

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

In re:

TBAC WIND DOWN, LTD.,

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

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

Upon the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (as revised and supplemented and as may be further amended in accordance with its terms, the “**Plan**,” Docket Nos. 243, 274, 297, 304),¹ filed by TBAC Wind Down, Ltd. f/k/a The Big Apple Circus, Ltd. (the “**Circus**”), as debtor and debtor in possession in the above-captioned case; and the Court having 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 and Ballots and Notices in Connection Therewith, and (IV) the Scheduling of Certain Dates with Respect Thereto* (the “**Disclosure Statement Order**,” Docket No. 285); and the Circus having distributed solicitation materials in accordance with the Disclosure Statement Order; and upon the affidavits of service and publication filed with respect to the Plan (collectively, the “**Affidavits of Service**,” Docket Nos. 288, 289, 293); and upon the *Supplement to Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Plan Supplement**,” Docket No. 297); and upon the blackline of the Plan reflecting certain nonmaterial, technical modifications to the Plan made after entry of the Disclosure Statement Order (the “**Plan Blackline**,” Docket No. 304, Ex. B); and upon the *Debtor’s Memorandum of*

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan.

Law In Support of Confirmation of the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd. (the “**Confirmation Brief**”, Docket No. 305); and upon the *Debtor’s Memorandum of Law In Support of Certain Releases Under the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Release Brief**”, Docket No. 298); and upon (a) the *Declaration of Will Maitland Weiss in Support of the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Weiss Declaration**”, Docket No. 299), (b) the *Declaration of Robin Chiu in Support of the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Chiu Declaration**”, Docket No. 303), (c) the *Declaration of Jung W. Song on Behalf of Donlin, Recano & Company, Inc. Regarding Voting and Tabulation of Ballots Accepting and Rejecting the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Voting Declaration**”, Docket No. 301), (d) the *Declaration of Christopher Updike in Support of the Debtor’s Memorandum of Law in Support of Confirmation of the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Updike Declaration**”, Docket No. 302), (e) the *Declaration of Will Maitland Weiss in Support of the Debtor’s Motion for Entry of an Order Approving the Sale of the Debtor’s Circus Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests* (the “**Circus Assets Sale Declaration**”, Docket No. 118), (f) the *Declaration of Will Maitland Weiss in Support of Debtor’s Motion for Entry of an Order Approving Private Sale of the Walden Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and Granting Related Relief* (the “**Walden Sale Declaration**”, Docket No. 33), (g) the *Supplemental Declaration of Will Maitland Weiss in Support of the Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (the “**Supplemental Weiss Declaration**”, Docket No. 309), and (h) the *Declaration of Will Maitland Weiss, Executive Director of The Big Apple Circus, Ltd., in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 2] (the “**First Day Declaration**”, and together with the Weiss

Declaration, the Chiu Declaration, the Voting Declaration, the Updike Declaration, the Circus Assets Sale Declaration, the Walden Sale Declaration, and the Supplemental Weiss Declaration, the “**Declarations**”); and the Court having considered the Plan, the Plan Supplement, the Declarations, the Affidavits of Service, the Confirmation Brief, the Release Brief, and the other papers filed in support of confirmation of the Plan; and all objections and responses to confirmation of the Plan having been withdrawn or resolved; and the hearing to consider confirmation of the Plan (the “**Confirmation Hearing**”) having been held before the Court on December 12, 2017; and the appearance of all interested parties having been noted in the record of the Confirmation Hearing; and the Court having considered all of the arguments of counsel and the evidence proffered, adduced, or presented at the Confirmation Hearing; and the Court having taken judicial notice of the entire docket and record of the Chapter 11 Case and the Confirmation Hearing; and the Court having found and determined that the Plan is in the best interests of the Circus, its estate and creditors, and all parties in interest, and should be confirmed as reflected by this Court’s rulings made in this Order and at the Confirmation Hearing; and after due deliberation and sufficient cause appearing therefor, the Court hereby **FINDS, ADJUDGES, DETERMINES, AND CONCLUDES THAT:**

1. Exclusive Jurisdiction; Venue; Core Proceeding. This Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the Southern District of New York, dated as of January 31, 2012. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409. Confirmation of the Plan, including approval of the releases, exculpations, and injunctions therein, is a core proceeding under 28 U.S.C. § 157(b)(2), and the Court has

exclusive jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed.

2. Burden of Proof. The Circus, as proponent of the Plan, has the burden of proving the elements of section 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence, which is the applicable evidentiary standard for confirmation of the Plan. As set forth below, the Circus has met that burden.

3. Notice and Solicitation. All parties required to receive notice of the Plan, the solicitation of votes on the Plan, the Plan Supplement, the modifications to the Plan as reflected in the Plan Blackline, and the Confirmation Hearing, together with all deadlines for filing and serving objections to confirmation of the Plan and voting to accept or reject the Plan, have received due, proper, timely, and adequate notice in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Disclosure Statement Order, and any applicable nonbankruptcy law, rule, or regulation, and have had an opportunity to appear and be heard with respect thereto. No other or further notice is required.

4. Plan Modifications. The modifications to the Plan as reflected in the Plan Blackline (a) constitute nonmaterial, technical modifications, (b) do not adversely change the treatment of any Claims, and (c) are in compliance with section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019. The Circus has complied with section 1125 of the Bankruptcy Code with respect to the modifications to the Plan as reflected in the Plan Blackline. No other or further disclosure or solicitation of votes is required.

5. Plan Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth below, the Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code.

6. Proper Classification of Claims (11 U.S.C. §§ 1122, 1123(a)(1)). Other than Claims under sections 507(a)(2), (a)(3), or (a)(8) of the Bankruptcy Code, which are separately addressed in Article II of the Plan, the Plan designates four Classes of Claims: Class 1 consists of Secured Claims, which include Claims secured by a lien on property of the Circus' estate; Class 2 consists of Priority Non-Tax Claims, which include any Claim entitled to priority in payment under section 507(a) of the Bankruptcy Code other than Priority Tax Claims and Deposit Claims; Class 3 consists of Deposit Claims, which include any Claim entitled to priority in payment under section 507(a)(7) of the Bankruptcy Code; and Class 4 consists of General Unsecured Claims, which include any unsecured Claim that is not an Administrative Claim, a Priority Tax Claim, a Claim for accrued Professional compensation, a Priority Non-Tax Claim, or a Deposit Claim. All Claims in each Class under the Plan are substantially similar to the other Claims in such Class. In each instance of separate classification, the Plan classifies Claims based upon differences in the nature, rights, and/or priority of such Claims. Furthermore, the Plan's classification scheme is not intended to gerrymander voting. As such, valid business, factual, and legal reasons exist for separately classifying the various Classes under the Plan. Therefore, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

7. Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). Article III of the Plan specifies that Classes 1, 2, and 3 are not Impaired under the Plan, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

8. Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). Article III of the Plan designates Class 4 as Impaired under the Plan and specifies the treatment of Claims in such Class, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

9. Equal Treatment Within Classes (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment for each Claim of a particular Class, unless the holder of a particular Claim agrees to a less favorable treatment of such Claim, thereby satisfying section 1123(a)(4) of the Bankruptcy Code.

10. Adequate Means For Implementation of the Plan (11 U.S.C. § 1123(a)(5)). In compliance with section 1123(a)(5) of the Bankruptcy Code, Article IV of the Plan sets forth adequate means for implementation of the Plan, including, among other things, dissolution of the Circus and the Creditors' Committee, liquidation of the Circus' estate, appointment of the Plan Administrator, transfer of the Stern and Kern Foundations Endowment, and approval of the Foundations Settlement.

11. Charter Provisions (11 U.S.C. § 1123(a)(6)). The charter for the Reorganized Debtor includes a provision prohibiting the issuance of non-voting equity securities and provide an appropriate distribution of voting power among the classes of securities, thereby satisfying section 1123(a)(6) of the Bankruptcy Code.

12. Selection of Plan Administrator and Post-Effective Date Board of Directors (11 U.S.C. § 1123(a)(7)). The provisions of the Plan governing the appointment of the Plan Administrator and the three directors of the Reorganized Debtor are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selecting such officers and directors, thereby satisfying section 1123(a)(7) of the Bankruptcy Code.

13. Additional Plan Provisions (11 U.S.C. § 1123(b)). The provisions of the Plan are appropriate and consistent with the provisions of the Bankruptcy Code.

14. Impairment of Certain Claims (11 U.S.C. § 1123(b)(1)). As permitted by section 1123(b)(1) of the Bankruptcy Code, the Plan impairs certain Classes of Claim while leaving others not Impaired.

15. Assumption and Rejection of Executory Contracts (11 U.S.C. §§ 1123(b)(2), (d)). As permitted by section 1123(b)(2) of the Bankruptcy Code, the Plan provides for the automatic rejection of all of the Circus' executory contracts and unexpired leases, except as otherwise provided in the Plan. The Circus has provided adequate assurance of future performance for each executory contract and unexpired lease that shall be assumed. The Circus has also cured any defaults under or relating to such executory contracts and unexpired leases, thus satisfying the requirements of section 1123(d) of the Bankruptcy Code.

16. Claim Settlements (11 U.S.C. § 1123(b)(3)). As permitted by section 1123(b)(3) of the Bankruptcy Code, the Plan provides for the settlement of certain Claims, including the Foundations Settlement, and the retention or release of certain claims belonging to the Circus.

17. Bankruptcy Rule 3016. The Plan is dated and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The filing of the Disclosure Statement with the Clerk of the Court satisfied Bankruptcy Rule 3016(b). All acts to be enjoined and identification of entities subject to such injunction under the Plan are set forth in specific and conspicuous text in the Plan and Disclosure Statement, thereby satisfying Bankruptcy Rule 3016(c).

18. The Circus' Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Circus has complied with the applicable provisions of the

Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code, because, among other reasons:

(a) the Circus is a proper debtor under section 109 of the Bankruptcy Code and a proper proponent of the Plan under section 1121(a) of the Bankruptcy Code;

(b) the Circus has complied with sections 1125 and 1126 of the Bankruptcy Code, as well as Bankruptcy Rules 3017 and 3018, by distributing the Disclosure Statement and soliciting acceptances of the Plan pursuant to the Disclosure Statement Order; and

(c) solicitation of the Plan pursuant to the procedures established in the Disclosure Statement Order conformed to the requirements of Bankruptcy Rule 3017(a) and Local Bankruptcy Rule 3017-1(a) and (b) with respect to the contents and transmittal of the Disclosure Statement.

19. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Circus has proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. The Plan is the product of fair, arm's length negotiations among the Circus' officers, directors, agents, and professionals and the U.S. Trustee, the Creditors' Committee, the Attorney General's Charities Bureau, and several of the Circus' largest creditors and donors. The fundamental fairness and good intentions of the Plan are underscored by the Creditors' Committee's vocal support of the Plan and the unanimous acceptance of the Plan by creditors who submitted votes. The Chapter 11 Case was filed, and the Plan was proposed, with the legitimate and honest purpose of winding down the Circus' estate, maximizing value for the Circus' stakeholders, and honoring the Circus' mission.

20. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)).
All payments made or to be made by the Circus for services rendered and expenses incurred in

connection with the Chapter 11 Case, including all Claims for payment of accrued compensation for services rendered by Professionals, will be paid only after allowance of such Claims by the Court, to the extent that such payment are not already approved and paid in accordance with orders of the Court, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

21. Disclosure of Post-Emergence Directors and Officers (11 U.S.C. § 1129(a)(5)). In the Plan Supplement, the Circus has disclosed the identity of the proposed Plan Administrator and the three directors of the Reorganized Debtor. The appointment and continuance of each of these people is consistent with the interests of creditors and public policy, thereby satisfying section 1129(a)(5) of the Bankruptcy Code.

22. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any rate change that would require approval of any regulatory agency; therefore, section 1129(a)(6) of the Bankruptcy Code is not applicable to confirmation of the Plan.

23. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The Liquidation Analysis attached as Exhibit C to the Disclosure Statement, the Chiu Declaration, and the other evidence proffered or adduced in support of the Plan (a) are persuasive and credible, (b) have not been controverted by other evidence, and (c) conclusively establish that each holder of a Claim in the Voting Class either (i) has accepted the Plan or (ii) will receive or retain under the Plan, on account of such Claim, property of a value, as of the Effective Date, that is not less than the amount that it would receive if the Circus was liquidated under chapter 7 of the Bankruptcy Code.

24. Acceptance by the Requisite Classes of Creditors (11 U.S.C. § 1129(a)(8)). Classes 1, 2, and 3 under the Plan are not Impaired, and, as evidenced by the Voting Declaration,

the requisite holders of Claims in Class 4 have voted to accept the Plan. Therefore, section 1129(a)(8) of the Bankruptcy Code is satisfied.

25. Treatment of Administrative and Priority Claims (11 U.S.C. § 1129(a)(9)).

Articles II and III of the Plan provide for full payment in cash of all Allowed Administrative Claims, Priority Tax Claims, Priority Non-Tax Claims, and Deposit Claims, other than as may have been otherwise agreed with a creditor, thereby satisfying section 1129(a)(9) of the Bankruptcy Code.

26. Acceptance By at Least One Impaired Class (11 U.S.C. § 1129(a)(10)).

As evidenced in the Voting Declaration, the only Impaired Class of Claims voted to accept the Plan even when excluding the votes of insiders. Accordingly, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

27. Feasibility (11 U.S.C. § 1129(a)(11)). The Circus has established that

confirmation of the Plan is not likely to be followed by the liquidation of the Circus or any successor to the Circus, other than as contemplated by the Plan, and that the Plan Administrator will have sufficient funds to wind down the Circus' estate. Therefore, section 1129(a)(11) of the Bankruptcy Code is satisfied.

28. Payment of Certain Fees (11 U.S.C. § 1129(a)(12)). Section 12.4 of the

Plan provides that all fees payable under section 1930 of title 28 as of entry of this Order shall be paid on the effective date of the Plan, and the Plan Administrator shall continue to pay all such fees until the Chapter 11 Case is closed. Accordingly, the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

29. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)); Domestic

Support Obligations (11 U.S.C. § 1129(a)(14)); Unsecured Claims Against Individual Debtors

(11 U.S.C. § 1129(a)(15)). The Circus has no retiree obligations, is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation, and is not an individual. Therefore, sections 1129(a)(13)-(15) of the Bankruptcy Code are not applicable to confirmation of the Plan.

30. Transfers Under Applicable Not-for-Profit Corporation Law (11 U.S.C. § 1129(a)(16)). All transfers of property contemplated under the Plan comply with applicable provisions of nonbankruptcy laws that govern the transfer of property by a corporation that is not a moneyed, business, or commercial corporation. Slappy and Monday's Foundation for Laughter, CircuSense, Marquis Studios, Ltd., and the Al & Joyce Vidbel Foundation, Inc. are charitable corporations or organizations exempt from taxation pursuant to federal and state laws (or will be fiscally sponsored by such a tax-exempt corporation or organization) and engaged in activities substantially similar to those of the Circus.

31. Purpose of the Plan (11 U.S.C. §1129(d)). The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the requirements of section 5 of the Securities Act of 1933, thereby satisfying the requirements of section 1129(d) of the Bankruptcy Code.

32. Good Faith Solicitation and Participation (11 U.S.C. § 1125(e)). The Circus and each of its representatives, agents, officers, directors, employees, professionals, advisors, and attorneys (a) have solicited and tabulated votes on the Plan fairly, in good faith, and in compliance with the applicable provisions of the Bankruptcy Code, including, without limitation, sections 1125(a) and 1125(e) of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and any applicable nonbankruptcy law, rule, or regulation, (b) have participated in good faith and in compliance with the applicable provisions of the Bankruptcy

Code, including, without limitation, sections 1125(a) and 1125(e) of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable nonbankruptcy law, rule, or regulation in the offer, issuance, sale, and purchase of any and all securities offered or sold under the Plan, and (c) are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and will have no liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan.

33. Executory Contracts and Unexpired Leases. The Circus has satisfied the provisions of section 365 of the Bankruptcy Code with respect to the assumption or rejection of executory contracts and unexpired leases as contemplated by the Plan. The evidence supporting adequate assurance of future performance proffered or adduced by the Circus at, or prior to, the Confirmation Hearing, is reasonable, persuasive, credible and accurate, and has not been controverted by other evidence.

34. Approval of the Plan. Based upon the Declarations, the Affidavits of Service, and other evidence presented by the Circus, which are adopted by the Court and incorporated herein by reference, the Plan complies, and the Circus has complied, with all applicable provisions of the Bankruptcy Code and nonbankruptcy law, including the applicable requirements of section 1129 of the Bankruptcy Code and the New York Not-For-Profit Corporation Law. The Plan, attached as Exhibit A, and the Plan Supplement are CONFIRMED and incorporated herein by reference.

35. Approval of Settlements. All settlements and compromises that are embodied in the Plan, including, without limitation, the Foundations Settlement, (a) represent a sound exercise of the Circus' business judgment, (b) were negotiated in good faith and at arm's length, (c) is in the best interests of the Circus and its estate, (d) are fair, equitable, and

reasonable under the circumstances of the Chapter 11 Case, and (e) are approved in all respects. In accordance with the Plan, the Circus and the Plan Administrator shall, and are hereby directed to, implement such settlements and compromises, including the Foundations Settlement.

36. Exculpation, Releases, and Injunction.

(a) The Released Parties have made substantial contributions to the Chapter 11 Case, and these efforts have conferred significant value upon the Circus' estate. The Released Parties have expended considerable time and resources to ensure an optimal outcome for holders of Allowed Claims and played an integral role in the formulation of the Plan. The extensive efforts of and consideration provided by the Released Parties in the Chapter 11 Case, without compensation in most cases, the magnitude of the recoveries provided under the Plan to the holders of Allowed Claims, and the Released Parties' rights to assert indemnification or contribution claims against the Circus' estate constitute sufficient and unique circumstances, warranting the release, exculpation, and injunction provisions in the Plan. Moreover, pursuing any claims released by the Circus pursuant to Section 8.2 of the Plan would not be in the best interest of the Circus' various stakeholders, and the associated costs likely outweigh any potential benefit from pursuing such claims. No party has objected to the release, exculpation, or injunction provisions in the Plan.

(b) The exculpation, release, and injunction provisions in the Plan, including, without limitation, those set forth in Article VIII of the Plan, (a) are within the jurisdiction of the Court under 28 U.S.C. § 1334, and consideration of the Plan, including such exculpation, release, and injunction provisions, constitutes a core proceeding for purposes of 28 U.S.C. § 157(b), (b) are, under the unique circumstances of this case, appropriate, fair, equitable, reasonable, supported by adequate consideration, and in the best interests of the Circus, its estate and

creditors, and all parties in interest, (c) represent a valid exercise of the Circus' business judgment, (d) are an essential means of implementing the Plan pursuant to section 1123(a)(6) of the Bankruptcy Code, (e) include an appropriate carve-out for gross negligence, willful misconduct, and fraud, (f) are consistent with the Bankruptcy Code, including sections 105, 1123, and 1129 of the Bankruptcy Code, and other applicable law, as well as the prevailing standard for such releases, exculpations, and injunctions in the Second Circuit and this District, (g) are authorized and approved in all respects without the consent of the applicable third parties, (h) are expressly incorporated into this Order, and (i) shall be, and hereby are, effective and binding on all persons and entities who may have had standing to assert released Claims or Causes of Action, and no person or entity shall possess such standing to assert such Claims or Causes of Action after the Effective Date.

37. Corporate Authority. The Circus has full corporate power and authority to execute and consummate the Plan, and all other documents contemplated thereby, and the Plan has been duly and validly authorized by all necessary corporate action of the Circus. No further consents or approvals, including that of any other court, the New York State Attorney General or the regents of the university of the state of New York, are required for the Circus to consummate the Plan, except as otherwise set forth in the Plan.

38. Waiver of Stay. Pursuant to Bankruptcy Rule 3020(e), for good cause shown, the fourteen-day stay of this Order imposed by Bankruptcy Rule 3020(e), and any other stay under applicable law, including the Bankruptcy Rules and the Local Bankruptcy Rules, is waived. The Circus is authorized to consummate and implement the Plan immediately upon, concurrently with, or as soon as practicable following satisfaction or waiver, as applicable, of the conditions set forth in Section 9.1 of the Plan.

39. Binding Effect. On and after the Effective Date, except as otherwise provided in this Order or the Plan, (a) the provisions of this Order and the Plan bind (i) the Circus, (ii) each holder of a Claim, whether or not the Claim of such holder is Impaired under the Plan, whether or not such holder has accepted the Plan, and whether or not such holder is entitled to a distribution under the Plan, (iii) any other entity giving, acquiring, or receiving property under the Plan, (iv) all counterparties to the Circus' executory contracts and unexpired leases rejected pursuant to the Plan, and (v) the respective heirs, executors, administrators, trustees, affiliates, officers, directors, agents, representatives, attorneys, beneficiaries, guardians, successors, and assigns, if any, of the foregoing (in their capacities as such), and (b) all settlements, compromises, waivers, exculpations, releases, and injunctions set forth in the Plan shall be effective and binding on all entities who may have had standing to assert any settled, released, exculpated, or enjoined Claims, and no other person or entity shall possess such standing to assert such Claims or Causes of Action after the Effective Date.

40. Service of Combined Notice.

(a) Within three (3) calendar days of the Effective Date, the Plan Administrator shall (a) serve notice of entry of this Order, any hearing scheduled by the Court to consider any application for final allowance of an Administrative Claim, the time fixed for filing requests for the allowance of certain Administrative Claims, and the occurrence of the Effective Date, substantially in the form attached as **Exhibit B**, which notice is hereby approved in all respects (the "**Combined Notice**"), upon each of the following parties at their respective addresses last known to the Circus: (i) the U.S. Trustee, (ii) the U.S. Attorney for the Southern District of New York, (iii) the New York State Attorney General, (iv) the New York City Department of Cultural Affairs, (v) counsel to the Creditors' Committee, (vi) the Internal

Revenue Service, (vii) the entities listed on the List of Creditors Holding the 20 Largest Unsecured claims, (viii) all counterparties to the Circus' executory contracts and unexpired leases rejected pursuant to the Plan, (ix) all parties listed on the Circus' creditor matrix, (x) all parties having filed proofs of claim in the Chapter 11 Case, (xi) any other known holders of claims or equity interests in the Circus, and (xii) 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; (b) post the Combined Notice on the website maintained in this case by the Circus' administrative agent: www.donlinrecano.com/bigapplecircus; and (c) publish the Combined Notice, modified for publication, once in *The New York Times*.

(b) Service, posting, and publication of the Combined Notice in accordance with this Order shall, for purposes of Bankruptcy Rule 3020(c), be deemed to have occurred promptly after entry of this Order, and shall constitute good and sufficient notice (a) pursuant to Bankruptcy Rules 2002(f)(7), 2002(j), 2002(k), and 3020(c)(2), of confirmation of the Plan and entry of this Order, (b) pursuant to Bankruptcy Rule 2002(a)(6), of any hearing scheduled by the Court to consider any application for final allowance of an Administrative Claim for Professionals seeking reimbursement for services performed, (c) of the time fixed for filing requests for the allowance of certain Administrative Expense Claim, (d) pursuant to Bankruptcy Rule 2002(a)(7), of the time fixed for filing proofs of claim with respect to rejection damage claims arising from the rejection of executory contracts and unexpired leases pursuant to the Plan, and (e) of the occurrence of the Effective Date. No other or further notice is required.

41. Miscellaneous.

(a) The findings and conclusions set forth in this Order constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to

this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are, and shall be deemed to be, made and adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are, and shall be deemed to be, made and adopted as such.

(b) On and after the Effective Date, the Reorganized Debtor and the Plan Administrator are hereby authorized to take all actions necessary or appropriate to consummate and implement the Plan, without further application to, or order of, this Court, provided that such actions are consistent with the terms and provisions of the Plan and this Order.

(c) Each federal, state, local, and foreign governmental agency or department, or other governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate and implement the Plan and the transactions contemplated thereby.

(d) The substantial consummation of the Plan, within the meaning of section 1127 of the Bankruptcy Code, is deemed to occur on the Effective Date.

(e) The failure to specifically include any particular provision of the Plan, the Plan Supplement, or any related agreement in this Order shall not diminish or impair the efficacy of such provision, and such provision shall have the same validity, binding effect, and enforceability as every other provision of the Plan, it being the intent of this Court that the Plan is confirmed in its entirety, and the Plan, the Plan Supplement, and any related agreement are incorporated into this Order by reference. To the extent of any inconsistency between the Plan and this Order, the terms and conditions of this Order shall govern. The provisions of this Order and the provisions of the Plan are integrated with each other, and are hereby deemed nonseverable and mutually dependent.

(f) Each reference to a document, agreement, or summary description in this Order or in the Plan that is in the form attached as an exhibit to the Plan shall be deemed to be a reference to such document, agreement, or summary description in substantially the form of the latest version of such document, agreement, or summary description filed with the Court (whether filed as an attachment to the Plan or filed separately).

(g) The headings contained in this Order are used for the convenience of the parties and shall not alter or affect the meaning of the text of this Order.

(h) The Court shall, subject to applicable law, retain jurisdiction with respect to all matters set forth in Article XI of the Plan and any arising out of or related to, the interpretation, implementation, or enforcement of this Order.

Dated: December 18, 2017
New York, New York

/s/ Sean H. Lane
THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Confirmed Plan

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

In re:

TBAC WIND DOWN, LTD.,

Debtor.

Chapter 11

Case No. 16-13297 (SHL)

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

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INTRODUCTION

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

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

ARTICLE I

DEFINED TERMS AND RULES OF INTERPRETATION AND CONSTRUCTION

1.1 Defined Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Rules of Interpretation and Construction

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

ARTICLE II

ADMINISTRATIVE CLAIMS AND PRIORITY TAX CLAIMS

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

2.1 Administrative Claims

(a) Treatment

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

(b) Administrative Claim Bar Date

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

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

2.2 Priority Tax Claims

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

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

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

ARTICLE III

CLASSIFICATION AND TREATMENT OF CLAIMS

3.1 Classification of Claims

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

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

3.2 Treatment of Claims

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

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

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

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

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

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

(c) Treatment of Class 3 – Deposit Claims

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

(d) Treatment of Class 4 – General Unsecured Claims

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

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

3.3 Elimination of Vacant Classes

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

ARTICLE IV

MEANS FOR IMPLEMENTATION OF THE PLAN

4.1 Continued Corporate Existence; Dissolution of the Reorganized Debtor

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

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

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

4.2 Liquidation of the Estate

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

4.3 Plan Administrator

(a) Appointment

The Plan Administrator shall be deemed appointed on the Effective Date, without further motion, application, notice, hearing, or other order of the Court. The initial Plan Administrator shall be Brad Boe as disclosed in the Plan Supplement.

(b) Duties

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

(c) Compensation

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

4.4 Plan Expenses

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

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

4.5 Transfer of the Stern and Kern Foundations Endowment

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

4.6 Foundations Settlement

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

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

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

4.7 Transfer of Phone System to the DCA

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

4.8 Destruction and Abandonment of Books and Records

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

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

4.9 Preservation of Insurance

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

4.10 Preservation of All Causes of Action

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

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

4.11 Dissolution of the Creditors' Committee

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

4.12 Limitation on Liability; Indemnification

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

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

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

4.13 Exemption from Transfer Taxes

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

4.14 Corporate Action

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

ARTICLE V

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

5.1 Assumption and Rejection of Executory Contracts and Unexpired Leases

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

5.2 Rejection Damages Claims Bar Date

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

5.3 Insurance Policies; Indemnification

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

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

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

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

ARTICLE VI

DISTRIBUTIONS

6.1 Plan Administrator as Disbursing Agent

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

6.2 Record Date for Distributions

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

6.3 General Unsecured Claim Distributions

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

6.4 No Distributions Pending Allowance

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

6.5 Final Distribution

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

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

6.6 Delivery of Distributions

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

6.7 Undeliverable Distributions and Unclaimed Property

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

6.8 De Minimis and Fractional Distributions

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

6.9 Compliance with Tax Requirements and Allocations

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

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

6.10 Time Bar to Cash Payments

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

6.11 Claims Payable by Insurance Carriers

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

6.12 Setoff

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

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

6.13 Disallowed Claims

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

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

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

6.14 Distributions on Account of the Endowment Loan Claim

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

6.15 Distributions Free and Clear

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

ARTICLE VII

DISPUTED CLAIMS

7.1 Objections to Claims

(a) Authority to Object to Claims

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

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

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

(c) Settlement and Compromise of Claims

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

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

7.2 Estimation of Claims

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

7.3 Disputed Claims Reserve

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

7.4 No Interest on Disputed Claims

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

ARTICLE VIII

SETTLEMENT, RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS

8.1 Compromise and Settlement of Claims and Controversies

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

8.2 Releases by the Debtor

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

8.3 Releases by Holders of Claims

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

8.4 Exculpation

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

8.5 Injunction

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

8.6 Limitations on Release, Exculpation, and Injunction Provisions

Nothing in Sections 8.2, 8.3, 8.4, or 8.5 hereof shall be construed to exculpate (a) any entity from willful misconduct, gross negligence, or fraud, or (b) any attorney to the extent that such exculpation would violate N.Y. Comp. Codes R. & Regs. tit. 22 § 1200.8 Rule 1.8(h)(1) (2009).

ARTICLE IX

CONDITIONS PRECEDENT TO THE EFFECTIVE DATE

9.1 Conditions Precedent to the Effective Date

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

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

9.2 Waiver of Conditions

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

9.3 Effect of Non-occurrence of Effective Date

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

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

ARTICLE X

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

10.1 Modification and Amendments to the Plan

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

10.2 Effect of Confirmation on Modifications

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

10.3 Revocation or Withdrawal of the Plan

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

ARTICLE XI

RETENTION OF JURISDICTION

11.1 Jurisdiction of the Court

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Binding Effect

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

12.2 Plan Supplement

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

12.3 Vacatur of Confirmation Order

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

12.4 Statutory Fees

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

12.5 Service of Documents

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

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

12.6 Entire Agreement

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

12.7 Severability

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

12.8 Closing the Chapter 11 Case

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

12.9 Governing Law

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

12.10 Term of Injunctions and Stays

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

Dated: December 7, 2017
New York, New York

Respectfully submitted,

TBAC WIND DOWN, LTD.

By: /s/ Will Maitland Weiss
Name: Will Maitland Weiss
Title: Executive Director

Exhibit A

Proposed Members of the Post-Effective Date Board of Directors

Title	Name	Affiliation	Compensation
Director	Rick Mayberry	Court Square Capital Partners	None
Director	Ron Gross	G Holdings, LLC	None
Director	Will Maitland Weiss	TBAC Wind Down, Ltd.	None

Exhibit B to the Plan

Certificate of Incorporation

CERTIFICATE OF INCORPORATION

OF

TBAC WIND DOWN, LTD.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit C to the Plan

Bylaws

Third Amended and Restated

TBAC Wind Down, Ltd.

By-Laws

Amended effective as of [DATE]

**Article I
Names and Offices**

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

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

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

**Article II
Members**

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

**Article III
Board of Directors**

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

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

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

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

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

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

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

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

Article IV Meetings of the Board of Directors

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

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

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

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

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

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

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

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

Article V Officers

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

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

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

Article VI General Provisions

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

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

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

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

Article VII Indemnification

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

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

Article VIII Amendments

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

Article IX Conflicts of Interest

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

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

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

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

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

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

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

Exhibit D to the Plan

Assumed Insurance Policies

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

Exhibit E to the Plan

Estimation of Unliquidated Claims

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

EXHIBIT B

Combined Notice

M. Natasha Labovitz
Christopher Updike
William H. Barlow II
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 (I) ENTRY OF AN ORDER CONFIRMING
THE CHAPTER 11 PLAN OF LIQUIDATION OF TBAC WIND
DOWN, LTD. AND (II) OCCURRENCE OF THE EFFECTIVE DATE**

TO ALL CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that on [●], the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) entered an order (the “**Confirmation Order**”, Docket No. [●]) confirming the *Chapter 11 Plan of Liquidation of TBAC Wind Down, Ltd.* (as may be modified, the “**Plan**”). Unless otherwise defined in this notice, capitalized terms used in this notice shall have the meanings ascribed to them in the Confirmation Order.

PLEASE TAKE FURTHER NOTICE that copies of the Confirmation Order, the Plan, and the related documents may be obtained free of charge by visiting the following website: www.donlinrecano.com/bigapplecircus. You may also obtain copies of any pleadings by visiting the Bankruptcy Court’s website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

PLEASE TAKE FURTHER NOTICE that the Effective Date of the Plan occurred on [●].

PLEASE TAKE FURTHER NOTICE that, unless otherwise provided in the Plan, the Confirmation Order, any other applicable order of the Bankruptcy Court, or agreed to

by the holder of an Administrative Claim and the TBAC Wind Down, Ltd. (the “**Debtor**”), requests for payment of Administrative Claims, including final applications for payment of accrued compensation for services rendered by Professionals before the Effective Date, must be filed and served on the Debtor or the Plan Administrator, as applicable, and such other entities as are designated by the Bankruptcy Rules, the Confirmation Order or other order by the Bankruptcy Court, pursuant to the procedures specified in the Confirmation Order no later than [●] (the “**Administrative Bar Date**”). Holders of Administrative Claims that are required to, but do not, file and serve a request for payment of such Administrative Claims by the Administrative Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtor, its Estate, the Reorganized Debtor, or any property of any of the foregoing, and such Administrative Claims shall be automatically disallowed and deemed forever compromised, settled, and released as of the Effective Date.

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

PLEASE TAKE FURTHER NOTICE that, on and after the Effective Date, the provisions of the Plan shall bind the Debtor, the Reorganized Debtor, the Plan Administrator, any holder of a Claim, the Estate and their respective successors or assigns, whether or not the Claim of such holders is Impaired under the Plan and whether or not such holder has accepted the Plan.

Dated: December [●] 2017
New York, New York

/s/ Draft
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