

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): December 7, 2019

GYRODYNE, LLC

(Exact name of Registrant as Specified in its Charter)

New York
(State or other jurisdiction
of incorporation)

001-37547
(Commission File
Number)

46-3838291
(I.R.S. Employer
Identification No.)

ONE FLOWERFIELD
SUITE 24
ST. JAMES, NEW YORK 11780

(Address of principal executive
offices) (Zip Code)

(631) 584-5400

Registrant's telephone number,
including area code

N/A

(Former name or former address, if changed since last report.)

Securities registered pursuant to Section 12(b) of the Exchange Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Shares of Limited Liability Company Interests	GYRO	Nasdaq Capital Market

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into Material Definitive Agreement

Purchase and Sale Agreement – Cortlandt Manor

Gyrodyne, LLC, a New York limited liability company (the “Company”), has announced the execution by its subsidiaries GSD Cortlandt, LLC, a New York limited liability company (“GSD”), and Buttonwood Acquisition, LLC (“Buttonwood” and together with GSD, the “Cortlandt Subsidiaries”), of a Purchase and Sale Agreement (the “Agreement”) effective as of December 7, 2019 (the “Effective Date”) for the sale of approximately 4.5 acres of its real property located in Cortlandt Manor, New York, together with the improvements thereon (the “Property”), to Sound Cortlandt, LLC, a Delaware limited liability company (“SC LLC”), for a purchase price of \$5,720,000.

The Town of Cortlandt (the “Town”) is processing a proposed zoning initiative to create a Medical Oriented District (“MOD”) that would include the entire Cortlandt property (owned by the Cortlandt Subsidiaries) within its boundaries. Included in the Town’s initiative is the Company’s site plan to subdivide the entire property into three parcels for the development of (i) a medical office building with retail, (ii) a multi-family residential housing project and (iii) an open space, passive recreation parcel. The Property that is the subject of the Agreement consists of the medical office building with ancillary retail space, and does not include the multi-family residential housing parcel or the open space, passive recreation parcel.

The Agreement requires: (i) an inspection period that will expire after a set period, during which time SC LLC will have the right to terminate the Agreement by written notice to GSD if SC LLC will not be fully satisfied, in SC LLC’s sole discretion, as to the status of title, suitability of the Property and all factors concerning same, prior to the expiration of the inspection period, in which case SC LLC will have the right to receive a refund of its earnest money deposit; (ii) if SC LLC does not terminate the Agreement on or prior to the end of the inspection period, SC LLC will be obligated to deliver an additional earnest money deposit to the escrow agent, which together with the initial earnest money deposit will be applied toward the purchase price at closing; (iii) unless SC LLC terminates the Agreement on or prior to the end of the inspection period, the closing will occur on the 60th day following the earlier of (y) the applicable governmental authorities granting of the Final Project Approvals (as defined in the Agreement and as described below); or (z) SC LLC’s waiver of the Final Project Approvals.

The Final Project Approvals are also contingent on the receipt of Subdivision Approval and Site Plan Approval (each as defined in the Agreement and as described below). The Subdivision Approval condition requires that the Cortlandt Subsidiaries obtain approval as and to the extent necessary to allow for the conveyance of the medical office building parcel to SC LLC and the conveyance of the recreation parcel to the owner’s association within a specified time following the last day of the inspection period. If such Subdivision Approval is not obtained within such specified time following the last day of the inspection period, SC LLC has the right to terminate the Agreement. The Agreement provides SC LLC with a limited right to terminate the Agreement in the event the Subdivision Approval contains requirements specified in the Agreement. In the event the Subdivision Approval has not been denied by the Town at or prior to the last day of the specified period, SC LLC shall have the right to extend the time to obtain the Subdivision Approval for a specified period of time. If such Subdivision Approval is not obtained within such additional time, SC LLC has the right to terminate the Agreement.

The Site Plan Approval is specifically delineated in the Agreement. If SC LLC fails to obtain the Site Plan Approval prior to the closing date, SC LLC may cancel the Agreement, waive the Site Plan Approval contingency, or extend the closing date.

The Agreement also contains additional customary covenants, conditions, representations and warranties.

The foregoing description of the Agreement is only a summary of its material terms, does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the full text of the Agreement, which shall be an exhibit to the Company's next 10-K filing.

After giving effect to the sale of the Property pursuant to the terms of the Agreement, the closing of which is subject to several conditions set forth therein (and only summarized above), the Company estimates that the aggregate amount of its net assets in liquidation will increase as a result of such sale to \$20.67 per share, an increase of \$0.59 per share over the net assets in liquidation per share previously reported as of September 30, 2019 of \$20.08 per share.

Deferred Compensation Plan

On December 6, 2019, the Company's Board of Directors (the "Board") approved the Gyrodyne, LLC Nonqualified Deferred Compensation Plan for Employees and Directors (the "DCP") effective as of January 1, 2020. The plan is a nonqualified deferred compensation plan maintained for officers and directors of the Company. Under the DCP, officers and directors may elect to defer a portion of their compensation to the DCP and receive interest on such deferred payments at a fixed rate of 5%. All DCP benefits will be paid in a single lump sum cash payment on December 15, 2026, unless a plan of liquidation is established for Gyrodyne before the distribution date in which case all benefits will be paid in a single lump sum cash payment after execution of an amendment to terminate the DCP. The foregoing description of the DCP does not purport to be complete and is qualified in its entirety by reference to the full text of the DCP, which is attached hereto as Exhibit 10.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

10.1 [Nonqualified Deferred Compensation Plan](#)

Forward-Looking Statement Safe Harbor

The statements made in this report that are not historical facts constitute "forward-looking information" within the meaning of the Private Securities Litigation Reform Act of 1995, and Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, both as amended, which can be identified by the use of forward-looking terminology such as "may," "will," "anticipates," "expects," "projects," "estimates," "believes," "seeks," "could," "should," or "continue," the negative thereof, other variations or comparable terminology as well as statements regarding the evaluation of strategic alternatives. Important factors, including certain risks and uncertainties, with respect to such forward-looking statements that could cause actual results to differ materially from those reflected in such forward-looking statements include, but are not limited to, the risk that the proceeds from the sale of Gyrodyne's assets may be substantially below Gyrodyne's estimates, the risk that the proceeds from the sale of our assets may not be sufficient to satisfy Gyrodyne's obligations to its current and future creditors and other unforeseeable expenses related to the proposed liquidation, the tax treatment of condemnation proceeds, the effect of economic and business conditions, including risks inherent in the real estate markets of Suffolk and Westchester Counties in New York, risks and uncertainties relating to developing Gyrodyne's undeveloped property in St. James, New York and other risks detailed from time to time in the Company's SEC reports.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

GYRODYNE, LLC

By: /s/ Gary Fitlin

Gary Fitlin

President and Chief Executive Officer

Date: December 12, 2019

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

GYRODYNE, LLC

By: /s/ Gary Fitlin

Gary Fitlin

President and Chief Executive Officer

Date: December 12, 2019

**GYRODYNE, LLC
NONQUALIFIED DEFERRED COMPENSATION PLAN
FOR EMPLOYEES AND DIRECTORS**

Effective as of January 1, 2020

December, 2019

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PREAMBLE

WHEREAS, Gyrodyne, LLC (“Gyrodyne” or the “Company”) wishes to establish a nonqualified deferred compensation plan to be known as the Gyrodyne, LLC Nonqualified Deferred Compensation Plan for Employees and Directors (the “Gyrodyne NQDC Plan” or the “Plan”) effective as of January 1, 2020, for the benefit of certain key employees and members of the Board of Directors of Gyrodyne; and

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WHEREAS, Gyrodyne, LLC (“Gyrodyne” or the “Company”) wishes to establish a nonqualified deferred compensation plan to be known as the Gyrodyne, LLC Nonqualified Deferred Compensation Plan for Employees and Directors (the “Gyrodyne NQDC Plan” or the “Plan”) effective as of January 1, 2020, for the benefit of certain key employees and members of the Board of Directors of Gyrodyne; and

WHEREAS, the purpose of the Plan was to permit eligible Highly Compensated Employees and Directors to elect to defer current compensation and Directors’ fees until December 15, 2026, unless the Plan is terminated sooner; and

WHEREAS, Section 409A of the Internal Revenue Code (the “Code”) imposes certain limitations regarding salary deferral elections, including strict requirements regarding the **time** and **form** of distributions under nonqualified retirement plans (which restrictions shall generally not apply to the Gyrodyne NQDC Plan due to the structure of the Plan); and

WHEREAS, the intent of the Plan is to comply with the Final Regulations issued under Section 409A of the Code, including all IRS announcements, notices and any other guidance issued under Section 409A.

NOW, THEREFORE, effective January 1, 2020, the Plan is established as follows:

ARTICLE I
DEFINITIONS

1.1 "**Account**" means the bookkeeping entry maintained in the records of the Company for each Participant representing the amount of Salary Deferral Contributions and Directors’ Fees deferred under the Plan, and all interest, earnings, appreciation, depreciation, losses, expenses, or distributions credited or debited to such account. In connection with the administration and operation of the Plan, the Committee may elect to establish one or more Subaccounts within a Participant’s Account, including, without limitation, a Subaccount for Salary Deferral Contributions and Directors’ Fees (and related amounts) made while serving in different capacities with the Company and a Subaccount for Salary Deferral Contributions (and related amounts) to which a separate time and/or form of payment applies.

1.2 "**Beneficiary**" means any person entitled to receive benefits under the Plan upon the death of a Participant, as designated in a Beneficiary Designation Form executed by each Participant. A Participant’s Beneficiary Designation Form may be revoked or changed by the Participant at any time, without the consent of any Spouse or any previous Beneficiary. Any such designation, revocation or change shall be in writing, signed by the Participant and delivered to the Company. In the event no Beneficiary is designated, or if any designated Beneficiary does not survive a Participant, all payments shall be made to the Participant's Spouse, if any, or to the Participant's estate.

1

1.3 "**Benefit Distribution Date**" means the payment of all benefits on December 15, 2026, unless accelerated upon termination of the Plan. Benefits shall not otherwise be paid upon a separation from service for an officer, resignation or removal of a member of the Board of Directors or the occurrence of death, Disability or retirement.

1.4 "**Board**" means the Board of Directors of Gyrodyne, LLC as in office from time to time.

1.5 "**Board Member**" means a member of the Board of Directors of Gyrodyne, LLC.

1.6 "**Code**" means the Internal Revenue Code of 1986, as amended, and any regulations issued thereunder.

1.7 "**Committee**" means the members of the Board who do not elect to voluntarily participate in the Plan.

1.8 "**Company**" means Gyrodyne, LLC or any successor entities thereto.

1.9 "**Compensation**" means the total remuneration paid by the Company during the calendar year, plus any contributions made by the Company under any salary reduction or similar arrangement to a qualified plan under Sections 401(k) or Section 125 of the Code, but **exclusive** of any cost to the Company for fringe benefits.

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For a Participant who is a member of the Board of Directors, Compensation means the total annual Directors' fees paid to the Participant.

1.10 "**Director**" means a Participant who is a member of the Board of Directors of the Company.

1.11 "**Disability**" means a Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, which can be expected to result in death or can be expected to last for a continuous period of not less than **12** months, as determined by an independent third party physician, selected within the discretion of the Committee. The determination of whether a Participant is disabled shall be determined by the Committee, in its sole discretion, but subject to the provisions of Section 409A.

1.12 "**Effective Date**" shall mean January 1, 2020.

1.13 "**Employee**" shall mean a person who is employed by the Company and who falls under the usual common law rules applicable in determining the employer-employee relationship.

1.14 "**Highly Compensated Employee**" means an individual who is characterized as a highly compensated employee under Section 414(q) of the Code, or any other level established by the Committee. To the extent required by Department of Labor Regulation Section 2520.104-23, to permit the Plan to qualify as a "Top Hat" plan for a select group of highly compensated employees, the term Highly Compensated Employee shall be restricted by the Committee to satisfy this Department of Labor Regulation. To the extent any Participant is determined to no longer be a Highly Compensated Employee while actively participating in the Plan, all future deferrals shall terminate until such time as the Participant is once again determined to be a Highly Compensated Employee. The Committee shall have the discretion to take all actions necessary to preserve the "Top Hat" status of the Plan, including but not limited to distributing any benefits and terminating the participation of any Participant in the Plan, except to the extent such action would violate Section 409A.

1.15 "**Highly Compensated Participant**" means a Highly Compensated Employee or Director who is selected to participate in the Plan.

1.16 "**Key Employee**" means an individual as described in Section 416(i) of the Code, determined without regard to Section 416(i) (5) thereof. For purposes of this provision, a Key Employee is an officer earning more than **\$180,000** in 2019 (with a limit of no more than **50** employees, or if less, the greater of **3** or **10%** of all employees being treated as officers); a **5%** owner; or a **1%** owner having annual compensation of more than **\$150,000**. All amounts shall automatically be increased as provided under the Code for cost of living or other changes.

1.17 "**Participant**" means a Highly Compensated Employee or Director who participates in the Plan. Notwithstanding any provisions of the Plan, an individual for whom an Account is maintained under the Plan shall be considered a Participant, whether such

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1.17 "**Participant**" means a Highly Compensated Employee or Director who participates in the Plan. Notwithstanding any provisions of the Plan, an individual for whom an Account is maintained under the Plan shall be considered a Participant, whether such individual is no longer a Highly Compensated Employee or Director, if he or she is still employed by the Company or is a Director or has not received all benefits payable under the Plan.

1.18 "**Plan**" means the Gyrodyne, LLC Nonqualified Deferred Compensation Plan for Employee and Director, as set forth herein and as amended from time to time.

1.19 "**Plan Year**" means each **12**-consecutive month period that begins on each January 1 and ends on the following December 31.

1.20 "**Salary Deferral Contributions**" means the amount of Compensation or Directors' fees a Participant elects to defer under the terms of the Plan.

1.21 "**Separation from Service**" means a Participant is no longer employed by the Company on account of a termination of employment, retirement, Disability or death, and is no longer serving as a Director. Consistent with the Final Treasury Regulation, or any subsequent guidance under Section 409A of the Code, no Separation from Service shall occur if a Participant continues to perform services as a consultant or an employee in excess of any amount of time permitted under such guidance.

a. **Leave of Absence.** For purposes of Section 409A, the employment relationship is treated as continuing in effect while a Participant is on military leave, sick leave, or other bona fide leave of absence, as long as the period of leave does not exceed **6** months, or if longer, as long as the Participant has a right to reemployment with the Employer provided either by statute or contract. Otherwise, after a **6**-month leave of absence, the employment relationship is deemed terminated, unless provided otherwise in any employment policies and procedures.

b. **Part-Time Status.** Whether or not a termination of employment occurs is determined based upon all facts and circumstances. However, in the event that services provided by a Participant are **insignificant**, a Separation from Service shall be deemed to have occurred. For purposes of Section 409A, if a Participant is providing services to the Company at a rate that is at least equal to **20%** of the services rendered, on average, during the immediately preceding **3** full calendar years of employment (or such lesser period), and the annual compensation for such services is at least **20%** of the average annual compensation earned during the final **3** full calendar years of employment (or such lesser period), no termination shall be deemed to have occurred since such services are **not insignificant**.

c. **Consulting Services.** Where a Participant continues to provide services to the Company or in a capacity other than as an employee, a Separation from Service shall **not be deemed to have occurred** if the Participant is providing services at an annual rate that is **50%** or more of the services rendered, on average, during the immediately preceding **3** full calendar years of employment (or such lesser period) and the annual remuneration for such services is **50%** or more of the annual remuneration earned during the final **3** full calendar years of employment (or such lesser period).

b. **Part-Time Status.** Whether or not a termination of employment occurs is determined based upon all facts and circumstances. However, in the event that services provided by a Participant are **insignificant**, a Separation from Service shall be deemed to have occurred. For purposes of Section 409A, if a Participant is providing services to the Company at a rate that is at least equal to **20%** of the services rendered, on average, during the immediately preceding **3** full calendar years of employment (or such lesser period), and the annual compensation for such services is at least **20%** of the average annual compensation earned during the final **3** full calendar years of employment (or such lesser period), no termination shall be deemed to have occurred since such services are **not insignificant**.

c. **Consulting Services.** Where a Participant continues to provide services to the Company or in a capacity other than as an employee, a Separation from Service shall **not be deemed to have occurred** if the Participant is providing services at an annual rate that is **50%** or more of the services rendered, on average, during the immediately preceding **3** full calendar years of employment (or such lesser period) and the annual remuneration for such services is **50%** or more of the annual remuneration earned during the final **3** full calendar years of employment (or such lesser period).

d. **Directors.** For Directors, a Separation from Service shall occur when the Director is no longer receiving any fees or performing any services as a Director.

1.22 **"Specified Employee"** means a Key Employee who is employed by the Company which has its stock publicly traded on an established securities market. For purposes of the Plan, the **Specified Employee Identification Date** shall be each December 31, and the **Specified Employee Effective Date** shall be the April 1 following the **Specified Employee Identification Date**. Specified Employees shall be determined by the Committee on an annual basis for purposes of all nonqualified deferred compensation plans and any other programs in accordance with the provisions of Section 409A of the Code.

The stock of the Company **is traded** on the NASDAQ Stock Exchange.

1.23 **"Spouse"** means the individual who is legally married to a Participant at the earlier of the Participant's Benefit Commencement Date or death.

1.24 **"Valuation Date"** means the last date of each calendar quarter or more frequent periods as determined within the discretion of the Committee.

ARTICLE II ELIGIBILITY TO PARTICIPATE

2.1 **Eligibility to Participate in Salary and Bonus Deferral or Directors' Fee Contributions.** Employees and Directors shall be eligible to participate in the Plan and make Salary Deferral Contributions or Directors' Fees Contributions upon being notified of their eligibility by the Committee, within its discretion. Each Participant may elect to participate in the Salary Deferral Contribution portion of the Plan by filing a written Salary Deferral Contribution Election Form with the Company, within **30** days of being **notified** of the ability to make Salary Deferral Contributions to the Plan (the "Individual Election Period") or during the annual election period established by the Committee prior to the beginning of any Plan Year (the "Open Election Period"). For purposes of the Plan, the Open Election Period shall be the December of each Plan Year.

2.2 **Re-employment.** If a Participant Separates from Service with the Company, but is subsequently re-employed by the Company, the Participant shall be entitled to resume participating in the Plan only in accordance with the procedures established under Section 2.1, within the discretion of the Board.

ARTICLE III CONTRIBUTIONS TO THE PLAN

3.1 **Discretionary Employer Contributions.** Gyrodyne shall credit to the Account of each Participant a sum equal to a percentage of Compensation determined prior to the beginning of each Plan Year by the Committee. The Discretionary Employer Contribution may also be made in any amount, not directly associated with a Participant's Compensation, to reward a Participant for past or future performance. Gyrodyne may determine a different Discretionary Employer Contribution each year for different Participants, within its discretion.

3.2 **Salary Deferral Contributions.** Each Participant in the Plan who is a Highly Compensated Employee or a Director shall be eligible to elect to voluntarily defer the payment of all or any portion of any Compensation or Directors' fees when such amounts would

ARTICLE II
ELIGIBILITY TO PARTICIPATE

2.1 **Eligibility to Participate in Salary and Bonus Deferral or Directors' Fee Contributions.** Employees and Directors shall be eligible to participate in the Plan and make Salary Deferral Contributions or Directors' Fees Contributions upon being notified of their eligibility by the Committee, within its discretion. Each Participant may elect to participate in the Salary Deferral Contribution portion of the Plan by filing a written Salary Deferral Contribution Election Form with the Company, within **30** days of being **notified** of the ability to make Salary Deferral Contributions to the Plan (the "Individual Election Period") or during the annual election period established by the Committee prior to the beginning of any Plan Year (the "Open Election Period"). For purposes of the Plan, the Open Election Period shall be the December of each Plan Year.

2.2 **Re-employment.** If a Participant Separates from Service with the Company, but is subsequently re-employed by the Company, the Participant shall be entitled to resume participating in the Plan only in accordance with the procedures established under Section 2.1, within the discretion of the Board.

ARTICLE III
CONTRIBUTIONS TO THE PLAN

3.1 **Discretionary Employer Contributions.** Gyrodyne shall credit to the Account of each Participant a sum equal to a percentage of Compensation determined prior to the beginning of each Plan Year by the Committee. The Discretionary Employer Contribution may also be made in any amount, not directly associated with a Participant's Compensation, to reward a Participant for past or future performance. Gyrodyne may determine a different Discretionary Employer Contribution each year for different Participants, within its discretion.

3.2 **Salary Deferral Contributions.** Each Participant in the Plan who is a Highly Compensated Employee or a Director shall be eligible to elect to voluntarily defer the payment of all or any portion of any Compensation or Directors' fees when such amounts would otherwise be payable to a Participant. Each Eligible Employee may elect to make Salary Deferral Contributions to the Plan by filing a written Salary Deferral Contribution Election Form with Gyrodyne within the Individual Election Period after being notified of the ability to make Salary Deferral Contributions to the Plan, or during the Open Election Period prior to the beginning of each Plan Year.

Any election to defer any Bonus Payment hereunder must be made prior to the date fixed for the payment of such bonus and prior to the final determination of the amount of such bonus. Such election must also be made before the beginning of the Plan Year in which the services shall be performed to which the Bonus Payment relates. In no event shall any election be given effect unless it complies with the provisions of this Plan and Section 409A of the Code.

3.3 **Change or Revocation of Salary Deferral Elections.** A Participant who does not elect to participate in the Plan during the Individual Election Period, or who wishes to change or suspend any Salary Deferral Contribution election for any future Plan Years must **wait** until the next Open Election Period in order to elect to participate in the Plan or to change or suspend any elections. Once an election is made for any Plan Year, it **may not otherwise be changed or suspended** during the Plan Year in which such election is effective. Any efforts to change or suspend any Salary Deferral Contributions shall only become effective as of the first day of the next Plan Year.

ARTICLE IV
PARTICIPANT ACCOUNTS

4.1 **Accounts.** All Salary Deferral Contributions made pursuant to Article III shall be credited to an Account maintained for each Participant. These Accounts shall be administered by the Committee and shall represent each Participant's benefit under the Plan. Each Participant's Account shall be credited with Salary Deferral Contributions on a periodic basis as otherwise payable to a Participant. Each Participant's Account shall also be credited with earnings and each Account shall be valued on each Valuation Date or more frequent basis as determined by the Committee in accordance with reasonable procedures established within the discretion of the Committee. On every Valuation Date each Account shall be credited with interest at a rate of **5%**. All earnings shall be **prorated** through the first day of any month in which a distribution occurs. In no event shall the creation of any sinking fund to satisfy the Company's obligations under the Plan be deemed to create any right to any specific assets for any Participant, or to otherwise cause the Plan to be funded. The earnings to be credited to Accounts under the Plan may be changed from time to time, within the discretion of the Board.

Any Account may also be valued by the Company as of any other date as the Committee may authorize for (i) the purpose of

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Any Account may also be valued by the Company as of any other date as the Committee may authorize for (i) the purpose of determining the Account of any Participant entitled to payment of benefits or (ii) any other reason the Committee deems appropriate.

ARTICLE V DISTRIBUTIONS

5.1 Time and Form of Payment.

(a) Normal Form of Distribution.

All benefits shall be paid in a single lump sum cash payment on the Benefit Distribution Date, even in the event of death, Disability, a Separation from Service or retirement. In the event a plan of liquidation is established for Gyrodyne before the Benefit Distribution Date, all benefits shall be paid in a single lump sum cash payment within **60** days after execution of an Amendment to terminate the Plan. In the event a Participant is determined to be a Specified Employee (*i.e.*, one of the top **50** officers), in no event may any distributions be made until **6** months after a Separation from Service occurs, except upon the termination of the Plan.

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All payments shall be based on the most recent Valuation Date preceding the payment of any benefit or occurrence of any payment event, as appropriate. A Participant shall continue to receive earnings on any balance remaining in the Participant's Account until all benefits are paid.

(b) Elections. No Participants may elect any form of distribution other than as provided above.

5.2 **Compliance with Section 409A.** Participants do not have any discretion to elect any **time** or **form** of payment that is different than the payment methods established under the terms of the Plan. Accordingly, **no discretion exists** regarding the **time** and **form** of payment and the Plan is intended to comply with all provisions of Section 409A.

ARTICLE VI VESTING

6.1 **Nonforfeitable Amounts.** A Participant shall have a **100%** nonforfeitable interest in all Salary Deferral Contributions which are credited under the Plan. Any Discretionary Employer Contributions made to the Plan shall also be **100%** vested, unless provided otherwise in any Individual Deferred Compensation Agreements.

ARTICLE VII CLAIMS PROCEDURES

All payments shall be based on the most recent Valuation Date preceding the payment of any benefit or occurrence of any payment event, as appropriate. A Participant shall continue to receive earnings on any balance remaining in the Participant's Account until all benefits are paid.

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ARTICLE VI **VESTING**

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ARTICLE VII **CLAIMS PROCEDURES**

7.1 **Claims and Review Procedures.** The Company hereby adopts the following claims procedures to review all claims for benefits under the Plan, in accordance with Department of Labor Regulation 29 CFR §2560.503-1:

(a) **Benefit Claims.** Claims for benefits shall be made in writing to the Company through the Human Resources Department. In the event the Company contracts with a person or corporation to process claims for any benefits, claims for such benefits shall be forwarded to such person or corporation as designated by the Company. Whoever processes claims for benefits shall be referred to as the Claim Coordinator in this claims procedure.

The Claim Coordinator shall make all determinations as to the right of any claimant to a benefit under the Plan. If the Claim Coordinator denies in whole or in part any claim for a benefit under the Plan, the Claim Coordinator shall furnish the claimant with notice of the decision not later than **90** days after receipt of the claim by the Claim Coordinator, unless special circumstances require an extension of time for processing the claim. If such an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial **90** day period. In no event shall such extension exceed the period of **90** days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the Claim Coordinator expects to render the final decision. If no notice of a decision or extension is provided, the claimant shall assume the claim has been denied.

The written notice, which the Claim Coordinator shall provide to every claimant who is denied a claim for benefits, shall be set forth in a manner calculated to be understood by the claimant:

- (i) The specific reason or reasons for the denial;
- (ii) Specific reference to pertinent Plan provisions on which the denial is based;
- (iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
- (iv) Appropriate information as to the steps to be taken if the claimant wishes to submit his claim for review; and
- (v) A description of the Plan's appeal procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse determination on the claimant's appeal.

A claimant or his authorized representative may request that the Committee review the denial of a claim by the Claim Coordinator. The Committee shall be established by the Corporation as the "Named Appeals Fiduciary," as required under ERISA for reviewing

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A claimant or his authorized representative may request that the Committee review the denial of a claim by the Claim Coordinator. The Committee shall be established by the Corporation as the "Named Appeals Fiduciary," as required under ERISA for reviewing claims, and shall serve as the Appeals Committee. Such request shall be made in writing and shall be presented to the Appeals Committee not more than **60** days after receipt by the claimant of written notification of the denial of a claim. The claimant shall have the right to review pertinent documents and to submit issues and comments in writing. The Appeals Committee shall make its decision on review not later than **60** days after receipt by the Appeals Committee of the claimant's request for review, unless special circumstances require an extension of time, in which case a decision shall be rendered as soon as possible but no later than **120** days after receipt by the Appeals Committee of the request for review. If such an extension of time for review is required because of special circumstances, written notice of the extension shall be furnished to the claimant prior to the commencement of the extension. The decision of review shall be in writing, shall be written in a manner calculated to be understood by the claimant, and shall include specific reasons for the decision, a statement of the claimant's right to bring an action under Section 502(a) of ERISA, and specific references to the pertinent Plan provisions on which the decision is based.

(b) **Compliance with Regulations.** It is intended that the claims procedure of this Plan be administered in accordance with the claims procedure regulations of the Department of Labor set forth in 29 CFR §2560.503-1.

ARTICLE VIII

GENERAL PROVISIONS

8.1 **Former Employees.** Any Participant in the Plan who has commenced to receive benefits on or before the Effective Date of this Plan or who has Separated from Service before the Effective Date of this Plan shall be governed by the provisions of the prior plans.

8.2 **Plan Unfunded.** The Plan shall be unfunded for purposes of the Code and Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and no assets shall be set aside for the payment of benefits under the Plan, even if a trust is established to provide for the payment of any or all benefits hereunder. All benefits shall be paid from the general assets of the Company, which remain subject to the claims of all general creditors of the Company and to unrestricted use by the Company until benefit payments are made. To the extent the Company decides, within its discretion, to establish any trust or other internal funding vehicles, such as a sinking fund, to provide for the payment of benefits to Participants and assist in meeting the Company's obligations under the Plan, any such trusts shall be grantor trusts established in accordance with the provisions of Revenue Procedure 92-64. Any provisions which would cause any trust to fail to comply with Revenue Procedure 92-64, or any subsequent Internal Revenue Service rulings or pronouncements, shall be null and void, and the closest alternative provision contained in Revenue Procedure 92-64 shall apply, if appropriate. Notwithstanding any provisions to the contrary, in the event of a "Change in Control" of the Company, if any benefits under the Plan are held in a "Rabbi Trust", the assets transferred to the Rabbi Trust shall become **irrevocably** held by the Rabbi Trust and may not be recovered by the Company, or used by the Company for any corporate or other purposes.

8.3 **Unsecured Creditor.** The right of a Participant or his Beneficiaries to benefits under this Plan shall be solely that of unsecured creditors of the Company. The benefits payable under the Plan constitute a mere promise by the Company to make payments in the future, and does not otherwise create any rights in the Participant or any Beneficiaries.

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8.4 **Administration.**

(a) **General.** The Committee shall be in charge of the operation and the administration of the Plan. The Committee shall have the power to delegate specific responsibilities. Such delegations may be to other officers or employees of the Company or to other individuals, all of whom shall serve at the pleasure of the Committee and, if full-time employees of the Company, without additional compensation.

(b) **Decision Process.** The Committee shall act by a majority of its members unless unanimous consent is required by the Plan or by unanimous approval of its members if there are two or less members in office at the time. In the event of a Committee deadlock, the Committee shall determine the method for resolving such deadlock. No Committee member shall act upon any question pertaining solely to himself, and the other member or members shall make any determination required by the Plan with respect to such member.

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(c) **Delegation.** The Committee may, by unanimous consent, delegate specific authority and responsibilities to one or more of its members. The member or members so designated shall be solely liable, jointly and severally, for their acts or omissions with respect to such delegated authority and responsibilities. Committee members not so designated shall be relieved from liability for any act or omission resulting from such delegation.

(d) **Authority and Responsibility.** The Committee shall have full authority and responsibility to interpret and construe the Plan and determine all questions of the status and rights of the Participants and the amounts of their contributions. Its interpretation, construction or determination, as the case may be, shall be final and conclusive on both the Company and the Participants and their respective successors, assigns, personal representatives and Beneficiaries. Such authority and responsibility shall include, but shall not be limited to, the following:

(i) Appointment of qualified accountants, consultants, administrators, counsel, appraisers, or other persons it deems necessary or advisable who shall serve the Committee as advisors only and shall not exercise any discretionary authority, responsibility or control with respect to the management or administration of the Plan;

(ii) Determination of all benefits, and resolution of all questions arising from the administration, interpretation and application of the Plan;

(iii) Adoption of forms and regulations for the administration of the Plan;

(iv) Remedy of all inequity resulting from incorrect information received or communicated, or from administrative

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(i) Appointment of qualified accountants, consultants, administrators, counsel, appraisers, or other persons it deems necessary or advisable who shall serve the Committee as advisors only and shall not exercise any discretionary authority, responsibility or control with respect to the management or administration of the Plan;

(ii) Determination of all benefits, and resolution of all questions arising from the administration, interpretation and application of the Plan;

(iii) Adoption of forms and regulations for the administration of the Plan;

(iv) Remedy of all inequity resulting from incorrect information received or communicated, or from administrative error;

(v) Settlement or compromise of any claims or debts arising from the operation of the Plan and the commencement of any legal actions or administrative proceeding.

(e) **Indemnification.** The Company shall indemnify and hold the members of the Committee harmless against liability incurred in the administration of the Plan, except for the gross negligence or willful misconduct of any member.

8.5 **Plan Interpretation.** The Board, or the Committee if such responsibility is delegated, shall have complete discretion to interpret all provisions of the Plan and to establish reasonable rules and procedures to facilitate the administration of the Plan.

8.6 **Benefits Non-Assignable.** Neither a Participant nor any Beneficiary under the Plan shall have any right to assign, transfer, pledge or otherwise encumber the right to receive any benefits hereunder, and any attempted assignment, transfer, pledge or other encumbrance shall be null and void and have no effect. Similarly, no rights under the Plan shall be subject to attachment or garnishment, or otherwise subject to liability for the debts, contracts, liabilities or torts by the creditors of any Participant or Beneficiary.

Notwithstanding the general inability to assign benefits under the Plan, consistent with IRS Notice 2002-31 and Revenue Ruling 2002-22, to the extent that a valid Property Settlement or Divorce Decree directs that any portion of a Participant's benefits under the Plan be designated to a former Spouse, benefits shall be paid to the Spouse, at the same time benefits would otherwise have been payable to the Participant. In no event, shall any former Spouse obtain any additional rights to receive any form of distribution, or benefits payable in any manner not permitted under the Plan, or at any time earlier than when a Participant would otherwise have been entitled to receive such benefits.

8.7 **Amendment and Termination.** The Board shall have the right, at any time, to amend or terminate the Plan, in whole or in part, provided that such amendment or termination shall not adversely affect any benefits which have been credited to Participant Accounts. The Board may not reduce or modify any benefit which has vested under Article VI without the written consent of each Participant, or if any Participant has died, the Participant's Beneficiaries. The ability of the Company to terminate the Plan, and the timing and manner of distributing benefits in connection with any termination of the Plan, shall in all respects comply with Section 409A of the Code.

8.8 **Employment Not Guaranteed by Plan.** Participation in the Plan shall not be deemed to be consideration for, or an inducement to, or a condition of the employment of any employee. Nothing contained in this Plan shall be deemed to give any Participants the right to be retained in the employment of the Company, nor shall any Participant, retired Participant, deceased Participant, disabled Participant, or terminated Participant have any right to any payment, except as such payment may be provided under the terms of the Plan.

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8.9 **Compliance With the Code.** The Plan is intended to comply with the provisions of Section 409A of the Code, and all other provisions. If there is any discrepancy between the provisions of this Plan and the provisions of Section 409A, this discrepancy shall be resolved in a manner as to give full effect to the provisions of Section 409A of the Code.

8.10 **Consequences of a Violation.** All Participants shall be informed that they may voluntarily participate in the Plan, after being notified of their eligibility to participate in the Plan. All Participants shall be notified of the potential tax consequences under Section 409A, if the provisions of the Plan and Section 409A are not followed, including the imposition of immediate income taxes, a **20%** excise tax, underpayment of interest penalties, and Form W-2 reporting. All Participants shall also be informed that the amount of their benefits under the Plan shall be reported to the IRS, as required for nonqualified deferred compensation programs.

8.11 **FICA Taxes.** All Participants shall be informed that when their benefits become **vested** under the Plan, and not subject to any substantial risk of forfeiture under Sections 3121(v) and 3306(r) and other provisions of the Code, the Participants shall be subject to FICA and all related taxes. The Company shall have the right to withhold from a Participant's other wages, any FICA or other related taxes required to be withheld as provided in Section 8.12.

8.12 **Taxes.** The Company shall be entitled to deduct from all benefit payments made to a Participant or any Beneficiary all applicable federal, state or local taxes required by law to be withheld from such payments.

8.13 **Top Hat Plan.** ERISA generally applies to protect the interests of "employees", and DOL Regulation Section 2520.104-23 establishes rules for certain arrangements that provide benefits for a select group of management or Highly Compensated Employees, referred to as "Top Hat" programs. This Plan is intended to be a Top Hat program under ERISA. In determining if the Plan satisfies all rules to be classified as a Top Hat program, or in reviewing the number of Participants in the Plan for any reasons, all employees of the Company, whether foreign or domestic, shall be taken into consideration.

8.14 **Merger or Acquisition.** Nothing contained herein shall preclude the Company from merging into or with, or being acquired by, another business entity which assumes this Plan.

8.15 **Satisfaction of Liability.** After all benefits have been distributed in full to a Participant, his Beneficiary, or a Substitute Payee (as provided below in section 8.16), all liability to such Participant or to his Beneficiary shall cease.

8.16 **Substitute Payee.** If a Participant or Beneficiary entitled to receive any benefits hereunder is in his minority, or is, in the judgment of the Committee, legally, physically, or mentally incapable of personally receiving and receipting any distribution, the Committee may make distributions to a legally appointed guardian or to such other person or institution as, in the judgment of the Committee, is then maintaining or has custody of the payee.

8.17 **Required Information.** The Company, Participants, or Beneficiaries entitled to benefits shall furnish forms and any

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8.17 **Required Information.** The Company, Participants, or Beneficiaries entitled to benefits shall furnish forms and any information or evidence as requested by the Committee for the proper administration of the Plan. Failure on the part of any Participant or Beneficiary to comply with such request within a reasonable period of time shall be sufficient grounds for delay in the payment of benefits, until the information or evidence requested is received, as long as such a delay does not result in any violations under Section 409A of the Code.

8.18 **Binding Upon Successors.** The liabilities under the Plan shall be binding upon any successor or assign of the Company and any purchaser of the Company or purchaser of substantially all of the assets of the Company, and this Plan shall continue in full force and effect.

8.19 **Annual Statement.** Participants shall receive an annual statement after the end of each Plan Year, confirming the amounts credited to each Participant's Account.

8.20 **Expenses.** All expenses incurred in administering the Plan shall be paid by the Company.

8.21 **Form of Communication.** Any election, claims, notice or other communication required or permitted to be made by a Participant under this Plan shall be made in writing and in such form as shall be prescribed by the Committee. Such communication shall be effective upon receipt, if hand-delivered or sent by first class mail, postage prepaid, return receipt requested to Gyrodyne, LLC, One Flowerfield, Suite 24, St. James, NY 11780-1551.

8.22 **Gender and Number.** The masculine gender, where appearing herein, shall be deemed to include the feminine gender, and the singular shall be deemed to include the plural, unless the context clearly indicates to the contrary.

8.23 **Captions.** The captions at the head of a paragraph of this Plan are designed for convenience of reference only and are not to be resorted to for the purpose of interpreting any provision of this Plan.

8.24 **Severability.** The invalidity of any portion of this Plan shall not invalidate the remainder, and the remainder shall continue in full force and effect.

8.25 **Binding Agreement.** The provisions of this Plan shall be binding upon the Participant and the Company and their successors, assigns, heirs, executors and beneficiaries.

8.27 **Governing Laws.** The Plan shall be governed and construed in accordance with the laws of the State of New York, except to the extent preempted by federal law.

The Plan is executed effective as of January 1, 2020.

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The Plan is executed effective as of January 1, 2020.

GYRODYNE, LLC

BY: _____

December, 2019

(C:\Clients\Gyrodyne\Def-Comp\Gyrodyne-Def-Comp-Plan)