

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

437 88 LLC,

Case No.

Debtor.

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LIMITED LIABILITY COMPANY RESOLUTION

At a special meeting of members of 437 88 LLC (the “Company”) held on December 30, 2024 and upon the unanimous consent of the members after motion duly made and carried, it was:

RESOLVED, that the Company is authorized to execute and file a bankruptcy petition under Chapter 11 of the United States Bankruptcy Code and to cause the prosecution thereof; and it is further

RESOLVED, that the Company is authorized to retain the law firm of GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP, as bankruptcy counsel for the purpose of filing and prosecuting the Chapter 11 petition on its behalf.

Dated: New York, New York
January 17, 2025

437 88 LLC

By:



Name: Tim Ziss

Title: Managing Member

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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**DEBTOR’S DECLARATION
PURSUANT TO LOCAL BANKRUPTCY RULE 1007-4**

Tim Ziss declares the following under penalties of perjury pursuant to 28 U.S.C. § 1746:

1. I am the managing member of 437 88 LLC (the “Debtor”), and as such I am fully familiar with the facts and circumstances set forth herein. I respectfully submit this Declaration in accordance with Local Bankruptcy Rule 1007-4 in support of the Debtor’s filing of a Chapter 11 case under Title 11 of the United States Code (the “Bankruptcy Code”).

2. The purpose of this Declaration is to outline the various factors leading to the decision by the Debtor to seek Chapter 11 relief, the Debtor’s asset and capital structure, and the Debtor’s overall reorganization strategy of maintaining possession and control of its real property.

Events Leading to the Chapter 11 Filing

3. The Debtor is the owner of a newly constructed five story medical office building containing 48,092 square feet of rentable space (the “Building”), located at 437 88th Street in the Bay Ridge section of Brooklyn (the “Property”).

4. The Property was first acquired in early 2018 for the sum of approximately \$7.0 million pursuant to a confirmed bankruptcy plan of reorganization entered in the Debtor’s previous case on January 25, 2018. Years ago, the Debtor was compelled to seek earlier Chapter 11 relief in order to enforce rights under a prior contract to purchase the Property, invoking the

provisions of 11 U.S.C. §108 extending the time to close. The Debtor ultimately settled its differences with the prior owner and the Debtor closed on the acquisition in 2018 with a view to redeveloping the Property into a modern medical office facility.

5. In 2018, the Property was improved by a two-story structure. In the years that followed, the Property was completely redesigned and underwent a so-called “ground-up redevelopment” to construct a Class A modern medical office facility in Bay Ridge.

6. To date, the Debtor has invested approximately \$20 million in connection with the project, including the mortgage financing originally issued by Dime Savings Bank (“Dime”) which was renewed several times, before Dime sold the loan last year. The principal balance under the mortgage loan is \$12,253,264.05. The Debtor operated under a forbearance and was disheartened to learn that, rather than extending the forbearance, Dime sold the note to a private note buyer known as BD 43788 LLC (the “Note Buyer”).

7. The Note Buyer quickly commenced foreclosure proceedings and just recently obtained the appointment of a Receiver. Accordingly, the Debtor has made the decision to seek Chapter 11 relief to preserve the status quo and preserve and protect more than five (5) years of time and capital invested in this redevelopment project.

The Property

8. The Property has achieved a Temporary Certificate of Occupancy (“TCO”) and an approved ICAP tax savings. In 2023, the Debtor entered into a lease with the New York University Grossman School of Medicine (“NYU”) to occupy a portion of the first floor and the entire second floor of the Building, totaling 19,162 square feet, for a term of fifteen (15) years, plus certain renewal options.

9. For over a year's time, the Debtor spent substantial effort negotiating a potential lease with another health care provider for the remainder of the upper floors at the Building. Although a term sheet was issued and a proposed lease was negotiated, the potential tenant decided to proceed in another direction.

10. In the meanwhile, the Dime Mortgage matured in January, 2024. During good faith negotiations with Dime, Debtor requested an extension to the end of 2024 to allow the time to obtain the required approvals of the TCO and ICAP, and secure a permanent take out lender. On March 27, 2024, the Debtor obtained a retroactive extension and forbearance from Dime ending on June 10, 2024, instead of its requested end of year extension. Based on the good faith negotiations and its longstanding relationship with Dime, the Debtor anticipated obtaining a further extension from Dime to the end of 2024, only to learn that Dime sold the mortgage to the Note Buyer, without any notice to the Debtor. As the Debtor expected, the TCO and ICAP were finalized subsequent to June 10, 2024 and it was able to secure permanent financing with CTBC prior to year end 2024.

11. Although Dime is free to assign the mortgage, the Debtor believes that Dime was already in negotiations to sell the note at the very same time it was in negotiations with the Debtor concerning the forbearance. Indeed, Dime may have used the forbearance as a means to enhance its ability to market the note. At any rate, the Debtor believes that Dime's marketing efforts should have been disclosed to the Debtor under any circumstances since Dime was aware that the Debtor reasonably relied upon its ongoing relationship in agreeing to a forbearance, which included, inter alia, an acknowledgment of the debt. Had the Debtor been made aware of a potential sale of the note it would not have agreed to such terms. The Debtor intends to take

Rule 2004 discovery to determine if grounds exist for subordination of the mortgage or disallowance of default interest.

12. In fact, the Debtor made it clear to Dime that it was prepared to litigate rather than agree to a forbearance without assurances of Dime's continued cooperation. During the forbearance period, the Debtor undertook efforts to enhance the value of the Property by obtaining a TCO and ICAP tax savings. These efforts were done at significant costs and in reliance that the loan would be further extended if necessary depending on the timing of the refinancing. I believe the Note Buyer was aware of the Debtor's reliance and purchased the note to attempt to take advantage of potential default interest and penalties regardless of the consequences to the Property. The Debtor intends to vigorously examine these areas of inquiry and shall also remove pending litigation upon commencement of the Chapter 11 case.

13. Additionally, the Debtor also retains significant claims against its insurance carrier for delays in providing funds for remediation following water infiltration losses, and intends to retain special counsel to pursue this claim in Chapter 11 as well.

Reorganization Strategy

14. The Debtor's main goal remains to complete the refinancing with CTBC Bank, which issued a commitment letter to refinance. Unfortunately, the commitment was impeded by the ensuing foreclosure proceedings. CTBC Bank was willing to provide a refinance in the principal sum of \$18.5 million prior to the institution of a foreclosure action. The Debtor hopes to revive its discussions with CTBC Bank in order to obtain exit financing. The Debtor shall also continue to negotiate with interested tenants for the leasing of the remainder of the Property, with the assistance of Tim King, a veteran New York City broker, who will be retained in the Chapter 11.

15. The Property was appraised in the sum of \$33.3 million in its current “as is” condition and \$39.8 million after the Building is fully stabilized. The appraisal was made in connection with the potential refinancing with CTBC Bank.

Local Rule Statements

16. Pursuant to Local Rule 1007-4(a)(iv) and (v), no committees were formed prior to the filing of the Debtor’s Chapter 11 petition.

17. Pursuant to Local Rule 1007-4(a)(vi), a list of all of the Debtor’s creditors is attached hereto.

18. Pursuant to Local Rule 1007-4(a)(vii), the Debtor has one mortgage creditor, BD 43788 LLC, as successor to Dime, as noted above. A list of the eleven (11) entities which filed notices of mechanic’s liens is contained in Schedule “F”.

19. Pursuant to Local Rule 1007-4(a)(viii), the Debtor’s assets and liabilities are set forth in the bankruptcy schedules and statements filed herewith.

20. Pursuant to Local Rule 1007-4(a)(ix), the stock interest in the Debtor is not publicly traded and is held by the undersigned as the 100% equity holder.

21. Pursuant to Local Rule 1007-4(a)(x), no Receiver has yet been appointed, although a motion is pending.

22. Pursuant to Local Rule 1007-4(a)(xi), the Debtor owns the Property subject to a lease with NYU as described above.

23. Pursuant to Local Rule 1007-4(a)(xii), the Debtor’s books and records are located at my offices in Brooklyn, NY.

24. Pursuant to Local Rule 1007-4(a)(xiii), a list of all pending lawsuits is filed herewith.

25. Pursuant to Local Rule 1007-4(a)(xiv), I shall continue to serve as the Manager of the Debtor without compensation.

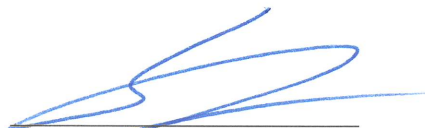
26. Pursuant to Local Rule 1007-4(a)(xv), the Debtor has no current employees.

27. Pursuant to Local Rule 1007-4(a)(xvii), the Debtor does not anticipate any significant extraordinary income or expenses in the next 30 days, except for the administrative costs of the Chapter 11 case and maintaining the Property, including payment of insurance.

Dated: New York, New York
January 17, 2025

437 88 LLC

By:



Name: Tim Ziss

Title: Managing Member

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

437 88 LLC,

Case No.

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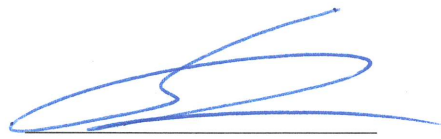
LIST OF EQUITY HOLDERS

Tim Ziss 100%

Dated: New York, New York
January 17, 2025

437 88 LLC

By:



Name: Tim Ziss

Title: Managing Member

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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RULE 7.1 CORPORATE OWNERSHIP STATEMENT

Pursuant to Federal Rule of Civil Procedure 7.1, 437 88 LLC certifies that it is a private non-governmental party, and has no corporate parent, affiliates and/or subsidiaries which are publicly held.

Dated: New York, New York
January 17, 2025

437 88 LLC

By:


Name: Tim Ziss

Title: Managing Member

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re: Chapter 11

433 87 LLC, Case No.

Debtor.

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LIST OF LAWSUITS

1. Dina Noaman v. C21 BK Home LLC et al / C21 BK Home LLC, Third Party Plaintiff v. 433 87 LLC et al.
Supreme Court, Kings County
Personal Injury
Index No. 536280/2022

Plaintiff's Attorney:

Sanders, Aronova Grossman, Woycik, Viener & Alant, PLLC
Mark R. Bernstein, Esq
100 Garden City Plaza, Suite 500
Garden City, New York 11530

Third Party Plaintiff's Attorney:

McMahon, Martine & Gallagher LLP
Deidre Egan, Esq.
55 Washington Street, Suite 720
Brooklyn, NY 11201

2. Exotic Design & Wire LLC d/b/a Empire State Contractors Group v. 437 88 LLC et al.
Supreme Court, Kings County
Enforcement of Mechanic's Lien
Index No. 503400/2024

Plaintiff's Attorney:

Schwartz Sladkus Reich Greenberg Atlas LLP
Andrea J. Caruso, Esq.
444 Madison Avenue, 6th Floor
New York, NY 10022

3. 437 88 LLC v. Great Lakes Insurance SE
U.S. District Court for the Eastern District of New York
Breach of Insurance Contract
24-cv-06867-MKB-VMS

Plaintiff's Attorney:

Lerner, Arnold & Winston, LLP
Frank P. Winston, Esq.
286 Fifth Avenue, 12th Floor
New York, NY 10001

4. BD 43788 LLC and Dime Community Bank v. 437 88 LLC et al.,
Supreme Court, Kings County
Foreclosure
Index No. 522507/2024

Plaintiff's Attorney:

Harry Zubli, Esq.
1010 Northern Blvd.
Suite 306
Great Neck NY 11021

Dated: New York, New York
January 17, 2025

437 88 LLC

By:



Name: Tim Ziss

Title: Managing Member