

**Hearing Date and Time: October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)**

**Response Deadline: October 18, 2017 at 5:00 p.m. (prevailing Eastern Time)**

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](mailto:nlabovitz@debevoise.com)) and Christopher Updike ([cupdike@debevoise.com](mailto: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](mailto: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](mailto:rfeinstein@pszjlaw.com)), Maria Bove, Esq. ([mbove@pszjlaw.com](mailto:mbove@pszjlaw.com)), and Steven Golden, Esq. ([sgolden@pszjlaw.com](mailto: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

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**In re:**

**TBAC WIND DOWN, LTD.,**

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**Chapter 11**

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

**MOTION FOR ENTRY OF 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 above-captioned debtor and debtor in possession, TBAC Wind Down, Ltd.,  
f/k/a The Big Apple Circus, Ltd. (the “**Circus**” or “**Debtor**”), respectfully states as follows:

**Relief Requested**

1. By this motion, pursuant to sections 502, 1125, 1126, and 1128 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 3016, 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 2002-1, 3017-1, 3018-1, 3020-1, and 9013-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Bankruptcy Rules**”), the Circus requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), approving: (i) the adequacy of the

*Disclosure Statement for the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (as may be amended from time to time and including all exhibits and schedules attached thereto, the “**Disclosure Statement**”); (ii) the solicitation and notice procedures with respect to confirmation of the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (as may be amended from time to time and including all exhibits and schedules attached thereto, the “**Plan**”);<sup>1</sup> (iii) the form of ballots and notices in connection therewith; and (iv) the scheduling of certain dates with respect thereto.

### **Jurisdiction and Venue**

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **General Background**

3. On November 20, 2016 (the “**Petition Date**”), the Circus commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. The Circus is authorized to continue to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On December 12, 2016, the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Creditors’ Committee**”) pursuant to section 1102 of the Bankruptcy Code [Docket No. 43]. No request for the appointment of a trustee or examiner has been made in this chapter 11 case.

5. Additional information regarding the Circus’ business, its capital structure, and the events leading to the filing of this chapter 11 case are set forth in the “Declaration of

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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.

Will Maitland Weiss, Executive Director of the Big Apple Circus, Ltd., In Support of Chapter 11 Petition and First Day Pleadings” [Docket No. 2].

6. Contemporaneously with this motion, the Circus filed the Plan and the Disclosure Statement. The Circus has also filed and commenced service of a notice of the hearing to approve the Disclosure Statement (the “**Disclosure Statement Hearing Notice**”), attached as **Exhibit 1** to the Proposed Order, on the Notice Parties (as defined below) and all known creditors of the Circus.

### **Basis for Relief Requested**

#### **I. The Disclosure Statement Should Be Approved**

##### **A. The Disclosure Statement Contains Adequate Information for Purposes of Section 1125 of the Bankruptcy Code**

7. In order to solicit acceptances of the Plan, section 1125 of the Bankruptcy Code requires the Circus to prepare, obtain approval of, and distribute, a disclosure statement that contains “adequate information” regarding that Plan for creditors entitled to vote on the plan. 11 U.S.C. § 1125. Section 1125(a)(1) of the Bankruptcy Code defines “adequate information” as follows:

“Adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1).

8. A disclosure statement must, as a whole, provide information that is “reasonably practicable” to permit an “informed judgment” by creditors and interest holders, if

applicable, to vote on a plan. See In re Momentum Mfg. Corp., 25 F.3d 1132, 1136 (2d Cir. 1994); see also In re Amfesco Indus., Inc., No. CV-882952 (JBW), 1988 WL 141524, at \*5 (E.D.N.Y. Dec. 21, 1988) (stating that “[u]nder section 1125 of the Bankruptcy Code, a reasonable and typical creditor or equity security holder must be provided ‘adequate information’ to make an informed judgment regarding a proposed plan.”); BSL Operating Corp. v. 125 E Taverns, Inc. (In re BSL Operating Corp.), 57 B.R. 945, 950 (Bankr. S.D.N.Y. 1986) (stating that “[s]ection 1125 might be described as a non-rigid ‘how-to-inform’ section . . . . A disclosure statement . . . is evaluated only in terms of whether it provides sufficient information to permit enlightened voting by holders of claims or interests.”).

9. The Court has broad discretion in determining on a case-by-case basis whether a disclosure statement contains adequate information under the unique facts and circumstances of each case. See In re Ionosphere Clubs, Inc., 179 B.R. 24, 29 (Bankr. S.D.N.Y. 1995) (adequacy of a disclosure statement “is to be determined on a case-specific basis under a flexible standard that can promote the chapter 11 policy of fair settlement through a negotiation process between informed interested parties” (internal citation omitted)); Kirk v. Texaco, Inc., 82 B.R. 678, 682 (S.D.N.Y. 1988) (“The legislative history could hardly be more clear in granting broad discretion to bankruptcy judges under § 1125(a): ‘Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case.’” (quoting H.R. Rep. No. 595, at 408–09 (1977))); see also In re PC Liquidation Corp., 383 B.R. 856, 865 (E.D.N.Y. 2008) (explaining that “what constitutes adequate information in any particular situation is determined on a case-by-case basis . . . with the determination being largely within the discretion of the bankruptcy court”); In re Copy Crafters Quickprint, Inc., 92 B.R. 973, 979

(Bankr. N.D.N.Y. 1988) (the adequacy of a disclosure statement is to be “determined on a case-specific basis under a flexible standard that can promote the policy of chapter 11 towards fair settlement through a negotiation process between informed interested parties.”).

10. In that regard, courts generally examine whether a disclosure statement contains the following types of information:

- a. the circumstances that gave rise to the filing of the bankruptcy petition;
- b. a complete description of the available assets and their value;
- c. the anticipated future of the debtor;
- d. the source of the information provided in the disclosure statement;
- e. a disclaimer, which typically indicates that no statements or information concerning the debtor or its assets or securities are authorized, other than those set forth in the disclosure statement;
- f. the condition and performance of the debtor while in chapter 11;
- g. information regarding claims against the estate;
- h. a liquidation analysis setting forth the estimated return that creditors would receive under chapter 7;
- i. the accounting and valuation methods used to produce the financial information in the disclosure statement;
- j. information regarding the future management of the debtor, including the amount of compensation to be paid to any insiders, directors, and/or officers of the debtor;
- k. a summary of the chapter 11 plan;
- l. an estimate of all administrative expenses, including attorneys’ fees and accountants’ fees;
- m. the collectability of any accounts receivable;
- n. any financial information, valuations or pro forma projections that would be relevant to creditors’ determinations of whether to accept or reject the plan;



- o. information relevant to the risks being taken by the creditors and interest holders;
- p. the actual or projected value that can be obtained from avoidable transfers;
- q. the existence, likelihood, and possible success of non-bankruptcy litigation;
- r. the tax consequences of the plan; and
- s. the relationship of the debtor with affiliates.

See In re Scioto Valley Mortg. Co., 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988); see also In re Source Enters, Inc., No. 06-11707 (AJG), 2007 WL 7144778, at \*2-4 (Bankr. S.D.N.Y. July 31, 2007) (using similar criteria and citing Scioto Valley, 88 B.R. at 170-71). This list is not meant to be comprehensive, and a debtor need not provide all the information on the list. In re U.S. Brass Corp., 194 B.R. 420, 424 (Bankr. E.D.Tex. 1996); see also In re Phoenix Petroleum Co., 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (“[C]ertain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.”).

11. The Disclosure Statement contains pertinent information that allows holders of claims in the Class entitled to vote to make informed decisions about whether to vote to accept or reject the Plan, including the following key sections and information contained therein:

- a. *Background about the Circus and this chapter 11 case* (Art. II). An overview of the Circus’ corporate history and operations, the events leading to this chapter 11 case, the “first day” relief obtained by the Circus, and the key events during this chapter 11 case, particularly with respect to the sale of substantially all of the Circus’ assets;
- b. *Summary of the Plan* (Art. III). An overview of the classification of classes of creditors and their treatment under the Plan, the means for implementation of the Plan, the treatment of executory contracts and unexpired leases, the procedures for distributions and a summary of the settlement, releases, exculpations and injunction provisions of the Plan;

- c. *Voting on the Plan* (Art. IV). A summary of the timing and mechanics for the submission of votes on the Plan;
- d. *Confirmation of the Plan* (Art. V). A description of confirmation procedures and statutory requirements for confirmation and consummation of the Plan;
- e. *Risk Factors* (Art. VI). Certain risks associated with the Plan, including an overall disclaimer as to the information provided by and set forth in the Disclosure Statement;
- f. *Tax Consequences of the Plan* (Art. VII). A description of certain U.S. federal income tax law consequences of the Plan; and
- g. *Recommendation* (Art. VIII). A recommendation by the Circus that holders of claims in the Class entitled to vote should vote to accept the Plan.

12. Based on the foregoing, the Circus submits that the Disclosure Statement complies with all aspects of section 1125 of the Bankruptcy Code and addresses the information set forth above in a manner that provides adequate information to holders of claims entitled to vote to accept or reject the Plan.

**B. The Disclosure Statement Provides Sufficient Notice of Injunction, Exculpation, and Release Provisions in the Plan for Purposes of Bankruptcy Rule 3016(c)**

13. Bankruptcy Rule 3016(c) requires that, if a plan provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code, the plan and disclosure statement must describe, in specific and conspicuous language, the acts to be enjoined and the entities subject to the injunction. Fed. R. Bankr. P. 3016(c).

14. The Plan provides for certain release (Sections 8.2 and 8.3), exculpation (Section 8.4) and injunction (Section 8.5) provisions with respect to certain claims and causes of action. The Disclosure Statement sets forth the full text of the foregoing provisions in bold, making it conspicuous to anyone who reads it, and explains their full effect. Thus, the Circus

respectfully submits that the Plan and the Disclosure Statement comply with Bankruptcy Rule 3016(c).

## **II. The Court Should Approve the Solicitation and Notice Procedures**

15. Consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and due process, the Circus seeks approval of the solicitation procedures set forth in **Exhibit 2** to the Proposed Order (the “**Solicitation Procedures**”). The Solicitation Procedures will allow the Circus to distribute solicitation materials and tabulate acceptances of the Plan effectively and efficiently. Furthermore, the Solicitation Procedures, in conjunction with the Confirmation Hearing Notice (as defined below), provide adequate notice to all holders of claims regarding the solicitation process and the relevant dates associated with the Solicitation Procedures.

### **A. Class Entitled to Vote**

16. On March 10, 2017, the Circus filed its schedules of assets and liabilities with the Court pursuant to section 521 of the Bankruptcy Code (as amended, the “**Schedules**”). The Court established March 30, 2017 as the deadline for non-governmental entities to file proofs of claim in this chapter 11 case, and May 19, 2017 as the deadline for governmental entities to file proofs of claim.

17. Based on the Schedules, the proofs of claims filed to date, and the structure of the Plan, the Plan provides for the following four (4) Classes of claims:

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

18. Of these Classes, the Circus submits that only holders of Claims in Class 4 (General Unsecured Claims) (the “**Voting Class**”) are Impaired but are entitled to receive distributions under the Plan, and, therefore, may vote on the Plan, subject to certain exceptions discussed below.

#### **B. Classes Not Entitled to Vote**

19. Under the Plan, certain Classes are not entitled to vote, including those claims that are not Impaired. Section 1126(f) of the Bankruptcy Code provides that, for purposes of soliciting votes in connection with the confirmation of a chapter 11 plan, “a class that is not impaired under a plan, and each holder of a claim of such class, are conclusively presumed to have accepted the plan, and the solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.” 11 U.S.C. § 1126(f). Section 1124 of the Bankruptcy Code generally provides that a class of claims is impaired under a plan unless, with respect to each claim of such class, the plan “leaves unaltered the legal, equitable, and contractual rights to which such claim . . . entitles the holders of such claim . . . .” See 11 U.S.C. § 1124(1).

20. The following Classes of claims (collectively, the “**Unimpaired Classes**”) are not Impaired and not entitled to vote on the Plan: Class 1 (Secured Claims), Class 2 (Priority Non-Tax Claims), and Class 3 (Deposit Claims).

**C. Disputed Claim Procedures**

21. Pursuant to section 1126(a) of the Bankruptcy Code, only holders of an “allowed claim” may accept or reject a chapter 11 plan. 11 U.S.C. § 1126(a). A proof of claim is deemed “allowed” unless and until an objection is filed to such proof of claim. 11 U.S.C. § 502(a). However, Bankruptcy Rule 3018(a) allows the Circus to temporarily allow claims against which an objection is pending (a “**Disputed Claim**”) in an amount that the Court deems appropriate for the purpose of the holder of such claim accepting or rejecting the Plan. In light of Bankruptcy Rule 3018(a), the Circus proposes that the Court approve the procedures set forth in the Solicitation Procedures regarding temporary allowance of claims subject to pending objections for voting purposes only. Specifically, if an objection is pending against a claim, the applicable holder will receive a notice substantially in the form annexed as **Exhibit 8** to the Proposed Order (the “**Disputed Claim Notice**”) and the Confirmation Hearing Notice (as defined below) in lieu of the entire Solicitation Package.

22. The Disputed Claim Notice will inform relevant holders that their respective claim is subject to an objection, and that the holder of such claim cannot vote any disputed portion of its claim unless one or more of the following events have taken place at least three days before the Voting Deadline (as defined below): (a) an order of the Court is entered allowing the Disputed 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 the Disputed 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 the Disputed Claim and the Circus temporarily or permanently allowing the Disputed Claim in an agreed upon amount; or (d) the pending objection to the Disputed Claim is voluntarily withdrawn by the objecting party (each, a “**Resolution Event**”). No later than two days after a Resolution Event, the Circus will cause the Administrative Agent (as defined below) to distribute a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant holder, which must be returned according to the instructions on the ballot provided to such holder by no later than the Voting Deadline (as defined below). The Disputed Claim Notice will also inform the relevant claim holders that they may be permitted to opt out of the third party release provision of the Plan by returning the attached release opt-out form.

23. If a claim is objected to on or before the date that is 14 days before the Voting Deadline (as defined below), the Circus will send the holder of such claim a Disputed Claim Notice and such claim will be disallowed for voting purposes unless a Resolution Event occurs. However, if a claim is objected to on a date that is less than 14 days before the Voting Deadline (as defined below), such claim will be deemed temporarily allowed for voting purposes only.

#### **D. The Disclosure Statement Hearing Notice**

24. Bankruptcy Rule 3017(a) and Local Bankruptcy Rule 3017-1 require that notice of the hearing to consider a proposed disclosure statement be provided to creditors and other parties in interest. Fed. R. Bankr. P. 3017(a) (providing that after a disclosure statement is filed, it must be mailed with the notice of the hearing to consider the disclosure statement and any objections or modifications thereto on no less than 28 days’ notice thereof); S.D.N.Y. LBR 3017-1 (providing that the proponent of a plan will transmit

all notices and documents required to be transmitted by Bankruptcy Rule 3017(a)); see also Fed. R. Bankr. P. 2002(b) (requiring not less than 28 days' notice by mail of the time for filing objections and the hearing to consider the approval of a disclosure statement).

25. The Circus will serve all known creditors with the Disclosure Statement Hearing Notice. The Disclosure Statement Hearing Notice identifies the: (a) date, time, and place of the hearing to consider the Disclosure Statement (the “**Disclosure Statement Hearing**”); (b) manner in which a copy of the Disclosure Statement (and exhibits thereto, including the Plan) can be obtained; and (c) deadline and procedures for filing objections to the approval of the Disclosure Statement.

26. Additionally, the Circus will distribute copies of the Disclosure Statement, including exhibits, to parties on the list of all parties required to be notified under Bankruptcy Rule 2002 (the “**2002 List**”).

**E. The Solicitation Package**

27. The Plan contemplates that holders of allowed claims in the Voting Class will be entitled to vote on the Plan. The Circus proposes to distribute a solicitation package, which includes materials required by Bankruptcy Rule 3017(d), to the holders of claims in the Voting Class, substantially in the form and manner set forth below (collectively, the “**Solicitation Package**”):

- a. the Solicitation Procedures, substantially in the form attached as **Exhibit 2** to the Proposed Order;
- b. the Confirmation Hearing Notice (as defined below), substantially in the form attached as **Exhibit 3** to the Proposed Order;
- c. a cover letter, substantially in the form attached as **Exhibit 4** to the Proposed 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, substantially in the form attached as **Exhibit 5** to the Proposed Order (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 Circus files with the Court and any documents that the Court orders to be made available.

28. The Circus intends to distribute the Solicitation Packages via first class mail through Donlin, Recano & Company, Inc., in its capacity as administrative agent for the Circus (the “**Administrative Agent**”) on or before the date that is three business days following entry of the Proposed Order (expected to be November 3, 2017, 2017) (the “**Solicitation Date**”), a date that is at least 28 days prior to the Voting Deadline and the Plan Objection Deadline (each as defined below). Distribution of the Solicitation Packages on or before the Solicitation Date will provide the requisite materials to holders of claims in the Voting Class in compliance with Bankruptcy Rules 3017(d) and 2002(b). Fed. R. Bankr. P. 3017(d) (after approval of disclosure statement, the debtor in possession must transmit the plan, the approved disclosure statement, notice of the time within which acceptances and rejections of such plan may be filed, and any other information that the court may direct to creditors and equity security holders); Fed. R. Bankr. P. 2002(b) (requiring 28 days’ notice by mail of the time for filing objections to the confirmation of a chapter 11 plan).

**F. The Confirmation Hearing Notice**

29. The Circus further requests approval of the notice of entry of the Proposed Order and the hearing on confirmation of the Plan, substantially in the form attached as **Exhibit 3** to the Proposed Order (the “**Confirmation Hearing Notice**”). Bankruptcy Rules 2002(b) and 2002(d) require not less than 28 days of notice to all holders of claims and interests of the time fixed for filing objections to, and the hearing on confirmation of, a chapter 11 plan.



Pursuant to Bankruptcy Rules 2002 and 3017(d), the Circus will cause the Confirmation Hearing Notice to be mailed promptly after the Court's entry of an order granting the relief requested herein and will include in the Confirmation Hearing Notice notice of, among other things: (a) the date and time of the hearing to consider confirmation of the plan (the "**Confirmation Hearing**"); (b) the Voting Record Date (as defined below); (c) the deadline to vote on the Plan (the "**Voting Deadline**"); (d) the deadline to file and serve objections to the plan (the "**Plan Objection Deadline**"); (e) the procedures for temporary allowance of claims for voting purposes; and (f) a disclosure regarding the release, injunction, and exculpation provisions contained in the Plan. Additionally, the Confirmation Hearing Notice informs parties that the Solicitation Package can be obtained by accessing the Administrative Agent's website or by requesting a copy from the Administrative Agent. Based upon the timelines proposed in this motion, the Confirmation Hearing Notice will provide at least 28 days' notice of before the relevant objection deadlines.

30. Bankruptcy Rule 2002(l) permits the Court to "order notice by publication if it finds that notice by mail is impracticable or that it is desirable to supplement notice." Fed. R. Bankr. P. 2002(1). To provide notification to those persons who may not receive notice by mail, the Circus proposes to publish the Confirmation Hearing Notice in the *The New York Times* on a date which is at least 28 days prior to the Confirmation Hearing. The Circus may also publish the Confirmation Hearing Notice in such trade or other publications as the Circus may choose.

31. The Circus believes that the proposed publication of the Confirmation Hearing Notice in the *The New York Times* will provide sufficient notice of the approval of the Disclosure Statement, the Confirmation Hearing, the Voting Record Date (as defined below), the

Voting Deadline, and the Plan Objection Deadline to entities who will not otherwise receive notice by mail as provided in the Solicitation Procedures.

**G. The Ballot**

32. In accordance with Bankruptcy Rule 3018(c), the Circus proposes to prepare and customize ballots for holders of claims in the Voting Class in substantially in the form of the ballots attached as **Exhibit 5** to the Proposed Order (the “**Ballots**”), to tabulate acceptances of the Plan. The form of the Ballots is based on Official Form No. 14, but has been modified to address the particular circumstances of this chapter 11 case and to include certain additional information that the Circus believes to be relevant and appropriate for the Voting Class.

33. Pursuant to the Solicitation Procedures, the Administrative Agent will distribute the appropriate Ballots to holders of claims in the Voting Class. All Ballots should be sent directly to the Administrative Agent who will tabulate all Ballots received.

**H. The Notice of Non-Voting Status**

34. In compliance with section 1123(a) of the Bankruptcy Code, administrative claims and priority tax claims asserted against the Circus are not classified under the Plan (collectively, the “**Unclassified Claims**”). See 11 U.S.C. § 1123(a)(1) (providing for classification of claims other than those claims specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code). As such, holders of Unclassified Claims are not entitled to vote on the Plan. Also, as discussed above, Article III of the Plan provides that claims in the Unimpaired Classes are not Impaired and are presumed to accept the Plan and, therefore, holders of such claims are not entitled to vote on the Plan.

35. Because the Circus will not solicit votes from holders of Unclassified Claims or holders of claims in the Unimpaired Classes, the Circus requests that the Court direct that the Disclosure Statement and the Plan not be mailed to holders of such claims. In lieu of the Solicitation Package, the Circus will send (a) a notice of non-voting status and release opt-out form, substantially in the form attached as **Exhibit 6** to the Proposed Order (the “**Notice of Non-Voting Status**”) to holders of Unclassified Claims and the Unimpaired Classes informing such holders that they are not entitled to vote on the Plan, but they may be permitted to opt out of the third party release provision of the Plan by returned the attached release opt-out form, and (b) the Confirmation Hearing Notice.

**I. The Contract and Lease Counterparties Notice**

36. Executory contracts and unexpired leases are deemed rejected under the Plan unless, among other things, such executory contract or unexpired lease (a) has 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. As soon as reasonably practicable after the Solicitation Date, the Circus will provide notices, substantially in the form as **Exhibit 7** to the Proposed Order (the “**Contract and Lease Counterparties Notice**”), to counterparties of executory contracts and unexpired leases regarding the proposed treatment of executory contracts and unexpired leases under the Plan.

37. In addition, to ensure that counterparties to executory contracts and unexpired leases receive notice of the Confirmation Hearing, the Circus will serve those parties with the Confirmation Hearing Notice. If any of these entities also is a holder of a claim in the Voting Class as of the Voting Record Date (as defined below), that entity will also receive a Solicitation Package in accordance with the Solicitation Procedures. The Circus respectfully

submits that the Contract and Lease Counterparties Notice complies with the Bankruptcy Code and, therefore, should be approved.

**J. Returned Solicitation Packages or Notices**

38. The Circus anticipates that some of the Disclosure Statement Hearing Notices that are sent to holders of claims may be returned by the United States Postal Service or other carrier as undeliverable. The Circus believes that it would be costly and wasteful to mail Solicitation Packages, the Notice of Non-Voting Status, or the Disputed Claim Notice, as applicable, to the same addresses to which undeliverable Disclosure Statement Hearing Notices were mailed. Therefore, the Circus seeks the Court's approval for a departure from the strict requirements of Bankruptcy Rule 3017(d), excusing the Circus from mailing Solicitation Packages to those entities whose Disclosure Statement Hearing Notice was undeliverable, unless the Circus, through the Administrative Agent, is able to locate accurate addresses for such entities not less than 10 days' prior to the Solicitation Date.

**K. Non-Substantive or Immaterial Modifications**

39. The Circus reserves its 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 prior to their distribution.

**L. The Voting Procedures**

40. The Circus proposes that only the following holders of claims in the Voting Class will be entitled to vote on the Plan:

- a. holders of claims who, on or before the Voting Record Date (as defined below), 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 at least 14 days prior to the Voting Deadline; 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. holders of claims listed in the 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 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.

**M. General Tabulation Procedures**

41. In tabulating votes for Classes of claims, the Circus proposes that the following hierarchy will be used to determine the claim amount associated with each holder’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 under the procedures set forth in the Solicitation Procedures;

- 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, 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 shall supersede the claim amount set forth on the respective proof of claim; and
- d. the claim amount listed in the Schedules, provided that such claim is not scheduled as contingent, disputed, or unliquidated and has not been paid; and
- e. in the absence of any of the foregoing, such claim will be disallowed for voting purposes.

42. The Circus also proposes to use the following voting procedures in

tabulating Ballots:

- a. except as otherwise provided in the Solicitation Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, 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 by electronic mail to @donlinrecano.com. However, Ballots submitted by facsimile will not be accepted (unless otherwise provided in the Solicitation Procedures);
- 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 disputed claims procedures set forth in the Solicitation Procedures;
- 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 the 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 Solicitation Procedures;
- 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.

43. The Solicitation Procedures permit the Circus to waive any of the above

specified requirements for completion and submission of Ballots so long as such requirement is



not otherwise required by the Bankruptcy Code, the Bankruptcy Rules, or the Local Bankruptcy Rules.

44. The Circus believes that the requested Solicitation Procedures and other relief requested herein are cost-effective, provide adequate notice and an opportunity to be heard, and are in the best interests of the Circus' estates, their creditors, and other parties in interest.

### **III. The Court Should Approve the Plan Confirmation Schedule**

45. The Circus also requests that the Court approve the Plan confirmation schedule in accordance with section 1126(c) of the Bankruptcy Code and Bankruptcy Rules 2002, 3017, and 3018. For the reasons set forth below, the Circus respectfully submits that the following Plan confirmation schedule provides all parties in interest ample time to review and consider the Plan and respond accordingly and thus complies with the requirements of the Bankruptcy Code and the Bankruptcy Rules. In addition, the Plan confirmation schedule also incorporates deadlines for dealing with potential Plan-related objections, to facilitate an orderly, predictable, and fair schedule governing all litigated issues related to confirmation of the Plan. Specifically, establishment of these dates affords creditors maximum notice of the confirmation process and provides a reasonable framework for parties to exchange information related to confirmation issues.

46. The Plan confirmation schedule set forth below provides a clear path to the completion of this chapter 11 case and avoids any unnecessary depletion of estate assets that might result from delay. Accordingly, the Circus requests that the Court approve the following Plan confirmation schedule:

<b>Event</b>	<b>Date</b>
Date of Service and Publication of Disclosure Statement Notice	September 20, 2017

<b>Event</b>	<b>Date</b>
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

**A. The Voting Record Date**

47. Bankruptcy Rule 3017(d) provides that upon approval of a disclosure statement, except to the extent that the Court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders, a debtor will mail to all creditors and equity security holders, and the United States Trustee, a copy of the plan, the disclosure

statement, notice of the voting deadline, and such other information as the Court may direct. Fed. R. Bankr. P. 3017(d).

48. The Circus requests that the Court establish **October 31, 2017 at 11:00 a.m. (prevailing Eastern Time)** (the “**Voting Record Date**”), as the date for determining: (a) the holders of claims that are entitled to vote on the Plan and thus receive the Solicitation Package pursuant to the Solicitation Procedures; and (b) whether claims have been properly transferred to an assignee, including pursuant to Bankruptcy Rule 3001(e), such that the assignee can vote as the holder of a claim.<sup>2</sup>

49. The Voting Record Date is prominently displayed in the Disclosure Statement Hearing Notice. For these reasons, the Circus believes that sufficient cause exists to set the Voting Record Date as requested.

#### **B. The Voting and Opt-Out Deadline**

50. Bankruptcy Rule 3017(c) provides, in relevant part, “[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan.” Fed. R. Bankr. P. 3017(c). Accordingly, the Circus requests that the Court establish **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)** as the Voting Deadline. The Confirmation Hearing Notice (which is part of the Solicitation Package) also prominently displays the Voting Deadline date and time. The Circus believes that this timeframe will provide adequate time for all the parties in interest to consider the Solicitation Package and respond by casting their Ballots. Further, the Circus requests that the Court establish **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)** as the deadline to return opt outs of the releases provided in the Plan (the “**Opt-Out Deadline**”). Furthermore, the

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<sup>2</sup> The Debtor’s request for the establishment of a Voting Record Date is for voting purposes only.

Circus requests the permission to extend the Voting Deadline in its discretion without further order from the Court.

**C. The Plan Objection Deadline**

51. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Fed. R. Bankr. P. 3020(b)(1). Bankruptcy Rules 2002(b) and 2002(d) provide that notice will be given to all creditors and equity security holders of not less than 28 days by mail of the time fixed for filing objections and the hearing to consider confirmation of a plan. Fed. R. Bankr. P. 2002(b), (d).

52. The Circus requests that the Court exercise its authority under Bankruptcy Rule 3020(b) and establish **December 1, 2017 at 5:00 p.m. (prevailing Eastern Time)**—a date that will afford interested parties at least 28 days’ mailed notice of the notice of entry of the Proposed Order and the Confirmation Hearing—as the Plan Objection Deadline. The Circus believes that the proposed Plan Objection Deadline will afford the Court, the Circus, and all parties in interest reasonable time to consider any objections and proposed modifications prior to the Confirmation Hearing. The Circus further requests that objections to confirmation of the Plan or proposed modifications to the Plan, if any, must:

- a. be in writing;
- b. conform to the Bankruptcy Rules and the Local Bankruptcy Rules;
- c. state the name and address of the objecting party and the amount and nature of the claim held by such entity;
- d. state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and
- e. be filed, together with proof of service, with the Court and served so that they are actually received by the notice parties identified in the Confirmation Hearing Notice on or before the Plan Objection Deadline.

**D. The Deadline to File Confirmation Reply Brief**

53. The Circus also requests that they (and other parties in support of the Plan) be permitted to file a reply to any objections to confirmation of the Plan no later than **December 7, 2017**, or a date that is at least 3 business days before the Confirmation Hearing.

**E. The Confirmation Hearing**

54. In accordance with Bankruptcy Rule 3017(c) and section 1128 of the Bankruptcy Code (requiring a plan confirmation hearing), the Circus requests that the Confirmation Hearing be scheduled for **December 12, 2017 at 11:00 a.m. (prevailing Eastern Time)** or the soonest available date thereafter. The Confirmation Hearing may be continued from time to time by the Court or the Circus without further notice other than adjournments announced in open court.

55. The Circus submits that the proposed timing for the Confirmation Hearing complies with the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules and will enable the Circus to pursue confirmation of the Plan so as to preserve the value of the estate to be distributed to the Circus' applicable stakeholders.

**Motion Practice**

56. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this motion. Accordingly, the Circus submits that the motion satisfies Local Bankruptcy Rule 9013-1(a).

**Notice**

57. The Circus served the Plan, the Disclosure Statement, and this motion on: (a) the U.S. Trustee, (b) the U.S. Attorney for the Southern District of New York, (c) the New

York State Attorney General, (d) the New York City Department of Cultural Affairs, (e) counsel to the Creditors' Committee, (f) the Internal Revenue Service; (g) the entities listed on the List of Creditors Holding the 20 Largest Unsecured claims and (h) all those persons and entities that have formally requested notice by filing a written request for notice, pursuant to Bankruptcy Rule 2002 and the Local Bankruptcy Rules (collectively, the "**Notice Parties**"). In addition, the Circus served the Disclosure Statement Hearing Notice on the Notice Parties and all known creditors. In light of the nature of the relief requested herein, the Circus respectfully submits that no further notice is necessary.

**No Prior Request**

58. No prior request for the relief sought herein has been made by the Circus to this or any other court.

WHEREFORE, the Circus respectfully requests that the Court (a) enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein, and (b) grant such other and further relief as is just and proper.

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 A**

**Proposed 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**

**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](mailto:nlabovitz@debevoise.com)) and Christopher Updike ([cupdike@debevoise.com](mailto: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](mailto: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](mailto:rfeinstein@pszjlaw.com)), Maria Bove, Esq. ([mbove@pszjlaw.com](mailto:mbove@pszjlaw.com)), and Steven Golden, Esq. ([sgolden@pszjlaw.com](mailto: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**

**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 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**

**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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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 4**

**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**

**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](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 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**

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

Counsel to the Debtor  
and Debtor in Possession

**EXHIBIT 7**

**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  
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 8**

**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.

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

Counsel to the Debtor  
and Debtor in Possession