

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

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In re	:	Chapter 11
	:	
10-16 Manhattan Avenue LLC, <i>et al.</i> ,	:	Case No. 12-12261 (ALG)
	:	
	:	
Debtors.	:	(Jointly Administered)
	:	
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DEBTORS' SECOND AMENDED JOINT CHAPTER 11 PLAN OF REORGANIZATION

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INTRODUCTION

The debtors set forth on Exhibit A hereto (collectively, the “**Debtors**”)¹ hereby propose this Second Amended Joint Chapter 11 Plan of Reorganization (the “**Plan**”) pursuant to section 1121 of the Bankruptcy Code. Reference is made to the Disclosure Statement for risk factors and a summary and analysis of this Plan and certain related matters. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classification of Claims and Equity Interests set forth in Articles II and IV hereof shall be deemed to apply to each Debtor in its own case, unless otherwise specified. This Plan does not substantively consolidate the assets and liabilities of the Debtors.

Subject to the restrictions on modifications set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in Article XII of this Plan, the Debtors expressly reserve the right to alter, amend, supplement or modify this Plan, one or more times, before its substantial consummation.

ARTICLE I

DEFINITIONS

1.1. **Scope of Definitions.** As used in this Plan, the following terms shall have the respective meanings specified below. Whenever the context requires, such terms shall include the plural as well as the singular number, the masculine gender shall include the feminine and the feminine gender shall include the masculine.

1.2. “**Accrued**” shall mean an expense incurred but not yet billed for nor paid.

1.3. “**Administrative Claim**” shall mean a Claim under section 503(b) (including, without limitation, all administrative claims under sections 503(b)(9) and 1114(e)(2) of the Bankruptcy Code) or determined to be an Allowed Administrative Claim by a Final Order that is entitled to priority under sections 507(a)(1) or 507(b) of the Bankruptcy Code, for costs or expenses of administration of the Chapter 11 Cases including, without limitation, any actual and necessary expenses of operating the businesses of the Debtors or preserving the estates incurred after the Petition Date, any outstanding indebtedness owed by the Debtors under Court-approved debtor-in-possession financing extended by DG, and any and all fees and expenses of Professionals (other than bankruptcy counsel for the Debtors) Filed under sections 330, 331, or 503 of the Bankruptcy Code.

1.4. “**Administrative Claims Bar Date**” shall have the meaning ascribed to such term in Section 2.3 of this Plan.

1.5. “**Administrative Claims Reserve**” shall have the meaning ascribed to such term in Section 7.3 of this Plan.

¹ Capitalized terms not defined in this Introduction shall have the meanings set forth in Article I of this Plan.

1.6. “**Allowed Claim**” or “**Allowed Administrative Claim**” shall mean: (a) any Claim, proof of which is/was Filed with the Bankruptcy Court or the Debtors’ court-appointed claims agent, if one is appointed in this case, on or before the date designated by the Bankruptcy Court as of the last date(s) for filing proofs of claim with respect to such Claim, or which has been or hereafter is scheduled by the Debtors as liquidated in amount and not disputed or contingent and which, in either case, is a Claim as to which no objection to the allowance thereof has been Filed within the applicable period of limitation (if any) for objection to Claims fixed by the Bankruptcy Court, or as to which any objection has been determined by a Final Order of the Bankruptcy Court (allowing such Claim in whole or in part); (b) a Claim that is allowed (i) in any contract, instrument, or other agreement entered into in connection with this Plan, (ii) in a Final Order or (iii) pursuant to the terms of this Plan; or (c) a request for payment of an Administrative Claim, which is made before the Administrative Claims Bar Date, or otherwise has been deemed timely asserted under applicable law, and is an Administrative Claim as to which no objection to allowance thereof has been Filed within the applicable deadline pursuant to Section 2.3 of this Plan. Except as otherwise specified in this Plan or a Final Order, the amount of an Allowed Claim shall not include interest on such Claim after the filing of the Chapter 11 Cases.

1.7. “**Ballot**” shall mean the form or forms that will be distributed along with the Disclosure Statement to holders of Allowed Claims in classes that are Impaired under this Plan and entitled to vote, which the holders of Impaired Claims may use to vote to accept or reject the Plan.

1.8. “**Bankruptcy Code**” shall mean title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

1.9. “**Bankruptcy Court**” shall mean the United States Bankruptcy Court for the Southern District of New York or such other court as may hereafter be granted jurisdiction over the Chapter 11 Cases.

1.10. “**Bankruptcy Rules**” shall mean the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under 28 U.S.C. § 2075, as amended from time to time, applicable to the Chapter 11 Cases, and any Local Rules of the Bankruptcy Court.

1.11. “**Bar Date**” shall mean the date set by the Bankruptcy Court as the last day to file proofs of Claim pursuant to the Bar Date Order to be entered by the Bankruptcy Court.

1.12. “**Bar Date Order**” shall mean the order to be entered by the Bankruptcy Court setting the Bar Date.

1.13. “**Business Day**” shall mean any day other than a Saturday, Sunday, or legal holiday as such term is defined in Bankruptcy Rule 9006.

1.14. “**Buyer Designees**” means those entities as DG shall designate in writing prior to the Property Transfer.

1.15. “**Cash**” shall mean cash and cash equivalents, including, but not limited to, wire transfers, checks and other readily marketable direct obligations of the United States of America and certificates of deposit issued by banks.

1.16. “**Cash Collateral Order**” shall mean the interim and/or final Order(s) (I) Authorizing Use of Cash Collateral; (II) Authorizing Debtors to Obtain Post-Petition Financing; and (III) Granting Liens, Security Interests and Superpriority Claims.

1.17. “**Chapter 11 Cases**” shall mean the above-captioned chapter 11 cases pending for the Debtors.

1.18. “**Claim**” shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code.

1.19. “**Class**” shall mean a category of holders of Claims or Equity Interests, as classified pursuant to Article II of this Plan.

1.20. “**Class 5 Disputed Claims Reserve**” shall have the meaning ascribed to such term in Section 7.4 herein.

1.21. “**Committee**” shall mean the Official Committee of Unsecured Creditors, if any, appointed by the Office of the United States Trustee and as reconstituted from time to time and existing as of the Confirmation Date.

1.22. “**Confirmation**” shall mean the entry of the Confirmation Order on the docket of the Bankruptcy Court.

1.23. “**Confirmation Date**” shall mean the date of entry of an order of the Bankruptcy Court confirming the Plan in accordance with the provisions of the Bankruptcy Code.

1.24. “**Confirmation Hearing**” shall mean the hearing to confirm this Plan.

1.25. “**Confirmation Order**” shall mean the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code.

1.26. “**Creditor**” shall have the meaning ascribed to such term in section 101(10) of the Bankruptcy Code.

1.27. “**Debtors**” shall mean the entities set forth on Exhibit A to this Plan.

1.28. “**Deficiency Claim**” shall mean, with respect to a Claim an amount equal to the Allowed amount of such Claim, minus the amount thereof that is a Secured Claim.

1.29. “**DG**” shall mean DG UWS SUB LLC.

1.30. “**DG Allowed Administrative Claim**” shall have the meaning ascribed to it in Section 4.3 herein.

1.31. “**DG Allowed Unsecured Claim**” shall have the meaning ascribed to it in Section 4.3 herein.

1.32. “**DG Allowed Secured Claim**” shall have the meaning ascribed to it in Section 4.3 herein.

1.33. “**Disclosure Statement**” shall mean the disclosure statement respecting this Plan, as approved by the Bankruptcy Court as containing adequate information in accordance with section 1125 of the Bankruptcy Code, all exhibits and annexes thereto and any amendments or modifications thereof.

1.34. “**Disputed Claim**” shall mean any Claim, including any Administrative Claim, which has not become an Allowed Claim pursuant to the Plan or a Final Order.

1.35. “**Disputed Cure Amounts**” shall have the meaning ascribed to such term in Section 8.1 herein.

1.36. “**Effective Date**” shall mean the first Business Day following the date on which each of the conditions set forth in Section 9.2 of this Plan have been satisfied or waived in accordance with such sections; provided that if a stay of the Confirmation Order is in effect, then the Effective Date shall mean the first Business Day after such stay is no longer in effect.

1.37. “**Entity**” shall have the meaning ascribed to such term in section 101(15) of the Bankruptcy Code.

1.38. “**Equity Interest**” shall mean the interest of any holder of an equity security of any of the Debtors represented by any issued and outstanding shares of common or preferred stock or other instrument evidencing a present ownership or membership interest in any of the Debtors, whether or not transferable, or any option, warrant, or right, contractual or otherwise, to acquire any such interest.

1.39. “**Estates**” shall mean the estates of the Debtors.

1.40. “**Fee Recipient**” shall mean such entity as the holders of Allowed Equity Interests shall unanimously designate in writing to bankruptcy counsel for the Debtors and counsel to DG not later than five (5) Business Days after the date of entry of the Confirmation Order.

1.41. “**Fee Recipient Payment**” shall have the meaning ascribed to such term in Section 4.6 herein.

1.42. “**File**”, “**Filed**”, or “**Filing**” shall mean file, filed or filing with the United States Bankruptcy Court for the Southern District of New York, or with respect to proofs of claim, proofs timely and properly transmitted to the Clerk of the Court or to the Debtors’ claims agent to the extent one is appointed pursuant to Order of the Bankruptcy Court.

1.43. “**Final Order**” shall mean an order entered by the Bankruptcy Court or any other court exercising competent jurisdiction over the subject matter and the parties that has not been reversed, amended or stayed and as to which (i) no appeal, certiorari proceeding or other review

reconsideration or rehearing has been requested or is still pending, and (ii) the time for filing a notice of appeal or petition for certiorari or further review reconsideration or rehearing has expired.

1.44. “**Foreclosure Action**” shall mean that certain foreclosure action commenced by DG against the Debtors, Wiener, Pinnacle, Praedium and certain other defendants in the Supreme Court of the State of New York, County of New York, pending under index number 850079/2011.

1.45. “**General Unsecured Claim**” shall mean any unsecured, non-priority Claim, including, without limitation, any Indemnification Claim, that is not an Administrative Claim, Priority Tax Claim, Other Priority Claim, Professional Fee Claim, DG Allowed Unsecured Claim or Receivership Claim.

1.46. “**Governmental Authority Lien Claims**” shall mean the Secured Claims of the New York City Department of Finance, New York State Environmental Control Board or other state or local authority, whose liens against a Debtor’s property arise by operation of law.

1.47. “**Impaired**” shall have the meaning ascribed to such term in section 1124 of the Bankruptcy Code.

1.48. “**Indemnification Claim**” shall mean a Claim for indemnification or advancement.

1.49. “**Liens**” shall mean valid and enforceable liens, mortgages, security interests, pledges, charges, encumbrances, or other legally cognizable security devices of any kind.

1.50. “**Loan**” shall mean the pre-petition secured loan in the aggregate principal amount of \$192,132,000 as of April 20, 2012, plus interest, costs, fees, penalties and expenses, made by Deutsche Bank Mortgage Capital, L.L.C. to the Debtors on or about April 12, 2007 in the original principal sum of \$204,000,000 in accordance with the terms of the Loan and Security Agreement between the parties.

1.51. “**Loan Documents**” shall mean, collectively, the following documents, as assigned to DG: (i) the Amended, Restated and Consolidated Promissory Note evidencing a total indebtedness of \$204,000,000 executed by the Debtors and delivered to Deutsche Bank Mortgage Capital, L.L.C., which Amended, Restated and Consolidated Promissory Note is intended to be severed into separate substitute mortgage notes, including a Substitute Mortgage Note A in the amount of \$80,000,000, a Substitute Mortgage Note B in the amount of \$50,000,000, and a Substitute Mortgage Note C in the amount of \$62,132,000; (ii) the Mortgage; (iii) the Assignment of Leases, Rents and Security Deposits executed by the Debtors and delivered to Deutsche Bank Mortgage Capital, L.L.C. on or about April 12, 2007; and (iv) all of other documents, agreements and instruments evidencing and/or securing the Loan.

1.52. “**Mortgage**” shall mean, collectively, that certain Amended, Restated and Consolidated Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Leases, Rents, and Security Deposits, executed by the Debtors and delivered to Deutsche Bank Mortgage Capital, L.L.C. on or about April 12, 2007, as assigned to DG, which

is intended to be severed into Substitute Mortgage A, Substitute Mortgage B, and Substitute Mortgage C.

1.53. “**Other Priority Claim**” shall mean any Claim against the Debtors entitled to priority in payment under section 507(a) of the Bankruptcy Code other than an Administrative Claim, Professional Fee Claim or Priority Tax Claim, other than Governmental Authority Lien Claims.

1.54. “**Person**” shall have the meaning ascribed to such term in section 101(41) of the Bankruptcy Code.

1.55. “**Permitted Exceptions**” shall mean, collectively, (i) the Mortgage and the other Loan Documents of record, (ii) if designated by DG, the lien of any debtor-in-possession financing extended by DG and approved by the Bankruptcy Court prior to the Effective Date, and (iii) standard printed exceptions that are part of the promulgated title insurance form and that cannot be removed by the a title company; provided, however, that Permitted Exceptions shall not include any title matter or encumbrance which shall interfere with the use, operation or ownership of the Properties.

1.56. “**Petition Date**” shall mean the date upon which the Debtors file their petitions for relief under chapter 11 of the Bankruptcy Code.

1.57. “**Pinnacle**” shall mean Pinnacle Managing Co., LLC.

1.58. “**Plan**” shall mean this Chapter 11 Plan, all exhibits hereto and any amendments or modifications hereof made in accordance with the terms hereof, the Bankruptcy Code and the Bankruptcy Rules.

1.59. “**Plan Expenses**” shall mean all actual and necessary costs and expenses incurred after the Effective Date in connection with the administration of this Plan, including, but not limited to, (i) the Debtors’ costs, expenses and legal fees incurred related to filing and prosecuting objections to Claims, and (ii) Statutory Fees.

1.60. “**Plan Funding Account**” shall mean an account to be established and administered by Rosen & Associates, P.C. containing funds deposited by or on behalf of DG for (A) payment, to the extent Cash remaining from the operation of the Debtors' Properties is insufficient to pay the following claims in full, in accordance with this Plan: (i) Allowed Administrative Claims (excluding Professional Fee Claims of counsel for the Debtors); (ii) Allowed Priority Claims; (iii) Allowed Professional Fee Claims (excluding Professional Fee Claims of Rosen & Associates, P.C., bankruptcy counsel for the Debtors) incurred on or before the Effective Date; (iv) Allowed Other Priority Claims; (v) Allowed Governmental Authority Lien Claims; (vi) Allowed Receivership Claims; (vii) Allowed General Unsecured Claims; and (viii) Statutory Fees; and (B) the establishment of (i) the Administrative Claims Reserve; and (ii) the Class 5 Disputed Claims Reserve.

1.61. “**PMM**” shall mean PMM Associates D-FXD LLC.

1.62. “**Post 12/1/11 Claims**” shall mean Claims arising on or after December 1, 2011.

1.63. “**Post Effective Date Holdback**” shall have the meaning ascribed to such term in Section 7.5 herein.

1.64. “**Pre 12/1/11 Claims**” shall mean Claims arising prior to December 1, 2011.

1.65. “**Praedium**” shall mean The Praedium Fund VI, L.P.

1.66. “**Priority Tax Claim**” shall mean any Claim for taxes against the Debtors entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code, other than Governmental Authority Lien Claims.

1.67. “**Professionals**” shall mean those Persons (i) employed pursuant to an order of the Bankruptcy Court in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered to the Debtors prior to the Effective Date, pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code, or (ii) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

1.68. “**Professional Fee Claim**” shall mean a claim under sections 327, 330(a), 503, or 1103 of the Bankruptcy Code for the compensation of a Professional for services rendered or reimbursement of expenses incurred in the Chapter 11 Cases on or prior to the Effective Date which has been approved by a Final Order (including expenses of the members of the Committee, if any).

1.69. “**Professional Fee Claim Bar Date**” shall have the meaning ascribed to such term in Section 2.4 herein.

1.70. “**Properties**” shall mean the Debtors’ parcels of real property identified in Exhibit A to this Plan, together with the buildings and any and all other fixtures and improvements erected thereon.

1.71. “**Property Manager**” shall mean Jeffrey Pikus, in his capacity as property manager for each of the Debtors.

1.72. “**Property Transfer**” shall have the meaning ascribed to such term in Section 4.3 of this Plan.

1.73. “**Receiver**” shall mean Bruce Lederman, as the receiver of the Properties pursuant to the order dated November 30, 2011 appointing him as receiver in the Foreclosure Action.

1.74. “**Receivership Claims**” shall mean Claims that have been incurred prior to the Petition Date by the Receiver in his administration and operation of the Debtors’ Properties consistent with and pursuant to the order dated November 30, 2011 appointing him as receiver in the Foreclosure Action.

1.75. “**Rejection Damage Claim**” shall mean a Claim arising from the rejection of an executory contract or unexpired lease of a Debtor under section 365 of the Bankruptcy Code by order of the Bankruptcy Court or under this Plan.

1.76. “**Released Parties**” means (i) DG, (ii) Gemstone Property Management LLC, (iii) Gemstone Realty Partners LLC, (iv) the Buyer Designees, (v) Berkadia Commercial Mortgage LLC, (vi) Bluestar Properties, Inc., and (vii) Jeffrey Pikus, and in the case of each of (i) - (vi), each such entities’ respective direct and indirect parents, subsidiaries and affiliates, together with each of their respective shareholders, members, managers, general partners, limited partners, officers, directors, employees, agents, representatives, attorneys and advisors or consultants.

1.77. “**Released Debtor Parties**” shall mean (i) Pinnacle, (ii) Joel Wiener, and (iii) Praedium, and in the case of each of (i) and (iii), their respective direct and indirect parents, subsidiaries and affiliates, together with each of their respective shareholders, members, managers, general partners, limited partners, officers, directors, employees, agents, representatives, attorneys and advisors or consultants, and in the case of (ii), his heirs, executors, successors, and assigns.

1.78. “**Schedules**” shall mean each Debtor’s Schedules of Assets and Liabilities Filed pursuant to Bankruptcy Rule 1007 as they may be amended from time to time.

1.79. “**Secured Claim**” shall mean all or a portion of a Claim existing on the Petition Date that constitutes a secured claim as defined in section 506(a)(1) of the Bankruptcy Code, as finally allowed and approved by the Bankruptcy Court or as otherwise agreed to by the Debtors and the creditor.

1.80. “**Security Deposits**” shall mean security deposits posted by tenants of any Debtor in accordance with the terms of their leases with such Debtor and applicable non-bankruptcy law.

1.81. “**Settlement Agreement**” shall mean that certain Settlement Agreement dated as of May 22, 2012, between and among DG, DG UWS LLC, Gemstone Property Management LLC, Gemstone Realty Partners LLC, Wiener, Pinnacle, Praedium, PMM, and the Debtors, and annexed as Exhibit C to the Disclosure Statement.

1.82. “**Statutory Fees**” shall mean all fees payable with respect to the Chapter 11 Cases pursuant to section 1930 of title 28 U.S.C. § 1930 and 31 U.S.C. § 3717.

1.83. “**Tenant Leases**” shall have the meaning ascribed to such term in Section 8.1 of this Plan.

1.84. “**Undisputed Cure Amounts**” shall have the meaning ascribed to such term in Section 8.1 of this Plan.

1.85. “**Unimpaired**” shall mean, with respect to a Class of Claims, a Claim that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

1.86. “**Wiener**” shall mean Joel Wiener.

All terms not expressly defined herein shall have the respective meanings given to such terms in section 101 of the Bankruptcy Code or as otherwise defined in applicable provisions of the Bankruptcy Code.

Unless otherwise specified herein, any reference to an Entity as a holder of a Claim or Equity Interest includes, with respect to such Claim or Equity Interest, that Entity's successors, assigns and affiliates. The rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

All Exhibits to this Plan are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits shall be timely filed in accordance with this Plan. Holders of Claims and Equity Interests may obtain a copy of the filed Exhibits upon written request to the Debtors. Upon their filing, the Exhibits may be inspected in the office of the Clerk of the Bankruptcy Court or its designee during normal business hours. The documents contained in the Exhibits shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

ARTICLE II

METHOD OF CLASSIFICATION OF CLAIMS AND INTERESTS AND GENERAL PROVISIONS AND CLASSIFICATION OF CLAIMS AND INTERESTS

2.1. **General Rules of Classification.** Generally, a Claim or Equity Interest is classified in a particular Class for voting and distribution purposes only to the extent the Claim or Equity Interest qualifies within the description of that Class, and is classified in another Class or Classes to the extent any remainder of the Claim qualifies within the description of such other Class or Classes. Unless otherwise provided, to the extent a Claim or Equity Interest qualifies for inclusion in a more specifically defined Class and a more generally-defined Class, it shall be included in the more specifically defined Class.

2.2. **Administrative Claims, Priority Tax Claims and Fee Claims.** Administrative Claims, Priority Tax Claims, and Professional Fee Claims have not been classified and are excluded from the Classes set forth in Article III of this Plan in accordance with section 1123(a)(1) of the Bankruptcy Code.

2.3. **Bar Date for Administrative Claims.** Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims (except for Professional Fee Claims) must be filed and served on the Debtors and DG, and their respective counsel, no later than thirty (30) days after the Effective Date (the "**Administrative Claims Bar Date**"). Any Person that is required to file and serve a request for payment of an Administrative Claim and fails to timely file and serve such request, shall be forever barred, estopped and enjoined from asserting such Claim or participating in distributions under this Plan on account thereof. Objections to requests for payment of Administrative Claims (except for Professional Fee Claims) must be filed and served on the Debtors and their counsel, DG and its counsel, and the party requesting payment of an Administrative Claim within thirty (30) days after the filing of such request for payment.

2.4. **Bar Date for Professional Fee Claims.** Unless otherwise ordered by the Bankruptcy Court, requests for payment of Professional Fee Claims incurred through the Effective Date must be filed and served on the Debtors and their counsel DG and its counsel, the Office of the United States Trustee for Region 2, and all parties in interest who have filed a request for notice pursuant to Bankruptcy Rule 2002 no later than twenty (20) days after the Effective Date (the **"Professional Fee Claim Bar Date"**). The day prior to the Confirmation Date, each Professional shall provide the Debtors and DG with a written estimate of the total amount of compensation and expenses for which such Professional expects to seek final compensation and reimbursement pursuant to section 330 of the Bankruptcy Code. Such estimates shall include estimated sums for the preparation and prosecution of any application for final compensation.

2.5. **Classification of Claims and Equity Interests.** The following is the designation of the Classes of Claims and Equity Interests under this Plan for each Debtor:

- (a) Class 1 Claims shall consist of all Other Priority Claims.
- (b) Class 2 Claims shall consist of all Governmental Authority Lien Claims.
- (c) Class 3 Claims shall consist of the DG Claim.
- (d) Class 4 Claims shall consist of all Receivership Claims.
- (e) Class 5 Claims shall consist of all General Unsecured Claims.
- (f) Class 6 Equity Interests shall consist of Equity Interests.

ARTICLE III

TREATMENT OF UNCLASSIFIED CLAIMS

3.1. **Administrative Claims.** Except to the extent the holder of an Allowed Administrative Claim agrees otherwise, each holder of an Allowed Administrative Claim (which does not include claims for fees and expenses incurred by bankruptcy counsel for the Debtors) shall be paid in respect of such Allowed Administrative Claim (a) the full amount thereof in Cash, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Administrative Claim, or upon such other terms as may be agreed upon by the holder of such Allowed Administrative Claim, or (b) such lesser amount as the holder of such Allowed Administrative Claim, the Debtors, and DG might otherwise agree; provided, however, that all Administrative Claims incurred in the ordinary course of the Debtors' businesses during the Chapter 11 Cases shall be paid in the ordinary course of the Debtors' businesses. Notwithstanding the foregoing, the Statutory Fees shall be paid in Cash as soon as practicable after the Effective Date.

3.2. **Priority Tax Claims.** Except as provided herein, each holder of an Allowed Priority Tax Claim shall be paid in respect of such Allowed Claim (A) the full amount thereof, without post-Petition Date interest or penalty, in Cash, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Claim; or (B)

upon such other terms as may be agreed upon by the holder of such Allowed Claim, the Debtors, and DG.

3.3. **Professional Fee Claims.** Each holder of an Allowed Professional Fee Claim, other than Rosen & Associates, P.C., bankruptcy counsel for the Debtors, shall receive 100% of the unpaid amount of such Allowed Professional Fee Claim in Cash after such Professional Fee Claim becomes an Allowed Claim. Allowed Professional Fee Claims of the Debtors' bankruptcy counsel, Rosen & Associates, P.C., shall be paid by Praedium, Pinnacle, and Wiener.

3.4. **Other Unclassified Claims.** Except to the extent provided herein, allowed unclassified Claims shall be paid from Cash remaining from the operations of the Debtors' Properties, and to the extent such Cash is insufficient, then from the Plan Funding Account.

ARTICLE IV

CLASSIFICATION AND TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS

The categories of Claims and Equity Interests listed below classify Claims against and Equity Interests in each of the Debtors for all purposes, including voting, confirmation, and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date.

4.1. **Class 1 - Other Priority Claims.** Each holder of an Allowed Other Priority Claim shall be paid in respect of such Allowed Other Priority Claim (A) the full amount thereof in Cash, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Other Priority Claim, or upon such other terms as may be agreed upon by the holder of such Allowed Other Priority Claim, the Debtors, and DG or (B) such lesser amount as the holder of such Allowed Other Priority Claim, the Debtors, and DG might otherwise agree. This Class is not impaired and, therefore, the holders of Claims in this Class are not entitled to vote and are conclusively presumed to accept this Plan.

4.2. **Class 2 - Governmental Authority Lien Claims.** Each holder of an Allowed Governmental Authority Lien Claim shall be paid in respect of such Allowed Governmental Authority Lien Claim (A) consistent with the terms of any written payout agreement made by or on behalf of such governmental authority and the Debtors before the Petition Date; (B) the full amount thereof in Cash, as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Governmental Authority Lien Claim, or upon such other terms as may be agreed upon by the holder of such Allowed Governmental Authority Lien Claim and (a) the Debtors, if such claim accrued prior to December 1, 2011, or (b) DG, if such claim accrued after December 1, 2011; or (C) such lesser amount as may be agreed upon by the holder of such Allowed Governmental Authority Lien Claim and (a) the Debtors, if such

claim accrued prior to December 1, 2011, or (b) DG, if such claim accrued after December 1, 2011. This Class is not impaired and, therefore, the holders of Claims in this Class are not entitled to vote and are conclusively presumed to accept this Plan.

4.3. **Class 3 - DG Claim.** DG shall have an Allowed Claim in respect of the Loan in the amount of \$228,004,752, which Claim shall be an Allowed Secured Claim equal to the aggregate values of each Debtor's interest in its Property (the "**DG Allowed Secured Claim**"), and an Allowed Unsecured Claim equal to the difference between the amount of the Allowed Claim and the amount of the DG Allowed Secured Claim (the "**DG Allowed Unsecured Claim**").

DG shall have an Allowed Administrative Claim (the "**DG Allowed Administrative Claim**") equal to amounts due it under the order(s) of the Bankruptcy Court authorizing the Debtors to use DG's cash collateral and incur secured debt from DG.

For avoidance of doubt, neither the DG Allowed Secured Claim nor the DG Allowed Unsecured Claim, nor the DG Allowed Administrative Claim shall be a Disputed Claim.

On the Effective Date, on account of the DG Allowed Secured Claim and the DG Allowed Administrative Claim, (i) the Debtors shall transfer and convey (the "**Property Transfer**") to the Buyer Designees, in accordance with the instructions of DG, (a) title to each of the Properties, free and clear of all Claims, Liens, charges, interests and encumbrances other than the Permitted Exceptions without recourse to the Debtors, and (b) any Cash of the Debtors' remaining after payment or reserving for payment of Claims as provided herein; (ii) the Debtors shall execute transfer, conveyance, and assignment documents in favor of DG as provided for in the Settlement Agreement, including an assumption of the Debtors' right, title and interest in any pending or future tax certiorari proceeding; and (iii) DG shall fund the Plan Funding Account.

DG shall waive its right to a distribution under this Plan on account of the DG Allowed Unsecured Claim.

This Class is impaired and, therefore, DG is entitled to vote on this Plan.

Nothing contained in this section or this Plan shall have the effect or be deemed to have the effect of discharging or terminating the Mortgage, the Loan, or any other Loan Documents. The Buyer Designees shall acquire the Properties subject to the same. The Property Transfer will not be set aside due to any error in the description thereof.

4.4. **Class 4 - Receivership Claims.** Except as provided in Section 5.10 with respect to commissions owed to the Receiver, Allowed Receivership Claims shall be paid (a) the full amount thereof, plus interest to the extent required by law, in Cash remaining from the operation of the Debtors' Properties (and if such remaining Cash is insufficient to pay Allowed Receivership Claims in full, then from the Plan Funding Account), as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Receivership Claim, or upon such other terms as may be agreed upon by the holder of the Claims, the Property Manager and DG, or (b) such amount as the holder of the Claim, the Property Manager, and DG might otherwise agree. This Class is not impaired and, therefore, the

holder of Claims in this Class is not entitled to vote and is conclusively presumed to accept this Plan.

4.5. **Class 5 - General Unsecured Claims.** Each holder of a General Unsecured Claim shall receive cash on the Effective Date or as soon as practicable thereafter in the full amount of its Allowed Claim, plus interest to the extent required by law. This Class is not impaired and, therefore, the holders of Claims in this Class are not entitled to vote and are conclusively presumed to accept this Plan.

4.6. **Class 6 Equity Interests.** This Class shall consist of PMM Associates D-FXD LLC ("**PMM**"), the holder of all Equity Interests. The Fee Recipient, which shall be PMM's designee, shall receive on account of all Allowed Equity Interests payment from DG in the amount of \$4.2 million, subject to reduction and holdback as provided for in the Settlement Agreement or under this Plan (the "**Fee Recipient Payment**"). Class 6 Equity Interests will be deemed cancelled, null and void, and of no force and effect. This Class is impaired and, therefore, the holders of Interests in this Class are entitled to vote on this Plan, but the Fee Recipient is not entitled to vote on this Plan.

4.7. **Waiver of Claims.** Any and all Claims held by Wiener, Pinnacle, PMM, Praedium or any of their respective relatives, affiliates, principals, members or partners, as the case may be, including Claims arising from rejection of any executory contracts, are deemed waived, and no distribution will be made under this Plan on account of any such Claim, except as provided in Section 4.6 of this Plan.

4.8. **Reservation of Rights.** Nothing contained herein shall be deemed to limit the right of the Debtors, DG, the United States Trustee, and any Creditor or party in interest to object to any Administrative Claims (including, without limitation, Professional Fee Claims and Cure Amounts), Priority Claims, Other Priority Claims, General Unsecured Claims (including, without limitation, Claims for rejection damages under section 365 of the Bankruptcy Code), and Secured Claims other than the DG Allowed Secured Claim which is deemed Allowed for the purposes of this Plan in the amount of at least \$119,000,000, and the DG Allowed Unsecured Claim. Nothing contained herein shall affect the Debtors' rights and defenses both legal and equitable, with respect to all members of any Unimpaired Classes including, but not limited to, all rights with respect to legal and equitable defenses to setoffs or recoupments asserted against members of any Unimpaired Classes subject to the releases granted herein.

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

5.1. **Assumption of Settlement Agreement.** Confirmation of this Plan will constitute the Bankruptcy Court's approval of the Debtors' assumption of the Settlement Agreement pursuant to section 365 of the Bankruptcy Code. The Debtors shall implement the provisions of the Settlement Agreement relating to the transfer and conveyance of the Properties consistent therewith.

5.2. **Funding of Plan Funding Account.** On the Effective Date, DG or a party acting on its behalf shall fund the Plan Funding Account. The Plan Funding Account shall be maintained at an authorized bank depository in the Southern District of New York.

5.3. **Reduction of and Holdback from Fee Recipient Payment.** On the Effective Date, (i) the Fee Recipient Payment shall be reduced by the amount necessary to pay Pre 12/1/11 Claims and Allowed Governmental Authority Lien Claims relating to water and sewer charges prior to December 1, 2011, and (ii) DG shall be entitled to hold back from the Fee Recipient Payment the Post Effective Date Holdback in accordance with Section 7.5 of this Plan.

5.4. **Payment of Professional Fee Claims of Debtors' Counsel.** Praedium, Pinnacle, and Wiener shall be responsible for payment of Professional Fee Claims of Rosen & Associates, P.C., the Debtors' bankruptcy counsel.

5.5. **Transfer of Title to Properties.** On the Effective Date, the Debtors shall irrevocably transfer, assign, and convey the Properties to the Buyer Designees, in accordance with the instructions of DG, pursuant to the terms of the Settlement Agreement and this Plan. The transfer, assignment, and conveyance of the Properties to the Buyer Designees shall be approved by the Confirmation Order as an absolute, unavoidable, and irrevocable sale of the Properties which the Debtors have made to the Buyer Designees for fair consideration and reasonably equivalent value.

5.6. **Deliveries at Closing.** The Debtors shall deliver to the Buyer Designees on the Effective Date those documents, instruments and certificates set forth in Schedule E of the Settlement Agreement. The Property Manager (and if he still has them in his possession, the Receiver) shall deliver to the Buyer Designees all (i) original leases, (ii) certificates by architects and/or engineers, plans and specifications, tests and surveys for the Properties, (iii) rent arrearage schedules, (iv) tenant files, (v) licenses, permits authorizations, and approvals, including, without limitation, certificates of occupancy, issued for or with respect to the Properties, (vi) files concerning any litigation (including pleadings) concerning the Properties, including landlord/tenant proceedings, together with substitutions of counsel executed by the Debtors or the Receiver (as the case may be), in connection with such proceedings or actions, (vii) affidavits of compliance with smoke detector/fire alarm installation, and (viii) records or agreements concerning the construction, management or operation of the Properties.

5.7. **Execution of Documents.** On the Effective Date, the Debtors, and any necessary party thereto, shall execute, release, and deliver all documents reasonably necessary to consummate the transactions contemplated by the terms and conditions of this Plan.

5.8. **Filing of Documents.** Pursuant to sections 105, 1141(c), and 1142(b) of the Bankruptcy Code, each and every federal, state, and local governmental agency or department, shall be directed to accept and record any and all documents and instruments necessary, useful or appropriate to effectuate, implement and consummate the transactions contemplated by this Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by this Plan.

5.9. **Corporate Action.** Upon the entry of the Confirmation Order, all matters provided under this Plan involving the corporate structure of the Debtors shall be deemed authorized and approved without any requirement of further action by the Debtors, the Debtors' shareholders and/or members, or the Debtors' boards of directors, managers, and/or managing members. As soon as practicable following the entry of a final decree closing the Chapter 11 Cases, each of the Debtors shall dissolve or otherwise terminate its existence, by filing a certificate of dissolution and a copy of the Confirmation Order and any other necessary documents with the applicable state authority.

5.10. **Receiver's Final Accounting, Discontinuance of Foreclosure Action and Discharge of Receiver.** No later than forty-five (45) days after the Effective Date, the Receiver shall file with the Bankruptcy Court and serve upon the Debtors, DG, the Office of the United States Trustee for Region 2, all parties who have filed a notice of appearance in the Chapter 11 Cases, and any additional parties identified in Section 12.15 of this Plan, a motion (the "**Receiver Motion**"), pursuant to section 543(b) of the Bankruptcy Code and Bankruptcy Rule 6002, for an order approving his final accounting of his receivership which he would otherwise file in the Foreclosure Action, his request for final approval of any commissions due to the Receiver under applicable law, and discharging the Receiver and his professionals from any further obligations with respect to the Properties or his receivership. **Notice of such motion shall be given to all Persons identified in Section 12.15, below, and in accordance with the provisions of such section.** Any party in interest may object to the final accounting or request for payment of commissions by filing and serving its objection within thirty days after it has been filed by the Receiver. If no objection is timely filed, or after the final accounting and commissions are approved by the Bankruptcy Court, the final accounting shall be binding on all parties for the purposes of the Foreclosure Action. Within thirty (30) days of the entry of an order of the Bankruptcy Court approving the Receiver Motion, DG shall cause to be filed in the Foreclosure Action a motion seeking discontinuance of the Foreclosure Action with prejudice. Confirmation of this Plan shall constitute consent by the Debtors and their creditors to discontinuance of the Foreclosure Action with prejudice.

ARTICLE VI

RELEASES

6.1. **Releases by the Debtors.** Pursuant to section 1123(b) of the Bankruptcy Code, and except for such liabilities and obligations otherwise assumed or provided hereunder, for good and valuable consideration provided by each of the Released Parties and the Released Debtor Parties, on the Effective Date and effective as of the Effective Date, the Released Parties and the Released Debtor Parties are deemed released and discharged by the Debtors and their Estates from any and all direct, indirect or derivative claims, obligations, rights, suits, judgments, Liens, damages, causes of action, remedies, liabilities, claims or rights of contribution and indemnification, and all other claims, causes of action, controversies of every type, kind, nature, description or character whatsoever, including any derivative claims asserted on behalf of the Estates, whether known or unknown, foreseen or unforeseen, liquidated or unliquidated, contingent or fixed, currently existing or hereafter arising, in law, at equity, whether for tort, fraud, contract or otherwise, that any Debtor would have been legally entitled to assert, including, but not limited to, any claim or cause of action arising from or relating to the Debtors,

the Chapter 11 Cases, this Plan, the subject matter of, or the transactions or events giving rise to, any Claim or Interest of the Released Parties and the Released Debtor Parties that is treated in this Plan, the business or contractual arrangements between any Debtor, on the one hand, and any Released Party or Released Debtor Party, on the other hand, the negotiation, formulation, or preparation of this Plan and the Disclosure Statement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place, in each case to the extent incurred on or prior to the Effective Date, other than in each case claims or liabilities arising out of or relating to any act or omission of a Released Party or Released Debtor Party that constitutes willful misconduct or gross negligence; provided, however, that nothing in this section or in this Plan shall be deemed to release any Released Party or any Released Debtor Party from liability for acts or omissions that are the result of actual fraud, gross negligence, willful misconduct, *ultra vires* acts, criminal conduct, disclosure of confidential information that causes damages, or willful violation of the securities laws or the Internal Revenue Code, or, in the case of an attorney professional and as required under Rule 1.8(h)(1) of the New York State Rules of Professional Conduct, malpractice. Except as set forth in Section 12.17 of this Plan, nothing in this Plan shall effect a release of any Claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any Claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties or the Released Debtor Parties, nor shall anything in this Plan enjoin the United States or any state or local authority from bringing any Claim, suit, action or other proceedings against the Released Parties or the Released Debtor Parties referred to herein for any liability whatever, including without limitation, any Claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Parties or the Released Debtor Parties. For the avoidance of doubt, the release of Gemstone Property Management LLC under this Plan releases Gemstone Property Management LLC from any and all claims of the Debtors and third parties based upon pre-Effective Date acts and conduct of the Debtors and their affiliates, but shall not release Gemstone Property Management LLC from claims based upon its own acts and conduct subsequent to the Effective Date.

6.2. **Injunction.** On the Effective Date, each Debtor shall be permanently enjoined from commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind, including asserting any setoff, right of subrogation, contribution, indemnification or recoupment of any kind, directly or indirectly, or proceeding in any manner in any place inconsistent with the releases granted by the Debtors and their Estates to the Released Parties and the Released Debtor Parties pursuant to this Plan. The Confirmation Order shall specifically provide for such injunction. The releases and injunctions granted in favor of the Released Parties and the Released Debtor Parties are integral parts of this Plan and are necessary to confirm this Plan.

6.3. **Exculpation.** On the Effective Date, other than such liabilities and obligations otherwise assumed or provided hereunder or under the Settlement Agreement, (a) (i) the Debtors, and their direct and indirect parents, subsidiaries and affiliates, together with each of its present

shareholders, members, managers, general partners, limited partners, officers, directors, employees, agents, representatives, attorneys and advisors or consultants (solely in their capacities as such) and (ii) the Released Parties, and all of their respective direct and indirect parents, subsidiaries and affiliates, together with each of their respective present and shareholders, members, managers, general partners, limited partners, officers, directors, employees, agents, representatives, attorneys and advisors or consultants (solely in their capacities as such) shall be deemed to release each of the other, and (b) the Released Parties shall be deemed released by all holders of Claims of and from any claims, obligations, rights, causes of action and liabilities for any act or omission occurring through the date immediately preceding the Effective Date that arise from or are related to the Properties and the ownership thereof, including, without limitation, any act or omission occurring during or relating to the Chapter 11 Cases, commencement of the Chapter 11 Cases, the solicitation of acceptances of this Plan, the Disclosure Statement, the pursuit of approval of the Disclosure Statement, the pursuit of confirmation of this Plan, the consummation of this Plan or the administration of this Plan or the property to be distributed under this Plan, except for acts or omissions which constitute fraud, willful misconduct, gross negligence, *ultra vires* acts, criminal conduct, disclosure of confidential information that causes damages, or willful violation of the securities laws or the Internal Revenue Code, or, in the case of an attorney professional and as required under Rule 1.8(h)(1) of the New York State Rules of Professional Conduct, malpractice, and all such Persons, in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan and under the Bankruptcy Code; provided, however, that nothing contained herein shall be construed to affect the claims and rights of any tenants under Tenant Leases or any applicable laws and regulations of the United States, the state of New York, and the City of New York, or of any applicable agency or department thereof.

6.4. **Confirmation Injunction.** Other than such liabilities and obligations otherwise assumed or provided hereunder, and as set forth in the Confirmation Order, (a) the rights afforded herein and the treatment of all Claims and Equity Interests herein, shall be in exchange for and in complete satisfaction and release of, all Claims and Equity Interests of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, against the Debtors or any of their assets and properties, (b) on the Effective Date, all such Claims against the Debtors shall be satisfied and released in full, and (c) all Persons shall be precluded from asserting and shall be permanently enjoined from commencing or continuing in any manner any action or proceeding (whether directly, indirectly, derivatively, or otherwise) against the Debtors, their assets or properties, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date; provided, however, that nothing contained herein shall be construed to affect the claims and rights of any tenants under Tenant Leases or any applicable laws and regulations of the United States, the state of New York, and the City of New York, or of any applicable agency or department thereof.

6.5. **Discharge.** Pursuant to section 1141(d)(3) of the Bankruptcy Code, the Debtors shall not receive a discharge.

ARTICLE VII

DISTRIBUTIONS UNDER THE PLAN

7.1. **Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided herein or as ordered by the Bankruptcy Court, distributions to be made on account of Claims that are Allowed Claims as of the Effective Date shall be made on the Effective Date or as soon thereafter as is practicable. Any distribution to be made on the Effective Date pursuant to this Plan shall be deemed as having been made on the Effective Date if such distribution is made on the Effective Date or as soon thereafter as is practicable. Any payment or distribution required to be made under this Plan on a day other than a Business Day shall be made on the next succeeding Business Day. Rosen & Associates, P.C. shall make all distributions required to be made under this Plan.

7.2. **Delivery of Distributions.** Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made at the address set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Debtors or their agents, unless the Debtors have been notified in writing of a change of address, including by the filing of a proof of claim or Administrative Claim request that contains an address for a holder of a Claim different from the address for such holder reflected on any Schedule.

7.3. **Reserves for Administrative, Priority Tax and Other Priority Claims.** On the Effective Date, or as soon as practicable thereafter, Rosen & Associates, P.C. shall establish and maintain a reserve from Cash on hand remaining from operations of the Debtors' Properties, or to the extent the foregoing is insufficient, Cash in the Plan Funding Account in an amount equal to the sum of (i) all Disputed Administrative Claims, Disputed Cure Amounts, Disputed Priority Tax Claims and Disputed Other Priority Claims, if any, in an amount equal to what would be distributed to holders of Disputed Administrative Claims, Disputed Priority Tax Claims, Disputed Other Priority Claims, and Disputed Cure Amounts if their Disputed Claims had been deemed Allowed Claims on the Effective Date or on the Administrative Claims Bar Date or such other amount as may be approved by the Bankruptcy Court upon motion of the Debtors and/or DG, (ii) an estimated amount for unpaid Professional Fee Claims and any other Administrative Claims that have not been filed as of the Effective Date, such amount to be agreed upon by the Debtors and DG or such other amount as may be fixed by the Bankruptcy Court, and (iii) commissions of the Receiver that may be approved by the Bankruptcy Court after the Effective Date (together, the "**Administrative Claims Reserve**"). Any such funds shall be maintained by Rosen & Associates, P.C. in an account located at an authorized bank depository in the Southern District of New York. With respect to such Disputed Claims, if, when, and to the extent any such Disputed Claim becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefore shall be distributed by the Debtors to the Claimant in a manner consistent with distributions to similarly situated Allowed Claims. The balance of such Cash, if any, remaining after all Professional Fee Claims, Disputed Administrative Claims, Disputed Cure Amounts, Disputed Priority Tax Claims, Disputed Other Priority Claims, and Receiver commissions have been resolved and distributions made in accordance with this Plan, shall be released and distributed promptly to DG. No payments or distributions shall be made with respect to a Claim that is a Disputed Claim pending the resolution of the dispute by Final Order or agreement of the parties (including DG).

7.4. **Reserves for Disputed Claims.** On the Effective Date, or as soon as practicable thereafter, Rosen & Associates, P.C. shall establish and maintain a reserve (“**Class 5 Disputed Claims Reserve**”) from Cash in the Plan Funding Account for all Class 5 Disputed Claims, including any Disputed Rejection Damage Claims. For purposes of establishing a reserve for Class 5 Disputed Claims, Cash will be set aside in an amount equal to the amount that would have been distributed to the holders of Class 5 Disputed Claims had their Class 5 Disputed Claims been deemed Allowed Claims on the Effective Date or in such other amount as may be approved by the Bankruptcy Court upon motion of the Debtors and/or DG. Any such funds shall be maintained Rosen & Associates, P.C. in an account located at an authorized bank depository in the Southern District of New York. With respect to such Class 5 Disputed Claims, if, when, and to the extent any such Class 5 Disputed Claim becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefore shall be distributed by the Debtors to the Claimant on the first business day following the end of the calendar month in which the Class 5 Disputed Claim becomes an Allowed Claim (or earlier in the discretion of the Debtors) and in a manner thereafter consistent with distributions to similarly situated Allowed Claims. The balance of such Cash, if any, remaining in the Class 5 Disputed Claim Reserve after all Class 5 Disputed Claims have been resolved and distributions made in accordance with this Plan, shall be released and distributed promptly to DG. No payments or distributions shall be made with respect to a Claim that is a Disputed Claim pending the resolution of the dispute by Final Order or agreement of the parties (including DG). The Debtors or DG shall have the right to seek an Order of the Bankruptcy Court, after notice and a hearing, estimating or limiting the amount of Cash or property that must be so deposited on account of any Disputed Claim. Any creditor whose Claim is so estimated shall have no recourse to any assets theretofore distributed on account of any Allowed Claim.

7.5. **Holdback From Fee Recipient Payment.** Notwithstanding anything to the contrary in this Plan, DG shall hold back \$400,000 (the “**Post Effective Date Holdback**”) from the Fee Recipient Payment to pay or reimburse DG in respect of any (a) Pre 12/1/11 Claims asserted after the Effective Date and (b) claims, whenever asserted, and associated reasonable legal costs and disbursements of defense, asserted against DG or the Properties, arising from rent overcharges or claimed rent overcharges accrued during the period August 29, 2005 through November 30, 2011. Praedium, Pinnacle, and Wiener shall have the right (but not the obligation) to manage the legal defense against any such rent overcharge claims that accrued during such period. On the date which shall be twelve months after the Effective Date, DG will pay to the Fee Recipient or its designee(s) (a) any sums remaining in the Post Effective Date Holdback less (b) an amount reasonably determined by DG to be necessary (1) to pay or settle outstanding Pre 12/1/11 Claims, (2) to pay or settle outstanding rent overcharges that accrued during the overcharge period specified herein and that have been asserted against DG but have not yet been finally paid or settled, and (3) to pay reasonable costs associated with such Pre 12/1/11 Claims or rent overcharges, including reasonable legal costs of defense.

7.6. **Claims Objection Deadline.** No later than thirty (30) days after the later of (i) the Confirmation Date (“**Objection Deadline**”) and (ii) the date the Claim is timely filed, provided however, that the Objection Deadline may be extended by the Bankruptcy Court upon the submission of a stipulation by and between the Debtors and DG, without notice or hearing, for up to an additional sixty (60) days thereafter, except, however, that the Objection Deadline shall not apply to objections to Professional Fee Claims, which shall be governed by Local

Bankruptcy Rule 9006-1(b) of the Bankruptcy Rules for the Southern District of New York. Objections to Pre 12/1/11 Claims shall be filed and served upon each affected Creditor by the Debtors and Objections to Post 12/1/11 Claims shall be filed and served upon each affected Creditor by DG.

7.7. **Settlement of Disputed Claims.** Objections to Claims may be litigated to judgment or withdrawn, and may be settled with the approval of the Bankruptcy Court, except to the extent such approval is not necessary as provided in this section. After the Effective Date, and subject to the terms of this Plan any Disputed Claim may be settled as follows; provided, however, that DG consents in writing to such settlement: (i) any Disputed Pre 12/1/11 Claim may be settled by DG by notice of presentment of an order to the Bankruptcy Court pursuant to Local Bankruptcy Rule 9074-1(b) of the Southern District of New York; and (ii) any Disputed Post 12/1/11 Claim may be settled by the Debtors by notice of presentment of an order to the Bankruptcy Court pursuant to Local Bankruptcy Rule 9074-1(b) of the Southern District of New York.

7.8. **Unclaimed Property.** If any distribution on account of Pre 12/1/11 Claims remains unclaimed for a period of one hundred and eighty (180) days after it has been delivered (or attempted to be delivered) in accordance with this Plan to the holder of such Allowed Claim, such unclaimed property shall be forfeited by such holder, whereupon all right, title and interest in and to the unclaimed property shall be held in reserve by Rosen & Associates, P.C. to be distributed to the Fee Recipient. Any such unclaimed property shall be maintained by Rosen & Associates, P.C. in an account located at an authorized bank depository in the Southern District of New York. If any distribution on account of any Administrative Claims, Post 12/1/11 Claims, Receivership Claims, and Governmental Authority Lien Claims that accrued on or after December 1, 2011 remains unclaimed for a period of one hundred and eighty (180) days after it has been delivered (or attempted to be delivered) in accordance with this Plan to the holder of an Allowed Claim, such unclaimed property shall be forfeited by such holder, whereupon all right, title and interest in and to the unclaimed property shall be held in reserve by Rosen & Associates, P.C. to be distributed to DG.

7.9. **Set-Offs.** The Debtors may, but shall not be required to, set-off against the distributions to be made pursuant to this Plan the claims, obligations, rights, causes of action and liabilities of any nature that the Debtors may hold against the holder of an Allowed Claim, other than DG; provided, however, that in the event the Debtors intend to set-off against the holder of an Allowed Claim distributions to be made under this Plan, the Debtors shall notify such holder in writing within thirty (30) days after the Effective Date and such holder shall have twenty-one (21) days to file (and serve on counsel to the Debtors) an objection (a "**Set-Off Objection**"). Any Set-Off Objection shall be heard by the Bankruptcy Court no earlier than twenty (20) days after the Set-Off Objection is filed, to the extent not resolved previously. Any such holder that fails to timely file a Set-Off Objection will be deemed to have consented to, and will forever be barred from contesting, any such set-off.

7.10. **Release of Liens.** On the Effective Date and except as expressly set forth in this Plan, all mortgages, deeds of trust, Liens or other security interests or encumbrances against the Properties other than Permitted Exceptions shall be released and forever discharged, and all the

right, title and interest of any holder of such mortgages, deeds of trust, Liens or other security interests shall revert to the Buyer Designees and their successors and assigns.

7.11. **Fractional Cents.** Any other provision of this Plan to the contrary notwithstanding, no payment of fractions of cents will be made. Whenever any payment of a fraction of a cent would otherwise be called for, the actual payment shall reflect a rounding down of such fraction to the nearest whole cent.

7.12. **Payments of Less than Twenty-Five Dollars (\$25.00).** If a cash payment otherwise provided for by this Plan with respect to an Allowed Claim would be less than twenty-five dollars (\$25.00) (whether in the aggregate or on any payment date provided in this Plan), notwithstanding any contrary provision of this Plan, the Debtors shall not be required to make such payment.

ARTICLE VIII

UNEXPIRED LEASES AND EXECUTORY CONTRACTS

8.1. **Assumption and Rejection of Agreements.**

(a) All unexpired leases of residential property with tenants of the Debtors (“**Tenant Leases**”) shall be neither assumed nor rejected.

(b) Except with respect to Tenant Leases, any and all pre-petition leases or executory contracts (i) not previously assumed or the subject of a motion to assume pending on the Confirmation Date, (ii) not designated prior to the Confirmation Date by the Buyer Designees or DG as pre-petition leases or executory contracts to be assumed by the Debtors (“**Designated Agreements**”), and (iii) not set forth on Exhibit B to this Plan, shall be deemed rejected by the Debtors.

(c) The pre-petition leases and executory contracts set forth on Exhibit B to this Plan shall be deemed assumed by the Debtors (the “**Exhibit B Agreements**”); subject, however to the payment of amounts necessary to cure the monetary defaults under such leases or executory contracts (as to each agreement, the “**Cure Amount**”).

(d) All counterparties to Exhibit B Agreements shall file with the Bankruptcy Court, and serve on the Debtors and DG, objections, if any, to the Debtors’ assumption of their respective leases or executory contracts, and include in such objection any dispute as to the amount asserted by the Debtors in Exhibit B to this Plan as the Cure Amount. Such objection shall be filed not later than seven (7) days prior to the Confirmation Date. Any undisputed Cure Amounts (“**Undisputed Cure Amounts**”) shall be paid as soon as practicable following the Effective Date of this Plan, and any disputed Cure Amounts (“**Disputed Cure Amounts**”) shall be paid upon the agreement of the parties or further order of the Bankruptcy Court.

(e) No later than fourteen (14) days prior to the Confirmation Hearing, the Debtors shall file a motion to assume the Designated Agreements. The motion shall require all counterparties to such leases and executory contracts to file with the Bankruptcy Court, and serve on the Debtors and DG, objections, if any, to the Debtors’ assumption of their respective

leases or executory contracts, and include in such objection any dispute as to the amount asserted by the Debtors as the Cure Amount. Such objection shall be filed not later than seven (7) days prior to the Confirmation Hearing on the motion. Any Undisputed Cure Amounts shall be paid as soon as practicable following the Effective Date of this Plan, and any Disputed Cure Amounts shall be paid upon the agreement of the parties or further order of the Bankruptcy Court.

(f) Notwithstanding anything to the contrary contained in this Section 8.1 of this Plan, the Buyer Designees and DG shall have the right to designate for rejection instead of assumption any executory contract, other than Tenant Leases, within ten (10) days following the entry of a Final Order fixing the Disputed Cure Amounts for such contract, in which case such contract shall then be deemed to have been rejected as of the Confirmation Date.

8.2. **Claims for Damages.** All proofs of claim with respect to Claims arising from the rejection of executory contracts or leases, if any, must, unless another order of the Bankruptcy Court provides for a different date, be filed with the Bankruptcy Court within thirty (30) days after the mailing of notice of Effective Date. Any and all proofs of claim with respect to Claims arising from the rejection of executory contracts by the Debtors shall be treated as Class 5 General Unsecured Claims, for purposes of distribution pursuant to this Plan. Unless otherwise permitted by Final Order, any proof of claim that is not filed before the Bar Date (other than those Claims arising from the rejection of executory contracts or leases under this Plan) shall automatically be disallowed as a late filed Claim, without any action by the Debtors, and the holder of such Claim shall be forever barred from asserting such Claim against the Debtors, their Estates, or property of their Estates.

ARTICLE IX

CONDITIONS TO CONFIRMATION AND EFFECTIVE DATE

9.1. **Conditions to Confirmation of the Plan.** This Plan shall not be confirmed unless and until the following conditions have been satisfied in full or waived by DG:

(a) the Bankruptcy Court shall have entered the Confirmation Order within 100 days after the Petition Date (or such other date as agreed to by Debtors and DG):

(b) the Confirmation Order is in form and substance satisfactory to DG, and such order shall approve all provisions, terms and conditions of this Plan, including but not limited to, the Property Transfer by each Debtor free and clear of all Claims, Liens, charges, interests and encumbrances other than the Permitted Exceptions, and shall provide that the Property Transfer shall be exempt from transfer taxes; and

(c) no material amendments, modifications, supplements, or alterations shall have been made to this Plan or any document delivered in connection therewith, without the express written consent of DG, which consent may be granted, withheld, or conditioned in its sole discretion.

9.2. **Conditions to Effectiveness of the Plan.** This Plan shall not become effective unless the Confirmation Order is not subject to any stay or injunction and the Property Transfer shall have occurred.

9.3. **Effect of Failure of Condition.** In the event that the Property Transfer shall not have occurred on or before twenty (20) days after the Confirmation Date, the Confirmation Order shall be vacated upon order of the Bankruptcy Court upon motion made by DG.

9.4. **Notice of the Effective Date; Actions Taken on Effective Date**

(a) The Debtors shall file and serve a notice of the occurrence of the Effective Date within two (2) Business Days thereafter.

(b) Unless otherwise specifically provided in this Plan, any action required to be taken by a Debtor on the Effective Date may be taken by such Debtor on the Effective Date or as soon as reasonably practicable thereafter.

ARTICLE X

RETENTION OF JURISDICTION

10.1. **Jurisdiction.** Following the Confirmation Date and until such time as all payments and distributions required to be made and all other obligations required to be performed under this Plan have been made and performed by the Debtors, as the case may be, the Bankruptcy Court shall retain jurisdiction as is legally permissible, including, without limitation, for the following purposes:

(a) **Claims.** To determine the allowance, extent, classification, or priority of Claims against the Debtors upon objection by the Debtors or DG;

(b) **Injunction, etc.** To issue injunctions or take such other actions or make such other orders as may be necessary or appropriate to restrain interference with this Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute this Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, execution, performance and consummation of this Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Chapter 11 Cases on or before the Effective Date with respect to any Person or Entity;

(c) **Professional Fees.** To determine any and all applications for allowance of compensation and expense reimbursement of Professionals for periods before the Effective Date, and objections thereto, as provided for in this Plan;

(d) **Certain Priority Claims.** To determine the allowance, extent and classification of any Priority Tax Claims, Other Priority Claims, Administrative Claims or any request for payment of an Administrative Claim;

(e) **Dispute Resolution.** To resolve any dispute arising under or related to the implementation, execution, consummation, or interpretation of this Plan and/or Confirmation Order and the making of distributions hereunder and thereunder;

(f) Executory Contracts and Unexpired Leases. To determine any and all motions for the rejection, assumption, or assignment of executory contracts or unexpired leases, to determine any and all disputes relating to cure amounts, and to determine the allowance and extent of any Claims resulting from the rejection of executory contracts and unexpired leases;

(g) Actions. To determine all applications, motions, adversary proceedings, contested matters, actions, and any other litigated matters instituted (either before or after the Effective Date) in the Chapter 11 Cases by or on behalf of the Debtors;

(h) General Matters. To determine such other matters, and for such other purposes, as may be provided in the Confirmation Order or as may be authorized under provisions of the Bankruptcy Code or other applicable law;

(i) Plan Modification. To modify this Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in this Plan or the Confirmation Order so as to carry out its intent and purposes;

(j) Aid Consummation. To issue such orders in aid of consummation of this Plan and the Confirmation Order notwithstanding any otherwise applicable non-bankruptcy law, with respect to any Person or Entity, to the full extent authorized by the Bankruptcy Code;

(k) Protect Properties. To protect the Properties of the Debtors from adverse Claims or Liens or interference inconsistent with this Plan, including to hear actions to quiet or otherwise clear title to such properties based upon the terms and provisions of this Plan;

(l) Abandonment of Property. To hear and determine matters pertaining to abandonment of property of the Estates;

(m) Implementation of Confirmation Order. To enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated; and

(n) Final Order. To enter a final order closing the Chapter 11 Cases.

ARTICLE XI

CONSOLIDATION OF DEBTORS FOR VOTING AND DISTRIBUTION PURPOSES

This Plan provides for the limited substantive consolidation of the Debtors' Estates, but solely for purposes of voting on this Plan by holders of Claims, making distributions to holders of Allowed Claims under this Plan, and confirmation of this Plan. In the event that the Effective Date does not occur, the Debtors reserve all rights with respect to the limited substantive consolidation of the Debtors. On the Effective Date, (i) all assets and liabilities of the Debtors will, solely for voting and distribution purposes, be treated as if they were merged, (ii) each claim against the Debtors will be deemed a single Claim against and a single obligation of the Debtors, (iii) any claims filed or to be filed in the Chapter 11 Cases will be deemed single Claims against all of the Debtors, (iv) all transfers, disbursements, and distributions to holders of Claims made by any Debtor hereunder will be deemed to be made by all of the Debtors, and (v)

any obligation of the Debtors as to Claims will be deemed to be one obligation of all of the Debtors. Holders of Allowed Claims shall be entitled to their share of assets available for distribution to such Class without regard to which Debtor originally was liable for such Claim.

Except as set forth in this Article, such limited consolidation shall not, other than for purposes related to this Plan, (x) affect the legal and corporate structures of the Debtors or the Reorganized Debtors, (y) cause any Debtor to be liable for any Claim or Equity Interest under this Plan for which it otherwise is not liable, and the liability of any Debtor for any such Claim or Equity Interest shall not be affected by such limited consolidation, and (z) affect equity interests in the Debtors.

Unless the Bankruptcy Court has approved by a prior order the limited substantive consolidation of the Debtors solely for purposes of this Plan, this Plan shall serve as, and shall be deemed to be, a request for entry of an order substantively consolidating the Debtors' Estates, but solely for purposes of this Plan, including voting on this Plan, making distributions to holders of Claims under this Plan, and confirmation of this Plan. If no objection to the limited substantive consolidation of the Debtors' Estates is timely filed and served by any holder of an impaired Claim affected by this Plan as provided herein on or before the voting deadline or such other date as may be established by the Bankruptcy Court, the confirmation order shall serve as the order approving the limited substantive consolidation of the Debtors' Estates, but solely for purposes of this Plan, including voting on this Plan, making distributions to holders of Allowed Claims under this Plan, and confirmation of this Plan. Any objections with respect to the limited substantive consolidation of the Debtors' Estates, solely for purposes of this Plan, that are filed and timely served shall be heard at the Confirmation Hearing.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1. **Pre-Confirmation Modification.** On notice to and opportunity to be heard by the United States Trustee, this Plan may be altered, amended or modified by the Debtors before the Confirmation Date as provided in section 1127 of the Bankruptcy Code; provided, however, that any such amendment or modification of this Plan must be approved in writing by DG.

12.2. **Post-Confirmation Immaterial Modification.** With the approval of the Bankruptcy Court and on notice to and an opportunity to be heard by the United States Trustee and without notice to holders of Claims and Equity Interests, the Debtors may, insofar as it does not materially and adversely affect the interests of holders of Claims, correct any defect, omission or inconsistency in this Plan in such manner and to such extent as may be necessary to expedite consummation of this Plan; provided, however, that any such amendment or modification of this Plan must be approved in writing by DG.

12.3. **Post-Confirmation Material Modification.** This Plan may be altered or amended after the Confirmation Date by the Debtors in a manner which, in the opinion of the Bankruptcy Court, materially and adversely affects holders of Claims, provided that such alteration or modification is made after notice and a hearing and otherwise meets the

requirements of section 1127 of the Bankruptcy Code; provided, however, that any such amendment or modification of this Plan must be approved in writing by DG.

12.4 **Post-Confirmation Status Reports.** After the Confirmation Date, the Debtors (i) shall file with the Bankruptcy Court and submit to the United States Trustee regular post-confirmation status reports every three months, on or before each of the fifteenth (15th) day of January, April, July, and October as appropriate, and in accordance with the provisions of Rule 3021-1(c) of the Local Bankruptcy Rules for the Southern District of New York until the Debtors' Chapter 11 Cases are closed, converted, or dismissed, whichever happens earlier, (ii) submit to the Court and to the United States Trustee the closing report required by the provisions of Rule 3022-1 of the Local Bankruptcy Rules for the Southern District of New York, and file with the Bankruptcy Court a motion for a final decree closing the Chapter 11 Cases.

12.5 **Withdrawal or Revocation of the Plan.** If the Debtors revoke or withdraw this Plan (as to all Debtors) or if confirmation or consummation of this Plan (as to all Debtors) does not occur, then (a) this Plan shall be null and void in all respects, (b) any settlement or compromise embodied in this Plan (including the allowance, fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests) and any assumption or rejection of executory contracts or leases affected by this Plan shall terminate and be of no further force or effect, and any document or agreement executed pursuant to this Plan shall be deemed null and void, and (c) nothing contained in this Plan shall constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtors or any other Person, or prejudice in any manner the rights of any other Person.

12.6 **Payment of Statutory Fees.** Rosen & Associates, P.C. shall pay from this Plan Funding Account all fees payable due as of the Effective Date pursuant to 28 U.S.C. § 1930. Thereafter, Rosen & Associates, P.C. shall pay from the Plan Funding Account all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus interest due under 31 U.S.C. § 3717, on all disbursements, including plan payments and disbursements in and outside of the ordinary course of business, until the earliest of the entry of a final decree closing the Chapter 11 Cases, dismissal of the Chapter 11 Cases, or conversion of the Chapter 11 Cases to cases under chapter 7.

12.7 **Successors and Assigns.** The rights, benefits and obligations of any Person or Entity named or referred to in this Plan shall be binding on, and shall inure to the benefit of, the heirs, executors, administrators, successors, and/or assigns of such Person or Entities..

12.8 **Comprehensive Settlement of Claims and Controversies.** Pursuant to section 1123(b)(3)(A) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions and other benefits provided under this Plan, the provisions of this Plan shall constitute a good faith compromise and settlement of all claims or controversies relating to the rights that a holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Allowed Equity Interest or any distribution to be made pursuant to this Plan on account of any Allowed Claim or Allowed Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, as of the Effective Date, of the compromise or settlement of all such claims or causes of action of (a) the Debtors and their Estates, including, without limitation, any Person or Entity seeking to exercise a right in a derivative capacity on behalf of the Estates,

and (b) the Released Parties, and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtors, their Estates, their properties and Claim holders and Equity Interest holders, and is fair, equitable and reasonable. For the avoidance of doubt, the compromise and settlement of all claims and causes of action of the Debtors and their Estates as set forth herein shall include any potential avoidance actions accruing to the Debtors or their Estates, which shall not be pursued.

12.9 **Preservation of Insurance.** This Plan shall not diminish or impair the enforceability of any insurance policy, right or claim that may cover Claims against the Debtors (including, without limitation, their members, managers or officers) or any other person or entity. Likewise, this Plan and Confirmation Order shall not impair any insurance carrier's rights, claims, defenses or disputes under any policy and shall not act to increase or extend any rights of the Debtors or the carriers.

12.10 **Termination of Property Manager.** On the Effective Date, (i) the Property Manager's management of the Properties shall be terminated, without the need for any further or other action or order by the Bankruptcy Court; (ii) DG may appoint a managing agent with full power to collect rents from and manage the Properties; (iii) the Property Manager shall deliver to the Buyer Designees all security deposits held pursuant to the leases affecting the Properties which have not been returned to any tenant as of the Effective Date; and (iv) the Property Manager shall turn over all property of the Debtors to the Buyer Designees.

12.11 **Cramdown.** To the extent any Impaired Class of Equity Interest entitled to vote on this Plan votes to reject this Plan, the Debtors reserve the right to request confirmation of this Plan under section 1129(b) of the Bankruptcy Code with respect to such Class(es), as well as with respect to Classes that are deemed to reject this Plan.

12.12 **Filing of Additional Documents.** Except as otherwise provided in this Plan, on or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan, and the Debtors shall be responsible for the preparation and filing of any reports necessary until entry of a final decree.

12.13 **Identity of Buyer Designees and Fee Recipients.** Not later than ten (10) days prior to the Confirmation Hearing, DG and the Debtors shall disclose the identity of the Buyer Designees and the Fee Recipients, respectively, and the Debtors shall file with the Bankruptcy Court a supplement to this Plan containing such information.

12.14 **Governing Law.** Except to the extent that the Bankruptcy Code is applicable, the rights and obligations arising under this Plan shall be governed by and construed and enforced in accordance with the laws of the state of New York.

12.15 **Notices.** Any notice required or permitted to be provided under this Plan shall be in writing and served by either (a) certified mail, return receipt requested, postage prepaid, (b) hand delivery or (c) reputable overnight courier service, freight prepaid, to be addressed as follows:

If to the Debtors: Pinnacle Group
1 Penn Plaza
New York, NY 10001
Attention: Joel Wiener
Adam Kaplan, Esq.

with a copy to: Rosen & Associates, P.C.
747 Third Avenue
New York, NY 10017
Attention: Sanford P. Rosen, Esq.

If to DG or the Buyer Designees: DG UWS LLC
c/o Dune Real Estate Partners LP
623 Fifth Avenue, 30th Floor
New York, NY 10022
Attention: General Counsel
David Oliner
Russell Gimmelstob

with a copy to: Herrick, Feinstein LLP
2 Park Avenue
New York, NY 10016
Attention: Jeffrey H. Kaufman, Esq.

If to Praedium: The Praedium Group, LLC
825 Third Avenue, 36th Floor
New York, NY 10022
Attention: Mason Sleeper
Peter A. Calatozzo

with a copy to: Morrison Cohen LLP
909 Third Avenue
New York, NY 10022-4784
Attention: Joseph T. Moldovan, Esq.
Danielle C. Lesser, Esq.

If to Pinnacle: Pinnacle Group
1 Penn Plaza
New York, NY 10001
Attention: Joel Wiener
Adam Kaplan, Esq.

with a copy to: Morrison Cohen LLP
909 Third Avenue
New York, NY 10022-4784
Attention: Joseph T. Moldovan, Esq.
Danielle C. Lesser, Esq.

12.16 **Saturday, Sunday or Legal Holiday.** If any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

12.17 **Exemption From Transfer Taxes.**

(a) Pursuant to section 1146(a) of the Bankruptcy Code: (i) the issuance, transfer, or exchange of notes or equity securities under this Plan; (ii) the creation of any mortgage, deed of trust, lien, pledge, or other security interest; (iii) the making or assignment of any contract, lease or sublease; or (iv) the making or delivery of any deed or other instrument of transfer or other consideration under, in the furtherance of, or in connection with this Plan, including, without limitation, the Property Transfer and any other payments and transfers pursuant to this Plan by any Debtor(s) to the Buyer Designees; delivery of deeds, bills of sale, or other transfers of tangible property, are exempt from and will not be subject to any stamp tax, or other similar tax or any tax held to be a stamp tax or other similar tax by applicable law.

(b) All filing officers (including without limitation, the Register of the City of New York) shall be, and hereby are directed to: (i) accept for recording and record, any and all deeds and other documents evidencing and/or relating to the Property Transfer which are presented to them for recording, immediately upon presentation thereof, with regard to the transactions effectuated pursuant to this Plan, without the payment of any New York State Real Estate Transfer Tax imposed under Article 31 of the New York State Tax Law, any New York City Real Property Transfer Taxes under section 11-2102 of the New York City Administrative Code, any mortgage recording tax or any other tax within the purview of section 1146(a) of the Bankruptcy Code, and without the requirement of presentation of any affidavit or form with respect to any tax imposed under Article 31 of the New York State Tax Law, any New York City Real Property Transfer Taxes under section 11-2102 of the New York City Administrative Code with respect to the transactions effectuated pursuant to this Plan; and (ii) cancel and discharge of record all liens, encumbrances, claims and other adverse interests in or against the Properties, except for the Permitted Exceptions, which shall not be canceled and shall continue and remain in full force and effect.

(c) All governmental authorities and any other taxing authorities shall be permanently enjoined from the commencement or continuation of any action to collect from the Properties, the Debtors, DG, and the Buyer Designees, any taxes from which the transactions effectuated pursuant to this Plan are exempt, pursuant to and in furtherance of section 1146(a) of the Bankruptcy Code, including but not limited to, New York State Real Estate Transfer Taxes, New York City Real Property Transfer Taxes, and applicable mortgage recording tax, and any penalties, interest, or additions to any tax related thereto.

(d) The New York County Register's office shall record the deed of each Property, and other similar conveyance documents required to be delivered under this Plan without the payment of any stamp tax, transfer tax, or similar tax, and without the presentation of affidavits, instruments, or returns otherwise required for recording or filing pursuant to section 1146(a) of the Bankruptcy Code.

12.18 **Severability**. If any term or provision of this Plan is held by the Bankruptcy Court prior to or at the time of Confirmation to be invalid, void or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as so altered or interpreted. In the event of any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan may, at the option of DG, remain in full force and effect and not be deemed affected. However, DG reserves the right not to proceed to Confirmation or consummation of this Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

12.19 **Headings**. The headings used in this Plan are inserted for convenience only and neither constitute a portion of this Plan nor in any manner affect the provisions of this Plan.

12.20 **Clarification**. To the extent there exists any inconsistency between the terms of this Plan and the terms of the Settlement Agreement--solely with respect to the rights and obligations of Pinnacle, Praedium, and Wiener on the one hand and of DG on the other--the terms of the Settlement Agreement shall control.

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CONFIRMATION REQUEST

The Debtors respectfully request confirmation of this Plan pursuant section 1129(a) of the Bankruptcy Code.

DATED: July 31, 2012

DEBTORS

10-16 MANHATTAN AVENUE, LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

120 WEST 105TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

165-171 MANHATTAN AVENUE LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

15 WEST 107TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

3-5 W. 108TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

7-9 W. 108TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

350 MANHATTAN AVENUE NY LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

634 W. 135TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

605 W. 156TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

625 W. 156TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

635 RIVERSIDE DRIVE NY LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

894 RIVERSIDE NY ASSOCIATES LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

25-29 ST. NICHOLAS TERRACE LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

35 ST. NICHOLAS TERRACE LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

287 EDGECOMBE AVENUE LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

291 EDGECOMBE AVENUE LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

5 WEST 101ST STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

61-63 WEST 104TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

106 W. 105TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

109 WEST 105TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

21 W. 106TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

123 WEST 106TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

125 WEST 106TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

127 WEST 106TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

4-6 WEST 108TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

8-10 WEST 108TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

203 W. 108TH STREET LLC

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Mason Sleeper
Title: Authorized Signatory Officer

216 W. 108TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

627 W. 113TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

302 W. 114 STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

312 W. 114TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer

400-408 WEST 128TH STREET LLC

By: /s/ Mason Sleeper
Mason Sleeper
Title: Authorized Signatory Officer