder of an Allowed Priority Tax Claim, if any, shall receive payment in full in Cash of the Allowed amount of such Claim (as determined by settlement or Final Order of the Bankruptcy Court), or such other treatment as may be agreed upon by such holder of an Allowed Priority Tax Claim.

C. Payment of Statutory Fees

All statutory fees prior to the Effective Date shall be paid by the Debtor on the Effective Date. After the Effective Date, the Debtor shall pay any and all such fees when due and payable and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the

UST. The Debtor shall remain obligated to pay quarterly fees to the UST until the earliest of the Debtor’s case being closed, dismissed or converted to a case under chapter 7 of the Bankruptcy Code.

V. SUMMARY OF TREATMENT OF CLAIMS

The following chart provides a summary of treatment of each Class of Claims and Equity Interests (other than Administrative Claims and Priority Tax Claims) and an estimate of the recoveries of each Class.⁴ The treatment provided in this chart is for informational purposes only and is qualified in its entirety by Article VII of the Combined Plan and Disclosure Statement.

A. Summary of Classification and Treatment of Claims and Equity Interests

Class	Estimated Allowed Claims and Equity Interests	Treatment/Voting Status	Estimated Recovery to Holders of Allowed Claims and Equity Interests
Class 1 – Senior Secured Claim	\$13,500,000	Impaired/Entitled to Vote	100% ⁵
Class 2 – Other Secured Claims	\$30,000.00	Unimpaired/Deemed to Accept	100%
Class 3 – Mechanics Lien Claims	\$Unknown at this time	Impaired/Entitled to Vote	If the Property sells for at least \$13,800,000 plus the Allowed Class 2 Claims, Class 3 Claim holders may receive a recovery prior to payment of Class 4 Claim holders. If the Property sells for less than \$13,800,000 plus the Allowed Class 2

⁴ The amounts represent estimated Allowed Claims and do not represent amounts actually asserted by the Creditors in proofs of claim or otherwise. The Bar Date has not yet passed and the Debtor has not completed its analysis of Claims filed to date in the Chapter 11 Case. Therefore, there can be no assurances of the exact amount of the Allowed Claims at this time. Rather, the actual amount of the Allowed Claims may be more or less than estimated.

⁵ As set forth below, Churchill has agreed to reduce its Claim and will credit bid its debt at the Auction. Assuming Churchill is the successful bidder at the Auction, the Churchill Claim would be deemed fully satisfied by virtue of the credit bid.

			Claims, Class 3 Claim holders shall be treated as Class 4 Claim holders.
Class 4 – General Unsecured Claims	\$400,000-\$9,400,000 ⁶	Impaired/Entitled to Vote	[1.5% to 37.5%]
Class 5 – Equity Interests	N/A	Impaired/Deemed to Reject	No Distribution

VI. CONFIRMATION AND VOTING PROCEDURES

A. Confirmation Procedure

1. Disclosure Statement Approval

On March ____, 2018, the Bankruptcy Court entered the Disclosure Statement Order. The Disclosure Statement Order conditionally approved the Combined Plan and Disclosure Statement as providing adequate information pursuant to section 1125 of the Bankruptcy Code and authorized the Debtor to solicit acceptances of the Combined Plan and Disclosure Statement.

2. Confirmation Hearing

Pursuant to the Disclosure Statement Order, a hearing has been scheduled for April 2, 2018, at 10:00 a.m., at the Bankruptcy Court at One Bowling Green, New York, New York to consider confirmation of the Combined Plan and Disclosure Statement pursuant to section 1129 of the Bankruptcy Code. The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice, except for an announcement of the adjourned date made at the Confirmation Hearing or by filing a notice with the Bankruptcy Court.

3. Procedure for Objections

Any objection to confirmation of the Combined Plan and Disclosure Statement must: (i) be in writing, (ii) conform to the Bankruptcy Rules and Local Rules of Bankruptcy Practice and

⁶ As set forth above, the Debtor has not made a final determination regarding the allowance of the Mustardside Claim, which impacts recoveries to Unsecured Creditors.

Procedure of the United States Bankruptcy Court for the Southern District of New York, and (iii) be filed with the Bankruptcy Court and served so as to be actually received on or before **March 26, 2018** (the “Confirmation Objection Deadline”) by (i) counsel for the Debtor, Tarter Krinsky & Drogin LLP, 1350 Broadway, 11th Floor, New York, NY 10018, Attn: Scott S. Markowitz, Esq. and Rocco A. Cavaliere, Esq.; (ii) counsel to Churchill, (a) Morrison Cohen LLP, 909 Third Ave, 27th Floor, New York, New York, 10022, Attn.: Robert K. Dakis, Esq. and (b) Thompson Hine, LLP, 335 Madison Ave., 12th Fl, New York, NY 10017, Attn: Barry M. Kazan, Esq. and (iii) the Office of the U.S. Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, NY 10014, Attn: Susan Arbeit, Esq. **Unless an objection is timely filed and served by the Confirmation Objection Deadline, such objection may not be considered by the Bankruptcy Court at the Confirmation Hearing.**

4. Requirements for Confirmation

The Bankruptcy Court will confirm the Combined Plan and Disclosure Statement only if it meets all the applicable requirements of section 1129 of the Bankruptcy Code. Among the requirements for confirmation in this Chapter 11 Case is the Combined Plan and Disclosure Statement be: (i) accepted by all impaired Classes of Claims and Equity Interests or, if rejected by an impaired Class, the Combined Plan and Disclosure Statement “does not discriminate unfairly” against and is “fair and equitable” with respect to such Class; and (ii) feasible. The Bankruptcy Court must also find that:

- a. The Combined Plan and Disclosure Statement has classified Claims and interests in a permissible manner;
- b. The Combined Plan and Disclosure Statement complies with the technical requirements of chapter 11 of the Bankruptcy Code; and

- c. The Combined Plan and Disclosure Statement has been proposed in good faith.

The Debtor believes the Combined Plan and Disclosure Statement complies, or will comply, with all such requirements.

5. Classification of Claims and Equity Interests

Section 1122 of the Bankruptcy Code requires the Combined Plan and Disclosure Statement to place a Claim or Equity Interest in a particular Class only if such Claim or Equity Interest is substantially similar to the other Claims or Equity Interests in such Class. The Combined Plan and Disclosure Statement creates separate Classes to deal respectively with Secured Claims, Mechanics Lien Claims, General Unsecured Claims, and Equity Interests. The Debtor believes the Combined Plan and Disclosure Statement's classifications place substantially similar Claims or Equity Interests in the same Class and thus meet the requirements of section 1122 of the Bankruptcy Code.

6. Impaired Claims or Equity Interests

Pursuant to section 1126 of the Bankruptcy Code, only the holders of Claims in Classes Impaired by the Combined Plan and Disclosure Statement and receiving a payment or Distribution under the Combined Plan and Disclosure Statement may vote on the Combined Plan and Disclosure Statement. Pursuant to section 1124 of the Bankruptcy Code, a Class of Claims may be impaired if the Combined Plan and Disclosure Statement alters the legal, equitable, or contractual rights of the holders of such Claims or interests treated in such Class. The holders of Claims not impaired by the Combined Plan and Disclosure Statement are deemed to accept the Combined Plan and Disclosure Statement and do not have the right to vote on the Combined Plan and Disclosure Statement. The holders of Claims or Equity Interests in any Class which will

not receive any payment or Distribution or retain any property pursuant to the Combined Plan and Disclosure Statement are deemed to reject the Combined Plan and Disclosure Statement and do not have the right to vote.

7. Eligibility to Vote on the Combined Plan and Disclosure Statement

Holders of Claims in Classes 1, 3 and 4 may vote on the Combined Plan and Disclosure Statement unless an objection to the Claim has been filed at the time the Claim holder executes the Ballot.

8. Solicitation Notice

All holders of Allowed Claims will receive (i) the Disclosure Statement Order, (ii) a form of Ballot, and (iii) a copy of the Combined Plan and Disclosure Statement.

9. Procedure/Voting Deadlines

In order for your Ballot to count, you must (1) complete, date, and properly execute the Ballot and (2) properly deliver the Ballot to the Debtor's counsel by mailing the Ballot to Tarter Krinsky & Drogin LLP, 1350 Broadway, 11th Floor, New York, New York, 10018, Attn: Scott S. Markowitz, Esq.

The Debtor must physically receive original ballots by mail or overnight delivery, on or before **March 23, 2018** (the "Voting Deadline"). Subject to the tabulation procedures approved by the Disclosure Statement Order, you may not change your vote once a Ballot is received by the Debtor.

Subject to the tabulation procedures approved by the Disclosure Statement Order, any Ballot that is timely and properly received will be counted and will be deemed to be cast as an acceptance, rejection, or abstention, as the case may be, of the Combined Plan and Disclosure Statement.

10. Acceptance of the Combined Plan and Disclosure Statement

As a Creditor, your acceptance of the Combined Plan and Disclosure Statement is important. In order for the Combined Plan and Disclosure Statement to be accepted by an impaired Class of Claims, a majority in number (*i.e.*, more than half) and two-thirds in dollar amount of the Claims voting (of each impaired Class of Claims) must vote to accept the Combined Plan and Disclosure Statement. At least one impaired Class of Creditors, excluding the votes of insiders, must actually vote to accept the Combined Plan and Disclosure Statement. The Debtor urges that you vote to accept the Combined Plan and Disclosure Statement. **YOU ARE URGED TO COMPLETE, DATE, SIGN, AND PROMPTLY RETURN THE BALLOT. PLEASE BE SURE TO COMPLETE THE BALLOT PROPERLY AND, IF NECESSARY, LEGIBLY IDENTIFY THE EXACT AMOUNT OF YOUR CLAIM AND THE NAME OF THE CREDITOR.**

11. Elimination of Vacant Classes

Any Class of Claims or Equity Interests that does not contain, as of the date of commencement of the Confirmation Hearing, a holder of an Allowed Claim or Equity Interest, or a holder of a Claim temporarily allowed under Bankruptcy Rule 3018, shall be deemed deleted from the Combined Plan and Disclosure Statement for all purposes, including for purposes of determining acceptance of the Combined Plan and Disclosure Statement by such Class under section 1129(a)(8) of the Bankruptcy Code.

B. Bar Dates for Fee Claims

All requests for compensation or reimbursement of Professionals retained in this Case for services performed and expenses incurred prior to the Effective Date shall be filed and served on: (i) the UST, (ii) counsel for the Debtor, and (iii) such other entities who are designated by the

Bankruptcy Rules, the Confirmation Order, or other Order of the Bankruptcy Court, by no later than thirty (30) days after the Effective Date, unless otherwise agreed by the Debtor. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and Professionals may be employed and paid in the ordinary course of business without any further notice to, or action, Order, or approval of, the Bankruptcy Court.

VII. TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. Treatment of Claims

1. Class 1 — Senior Secured Claim

a. Classification

Class 1 is composed of the Churchill Claim.

b. Impairment and Voting

Voting: Class 1 is impaired and entitled to vote for or against the Plan.

c. Treatment

Churchill has agreed to reduce the amount of its Allowed Claim to \$13.5 million as of the Petition Date. Churchill will be paid either in Cash from the proceeds of the Sale, or shall be deemed to have its Allowed Claim fully satisfied via its \$13.5 million credit bid.

2. Class 2 – Other Secured Claims

a. Classification

Class 2 is comprised of other Secured Claims including, among others, any claims of the City of New York on account of unpaid real estate taxes.

b. Impairment and Voting

Class 2 Claims are not impaired and are deemed to accept the Plan.

c. Treatment

Class 2 Claims shall be paid in full on the Effective Date.

3. Class 3 — Mechanics Lien Claims

a. Classification

Class 3 is comprised of allowed Mechanics Lien Claims.

b. Impairment and Voting

Class 3 Claims are impaired and eligible to vote on the Plan.

c. Treatment

In the event the Property sells for more than \$13,800,000.00 plus the Allowed Class 2 Claims, Class 3 Claims will be paid their *Pro Rata* share of the proceeds of Sale until such Claims are satisfied in full. In the event the Property does not sell for more than \$13,800,000.00 plus the Allowed Class 2 Claims, holders of Class 3 Claims shall be deemed General Unsecured Claims and shall be added to Class 4.

4. Class 4 — General Unsecured Claims

a. Classification

Class 4 is comprised of Allowed General Unsecured Claims, including all unpaid Claims of contractors, vendors, and service providers not holding valid Mechanics Lien Claims. Class 4 is also comprised of all holders of Mechanics Lien Claims that were not paid in full through their treatment in Class 3.

b. Impairment and Voting

Class 4 Claims are impaired and eligible to vote on the Plan.

c. Treatment

Class 4 Claims shall receive, in full and final satisfaction of such Claims, their *Pro Rata* share of the Sale proceeds after satisfaction, in full, of Class 1, Class 2, and Class 3 claims. In the event the Property does not sell for more than the value of the Churchill Claim, holders of Class 4 Claims will receive their *Pro Rata* share of the balance of the Plan Fund remaining after payment of Allowed Administrative Claims.

5. Class 5 – Equity Interests

a. Classification

Class 5 is comprised of the Debtor's current Equity Interests.

b. Impairment and Voting

The holders of Class 5 Equity Interests are deemed to reject the Plan and are not entitled to vote to accept or reject the Plan.

c. Treatment

The holders of Class 5 Equity Interests will receive no Distribution. After entry of the Confirmation Order, all Class 5 Equity Interests will be deemed canceled, null and void, and of no force and effect.

B. Cramdown and No Unfair Discrimination

In the event that any impaired Class of Claims or Equity Interests rejects the Plan or is deemed to have rejected the Combined Plan and Disclosure Statement, the Debtor hereby requests, without any delay in the occurrence of the Confirmation Hearing or Effective Date, that the Bankruptcy Court confirm the Combined Plan and Disclosure Statement in accordance with section 1129(b) of the Bankruptcy Code with respect to such non-accepting Class, in which case the Combined Plan and Disclosure Statement shall constitute a motion for such relief.

Confirming the Combined Plan and Disclosure Statement under such a circumstance is what is known as a “cramdown.” Among other things, a “cramdown” is appropriate where the Bankruptcy Court finds that such plan does not unfairly discriminate against the objecting classes and is fair and equitable with respect to those objecting classes. A plan unfairly discriminates against a class if another class of equal rank in priority will receive greater value under the plan than the non-accepting class without reasonable justification. A plan is fair and equitable if no claim or interest junior to the objecting class shall receive or retain any claim or interest under the plan. Assuming the Class 1 Claim holder votes in favor of the Plan, the Debtor believes it will be able to comply with section 1129(b) of the Bankruptcy Code and will request the Court confirm the Plan notwithstanding the failure to comply with section 1129(a)(8) of the Bankruptcy Code.

VIII. IMPLEMENTATION OF THE PLAN

A. Sale of the Property

The Plan is a “sale plan” whereby the Property will be marketed in accordance with the Bid Procedures approved by the Court, and sold at an Auction, with the sale proceeds to be distributed to the Classes of Claims entitled to receive a Distribution. The Sale shall be effectuated as follows:

1. Upon conditional approval of the Disclosure Statement, the Property shall immediately be marketed for sale by the Debtor with the assistance of a retained broker/Auctioneer.
2. The Marketing Period shall be approximately forty (40) days from entry of the Disclosure Statement Order.

3. Qualified Bidders shall be chosen as outlined in the Bid Procedures approved by the Court.

4. A sale by Auction shall occur on April 11, 2018 if Qualified Bids other than Churchill's credit bid of \$13,500,000.00 are timely received in accordance with the Bid Procedures.

5. David Schechtman of Meridian Capital Group, LLC shall be promptly retained to serve as Auctioneer/broker for the Property.

6. Churchill is required to credit bid the Allowed amount of its Claim—\$13.5 million—and is deemed a Qualified Bidder pursuant to the Bid Procedures approved by the Bankruptcy Court.

7. The terms of sale included in the Bid Procedures shall be approved and shall be used as the form of sale contract for the Sale.

8. After the Auction, the Debtor shall file a notice of results of Auction.

B. Plan Fund

On the Effective Date, only if Churchill is a successful purchaser via its credit bid, Churchill will pay to the estate \$250,000 in Cash to fund the Plan Fund. The Plan Fund will be used to satisfy Administrative Claims, with the balance being distributed *Pro Rata* to Class 4 Claim holders.

C. Discharge of Obligations

Except as otherwise expressly provided for and preserved herein, upon the occurrence of the Effective Date, as the case may be, any mortgages, liens, claims, taxes, judgments, notices of pendency, and non-permitted encumbrances that have been asserted against the Debtor or the

Debtor's Property, shall be deemed cancelled and discharged as of record; provided, however, the preceding proviso shall not affect the discharge of Claims pursuant to the Bankruptcy Code or this Plan or result in any expense or liability to the Debtor.

D. Post-Closing Date Transactions

On or after the Effective Date, the Debtor is hereby authorized to take any and all actions as may be necessary or appropriate to effect any of the provisions of this Plan, including any and all actions as may be necessary or appropriate to effect the sale contemplated by this Plan and the transfer of the Property, including the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of this Plan and other terms on which the applicable parties agree.

E. Preservation of Other Rights and Causes of Action

All Causes of Action belonging to the Debtor against third parties shall remain property of the Debtor's estate and shall be vested in the estate for the benefit of the creditors of this estate to the extent not otherwise liquidated prior to the Effective Date.

F. Post-Confirmation Management

Any post-confirmation actions required to implement the Plan shall be managed by the Debtor.

G. Rights and Powers of the Debtor

The Debtor shall be empowered to (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan, (ii) direct that all Distributions contemplated hereby be made, (iii) prosecute, settle, and enforce all causes of

action and claims on behalf of the estate, and (iv) exercise such other powers as may be deemed by the Debtor to be necessary and proper to implement the provisions hereof.

IX. PROVISIONS GOVERNING DISTRIBUTIONS

A. Distributions

All Distributions under the Plan shall be made by Debtor with appropriate reserves to be established with respect to Disputed Claims, as provided below.

B. Claim Objection Deadline

Unless otherwise ordered by the Bankruptcy Court, objections to Claims shall be served no later than 60 days after the Effective Date in accordance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules. Any Claim that is the subject of a filed Claim objection at the time of the Confirmation Hearing shall not be eligible to vote on the Plan pursuant to 11 U.S.C. § 1126(a) unless such Claim holder obtains such right as permitted by the Bankruptcy Code or the Bankruptcy Rules.

C. No Distribution Pending Allowance

Notwithstanding any other provision of the Plan, no payment or Distribution shall be made with respect to any portion of a Disputed Claim unless and until all objections to such Disputed Claim are resolved by stipulation or order of the Bankruptcy Court which becomes final and non-appealable (hereafter referred to as a “Final Order”).

D. Unclaimed Distributions

If a Distribution to the holder of any Allowed Claim is returned as undeliverable or unclaimed, no further Distribution shall be made to such holder unless and until the Debtor is notified in writing of such holder’s then current address within ninety (90) days of the Effective Date. Thereafter, the Distribution shall be forfeited and revert back to the Debtor.

E. Disputed Claims Reserves

From and after the Effective Date, and until such time as a Disputed Claim has been compromised, settled, or determined by Final Order, the Debtor shall establish and maintain the Disputed Claims Reserve to ensure that each holder of a Disputed Claim shall receive payment in full in accordance with the provisions of the Plan in the event such Claim is allowed in the maximum amount claimed. At such time as, and to the extent that, any Disputed Claim becomes Allowed by Final Order, in whole or in part, the Debtor shall utilize amounts held by the Debtor to make payment to the holder of such Claim as provided for herein. Following the payment, satisfaction, or resolution of all Disputed Claims any amounts remaining in the Disputed Claims Reserve shall be made available for Distribution under the Plan.

X. PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT, AND UNLIQUIDATED CLAIMS

A. Prosecution of Objections to Disputed Claims

The Debtor or any other person with standing shall be responsible for pursuing any objection to the allowance of Claims.

B. Estimation of Claims

The Debtor shall have the right to seek an order of the Bankruptcy Court, after notice and a hearing (which notice may be limited to the holder of a Disputed Claim and the United States Trustee, and which hearing may be held on an expedited basis), estimating for final Distribution purposes any Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor previously objected to such Claim prior to the Confirmation Hearing.

XI. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Rejection of Executory Contracts and Unexpired Leases

Subject to Sections XI. C and XI. D below, on the Effective Date, all executory contracts or unexpired leases not assumed before the Effective Date, terminated by their own terms prior to the Effective Date, or subject to a pending motion to assume as of the Effective Date, will be deemed rejected. The Confirmation Order shall constitute an Order approving such rejection as of the Effective Date.

B. Deadline for Filing Proofs of Claim Relating to Executory Contracts and Unexpired Leases Rejected Pursuant to the Combined Plan and Disclosure Statement

If the rejection by the Debtor of an executory contract or unexpired lease pursuant to the Combined Plan and Disclosure Statement gives rise to a Claim, a proof of claim must be submitted to the Debtor, by no later than thirty-five (35) days after the Effective Date. Any proofs of claim not filed and served within such time period will be forever barred from assertion against the Debtor and its estate. Unless otherwise ordered by the Bankruptcy Court, all Claims arising from the rejection of executory contracts shall be treated as Class 3 Claims under the Combined Plan and Disclosure Statement.

C. Debtor's Obligations Pursuant to its Organizational Documents

By the Combined Plan and Disclosure Statement, the Debtor hereby assumes all obligations pursuant to its certificate of formation, operating agreement, or other organization documents to indemnify current officers, directors, agents, and/or employees with respect to all present and future actions, suits, and proceedings against the Debtor or such directors, officers, agents, and/or employees, based upon any act or omission for or on behalf of the Debtor. All such obligations shall not be discharged or impaired by confirmation of the Combined Plan and Disclosure Statement. Notwithstanding the foregoing, any and all such related pre-Petition Date obligations (including prepetition indemnification obligations and prepetition cure obligations)

shall constitute Class 4 Claims, without further recourse to the assets of or Distributions from the Debtor's estate. Notwithstanding the foregoing, any and all post-Petition Date indemnity obligations arising from post-Petition Date activities shall constitute Administrative Claims, subject to section 503(b)(1)(A) of the Bankruptcy Code.

D. Debtor's Insurance Policies

Nothing in the Combined Plan and Disclosure Statement and/or the Confirmation Order alters the rights and obligations of the Debtor (and its estate) and the Debtor's insurers (and third-party claims administrators) under any insurance policies or modifies the coverage or benefits provided thereunder or the terms or conditions thereof or diminishes or impairs the enforceability of such insurance policies. The Debtor is authorized to terminate and/or cancel the Debtor's insurance policies in connection with the final dissolution of the Debtor.

**XII. CONDITIONS PRECEDENT TO THE
EFFECTIVE DATE OF THE PLAN**

A. Conditions Precedent to the Effective Date

The following are conditions precedent to the Effective Date that must be satisfied:

- a. Confirmation shall have occurred and the Confirmation Order shall have been entered by the Bankruptcy Court, and not stayed by the Bankruptcy Court or any other court with appropriate jurisdiction;
- b. There shall not be in effect on the Effective Date any Order entered by a court of competent jurisdiction staying, restraining, enjoining, or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan;
- c. All other documents necessary to implement the Plan shall have been effected or executed in form and substance satisfactory to the Debtor; and

- d. The closing on the Sale of the Property shall have occurred and if Churchill is a successful bidder via the credit bid, Churchill has deposited the Plan Fund into Debtor's counsel's trust account for Distributions in accordance with this Plan.

XIII. OTHER PROVISIONS

A. Books and Records

On the Effective Date, the Debtor's books and records shall be transferred to the Post-Effective Date Debtor who shall be free, in its discretion to abandon, destroy, or otherwise dispose of the books and records in compliance with applicable non-bankruptcy law at any time on and after the Effective Date, without the need for any other or further Order.

B. Revesting of Debtor's Assets

Except as otherwise provided herein, any assets that are property of the Debtor's estate on the Effective Date including, without limitation, any Causes of Action, shall revert in the Post-Effective Date Debtor on the Effective Date. Thereafter, the Post-Effective Date Debtor may operate its business and may use, acquire, and dispose of such property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, or Bankruptcy Court approval. Except as specifically provided in the Combined Plan and Disclosure Statement or the Confirmation Order, as of the Effective Date, all property of the Debtor shall be free and clear of any Liens, Claims, encumbrances, and interests of any kind.

C. Termination of Injunctions or Stays

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays provided for in the Chapter 11 Case under Bankruptcy Code sections 105 or 362 or otherwise,

and extant on the Confirmation Date shall terminate on the Effective Date, at which time the injunctions and stays set forth in the Combined Plan and Disclosure Statement shall take effect.

D. Amendment or Modification of the Combined Plan and Disclosure Statement

Alterations, amendments, or modifications of the Combined Plan and Disclosure Statement may be proposed in writing by the Debtor, at any time before the Confirmation Date, provided that the Combined Plan and Disclosure Statement, as altered, amended, or modified, satisfies the conditions of sections 1122 and 1123 of the Bankruptcy Code, and the Debtor shall have complied with section 1125 of the Bankruptcy Code.

E. Severability

In the event the Bankruptcy Court determines, before the Confirmation Date, that any provision in the Combined Plan and Disclosure Statement is invalid, void, or unenforceable, such provision shall be invalid, void, or unenforceable with respect to the holder or holders of such Claims or Equity Interest as to which the provision is determined to be invalid, void, or unenforceable. The invalidity, voidability, or unenforceability of any such provision shall in no way limit or affect the enforceability and operative effect of any other provision of the Combined Plan and Disclosure Statement.

F. Revocation or Withdrawal of the Combined Plan and Disclosure Statement

The Debtor reserves the right to revoke or withdraw the Combined Plan and Disclosure Statement before the Confirmation Date. If the Debtor revokes or withdraws the Combined Plan and Disclosure Statement before the Confirmation Date, then the Combined Plan and Disclosure Statement shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Debtor.

G. Binding Effect

The Combined Plan and Disclosure Statement shall be binding upon and inure to the benefit of the Debtor, the holders of Claims and the holders of Equity Interests, and their respective successors and assigns.

H. Notices

All notices, requests, and demands to or upon the Debtor to be effective shall be in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as shall be set forth in the Confirmation Order.

I. Governing Law

Except to the extent the Bankruptcy Code, Bankruptcy Rules, or other federal law is applicable, or to the extent an exhibit to the Combined Plan and Disclosure Statement provides otherwise, the rights and obligations arising under the Combined Plan and Disclosure Statement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of law of such jurisdiction.

J. Headings

Headings are used in the Combined Plan and Disclosure Statement for convenience and reference only, and shall not constitute a part of the Combined Plan and Disclosure Statement for any other purpose.

K. Filing of Additional Documents

On or before substantial consummation of the Combined Plan and Disclosure Statement, the Debtor shall file with the Bankruptcy Court such agreements and other documents as may be

necessary or appropriate to effectuate and further evidence the terms and conditions of the Combined Plan and Disclosure Statement.

L. No Admissions

Notwithstanding anything herein to the contrary, nothing contained in the Combined Plan and Disclosure Statement shall be deemed as an admission by any entity with respect to any matter set forth herein.

M. Successors and Assigns

The rights, benefits, and obligations of any person or entity named or referred to in the Combined Plan and Disclosure Statement shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, or assign of such person or entity.

N. Reservation of Rights

Except as expressly set forth herein, the Combined Plan and Disclosure Statement shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the filing of the Combined Plan and Disclosure Statement, nor any statement or provision contained herein, or the taking of any action by the Debtor with respect to the Combined Plan and Disclosure Statement shall be or shall be deemed to be an admission or waiver of any rights of the Debtor or holders of Claims or Equity Interests before the Effective Date.

O. Implementation

The Debtor shall take all steps, and execute all documents, including appropriate releases, necessary to effectuate the provisions contained in the Combined Plan and Disclosure Statement.

P. Inconsistency

In the event of any inconsistency among the Combined Plan and Disclosure Statement and any other instrument or document created or executed pursuant to the Combined Plan and

Disclosure Statement, the provisions of the Combined Plan and Disclosure Statement shall govern.

Q. Dissolution of the Debtor

As soon as practicable after the closing of the Chapter 11 Case, the Debtor may: (i) file a certificate of dissolution or such similar document, together with all other necessary corporate documents, to effect such Debtor's dissolution or termination under the applicable laws of its state of incorporation or domicile; and (ii) complete and file such Debtor's final federal, state, and local tax returns. Following such actions, such Debtor shall be dissolved or terminated for all purposes without the necessity for any other or further actions, including, without limitation, the payment of any franchise or similar taxes to the state or commonwealth of incorporation or organization of such entity. The filing by the Debtor of its certificate of dissolution or similar document shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including, without limitation, any action by the stockholders, members, or the board of directors.

R. Request for Expedited Determination of Taxes

The Debtor shall have the right to request an expedited determination under section 505(b) of the Bankruptcy Code with respect to tax returns filed, or to be filed, for any and all taxable periods ending after the Petition Date through the Effective Date.

S. Compliance with Tax Requirements

In connection with the Plan, the Debtor shall comply with all withholding and reporting requirements imposed by federal, state, and local taxing authorities and distributions under the Plan shall be subject to such withholding and reporting requirements; provided, however, that the

transfer of the Property or other interest hereunder shall be exempt from any federal, state or local recording tax to the fullest extent permitted by Section 1146(a) of the Bankruptcy Code.

T. Effective Date

The Effective Date of the Plan is defined to mean the post-confirmation date on which the conditions precedent under Article XII herein have been satisfied and upon which the terms of the Plan become effective.

U. Modification of the Plan

The Plan may be amended or modified by the Debtor (a) before the Confirmation Date, to the extent permitted by section 1127 of the Bankruptcy Code; (b) after the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, to the extent the Debtor institutes proceedings in the Bankruptcy Court to modify this Plan pursuant to section 1127(b) of the Bankruptcy Code to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order or to accomplish such matters as may be necessary or appropriate to carry out the purposes and effects of the Plan. The Debtor also reserves the right to modify or amend the Plan upon a determination by the Bankruptcy Court that the Plan is not confirmable pursuant to section 1129 of the Bankruptcy Code to the extent permissible under section 1127 of the Bankruptcy Code without the need to re-solicit acceptances.

V. Retention of Jurisdiction

The Bankruptcy Court shall retain jurisdiction over the Chapter 11 Case for the purposes of, *inter alia*, determining all disputes relating to Claims, resolving all matters relating to the Sale, and other issues presented by or arising under the interpretation, implementation, or enforcement of the Plan, and to determine all other matters pending on the date of confirmation.

XIV. ADDITIONAL INFORMATION

The Plan and Disclosure Statement may be amended and supplemented from time to time so creditors have the most up-to-date information as circumstances continue to develop. Requests for additional information should be directed to the Debtor's counsel at Tarter Krinsky & Drogin LLP, 1350 Broadway, 11th Floor, New York, New York 10018, Tel: (212) 216-8000, Attn: Scott S. Markowitz, Esq., Email: smarkowitz@tarterkrinsky.com.

XV. CONCLUSION

The Plan provides the best approach to maximize value for the Debtor's estate, including a recovery to holders of the Unsecured Claims. Thus, all Creditors are urged to vote to accept the Plan.

Dated: March 1, 2018

74 GRAND ST. EQUITIES, LLC
Debtor and Debtor-in-Possession

By: /s/ Paul McDonnell
Name: Paul McDonnell
Title: Managing Member