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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
In re

Chapter 11

2279-2283 THIRD AVENUE ASSOCIATES  
LLC,

Case No. 12-13092 (JMP)

Debtor.  
-----X

**DISCLOSURE STATEMENT WITH RESPECT TO DEBTOR'S PLAN OF  
REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

**ALL CREDITORS ARE ADVISED AND ENCOURAGED TO READ THIS  
DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY BEFORE  
VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND  
STATEMENTS MADE IN THIS DISCLOSURE STATEMENT, INCLUDING THE  
FOLLOWING SUMMARY, ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE  
TO THE PLAN, ANY AND ALL SUPPLEMENTS TO THE PLAN AND THE OTHER  
EXHIBITS ANNEXED TO THE PLAN AND THIS DISCLOSURE STATEMENT. THE  
STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE  
ONLY AS OF THE DATE HEREOF UNLESS OTHERWISE SPECIFIED, AND THERE  
CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL  
BE CORRECT AT ANY TIME AFTER SUCH DATE.**

**THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER APPLICABLE LAW. THIS DISCLOSURE STATEMENT HAS NEITHER BEEN APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION (THE "SEC") NOR HAS THE SEC PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED HEREIN. PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING CLAIMS SHOULD EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSES FOR WHICH THEY WERE PREPARED.**

**CERTAIN STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING FORWARD-LOOKING STATEMENTS, ARE BASED ON ESTIMATES AND ASSUMPTIONS. THERE CAN BE NO ASSURANCE THAT SUCH STATEMENTS WILL REFLECT ACTUAL OUTCOMES.**

**THE INFORMATION IN THIS DISCLOSURE STATEMENT IS BEING PROVIDED SOLELY FOR PURPOSES OF VOTING TO ACCEPT OR REJECT THE PLAN. NOTHING IN THIS DISCLOSURE STATEMENT MAY BE USED BY ANY PERSON OR ENTITY FOR ANY OTHER PURPOSE. THE FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT, INCLUDING THE DESCRIPTION OF THE DEBTOR, ITS BUSINESS AND EVENTS LEADING TO THE COMMENCEMENT OF THESE CHAPTER 11 CASES, HAS BEEN OBTAINED**

**FROM VARIOUS DOCUMENTS, AGREEMENTS AND OTHER WRITINGS RELATING TO THE DEBTOR. NEITHER THE DEBTOR NOR ANY OTHER PARTY MAKES ANY REPRESENTATION OR WARRANTY REGARDING SUCH INFORMATION.**

**THE TERMS OF THE PLAN GOVERN IN THE EVENT OF ANY INCONSISTENCY WITH THE SUMMARIES IN THIS DISCLOSURE STATEMENT. ALL EXHIBITS TO THE DISCLOSURE STATEMENT ARE INCORPORATED INTO AND ARE A PART OF THIS DISCLOSURE STATEMENT AS IF SET FORTH IN FULL HEREIN.**

**AS TO CONTESTED MATTERS, EXISTING LITIGATION INVOLVING THE DEBTOR, ADVERSARY PROCEEDINGS, AND OTHER ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE WITHOUT PREJUDICE SOLELY FOR SETTLEMENT PURPOSES, WITH FULL RESERVATION OF RIGHTS, AND IS NOT TO BE USED FOR ANY LITIGATION PURPOSE WHATSOEVER. AS SUCH, THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING INVOLVING THE DEBTOR, OR ANY OTHER PARTY IN INTEREST, NOR SHALL IT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES, FINANCIAL OR OTHER EFFECTS OF THE REORGANIZATION AS TO HOLDERS OF CLAIMS AGAINST OR EQUITY INTERESTS IN THE DEBTOR.**

**TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230, EACH HOLDER IS HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE TAX CODE; (B) SUCH DISCUSSION IS INCLUDED HEREBY BY THE DEBTOR IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTOR OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

**TABLE OF CONTENTS**

**EXHIBIT A—PLAN**

**EXHIBIT B— LIQUIDATION ANALYSIS**

**EXHIBIT C— PLAN SETTLEMENT AGREEMENT**

**I.  
INTRODUCTION**

On July 17, 2012 (the “Petition Date”), 2279-2283 Third Avenue Associates LLC (the “Debtor”) filed a petition for relief under chapter 11 of the title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Southern District of New York (the “Court”). On June \_\_, 2013 the Debtor and LSV-JCR 124<sup>th</sup> LLC (the “Senior Lender”) filed their proposed joint Chapter 11 plan of reorganization dated June \_\_, 2013 (as may be further amended, modified or supplemented, the “Plan”), a copy of which is annexed as Exhibit A, which sets forth the manner in which Claims against and Equity Interests in the Debtor will be treated. This Disclosure Statement (the “Disclosure Statement”) describes certain

aspects of the Plan (including the treatment of creditor Claims under the Plan), the Debtor's business and related matters. Unless otherwise defined, all capitalized terms have the meanings ascribed to them in the Plan.

As discussed more fully below, after a careful review of their businesses and prospects, and after extensive negotiations, the Debtor, in consultation with its advisors, and the Senior Lender have concluded that recoveries to creditors will be maximized under the Plan and by the liquidation of the Debtor as contemplated by the Plan, as contrasted with other possible alternatives.

This Disclosure Statement is submitted to holders of Claims against the Debtor in connection with (i) the solicitation of acceptances of the Plan and (ii) the hearing to consider confirmation of the Plan (the "Confirmation Hearing") presently scheduled for August \_\_, 2013, at 10:00 a.m. Eastern Time.

Attached as Exhibits to this Disclosure Statement are copies of the following:

- The Plan (Exhibit A); and
- Liquidation Analysis (Exhibit B)

In addition, a Ballot for the acceptance or rejection of the Plan is being transmitted with this Disclosure Statement to the holders of Impaired Claims that are entitled to accept or reject the Plan.

The Proponents have moved the Court for an order, to be entered immediately prior to an order confirming the Plan, approving this Disclosure Statement as containing "adequate information" to enable a hypothetical, reasonable investor typical of the holders of Claims in Classes eligible to vote on the Plan to make an informed judgment as to whether to accept or reject the Plan

Detailed voting instructions accompany each Ballot. Each holder of a Claim entitled to vote on the Plan should read this Disclosure Statement, the Plan, the other Exhibits hereto and the instructions accompanying the Ballot(s) in their entirety before voting. These documents contain, among other things, important information concerning the classification of Claims for voting purposes and the tabulation of votes. No solicitation of a vote to accept the Plan may be made without giving the voter a Disclosure Statement approved by the Court.

**A. Holders of Claims and Equity Interests Entitled to Vote**

Only impaired holders of Allowed Claims or Interests are entitled to vote to accept or reject a proposed chapter 11 plan. Unimpaired Classes are deemed to have accepted the Plan and are not entitled to vote. Classes of Claims or Interests that will not receive any distribution under a reorganization plan are deemed to have rejected such plan and also are not entitled to vote.

Under the Plan, Class 3 (Senior Lender Claim) and Class 4 (General Unsecured Claims) are impaired and entitled to vote on the Plan. Class 5 (Equity Interests) will receive no distributions under the Plan and is therefore deemed to have rejected the Plan. Classes 1 and 2 are unimpaired and conclusively deemed to have accepted the Plan.

The Code defines “acceptance” of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that vote for acceptance or rejection of the plan. For a more detailed description of the requirements for confirmation of the Plan, see Article VIII, “Confirmation Procedures.”

**B. Voting Procedures**

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for that purpose. If you hold a Claim or an Interest in more than one Class and you are entitled to vote in more than one Class, you will receive separate Ballots that must be used for each separate Class.

Please vote and return your Ballot(s) directly to the following address:

DELBELLO DONNELLAN WEINGARTEN  
WISE & WIEDERKEHR, LLP  
Attn: Jonathan S. Pasternak  
One N. Lexington Avenue  
White Plains, New York 10601

**DO NOT RETURN ANY OTHER INSTRUMENTS OR AGREEMENTS WITH YOUR BALLOT. TO BE COUNTED, YOUR BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE RECEIVED NO LATER THAN 5:00 P.M., DAYLIGHT SAVINGS TIME, ON AUGUST \_\_, 2013.**

Each holder of an Allowed Claim in an impaired Class which receives or retains property under the Plan shall be entitled to vote separately to accept or reject the Plan and indicate such vote on a duly executed and delivered Ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other controlling order or orders of the Bankruptcy Court.

The proposed deadline for the filing of proofs of claim (the "Bar Date") will not have occurred by the time votes are solicited on the Plan. Accordingly, the Proponents shall provide a Ballot to all entities upon which notice of the order establishing the Bar Date will be served. Entities which assert a claim which was either not listed on the Debtor's schedules, or which was listed as contingent, unliquidated or disputed, shall be entitled to vote to accept or reject the Plan and, for voting purposes only, shall be deemed to hold a claim of \$1.

If you are a holder of a Claim entitled to vote on the Plan and you did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the procedures for voting on the Plan, please call DelBello Donnellan, Et Al., Attn: Jonathan Pasternak at 914-681-0200, counsel for the Debtor, during regular business hours.

**C. Confirmation Hearing**

A hearing to consider confirmation of the Plan (the "Confirmation Hearing") will be held on August \_\_, 2013 at 10:00 a.m., Eastern Standard Time, before the Honorable James M. Peck, United States Bankruptcy Judge, at the Court, One Bowling Green, New York, New York 10004. The Court has directed that objections, if any, to confirmation of the Plan be served and filed so that they are received on or before August \_\_, 2013, at 5:00 p.m., New York Time. Service of any objection to confirmation must be served upon: (a) DelBello Donnellan Weingarten Wise & Wiederkehr, LLP, One N. Lexington Avenue, White Plains, New York 10601, Attn: Jonathan S. Pasternak; and (b) Fox Rothschild LLP, attorneys for the Senior Lender, 100 Park Avenue, New York, New York 10017, Attn: Yann Geron. The Confirmation Hearing may be adjourned from time to time by the Court without further notice except for the announcement of the adjournment date made at the Confirmation Hearing or at any subsequent adjourned Confirmation Hearing.

THE PROPONENTS BELIEVE THAT THE PLAN WILL ENABLE THE DEBTOR TO MAXIMIZE RECOVERIES TO ITS CREDITORS AND ACCOMPLISH THE OBJECTIVES OF CHAPTER 11. THE PROPONENTS BELIEVE THAT ACCEPTANCE OF THE PLAN IS IN THE BEST INTERESTS OF THE DEBTOR AND ITS CREDITORS. THE PROPONENTS URGE CREDITORS TO VOTE TO ACCEPT THE PLAN.

**II.  
OVERVIEW OF THE PLAN AND SUMMARY  
TREATMENT OF CLAIMS AND INTERESTS**

The following table briefly summarizes the specific classification and treatment of Claims and Equity Interests under the Plan.



SUMMARY OF CLASSIFICATION AND TREATMENT  
OF CLAIMS AND EQUITY INTERESTS UNDER THE PLAN

Unclassified Claims

As provided in the Plan, Administrative Claims, Priority Tax Claims, Professional Fee Claims and Other Unclassified Claims have not been classified and are excluded from the following Classes in accordance with section 1123(a)(1) of the Bankruptcy Code:

<u>Class</u>	<u>Type of Claim or Equity Interest</u>	<u>Treatment</u>	<u>Estimated Claim Amount (By Class)</u>	<u>Estimated Recovery</u>
1	Other Priority Claims	Unimpaired; 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 Debtor and the Secured Lender or (B) such lesser amount as the holder of such Allowed Other Priority Claim, the Debtor and the Secured Lender might otherwise agree.	\$0	100%
2	Governmental Authority Lien Claims	Unimpaired; 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 the holder of such Allowed Governmental Authority Lien Claim and the Debtor 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, the Debtor and the Secured Lender. .	\$250,000	100%
3	Senior Lender Claim	Impaired; On the Effective Date, on account of the Senior Lender's Allowed Secured Claim, (i) the Debtor shall transfer and convey to the Buyer Designee, in accordance with the instructions of the Secured Lender, and the terms and conditions set forth in the Plan, (a) title to the Property, free and clear of all Claims, Liens, charges, interests and encumbrances other than the Permitted Exceptions without recourse to the Debtor, and (b) any Cash of the Debtor; (ii) the Debtor shall execute transfer,	\$14.5 million	96%

conveyance and assignment documents in favor of the Secured Lender as provided of in the Settlement Agreement, including an assumption of the Debtor’s rights, title and interest in any pending or future tax certiorari proceeding; (iii) the New York City Litigation Claim shall be deemed transferred from the Debtor to the Secured Lender; and (iv) the Secured Lender shall fund the Plan Funding Account.

On the Effective Date, the Secured Lender shall waive its right to a Distribution under the Plan on account of its Unsecured Deficiency Claim against Debtor but shall retain the right to vote to accept or reject the Plan on account of its Unsecured Deficiency Claim.

4	General Unsecured Claims	Impaired; Each holder of an Allowed General Unsecured Claim shall receive on the Effective Date, or as soon as practicable thereafter, its Pro Rata Share of Cash from the \$100,000 Plan Funding Account.	\$750,000	13.5%
5	Equity Interests	On the Effective Date, Equity Interests in the Debtor shall be cancelled and the holders thereof shall receive no Distribution under the Plan on account of such Equity Interests. The holders of Equity Interests shall be deemed to have rejected the Plan.	N/A	0%

**III.  
OVERVIEW OF CHAPTER 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of interested parties including its creditors and equity interest holders. In addition to permitting rehabilitation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and equity interest holders with respect to the distribution of a debtor’s assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.” The consummation of a plan of reorganization is the principal objective

of a chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in the debtor. Confirmation of a plan by the bankruptcy court makes the plan binding upon a debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the confirmation order discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

After a plan has been filed, the holders of claims against or interests in a debtor are generally permitted to vote to accept or reject the plan. Before soliciting acceptances of the proposed plan, however, section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. The Debtor and the Secured Lender are submitting this Disclosure Statement to holders of Claims against the Debtor and the Debtor's Equity Holders to satisfy the requirements of section 1125 of the Bankruptcy Code.

#### **IV. DESCRIPTION OF THE DEBTOR'S BUSINESS**

##### **A. Background**

The Debtor is in the business of developing the property commonly known as 2279-2283 Third Avenue, New York, New York 10035 consisting of real property located at 2283 Third Avenue, New York, NY 10035 and the condominium units located at 2279 Third avenue, new York, NY 10035 (collectively, the "Property"). In connection with obtaining financing to construct the Property, the Debtor entered into a Construction Loan Note dated May 8, 20006, as amended from time to time, in the original principal amount of \$11,578,986.51, that certain

Supplemental Construction Loan Note dated April 3, 2009, as may be amended from time to time, in the original principal amount of \$1,180,222.00 and that certain Project Loan Note dated May 8, 2006, as amended from time to time, in the original principal amount of \$2,417,096.14 (collectively, the “Senior Notes”) from the Debtor to TD Bank, N.A., successor by merger to Commerce Bank, N.A. as senior predecessor lender, which Senior Notes were subsequently assigned to the Senior Lender. The Debtor also executed a mortgage (the “Mortgage; collectively with the Senior Notes, the “Loan Documents”)”) in favor of TD Bank, which mortgage was also duly assigned to the Senior Lender prior to Petition Date.

Debtor’s Default Under the Senior Notes

The Debtor failed to make payments required under the Senior Notes, and the Senior Lender had and continues to have the right to exercise immediately its rights and remedies under the Loan Documents.

On August 2, 2011, the Senior Lender commenced a foreclosure action against the Debtor and certain other defendants to foreclose on the Mortgage, in the New York Supreme Court, New York County (the “State Court”) under index number 810241/2011 (the “Foreclosure Action”). In the Foreclosure Action the State Court entered an *ex parte* order (the “Receiver Order”) appointing Steven Weiss as Receiver (the “Receiver”) of the Property.

The total principal balance due under the Senior Notes as of June 20, 2013 is \$14,513,293.56, plus interest, fees, costs and expenses continuing to accrue thereon (the “**Additional Sums**” and together with the outstanding principal balance due under the Notes, the “**Obligations**”).

**V.**  
**THE CHAPTER 11 CASE**

**A. Motions and Orders**

*First Day Motions.* No “first day” motions were filed on or close to the Petition Date in the Chapter 11 Case. On the Petition Date, the Debtor filed a motion filed for the joint administration of the Debtor’s case with that of its parent corporation, 2279-2283 Third Avenue Development Corp. and an order authorizing the joint administration was entered on August 16, 2012. The parent’s Chapter 11 case is a “no asset” case and will be dismissed upon confirmation of the Plan.

*Retention of Counsel.* On the Petition Date, the Debtor filed an application seeking to employ Rattet Pasternak, LLP as its attorneys (the “Retention Motion”). An order approving such retention nunc pro tunc as of the Petition Date was entered on January 29, 2013. On January 29, 2013, the Court also entered an order authorizing the Debtor to retain DelBello Donnellan Weingarten Wise & Wiederkehr, LLP as substitute counsel for the Rattet firm.

*The Bar Date Application.* On August 24, 2012, the Court entered an order establishing a deadline of October 4, 2012 for creditors to file proofs of claims.

**B. No Official Committee of Unsecured Creditors**

No official committee of unsecured creditors has been appointed in the Chapter 11 Case.

**C. Disclosure Statement/Plan Confirmation Hearings**

The Plan Proponents have moved this Court for an order, to be entered immediately prior to an order confirming the Plan, approving this Disclosure Statement as containing "adequate information" to enable a hypothetical, reasonable investor typical of the Holders of Claims in classes eligible to vote on the Plan to make an informed judgment as to whether to accept or

reject the Plan. A hearing to consider the adequacy of this Disclosure Statement is scheduled for July \_\_, 2013.

## **VI.**

### **SUMMARY OF THE PLAN OF REORGANIZATION**

#### **A. Introduction**

The Proponents believe that confirmation of the Plan provides the best opportunity for maximizing recoveries for the Debtor's creditors. The Plan provides that the Secured Lender will fund all Distributions to be made thereunder. Absent such funding, there would be no Cash or other assets of the Debtor to make Distributions to creditors other than to the Secured Lender. Thus, the Proponents believe, and will demonstrate to the Court, that the Debtor's creditors will receive substantially less in a hypothetical liquidation under chapter 7 of the Bankruptcy Code than they would under the Plan. The following is a summary of the Plan. The Plan is attached as Exhibit A to this Disclosure Statement. The terms of the Plan govern in the event of any discrepancies with the following discussion.

#### **B. Classification and Treatment of Administrative Expense Claims, Claims and Equity Interests Under the Plan**

Only administrative expenses, claims and equity interests that are "allowed" may receive distributions under a chapter 11 plan. An "allowed" administrative expense, claim or equity interest simply means that a debtor agrees, or in the event of a dispute, that the court determines, that the administrative expense, claim or equity interest, including the amount, is in fact a valid obligation of, or interest in, a debtor. Section 502(a) of the Bankruptcy Code provides that a timely-filed administrative expense, claim or equity interest is automatically "allowed" unless a debtor or another party in interest objects.

The Bankruptcy Code also requires that, for purposes of treatment and voting, a chapter 11 plan divide the different claims against, and equity interests in a debtor, into separate classes based upon the legal rights and obligations attached to the claim or interest. Substantially similar claims are usually but not necessarily, classified together, as are equity interests of a substantially similar legal nature. Because an entity may hold multiple claims and/or equity interests which give rise to different legal rights, the holders of such claims and/or equity interests may find themselves members of multiple classes of claims and/or equity interests. As a result, under the Plan, for example, a creditor that holds a Claim based on an unsecured Claim as well as equity in the Debtor would have its Claim classified in Class 4 and its Equity Interest classified in Class 5. To the extent of this holder's Claim, the holder would be entitled to the voting and treatment rights that the Plan provides with respect to Class 4 and, to the extent of the holder's Equity Interest, the voting and treatment rights that the Plan provides with respect to Class 5.

Under a chapter 11 plan, the separate classes of claims and equity interests must be designated either as "impaired" (altered by the plan in any way) or "unimpaired" (unaltered by the plan). If a class of claims is "impaired," the Bankruptcy Code affords certain rights to the holders of such claims, such as the right to vote on the plan (unless the plan provides for no distribution to the holder, in which case, the holder is deemed to reject the plan), and the right to receive an amount under the chapter 11 plan that is not less than the value that the holder would receive if the debtor were liquidated under chapter 7.

Under section 1124 of the Bankruptcy Code, a class of claims or interests is "impaired" unless, with respect to each claim or interest of such class, the plan (i) does not alter the legal, equitable and contractual rights of the holders of such claims or interests or; (ii) irrespective of the holder's right to receive accelerated payment of such claims or interests after the occurrence

of a default, cures all defaults (other than those arising from, among other things, the debtor's insolvency or the commencement of a bankruptcy case), reinstates the maturity of the claims or interests in the class, compensates the holders of such claims or interests for any damages incurred as a result of their reasonable reliance upon any acceleration rights and does not otherwise alter their legal, equitable or contractual rights. Typically, this means that the holder of an unimpaired claim will receive on the later of the effective date of the plan of reorganization or the date on which amounts owing are due and payable, payment in full, in cash, with post-petition interest to the extent permitted and provided under the governing agreement between the parties (or, if there is no agreement, under applicable non-bankruptcy law), and the remainder of the debtor's obligations, if any, will be performed as they come due in accordance with their terms. Thus, other than its right to accelerate the debtor's obligations, the holder of an unimpaired claim will be placed in the position it would have been in had the debtor's case not been commenced.

Consistent with these requirements, the Plan divides the Claims against, and Equity Interests in, the Debtor into the following Classes:

Unclassified	Administrative Expense Claims	Paid in full
Unclassified	Priority Tax Claims	Paid in full
Unclassified	Professional Fee Claims	Paid in full
Unclassified	Other Unclassified Claims	Paid in full
Class 1	Other Priority Claims	Unimpaired
Class 2	Governmental Authority Lien Claims	Unimpaired
Class 3	Secured Lender Claim	Impaired



Class 4	General Unsecured Claims	Impaired
Class 5	Equity Interests	Impaired

For purposes of computing Distributions under the Plan, Allowed Claims do not include post-petition interest unless otherwise specified in the Plan.

**1. Unclassified—Administrative Claims**

Administrative Claims are Claims constituting costs or expenses of administration of the Chapter 11 Case. Such Claims include any actual and necessary costs and expenses of preserving the Debtor's estate, any indebtedness or obligations incurred or assumed by the Debtor in connection with the conduct of its business, all compensation and reimbursement of expenses to the extent Allowed by the Court under the Bankruptcy Code and any fees or charges assessed against the Debtor's estate owed to the office of the U.S. Trustee.

Pursuant to the Plan, 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 Debtor) 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 and 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 Debtor and the Secured Lender might otherwise agree; provided, however, that all Administrative Claims incurred in the ordinary course of the Debtor's business during the Chapter 11 Case shall be paid in the ordinary course of the Debtor's business. Notwithstanding the foregoing, the Statutory Fees shall be paid in Cash as soon as practicable after the Effective Date.

Unless otherwise ordered by the Bankruptcy Court, requests for payment of Administrative Claims (except for Professional Fee Claims) must be filed and served on each of the Proponents' counsel, no later than thirty (30) days after the Confirmation 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 the Plan on account thereof. Objections to requests for payment of Administrative Claims (except for Professional Fee Claims) must be filed and served on the Proponents' respective counsel, and the party requesting payment of an Administrative Claim within thirty (30) days as after the filing of such request for payment. The Debtor believes there are no such Claims.

**2. Unclassified—Priority Tax Claims.**

Priority Tax Claims are Claims for taxes against the Debtor entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code. Except as provided otherwise in the Plan, 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 Priority Tax Claim; or (b) upon such other terms as may be agreed upon by the holder of such Allowed Claim and the Secured Lender. The Debtor believes such claims do not exceed \$5,000 in the aggregate.

**3. Unclassified-- Professional Fee Claims**

Professionals are Persons employed pursuant to an order of the Bankruptcy Court in accordance with sections 327, 328, or 1103 of the Bankruptcy Code or otherwise and to be compensated for services rendered prior to the Effective Date pursuant to sections 327, 328, 329, 330 and/or 331 of the Bankruptcy Code. Professionals in this Chapter 11 Case consist only of

Rattet Pasternak, LLP. Professional Fee Claims are Claims for fees and expenses claimed by a Professional Person pursuant to sections 330, 331 or 503 of the Bankruptcy Code, and unpaid as of the Effective Date, but not including any subrogation or contribution Claim arising from any Person's payment of any fees and expenses to a Professional Person.

Pursuant to the Plan, unless otherwise ordered by the Bankruptcy Court and subject to notice and a hearing under section 330 of the Bankruptcy Code, requests for payment of Professional Fee Claims incurred through the Effective Date must be filed and served on counsel to each of the Proponents no later than twenty (20) days after the Confirmation Date (the "Professional Fee Claim Bar Date"). The day prior to the Confirmation Date, each Professional shall provide each of the Proponents 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.

Under the Plan, each holder of an Allowed Professional Fee Claim shall receive 100% of the unpaid amount of such Allowed Professional Fee Claim in Cash after such Professional Fee Claim becomes an Allowed Professional Fee Claim provided, however, that the aggregate Distributions on account of Allowed Professional Fee Claims shall not exceed \$50,000. In the event that aggregate Professional Fee Claims exceed \$50,000, then the holder of the Allowed Professional Fee Claims shall receive their Pro Rata Share of \$50,000. Rattet Pasternak, LLP and DelBello Donnellan et al. have agreed to cap their aggregate unpaid Professional Fee Claims at \$50,000 and there are no other Professionals in this Chapter 11 Case.

#### **4. Unclassified—Other Unclassified Claims**

The does not believe that any other unclassified claims exist in this Chapter 11 Case. However, to the extent that there are any Allowed Claims which are not classified in the Plan and

which are not Administrative Claims, Priority Tax Claims or Professional Fee Claims, such Claims shall be paid in Cash in full as soon as practicable after the later of (i) the Effective Date and (ii) the date on which such Claim becomes an Allowed Claim.

**5. Class 1—Other Priority Claims (Unimpaired; therefore, deemed to have accepted the Plan and not entitled to vote)**

Other Priority Claims consist of Claims against the Debtor 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.

Under the Plan, 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 Debtor and the Secured Lender or (b) such lesser amount as the holder of such Allowed Other Priority Claim, the Debtor and the Secured Lender 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 the Plan. The Debtor believes there are no such Claims.

**6. Class 2—Government Authority Lien Claims (Unimpaired; therefore, deemed to have accepted the Plan and not entitled to vote)**

Governmental Authority Lien Claims are Secured Claims of any governmental taxing authorities including, without limitation, the New York City Department of Finance, New York State Environmental Control Board or other local state or local authority, whose liens against the Property arise by operation of law.

Under the Plan, 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 the holder of such Allowed Governmental Authority Lien Claim and the Debtor 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 the Secured Lender. 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 the Plan. Class 2 Claims aggregate the approximate amount of \$250,000.

**7. Class 3—the Senior Lender Claim (Impaired; therefore, entitled to vote to accept or reject the Plan)**

Under the Plan, The Senior Lender shall have an Allowed Claim in the amount of no less than \$14,513,293.56, plus fees, costs and expenses, as of June 20, 2013, which Claim shall be an Allowed Secured Claim equal to the value of the Property which is approximately \$14 million.

On the Effective Date, on account of the Senior Lender's Allowed Secured Claim, (a) the Debtor shall transfer and convey (the "Property Transfer") to the Buyer Designee, in accordance with the instructions of the Senior Lender and Article V of the Plan title to the Property, free and clear of all Claims, Liens, charges, interests and encumbrances other than the Permitted Exceptions without recourse to the Debtor; (b) the Debtor shall execute transfer, conveyance and assignment documents in favor of the Senior Lender as provided of in the Settlement Agreement, including an assumption of the Debtor's rights, title and interest in any pending or future tax certiorari proceeding; and (c) the Senior Lender shall fund the Plan Funding Account.

The Senior Lender shall waive its right to a Distribution under the Plan on account of its Class 4 Unsecured Deficiency Claim against Debtor in the amount of approximately \$513,293.56 but not its right to vote to accept or reject the Plan on account of such Claim.

This Class is impaired and, therefore, the Secured Lender is entitled to vote on the Plan.

Nothing contained in this section or the 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 Designee shall acquire the Property subject to the same. The Property Transfer will not be set aside due to any error in the description thereof.

**8. Class 4— General Unsecured Claims (Impaired; therefore, entitled to vote to accept or reject the Plan)**

General Unsecured Claims are unsecured, non-priority Claims that are not Administrative Claims, Priority Tax Claims, Other Priority Claims, Professional Fee Claims or Secured Claims.

Under the Plan, each holder of an Allowed General Unsecured Claim shall receive on the Effective Date, or as soon as practicable thereafter, its Pro Rata Share of \$100,000 in Cash from the Plan Funding Account. This Class is impaired and, therefore, the holders of Claims in this Class, including the Secured Lender on account of its Unsecured Deficiency Claim, are entitled to vote. Class 4 Allowed Claims aggregate approximately \$750,000.

**9. Class 5—Equity Interests (Impaired; deemed to have rejected the Plan)**

Equity Interests consist of the legal, equitable, contractual or other rights of any Person with respect to any capital stock, membership interest or other ownership interest in the Debtor, whether or not transferable, and any option, warrant or right to purchase, sell, subscribe for, or otherwise acquire or receive an ownership interest or other equity security in the Debtor.

Under the Plan, on the Effective Date, Equity Interests in the Debtor shall be cancelled and the holders thereof shall receive no Distribution under the Plan on account of such Equity Interests. The holders of Equity Interests shall be deemed to have rejected the Plan.

**C. Provisions Regarding Corporate Governance and Management of the Debtor Post-Confirmation**

1. **Post-confirmation Management of Debtor.** Following the Effective Date and the transfer of all of the Property to the Buyer Designee, Waldman shall serve as sole manager of the Debtor for which he will receive no compensation.

2. **Corporate Action.** Upon the entry of the Confirmation Order, all matters provided under the Plan involving the corporate structure of the Debtor shall be deemed authorized and approved without any requirement of further action by the Debtor, the Debtor's shareholders and/or members, or the Debtor's boards of directors, managers, and/or managing members.

**D. Means for Implementation of the Plan**

1. **Funding of Plan Funding Account.** The Plan Funding Account is an account to be established on the Effective Date and administered by the Disbursing Agent. The Plan Funding Account will be funded by the Senior Lender and the funds therein shall be earmarked to make Distributions as follows: (i) \$50,000 for Distributions on account of unpaid Allowed Professional Fee Claims; (ii) \$100,000 for all Distributions on account of Allowed General Unsecured Claims; (iii) an amount sufficient to make Distributions on account of Allowed Administrative Claims (other than Allowed Professional Fee Claims), if any; (iv) an amount sufficient to make Distributions on account of Allowed Priority Tax Claims, if any; (v) an amount sufficient to make Distributions on account of Allowed Other Unclassified Claims, if

any; (vi) an amount sufficient to make Distributions on account of Allowed Other Priority Claims, if any; (vii) an amount sufficient to make Distributions on account of Allowed Governmental Authority Lien Claims, if any; (viii) an amount sufficient to make Allowed Receivership Claims, if any; and (ix) an amount sufficient to pay Statutory Fees. After its initial funding of the Plan Funding Account on the Effective Date, the Senior Lender shall not be required to make any further contributions to the Plan Funding Account.

2. **Transfer of Title to Property.** On the Effective Date, the Debtor shall irrevocably transfer, assign and convey, by the Deed, to the Buyer Designee, all of its right, title and interest in and to the Property free and clear of any and all liens, claims, security interests, encumbrances, rights or interests of any kind or nature whatsoever, including any liability for any local, federal or state stamp or similar tax, other than any Permitted Encumbrances. At the option of the Secured Lender, the Property shall be irrevocably transferred, assigned and conveyed to the Buyer Designee subject to the indebtedness evidenced by the loan documents in connection with the Loan. The transfer, assignment and conveyance of the Property to the Buyer Designee shall be approved by the Bankruptcy Court as an absolute and irrevocable sale of the Property which the Debtor has made to the Buyer Designee for fair consideration and reasonably equivalent value. Notwithstanding the appointment of the Receiver, on the Effective Date, the Debtor, each of its members and their respective constituent general partners and limited partners, if any, and all agents, employees and affiliates of the Debtor shall have relinquished and surrendered full management and control of the Property to the Buyer Designee. From and after the Effective Date, Buyer Designee shall be vested with ownership, management and control of the Property; and the Debtor, each of its members, general and limited partners, if any, and all



agents, employees and affiliates of the Debtor shall have no further right, title and/or interest in and to the Property.

**3. Deliveries at Closing.** The Debtor, or to the extent not in possession of the Debtor, Waldman, the Receiver and/or the Property Manager, shall deliver to the Buyer Designee on the Effective Date the following:

- i. The Deed (substantially in the form annexed as an exhibit to the supplement to the Plan to be filed no later than ten (10) days prior to the Confirmation Hearing), conveying the Property to the Buyer Designee as provided in the Plan. The Deed shall be duly executed and acknowledged by the Debtor and the Buyer Designee and shall be in form for recording.
- ii. Any tax return required in connection with any New York City Real Property Transfer Tax, New York State Real Estate Transfer Tax, and any other transfer taxes payable by reason of the conveyance of the Property by the Debtor to the Buyer Designee. Each such tax return shall be duly executed by the Debtor and Buyer Designee and acknowledged, sworn to or affirmed by the Debtor and the Buyer Designee before a notary public, where appropriate.
- iii. A bill of sale, conveying and transferring to the Buyer Designee all right, title and interest of the Debtor, if any, in and to all articles of personal property that are included in this sale pursuant to the Plan, executed by the Debtor, in a form reasonably acceptable to the Secured Lender and/or the Buyer Designee.
- iv. A Real Property Transfer Report (Form RP-5217NYC) in proper form for submission (the "Transfer Report"). The Transfer Report shall be duly executed by the Debtor and the Buyer Designee.
- v. A certification of non-foreign status, duly signed by the Debtor, in the form required by Section 1445 of the Internal Revenue Code and the regulations promulgated thereunder.
- vi. Such instruments, agreements or other documents as may be necessary or convenient in order to effectuate any of the provisions of the Plan, or requested by the Secured Lender or Buyer Designee or the title company insuring the Buyer Designee's title to consummate the transactions contemplated herein, or to confirm any of the provisions of the Plan, which shall be executed and, if and to the extent appropriate or required, acknowledged or sworn to or affirmed by the Debtor before a notary public.
- vii. Any transferable certificates, licenses, permits, authorizations and approvals issued for or with respect to the Property by governmental and quasi-governmental authorities having jurisdiction.

- viii. All keys or key cards and alarm codes to, and all combinations to, any locks on, all entrance doors to, and any equipment and utility rooms located in, the Property, if any, appropriately tagged for identification.
- ix. An affidavit of compliance with smoke detector/alarm installation.
- x. Any construction warranties, construction plans, as-built plans, and any other documents relating to the construction of the Property.

**4. Execution of Documents.** On the Effective Date, the Debtor, 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 the Plan.

**5. 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 the Plan, and any and all notices of satisfaction, release or discharge or assignment of any Lien, Claim or encumbrance not expressly preserved by the Plan.

**6. Manner of Payment.** Any payment of Cash made under the Plan may be made either by check drawn on a domestic bank, by wire transfer, or by automated clearing house transfer from a domestic bank, at the option of the Disbursing Agent.

**7. Tax and Withholding Requirements.** The Disbursing Agent, in making Distributions under the Plan, shall comply with applicable tax withholding and reporting requirements imposed by any governmental unit, and all Distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. The Disbursing Agent may withhold the entire Distribution due to any holder of an Allowed Claim until such time as such holder provides the Disbursing Agent with the necessary information to comply with any reporting and withholding requirements of any governmental unit. Any funds so withheld will

then be paid by the Disbursing Agent to the appropriate authority. If the holder of an Allowed Claim fails to provide to the Disbursing Agent the information necessary to comply with any reporting and withholding requirements of any governmental unit within thirty (30) days from the date of first notification by the Disbursing Agent to the holder of such Allowed Claim about the need for such information or for the Cash necessary to comply with any applicable withholding requirements, then such holder's Distribution shall be treated as unclaimed property in accordance with section 7.7 of the Plan.

**8. Rights and Obligations of the Disbursing Agent**

(a) Powers of the Disbursing Agent. The Disbursing Agent shall be empowered to (i) take all steps and execute all instruments and documents necessary to effectuate the disbursements to be made under the Plan; (ii) make Distributions contemplated by the Plan; (iii) comply with the Plan and the obligations thereunder; (iv) employ, retain, or replace professionals to represent it with respect to its responsibilities; and (v) exercise such other powers as may be vested in it pursuant to order of the Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

(b) Duties of the Disbursing Agent. The Disbursing Agent shall have the duties of carrying out the disbursements under the Plan, which shall include taking or not taking any action which the Disbursing Agent deems to be in furtherance thereof, including, from the date of its appointment, making payments and conveyances and effecting other transfers necessary in furtherance of the Plan. After the Confirmation Date, the Disbursing Agent (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 Debtor's Chapter 11 Case is 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 Case.

**E. Releases**

**1. Releases by the Debtor. 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 the Released Parties to the Effective Date and effective as of the Effective Date, the Released Parties are deemed released and discharged by the Debtor and its Estate from any and all direct, indirect or derivative claims, obligations, rights, suits, judgments, 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 Estate, 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 the 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 Debtor, the Chapter 11 Case, the Plan, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest of the Released Parties that is treated in the Plan, the business or contractual arrangements between the Debtor, on the one hand, and any Released Party, on the other hand, the negotiation, formulation, or preparation of the 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 that constitutes willful misconduct or gross negligence; provided, however, that nothing in this section or in the Plan shall be deemed to release any Released 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 11.16 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, 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 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.**

**2. Injunction. On the Effective Date, the 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 or subrogating, 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 Debtor and its Estate to the Released Parties pursuant to the Plan. The Confirmation Order shall specifically provide for such injunction. The releases and injunctions granted in favor of the Released Parties are integral parts of the Plan and are necessary to confirm the Plan.**

**F. Distributions Under the Plan**

**1. Distributions for Claims Allowed as of the Effective Date.** Except as otherwise provided in the Plan 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 the 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 the Plan on a day other than a Business Day shall be made on the next succeeding Business Day. The Disbursing Agent shall make all Distributions required to be made under the Plan.

**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 Debtor or its agents, unless the Debtor has 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. The Debtor shall notify the Disbursing Agent of any such change of address.

3. **Reserves for Administrative, Priority Tax and Other Priority Claims.** On the Effective Date, or as soon as practicable thereafter, the Disbursing Agent shall establish and maintain a reserve from 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 Debtor and/or the Secured Lender, (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 Debtor and the Secured Lender 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 Claim Reserve”). Any such funds shall be maintained by the Disbursing Agent in an account 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 Disbursing Agent 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 the Plan, shall be released and distributed promptly to the Secured Lender. 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 the Secured Lender).

4. **Reserves for Disputed Claims.** On the Effective Date, or as soon as practicable thereafter, the Disbursing Agent shall establish and maintain a reserve from Cash in the Plan Funding Account for all Disputed Classified Claims, including any Disputed Rejection Damage Claims. For purposes of establishing a reserve for Disputed Classified Claims, Cash will be set aside in an amount equal to the amount that would have been distributed to the holders of Disputed Classified Claims had their 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 Debtor and/or the Senior Lender. Any such funds shall be maintained by the Disbursing Agent in an account at an authorized bank depository in the Southern District of New York. With respect to such Disputed Classified Claims, if, when, and to the extent any such Disputed Classified Claim becomes an Allowed Claim by Final Order, the relevant portion of the Cash held in reserve therefor shall be distributed by the Disbursing Agent to the Claimant on the first business day following the end of the calendar month in which the Disputed Claim becomes an Allowed Claim (or earlier in the discretion of the Debtor and the Secured Lender) and in a manner thereafter consistent with distributions to similarly situated Allowed Claims. The balance of such Cash, if any, remaining in the reserve from Disputed Classified Claims after all such Disputed Claims have been resolved and distributions made in accordance with the Plan, shall be released and distributed promptly to the Secured Lender. 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 the Secured Lender). The Debtor or the Secured Lender 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.

5. **Claims Objection Deadline.** Objections to Claims shall be filed no later than thirty (30) days after the later of (i) the Effective 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 Debtor or Disbursing Agent and the Secured Lender, without notice or hearing, for up to an additional ninety (90) days thereafter.

6. **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 in an amount less than \$75,000 may be settled 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, provided, however, that the Secured Lender consents in writing to such settlement.

7. **Unclaimed Property.** If any Distribution remains unclaimed for a period of one hundred and twenty (120) days after it has been delivered (or attempted to be delivered) in accordance with the 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 the Disbursing Agent to be distributed to the Secured Lender as soon as reasonably practicable.

**8. Set-Offs.** The Debtor may, but shall not be required to, set-off against the distributions to be made pursuant to the Plan the claims, obligations, rights, causes of action and liabilities of any nature that the Debtor may hold against the holder of an Allowed Claim, other than the Secured Lender; provided, however, that in the event the Debtor intends to set-off against the holder of an Allowed Claim distributions to be made under the Plan, the Debtor shall notify such holder in writing within thirty (30) days of the Effective Date and such holder shall have twenty-one (21) days to file (and serve on counsel to the Debtor) 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 an Set-Off Objection will be deemed to have assented to, and will forever be barred from contesting any such set-off.

**9. Release of Liens.** On the Effective Date and except as expressly set forth in the Plan, all mortgages, deeds of trust, Liens or other security interest or encumbrances against the Property 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 Designee and its’ successors and assigns.

**10. Fractional Cents.** Any other provisions of the 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.

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

**G. Unexpired Leases and Executory Contracts**

**1. Assumption and Rejection of Agreements.**

(a) 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, or (ii) not designated prior to the Confirmation Date by the Secured Lender as pre-petition leases or executory contracts to be assumed by the Debtor and assigned to the Buyer Designee, shall be deemed rejected by the Debtor.

(b) The pre-petition leases and executory contracts set forth on Exhibit A to the Plan, if any, shall be deemed assumed by the Debtor (the "Exhibit A Agreements"); subject, however to the payment of amounts necessary to cure the monetary default under such leases or executory contracts (as to each agreement the "Cure Amount") and shall be simultaneously assigned to the Buyer Designee on the Effective Date.

(c) All counterparties to Exhibit A Agreements shall file with the Bankruptcy Court, and serve on the Debtor and the Secured Lender, objections, if any, to the Debtor's assumption and assignment to the Buyer Designee of their respective leases or executory contracts, and include herein such objections any dispute as to the amount asserted by the Debtor in Exhibit A to the Plan as the Cure Amount. Such objection shall be filed not later than seven (7) days subsequent to the Confirmation Date. Any undisputed Cure Amounts ("Undisputed Cure Amounts") shall be paid as soon as practicable following

the Effective Date of the 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.

(d) Notwithstanding anything to the contrary contained in section 8.1 of the Plan, the Buyer Designee and the Secured Lender shall have the right to designate for rejection instead of assumption any executory contract within 10 days following the entry of a Final Order fixing the Disputed Cure Amounts for such contract, in which case such contract shall be deemed to have been rejected as of the Confirmation Date.

**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 Debtor shall be treated as General Unsecured Claims, for purposes of distribution pursuant to the 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 the Plan) shall automatically be disallowed as a late filed Claim, without any action by the Debtor, and the holder of such Claim shall be forever barred from asserting such Claim against the Debtor, its Estate, or property of its Estate.

**H. Conditions to Confirmation and the Effective Date**

**1. Conditions to Confirmation of the Plan.** The Plan shall not be confirmed unless and until the following conditions have been satisfied in full or waived by the Secured Lender.

(a) The Confirmation Order is in form and substance satisfactory to the Senior Lender, and such order shall approve all provisions, terms and conditions of the Plan,

including but not limited to, the Property Transfer by the 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

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

**2. Conditions to Effectiveness of the Plan.** The Plan shall not become effective unless:

(a) The Confirmation Order is a Final Order and is not subject to any stay or injunction;

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

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

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

**I. Retention of Jurisdiction**

**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 the Plan have been made and performed by the Debtor, the Disbursing Agent or the Secured Lender, 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 Debtor upon objection by the Debtor or the Secured Lender;

(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 the Plan or its execution or implementation by any Person, to construe and to take any other action to enforce and execute the Plan, the Confirmation Order, or any other order of the Bankruptcy Court, to issue such orders as may be necessary for the implementation, executions, performance and consummation of the Plan and all matters referred to herein, and to determine all matters that may be pending before the Bankruptcy Court in the Chapter 11 Case 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 Professional for periods before the Effective Date, and objections thereto, as provided for the in the 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 the Plan and/or Confirmation Order and the making of Distributions under the Plan and/or Confirmation Order.

(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 Case by or on behalf of the Debtor.

(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 the Plan under section 1127 of the Bankruptcy Code, remedy any defect, cure any omission, or reconcile any inconsistency in the 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 the 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 the Property. To protect the Property of the Debtor from adverse Claims or Liens or interference inconsistent with the Plan, including to hear actions to quiet or otherwise clear title to the Property based upon the terms and provisions of the Plan;

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

(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.

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

**J. Miscellaneous Provisions**

1. **Pre-Confirmation Modification.** On notice to and opportunity to be heard by the United States Trustee, the Plan may be altered, amended or modified by the Secured Lender before the Confirmation Date as provided in section 1127 of the Bankruptcy Code.

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 Secured Lender, insofar as it does not materially and adversely affect the interests of holders of Claims, may correct any defect, omission or inconsistency in the Plan in such manner and to such extent as may be necessary to expedite consummation of the Plan.

3. **Post-Confirmation Material Modification.** The Plan may be altered or amended after the Confirmation Date by the Secured Lender 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.

4. **Withdrawal or Revocation of the Plan.** If the Debtor and the Secured Lender jointly revoke or withdraw the Plan, or if the Secured Lender revokes or withdraws the Plan, or if confirmation or consummation of the Plan does not occur, then (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the 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 the Plan shall terminate and be of no further force or effect, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan shall constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor



or any other Person, or prejudice in any manner the rights of any other Person. Notwithstanding anything to the contrary herein, the Debtor shall not be permitted to withdraw the Plan without the express written consent of the Secured Lender.

**5. Payment of Statutory Fees.** The Disbursing Agent shall pay from the Plan Funding Account all fees payable due as of the Effective Date pursuant to section 1930 of Title 28 of the United States Code. Thereafter, the Disbursing Agent shall pay from the Plan Funding Account all United States Trustee quarterly fees under 28 U.S.C. Section 1930(a)(6), plus interest due under 31 U.S.C. Section 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 Case, dismissal of the Chapter 11 Case, or conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code.

**6. Successors and Assigns.** The rights, benefits and obligations of any Person or Entity named or referred to in the 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.

**7. Exculpation. On the Effective Date, other than such liabilities and obligations otherwise assumed or provided hereunder or under the Settlement Agreement, (a) the Debtor, and its direct and indirect parents, subsidiaries and affiliates, together with each of its shareholders, members, managers, general partners, limited partners, officer, directors, employees, agents, representatives, attorneys and advisors or consultants (solely in their capacities as such) and (b) the Released Parties, and all of their respective direct and indirect parents and subsidiaries, together with each of their respective 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 the Released Parties shall be deemed released by all holders of Claims and Equity Interests 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 Property and the ownership thereof, including, without limitation, any act or omission occurring during or relating to the Chapter 11 Case, commencement of the Chapter 11 Case, the solicitation of acceptances of this Plan, the Disclosure Statement, the pursuit of approval of the Disclosure Statement, the pursuit of confirmation of the Plan, the consummation of the Plan or the administration of the Plan or the property to be distributed under the 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 the Plan and under the Bankruptcy Code.

8. **Confirmation Injunction.** Other than such liabilities and obligations otherwise assumed or provided in the Plan, and as set forth in the Confirmation Order, (a) the rights afforded under the Plan 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 Debtor or any of its assets and properties, (b) on the Effective Date, all such Claims against the Debtor shall 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 Debtor, its 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.

**9. 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 the Plan, the provisions of the 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 the 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 for (a) the Debtor and its Estate, including, without limitation any Person or Entity seeking to exercise a right in a derivative capacity on behalf of the Estate, and (b) the Released Parties, and the Bankruptcy Court's finding that such compromise or settlement is in the best interests of the Debtor, its Estates, its 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 Debtor and its Estates as set forth herein shall include any potential avoidance actions accruing to the Debtor or its Estates, which shall not be pursued.

**10. Preservation of Insurance.** The Plan shall not diminish or impair the enforceability of any insurance policy, right or claim that may cover Claims against the Debtor (including, without limitation, its members, managers or officers) or any other persons or entity.

Likewise, the 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 Debtor or the carries.

**11. Cramdown.** The Proponents reserve the right to request confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class of Claims or Equity Interests that rejects, or is deemed to have rejected, the Plan.

**12. Filing of Additional Documents.** Except as otherwise provided in the Plan, on or before the Effective Date, the Debtor 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 the Plan, and the Debtor shall be responsible for the preparation and filing of any reports necessary until entry of a final decree.

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

**14. Notices.** Any notice required or permitted to be provided under the 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 Debtor: Michael F. Waldman  
29 Wildwood Drive  
Wilton, CT 06897  
Email: mwaldman@northmanhattanconst.com

With a copy: Jonathan S. Pasternak, Esq.  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One N. Lexington Avenue  
White Plains, NY 10601  
Email: jpasternak@ddw-law.com

If to the Secured Lender: Alan Leavitt  
c/o Lane Capital  
1250 Broadway, Suite 1203  
New York, NY 10001  
Tel: 212-444-9020  
Email: aleavitt@lanecp.com

With a copy to:  
Fox Rothschild LLP  
100 Park Avenue, Suite 1500  
New York, NY 10017  
Attention: Yann Geron, Esq.  
Tel: 212-878-7900  
Email: ygeron@foxrothschild.com

**15. Saturday, Sunday or Legal Holiday.** If any payment or act under the 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.

**16. Exemption from Transfer Taxes.**

(a) The principal purpose of the Plan is to effectuate a consensual resolution of all disputes between the parties and to facilitate a distribution to creditors who would otherwise remain unpaid. As discussed above, the Plan embodies the terms of resolution under the Settlement Agreement, pursuant to which the Debtor, on the Effective Date, will transfer, assign, and convey the Property (the "Property Transfer") to the Buyer Designee. The Property Transfer will result in the settlement of the Foreclosure Action and a distribution to creditors. Accordingly, the principal purpose of the Plan is not the avoidance of taxes. It is appropriate therefore that section 11.16 of the Plan provides that, pursuant to section 1146(a) of the Bankruptcy Code, the Property Transfer and any other payments and transfers made pursuant to the Plan by the Debtor to the Buyer Designee, including but not limited to, the delivery of deeds,

bills of sale, or other transfers of tangible property, are exempt from and will not be subject to any transfer tax, or other similar tax.

(b) Provided the Property is transferred after the Confirmation Date as contemplated under this Plan, pursuant to section 1146(a) of the Bankruptcy Code: (i) the issuance, transfer, or exchange of notes or equity securities under the 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 the Plan, including, without limitation, the Property Transfer and any other payments and transfers pursuant to the Plan by the Debtor to the Buyer Designee, 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.

(c) 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 the 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 11-2012 of the New York City Administrative Code

with respect to the transactions effectuated pursuant to the Plan; and (ii) cancel and discharge of record all liens, encumbrances, claims and other adverse interests in or against the Property except for the Permitted Exceptions, which shall not be canceled and shall continue and remain in full force and effect.

(d) All governmental authorities and any other taxing authorities shall be permanently enjoined from the commencement or continuation of any action to collect from the Property, the Debtor, the Secured Lender and the Buyer Designee, any taxes from which the transactions effectuated pursuant to the 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.

(e) The New York County Register's office shall record the deed of the Property, and other similar conveyance documents required to be delivered under the 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.

**17. Severability.** If any term or provision of the 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 the Plan may, at the option of the

Secured Lender, remain in full force and effect and not be deemed affected. However, the Secured Lender reserves the right not to proceed to Confirmation or consummation of the Plan if any such ruling occurs. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

**18. Extinguishment of Causes of Action Under the Avoiding Power Provisions.**

On the Effective Date, all rights, claims, causes of action, avoiding powers, suits and proceedings arising under sections 506(c), 544, 545, 547, 548, 549 and 553 of the Bankruptcy Code shall be extinguished unless then pending. Except to the extent released in the Plan or order of the Bankruptcy Court, the Debtor shall have, retain, reserve, and be entitled to assert all other Claims, causes of action, rights of setoff and other legal or equitable defenses which the Debtor had immediately prior to the Petition Date as fully as if the Chapter 11 Case had not been commenced; and any of the Debtor's legal and equitable rights respecting any such Claim which is not specifically waived, extinguished or relinquished by the Plan or order of the Bankruptcy Court may be asserted after the Effective Date to the same extent as if the Chapter 11 Case had not been commenced.

**19. Post-Confirmation Date Service List**

From and after the Confirmation Date, all notices of appearance and demands for service of process filed with the Court prior to such date shall no longer be effective. No further notices, other than notice of entry of the Confirmation Order shall be required to be sent to such Entities.

**VII.  
CONFIRMATION PROCEDURE**

Under the Bankruptcy Code, the following steps must be taken to confirm the Plan:



**A. Solicitation of Votes**

In accordance with Sections 1126 and 1129 of the Bankruptcy Code, the Claims in Classes 3 and 4 of the Plan are impaired and are entitled to vote to accept or reject the Plan. Claims in Classes 1, and 2 are unimpaired. The holders of Allowed Claims in such Classes are conclusively presumed to have accepted the Plan and the solicitation of acceptances with respect to such Classes therefore is not required under section 1126(f) of the Bankruptcy Code. Holders of Interests in Class 5 will not receive any Distributions and are deemed to have rejected the Plan. Chapter 11 of the Bankruptcy Code provides that, in order for the Bankruptcy Court to confirm the Plan as a consensual plan, the holders of Impaired Claims against, and Impaired Interests in, the Debtor that are entitled to vote must accept the Plan.

An Impaired Class of Claims will have accepted the Plan if (i) the holders of at least two-thirds in amount of the Allowed Claims actually voting in the Class have voted to accept the Plan and (ii) the holders of more than one-half in number of the Allowed Claims actually voting in the Class have voted to accept the Plan, not counting the vote of any holder designated under section 1126(e) of the Bankruptcy Code or any insider.

A vote may be disregarded if the Court determines, after notice and a hearing, that acceptance or rejection was not solicited or procured in good faith or in accordance with the provisions of the Code.

Any creditor in an impaired Class (i) whose Claim has been listed by the Debtor in the Debtor's Schedules filed with the Court (provided that such Claim has not been scheduled as Disputed, contingent or unliquidated) or (ii) who filed a proof of Claim on or before the Bar Date (or, if not filed by such date, any proof of Claim filed within any other applicable period of limitations or with leave of the Court), which Claim is not the subject of an objection or request for estimation, is entitled to vote.

**B. The Confirmation Hearing**

The Bankruptcy Code requires the Court, after notice, to hold a confirmation hearing. The Confirmation Hearing in respect of the Plan has been scheduled for August \_\_, 2013, at 10:00 a.m. Prevailing Eastern Time, before the Honorable James M. Peck, at the Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, NY 10004-1408. The Confirmation Hearing may be adjourned from time to time by the Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing. Any objection to Confirmation must be made in writing and specify in detail the name and address of the objector, all grounds for the objection and the amount of the Claim or number of shares of common stock of the Debtor held by the objector. Any such objection must be filed with the Court and served so that it is received by the Court and the following parties on or before August \_\_, 2013 at 5:00 p.m. New York Time:

Jonathan S. Pasternak, Esq.  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One N. Lexington Avenue  
White Plains, NY 10601  
-and-

Yann Geron, Esq.  
Fox Rothschild LLP  
100 Park Avenue  
New York, NY 10017

Objections to Confirmation of the Plan are governed by Bankruptcy Rule 9014 and orders of the Bankruptcy Court.

**C. Confirmation**

At the Confirmation Hearing, the Court will confirm the Plan only if all of the requirements of section 1129 of the Bankruptcy Code are met. Among the requirements for

confirmation of the Plan are that the Plan is (i) accepted by all impaired Classes of Claims and Equity Interests or, if rejected by an impaired Class, that the Plan “does not discriminate unfairly” and is “fair and equitable” as to such Class, (ii) feasible and (iii) in the “best interests” of creditors and stockholders that are impaired under the Plan.

**1. Acceptance**

Classes 3 and 4 of the Plan are impaired under the Plan. Class 5 is presumed to have rejected the Plan. Classes 1, and 2 of the Plan are unimpaired and, therefore, are conclusively presumed to have voted to accept the Plan.

**2. Feasibility**

The Bankruptcy Code requires a plan proponent to demonstrate that confirmation of a plan of reorganization is not likely to be followed by the liquidation or the need for further financial reorganization of a debtor unless so provided by the plan of reorganization. Here, the Plan contemplates the liquidation and dissolution of the Debtor. In order to accomplish such liquidation and dissolution, the Plan provides that the Senior Lender will deposit all funding necessary for Distributions required under the Plan into the Plan Funding Account on the Effective Date. Although there is a cap on the overall contribution required to be made by the Secured Lender (which may be waived in the Secured Lender’s sole discretion), the Proponents believe that the Distributions required to be made under the Plan will not exceed that limit. If, however, required Distributions under the Plan exceed the limit on the Secured Lender’s contribution to the Plan Funding Account, the Proponents will so notify the Court and (i) the Plan will fail to become effective or, (ii) in the sole discretion of the Senior Lender, the Senior Lender may contribute such additional monies as may be required to make all required Distributions under the Plan.

### **3. Best Interests Test**

With respect to each impaired Class of Claims and Equity Interests, confirmation of the Plan requires that each holder of an Allowed Claim or Equity Interest either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. To determine what holders of Claims and Equity Interests of each impaired Class would receive if the Debtor were liquidated under chapter 7, the Bankruptcy Court must determine the dollar amount that would be generated from the liquidation of the Debtor's assets and properties in the context of a chapter 7 liquidation case. The cash amount that would be available for satisfaction of Claims and Equity Interests would consist of the proceeds resulting from the disposition of the unencumbered assets and properties of the Debtor, augmented by the unencumbered cash held by the Debtor at the time of the commencement of the liquidation case. Such cash amount would be reduced by the amount of the costs and expenses of the liquidation and by such additional administrative expense and priority claims that might result from the termination of the Debtor's businesses and the use of chapter 7 for the purposes of liquidation.

The Debtor's costs of liquidation under chapter 7 would include the fees payable to a chapter 7 trustee, as well as those fees that might be payable to attorneys and other professionals that such a trustee might engage. In addition, claims would arise by reason of the breach or rejection of obligations incurred and leases and Executory Contracts assumed or entered into by the Debtor during the pendency of the Chapter 11 Case. The foregoing types of claims and other claims that might arise in a liquidation case or result from the pending Chapter 11 Case, including any unpaid expenses incurred by the Debtor during the Chapter 11 Case such as

compensation for attorneys, would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available to pay pre-petition Claims.

To determine if the Plan is in the best interests of each impaired Class, the present value of the distributions from the proceeds of a liquidation of the Debtor's unencumbered assets and properties, after subtracting the amounts attributable to the foregoing Claims, are then compared with the value of the property offered to such Classes of Claims and Equity Interests under the Plan.

After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors in the Chapter 11 Case, including (i) the increased costs and expenses of a liquidation under chapter 7 arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, (ii) the erosion in value of assets in a chapter 7 case in the context of the expeditious liquidation required under Chapter 7 and the "forced sale" atmosphere that would prevail and (iii) the substantial increases in Claims which would be satisfied on a priority basis or on parity with creditors in the Chapter 11 Case, the Proponents have determined that confirmation of the Plan will provide each holder of an Allowed Claim or Equity Interest with a recovery that is not less than such holder would receive pursuant to liquidation of the Debtor under chapter 7. The Proponents also believe that the value of any Distributions to each Class of Allowed Claims would be less than under the Plan because such distributions in a chapter 7 case would not occur for a substantial period of time.

A Liquidation Analysis of the Debtor, prepared by the Proponents and their advisors, is attached hereto as Exhibit "B". The information set forth in Exhibit C provides a summary of the liquidation values of the Debtor's assets, assuming a chapter 7 liquidation in which a trustee appointed by the Bankruptcy Court would liquidate the assets of the Debtor's Estates.

Underlying the Liquidation Analysis are a number of estimates and assumptions that, although developed and considered reasonable by the Proponents, are inherently subject to significant economic and competitive uncertainties and contingencies beyond the control of the Proponents. The Liquidation Analysis is also based on assumptions with regard to liquidation decisions that are subject to change. Accordingly, the values reflected might not be realized if the Debtor were, in fact, to undergo such a liquidation.

As set forth in the Liquidation Analysis, other than the Secured Claim of the Secured Lender, no other creditors would likely receive a distribution if the Debtor's assets were liquidated in a hypothetical chapter 7 case.

### **VIII. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

If the Plan is not confirmed and consummated, the alternatives to the Plan include (i) liquidation of the Debtor under chapter 7 of the Bankruptcy Code and (ii) an alternative plan of reorganization.

#### **A. Liquidation Under Chapter 7**

If no plan is confirmed, the Chapter 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code, pursuant to which a trustee would be selected to liquidate the Debtor's assets for distribution in accordance with the priorities established by chapter 7. As discussed above, the Proponents believe that liquidation under chapter 7 would result in smaller Distributions being made to creditors than those provided for in the Plan because there would not be sufficient recoveries to make any Distributions to creditors after Distributions are made on account of the Secured Lender Claim.

**B. Alternative Plan of Reorganization**

If the Plan is not confirmed, the Debtor (or if the Debtor's exclusive period in which to file a plan of reorganization has expired, any other party in interest) could attempt to formulate a different plan. Such a plan might involve either a reorganization and continuation of the Debtor's businesses or an orderly liquidation of their assets. However, under the terms of the Settlement Agreement, the Debtor may not seek to confirm a plan which is not acceptable to the Secured Lender.

**IX.  
CERTAIN RISK FACTORS TO BE CONSIDERED**

HOLDERS OF CLAIMS AGAINST THE DEBTOR AND INTERESTS IN THE DEBTOR SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED BY REFERENCE), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

The Plan provides that Class 4 Claimants shall receive a Cash Distribution on the Effective Date. The funds for these payments will be contributed by the Senior Lender into the Plan Funding Account on the Effective Date. Although the Senior Lender currently has the financial wherewithal to make such contributions, such contribution remains subject to the conditions to the occurrence of the Effective Date including the transfer of the Property to the Buyer Designee as set forth in the Plan.

**A. Certain Bankruptcy Law Considerations**

**1. Risk of Non-Confirmation of the Plan**

Although the Proponents believe that the Plan will satisfy all requirements necessary for confirmation by the Court, there can be no assurance that the Court will reach the same conclusion. Moreover, there can be no assurance that modifications of the Plan will not be required for confirmation or that such modifications would not necessitate the re-solicitation of votes.

**2. Risk of Non-Occurrence of the Effective Date**

Although the Proponents believe that all of the conditions to the Effective Date will occur after the entry of the Confirmation Order, there can be no assurance as to the timing of the Effective Date or that such conditions will ever occur.

**B. Certain Tax Matters**

For a summary of certain federal income tax consequences of the Plan to holders of Claims and to the Debtor, see Article XI, "Certain Federal Income Tax Consequences Of The Plan."

**C. Additional Factors to be Considered**

**1. The Proponents Have No Duty to Update**

The statements contained in this Disclosure Statement are made by the Proponents as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has been no change in the information set forth herein since that date. The Proponents have no duty to update this Disclosure Statement unless otherwise ordered to do so by the Bankruptcy Court.



**2. No Representations Outside This Disclosure Settlement  
Are Authorized**

No representations concerning or related to the Debtor, the Chapter 11 Case, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan other than as contained in, or included with, this Disclosure Statement should not be relied upon by you in arriving at your decision.

**3. Claims Could Be More Than Projected**

Although the Proponents believe that the Bar Date for filing proofs of Claim occurred on August 23, 2012 and that their good faith estimates contained herein as to the total amount of Allowed Claims are reasonable, the Allowed amount of Claims in each class could be significantly more than projected, which in turn, could cause the value of Distributions to be reduced substantially or could exceed the limit on the Secured Lender's contributions to the Plan Confirmation Fund.

**4. No Legal or Tax Advice is Provided to You By This  
Disclosure Statement**

The contents of this Disclosure Statement should not be construed as legal, business or tax advice. Each holder of a Claim or Equity Interest should consult his, her, or its own legal counsel and accountant as to legal, tax and other matters concerning his, her, or its Claim or Equity Interest.

This Disclosure Statement is not legal advice to you. This Disclosure Statement may not be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

**5. No Admission Made**

Prior to the approval of this Disclosure Statement, nothing contained herein shall constitute an admission of, or be deemed evidence of, the tax or other legal effects of the Plan on the Debtor or on holders of Claims or Equity Interests; provided, however, that upon approval of the this Disclosure Statement, nothing contained herein shall constitute an admission in any proceeding other than the Chapter 11 Case.

**X.  
SECURITIES LAWS MATTERS**

The Plan does not contemplate the issuance of any securities.

**XI.  
CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtor and holders of certain claims against the Debtor. This discussion does not address the U.S. federal income tax consequences of the implementation of the Plan to holders of claims that are entitled to reinstatement, unimpaired or otherwise entitled to payment in full in cash under the Plan.

The discussion of U.S. federal income tax consequences set forth below is based on the Internal Revenue Code of 1986, as amended (the "Tax Code"), U.S. Department of Treasury regulations promulgated or proposed thereunder, judicial authorities, published positions of the Internal Revenue Service ("IRS") and other applicable authorities, all as in effect on the date of this document and all of which are subject to change or differing interpretations (possibly with retroactive effect). The U.S. federal income tax consequences of the contemplated transactions are complex and are subject to significant uncertainties. The Proponents have not requested a ruling from the IRS or any other tax authority, or an opinion of

counsel, with respect to any of the tax aspects of the contemplated transactions, and the discussion below is not binding upon the IRS or such other authorities. Thus, no assurance can be given that the IRS or such other authorities would not assert, or that a court would not sustain, a different position from any discussed herein.

Except as specifically stated otherwise, this summary assumes that a holder holds a claim or an existing Equity Interest as a capital asset for U.S. federal income tax purposes. This summary does not address foreign, state or local tax consequences of the contemplated transactions, nor does it purport to address the U.S. federal income tax consequences of the transactions to special classes of taxpayers (*e.g.*, foreign persons or entities, small business investment companies, regulated investment companies, real estate investment trusts, banks and certain other financial institutions, insurance companies, tax-exempt organizations, holders that are, or hold claims or existing Equity Interests through, pass-through entities, persons whose functional currency is not the U.S. dollar, dealers in securities or foreign currency, and persons holding claims or existing Equity Interests as a hedge against, or that is hedged against, currency risk or as part of a straddle, constructive sale or conversion transaction).

The discussion does not address U.S. federal taxes other than income taxes, nor does it apply to any person that acquires any of the consideration issued pursuant to the Plan through means other than directly participating in the exchange. If a partnership (or another entity that is treated as a partnership for U.S. federal income tax purposes) holds claims or existing Equity Interests, the tax treatment of a partner (or other equity owner) generally will depend upon the status of such partner (or other owner) and upon the activities of the partnership (or other entity). This discussion is based on currently available information regarding the Plan terms and may not reflect the actual terms of the Plan upon its implementation. The following

summary of certain U.S. federal income tax consequences is for informational purposes only and is not a substitute for careful tax planning and advice based upon the individual circumstances pertaining to a holder of claims or existing Equity Interests.

**IRS Circular 230 Notice:** To ensure compliance with IRS Circular 230, holders of Claims and existing Equity Interests are hereby notified that: (A) any discussion of U.S. federal tax issues contained or referred to in this Disclosure Statement is not intended or written to be used, and cannot be used, by such holders for the purpose of avoiding penalties that may be imposed on them under the Tax Code; (B) such discussion is written in connection with the promotion or marketing by the Debtor of the transactions or matters addressed herein; and (C) such holders should seek advice based on their particular circumstances from independent tax advisors.

**A. Consequences to the Debtor**

The Plan, as currently contemplated, may result in U.S. federal income tax consequences to the Debtor. The Plan, as currently contemplated, may result in income tax consequences to the Debtor's Equity Interest Holder(s) in connection with the liquidation of the Debtor. Such tax, if any, may flow to the Equity Holder(s) pursuant to the Debtor's status as a limited liability company.

**B. Consequences to Claim Holders**

A Claim holder that receives money or other property in discharge of a Claim for interest accrued during the period the holder owned such Claim and not previously included in such holder's income will be required to recognize ordinary income equal to the amount of such money and the fair market value of such property received in respect of such Claim. A holder

generally may claim an ordinary deduction (or, possibly, a write-off against a reserve for bad debts) to the extent of any Claim for accrued interest that was previously included in such holder's taxable income and which will not be paid in full by the Debtor under the Plan (after allocating any payment to be made by the Debtor between principal and accrued interest), even if the underlying Claim is held as a capital asset. The tax basis of any property received in exchange for a Claim for accrued interest under the Plan will equal the fair market value of such property on the Effective Date, and the holding period for such property will begin on the day following the Effective Date.

The extent to which consideration distributable under the Plan is allocable to interest is unknown. Holders of Claims are advised to consult their own tax advisers to determine the amount, if any, of consideration received under the Plan that is allocable to interest.

**THE FOREGOING SUMMARY HAS BEEN PROVIDED FOR INFORMATIONAL PURPOSES ONLY. ALL HOLDERS OF CLAIMS OR EXISTING EQUITY INTERESTS PARTICIPATING IN THE EXCHANGE UNDER THE PLAN ARE URGED TO CONSULT THEIR TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES APPLICABLE TO THEM.**

**XII.**

**RECOMMENDATION AND CONCLUSION**

For all of the reasons set forth in the Disclosure Statement, the Proponents believe that confirmation and consummation of the Plan is preferable to all other alternatives. Consequently, the Proponents urge all eligible holders of Impaired Claims and Interests to vote to **accept** the Plan, and to complete and return their ballots August \_\_, 2013 they will be **received** by the Debtor's counsel on or before 5:00 p.m. (Eastern Time) on August \_\_, 2013.

Dated: June 26, 2013

**DEBTOR**

**2279-2283 THIRD AVENUE ASSOCIATES LLC**

By: /s/ Michael Waldman

Name: Michael Waldman  
Title: Managing Member, 2279-2283 Third Avenue  
Development LLC, Sole Member of the Debtor