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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re

315 W 35TH ASSOCIATES LLC,

Chapter 11
Case No. 15-10877

SECOND AMENDED
DISCLOSURE STATEMENT

Debtor.
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This Second Amended Disclosure Statement ("Disclosure Statement") is filed by 315 W 35th Associates LLC, debtor herein, in connection with the Amended Plan of Reorganization ("Plan") filed in this proceeding by the Debtor.

BACKGROUND HISTORY

The Debtor is a domestic limited liability company and is the owner of premises 315 West 35th Street, New York, New York ("Property"). The Debtor purchased the property on March 7, 2006 as an investment in anticipation of developing the site. The Debtor entered into a contract with a developer to develop the Property, but he could not proceed. In July, 2007, the Debtor entered into a Contract of Sale with Motovich Holdings LLC ("Motovich"). Motovich was unable to close, despite three extensions for which Motovich paid good money. There was ensuing litigation between Motovich and the Debtor, which eventually led to a default judgment in favor of Motovich in the sum of \$5,300,438.31, which was entered on February 11, 2011 ("Default Judgment").

Thereafter, when there was a change in the managerial personnel of the Debtor, the Debtor made a motion in Supreme Court, New York County to vacate the Motovich Judgment, which was pending at the time of the filing of the Chapter 11 petition.

Due to the financial crisis of 2008, further attempts by the Debtor to refinance or sell the project were of no avail. Upon the acquisition of the Property, the Debtor's investors made equity contributions of \$4,100,000. The Debtor also took a mortgage from Interwest National Bank ("Interwest") in order to help acquire and develop the Property.

In June, 2007, Interwest sold its interest to Wrightwood Capital Lender LLC ("Wrightwood"), who subsequently sold the mortgage to Mazel 315 West 35th LLC ("Mazel"). Mazel paid \$10,250,000 to an affiliate of Wrightwood for mortgages with a face amount of \$25,325,000, which mortgages were then in default.

Mazel commenced a foreclosure action in 2011 that was very heavily litigated in the state court. That long litigation eventually culminated in a Judgment of Foreclosure and Sale ("Foreclosure Judgment") that was entered on January 29, 2015. By that time, there were various judgment creditors, whose claims were spelled out in the Foreclosure Judgment. Mazel scheduled a foreclosure sale for April 9, 2015.

The Debtor was fearful that a state court foreclosure sale would be a "fire sale" and that the true value of the Property, which had risen significantly in the last year, would be lost to both creditors and to the investors. Therefore, on April 8, 2015, the Debtor filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Code ("Code") and obtained an automatic stay of the foreclosure sale.

INTRODUCTION

The Debtor's Plan was based upon the successful sale of the Property for an amount of money that will be able to pay all the creditors in full and leave a surplus for the equity interests. The Bankruptcy Judge scheduled a sale of the Property for July 13, 2015, which was an open auction sale held in the Bankruptcy Court. There were two bidders at the auction sale and Mazel was the successful purchaser at \$43,000,000. A closing will be scheduled in connection with confirmation of the Plan. The contents of the Plan will be described below.

This Disclosure Statement is not intended to replace a review and analysis of the Plan. It has been prepared based upon information taken from records of the Debtor, the files in the Bankruptcy Clerk's office, files available in the Supreme Court, New York County and files of counsel for the Debtor (Kera & Graubard). It is submitted to give a history of the Debtor and its operations; the record in the Chapter 11 proceeding to date; and to explain the terms and provisions of the Plan. If any creditor has any questions, the Debtor urges those creditors to contact counsel for the Debtor, who will make every effort to assist those creditors. The sale proceeds will allow for payment of all secured, priority and administration creditors in full. Those classes will be deemed to have accepted the Plan.

To the extent that the sale proceeds are insufficient to pay all the unsecured creditors in full, there will be a distribution to the unsecured creditors on a pro rata basis who will be entitled to vote on the Plan.

Creditors should use this Disclosure Statement in its entirety in the event that it becomes necessary to vote on the Plan. No solicitation of votes may be made, except pursuant to the terms of the Disclosure Statement and the court order approving the Disclosure Statement. Except as set forth in this Disclosure Statement, there are no other representations concerning the Debtor, the Property, its assets, its past and future operations or the Plan; that have been authorized by any entity.

HISTORY OF THE CASE

By order of the Bankruptcy Court, a status conference was held before Judge Stuart M. Bernstein on May 19, 2015, at which time a report was given with regard to the increased real estate values in the area, so that the Debtor expects to be able to sell the Property and pay all the creditors in full.

A Receiver had been appointed in the Foreclosure Action and the Debtor has consented to the Receiver remaining in place during the pendency of the Chapter 11 case.

On May 20, 2015, the Section 341 meeting was held at which time the Debtor appeared and answered questions posed by the U.S. Trustee and other creditors who were present at the meeting. The meeting centered on the financial problems facing the Debtor and the prospective actions the Debtor would seek to take to remedy those problems, which was through a sale of the Property at auction.

Mazel made a motion to dismiss the Chapter 11 case and in the alternative obtain relief from the automatic stay; and also to keep the Receiver in place. That motion was opposed by the Debtor on the basis that an application had been made to the Court for a sale of the Property, which was returnable the same day. The Bankruptcy Judge resolved the motion by allowing the Debtor to have an auction sale of the Property and further granting Mazel relief from the automatic stay to the extent of permitting Mazel to advertise the foreclosure sale and to schedule the sale for about two weeks after the auction sale. However, the relief from stay was limited so that Mazel could not sell the Property, but have to come back to the Bankruptcy Court to get permission to sell. Further, that would only be applicable if the auction sale in the Bankruptcy Court would not produce any bids.

Young made a motion for the appointment of a Chapter 11 Trustee to sell the Property. In view of the Court's authorizing the Debtor to sell the Property at an auction sale, the motion by Young was denied.

PLAN OF REORGANIZATION

The Plan is based upon the premise that the Debtor obtained sufficient proceeds at the auction sale of the Property to allow for payment of all the secured, priority and administration creditors in full. If the sale proceeds are not sufficient to pay all the

unsecured creditors in full, then the unsecured creditors will be paid on a pro rata basis from the balance of the proceeds of the auction sale.

The Debtor's plan has ten classes of creditors. Classes 1 through 7 are made up of creditors who are secured by a lien on the Property, as is more fully set forth in the Foreclosure Judgment, that enumerated which creditors are to be paid in a specific order as having liens on the Property. Each secured creditor is entitled to be paid after the secured creditors of a higher priority have been paid.

Therefore, Class 1 consists of the claim of Mazel, which approximates \$29,000,000. This claim will be paid in full from the proceeds of sale on the Effective Date, which is defined in the Plan as being the date upon which the sale of the Property under the Plan closes, or such other date after the Confirmation Date as may be practicable. The Confirmation Date means the date that the order confirming the Chapter 11 plan is entered by the Court. Mazel credit bid its secured claim, so it will only have to pay the sum of \$14,000,000 at the closing.

The Class 2 claim is the secured claim of Gertler & Wentz Architects LLP ("Gertler") in the sum of \$76,114.02. The Gertler claim will be paid on the Effective Date after full payment of the Mazel claim.

The Class 3 claim is the secured claim of the New York State Environmental Control Board ("ECB") in the sum of \$800. ECB has three separate claims, which have different priority against the Property, based upon the timing of the filing of the ECB judgments. The Class 3 claim of ECB will be paid on the Effective Date in full from the proceeds of sale, but after full payment is made to Mazel and Gertler.

Class 4 is the secured claim of Robert Verrone ("Verrone"), who is presently owed approximately \$470,000. The Class 4 claim will be paid on the Effective Date in full from the proceeds of sale, but after full payment is made to Mazel, Gertler and ECB.

Class 5 is the secured claim of ECB Claim No. 2, who is presently owed approximately \$10,000. The Class 5 claim of ECB will be paid in full on the Effective Date

from the proceeds of sale, but after full payment is made to Mazel, Gertler, ECB and Verrone.

Class 6 is the secured claim of Motovich Holdings LLC. This claim is based upon the Default Judgment. The Debtor and Motovich have agreed to a settlement that will allow the Motovich claim as a secured claim in the sum of \$7,309,977.94, but with only the right to be paid on Effective Date the sum of \$4,500,000. The Debtor has the right to object to the balance of the Motovich Claim and Motovich has agreed to vote in favor of the Plan. In addition, if the gross sale proceeds of the Property meet or are greater than \$35,000,000, then Motovich has agreed to subordinate its secured claim to the administration expense claim of Marcus & Millichap Real Estate Investment Services ("Marcus"), the real estate professional employed by the Debtor in connection with the sale of the Property. Therefore, the portion of the Class 6 claim that was agreed be paid, will be paid on the Effective Date from the proceeds of sale, but after full payment is made to Mazel, Gertler, ECB, Verrone and Marcus.

Class 7 is the ECB claim No. 3 in the sum of \$16,000. Class 7 claim of ECB will be paid in full on the Effective Date from the proceeds of sale, but after full payment is made to Mazel, Gertler, ECB, Verrone, ECB (Claim No. 2), Marcus and Motovich.

Class 8 consists of priority claims under Section 507 of the Code. In a commercial case like this, the priority creditors are usually governmental units. The Debtor listed the ECB as the only priority creditor, but that claim will be paid in connection with the ECB secured claims. The Debtor has had no income for many years, so it does expect any claim from either Internal Revenue Service or from the State of New York.

The only claim known to the Debtor that could be a priority claim is for New York City real estate taxes. However, those taxes have been paid by the Lender for many years, except that the installment due January 1, 2015 was not paid by the Lender. The website of the City of New York indicates that the taxes will be due as of July 1, 2015 in the total sum of \$265,019.08. This consists of the unpaid installment due January 1, 2015, plus

interest in the sum of \$137,344.12 and the installment due July 1, 2015 in the sum of \$127,674.96. These are the two components of the amount of \$265,019.08, which will be paid in connection with the closing on the sale of the Property. Therefore, the Debtor does not expect that any priority claims will be filed that will have to be paid through the Plan.

Class 9 consists of the general unsecured claims, which are to be paid on a pro rata basis from the funds that are available after payment of Class 1 through Class 8 creditors. The Debtor anticipates that a successful sale will allow for payment of a significant dividend to the unsecured creditors. The unsecured creditors that were scheduled have filed claims that total \$609,125.43.

There is one other unsecured creditor named John Young ("Young"). Young had a pre-petition contract with the Debtor to purchase the Property for the sum of \$31,500,000. However, Young could not close prior to the scheduled foreclosure sale. The Contract of Sale was deemed rejected under Section 365(d) of the Code. Arguably, that gives Young a damage claim for the difference between the ultimate sales price at the auction sale and his contract price of \$31,500,000. Young filed a secured claim for \$3,150,000 for the return of the security deposit and an unsecured claim for \$11,500,000 based upon the auction. The Debtor and Young have discussed resolution, but could not reach an agreement. The Debtor plans to object to the general claim filed by Young and reduce it very significantly based upon Real Estate Law in the State of New York and Bankruptcy Law.

A claim was recently filed by the Council for Community Preservation, Inc. claiming all types of services rendered to the Debtor in the sum of \$3,321,000. The Debtor verily believes that this claim has no basis whatsoever and will be objecting to it and expects that it will be expunged.

A claim was filed by S&BW 35th Investors as an equity claim under Class 10 in the sum of \$4,100,000. The other equity holder Haisha Deitsch filed a combination claim of \$3,778,154.36 claiming partial equity and partial loans, both without specification. The

Debtor is awaiting details from the attorneys for Mr. Deitsch and, if necessary, will object to the non-equity portion of the claim.

A claim was filed by Mazal 315 West 35th LLC, claiming some sort of secured status and right to purchase the Property. However, that claim was rejected in the Supreme Court, State of New York foreclosure proceeding and is barred from asserting the same claim in the Chapter 11 case. The Debtor will object to the claim of Mazal and expects it to be expunged.

The secured, administrative and priority creditors are not impaired under the Plan. This is premised on the successful sale of the Property that produced enough proceeds to pay all the claims in full. A claim is impaired if its legal, equitable and contractual rights are altered by the terms of the Plan. In order to obtain acceptance of the Plan from a class of creditors, the Debtor must obtain affirmative votes from more than one-half in number which constitutes more than two-thirds in amount of the class of creditors who vote on the Plan. Since there was a successful sale of the Property, it is not necessary to obtain acceptance from the secured, administrative and priority creditors.

There is a question if the proceeds of sale will pay the unsecured claims in full. Therefore, the Class 9 and 10 claims may be impaired. Accordingly, Class 9 and Class 10 creditors are entitled to accept or reject the Plan, and may do so with a ballot that will be provided to them by counsel for the Debtor.

In the event there exists a class of impaired creditors that does not accept the Plan, the Debtor intends to proceed under Section 1129(a) of the Code which allows the Bankruptcy Court, on the request of the plan proponent (who in this case is the Debtor) to confirm the Plan on the basis that the Plan does not discriminate unfairly, and is fair and equitable with respect to the impaired creditors who have not accepted the Plan.

PLAN IMPLEMENTATION

The Debtor plans to satisfy the secured claims, the administration claims, the priority claims and the general unsecured claims through the auction sale of the Property. The Bankruptcy Court entered an order dated June 25, 2015 that authorized the sale free and clear of all liens and encumbrances, which will allow for the highest bidder at the sale to take title to the Property without any problems. Also, the Plan provides for the secured creditors to provide any documentation that is necessary to release their claims as of record in connection with the sale of the Property and the payment to the secured creditors pursuant to the Plan.

The Debtor believes that the Plan satisfies all of the statutory requirements of Chapter 11 in the Code, that the Debtor has filed a plan in good faith and that the Debtor has complied, or will have complied, with all of the requirements of Chapter 11.

In the event that the sale proceeds are insufficient to pay all of the creditors, and there are classes of impaired creditors, the Debtor will contend that the claims that are impaired under the Plan will receive payments under the Plan that have a present value as of the Effective Date that is not less than the amounts that were likely to be received by the creditors if the Debtor were liquidated under Chapter 7 of the Code.

FINANCIAL ANALYSIS

If there were to be a liquidation under Chapter 7 of the Code, the net proceeds of the sale of Debtor's real property would be distributed to creditors in the order of their priority under Section 507 of the Code. The Debtor believes that the Plan provides for a far better return for the Debtor's estate and its creditors than could be achieved through a liquidation. Chapter 7 represents an additional layer of administration and legal expenses, which the

Debtor estimates would further erode any distribution to the creditors. A copy of the Debtor's Assets and Liabilities, together with a Liquidation Analysis, is annexed hereto as Exhibit A.

PAYMENT OF CLAIMS AND OBJECTIONS TO CLAIMS

The attorneys for the Debtor Kera & Graubard will be the Disbursing Agent under the Plan without a bond. The Disbursing Agent, together with the Debtor, is authorized to review claims and file objections to claims in the event there is any basis to do so. Any party in interest may file an objection to claim for a period of thirty (30) days after the Effective Date. The Disbursing Agent shall maintain a reserve fund to cover all claims that may be under objection, so that in the event the objection is not sustained, then full payment can be made to that creditor.

EXECUTORY CONTRACTS AND UNEXPIRED LEASES

The Debtor did not have any unexpired leases and the only executory contract was with Young, which was deemed rejected under the Bankruptcy Code. In the event there is any executory contract that the Debtor had no knowledge of, then such claim must be filed within thirty (30) days of the Effective Date. Any claim for rejection not filed within that time period will be deemed discharged and not entitled to participate in the distribution under the Plan.

MANAGEMENT OF THE DEBTOR

The Debtor is presently managed by two people: Michael Sorotzkin, as a manager, and Haisha Deitch, as managing member. Mr. Sorotzkin is a managing member of an

entity known as S&B W. 35th LLC, which is a member of the Debtor. Both Messrs. Sorotzkin and Deitch will continue post-confirmation as management of the Debtor.

TAX CONSEQUENCES

The Debtor does not believe that there will be any negative tax consequences to the Debtor or to the creditors under the Plan. However, to the extent that the creditors are not paid in full under the Plan, such creditor may be entitled to a bad debt deduction. To the extent that a creditor has already taken a bad debt deduction, the distribution under the Plan may be taxable as income.

IN THIS DISCLOSURE STATEMENT, THE DEBTOR DOES NOT PURPORT TO GIVE ANY TAX ADVICE TO ANY CREDITORS OR PARTIES IN INTEREST IN THIS CHAPTER 11 CASE. CREDITORS AND INTEREST HOLDERS SHOULD SEEK INDEPENDENT COUNSEL AND TAX PROFESSIONALS FOR ADVICE CONCERNING THE TAX CONSEQUENCES OF THEIR TREATMENT UNDER THIS PLAN.

VOTING PROCEDURES AND REQUIREMENTS

The Debtor's assumption was that the sale price of the Property will be sufficient to pay all classes of creditors (except equity interest) in full so that they will be not be impaired and be deemed to have accepted the Plan. Since the sale proceeds may not bring enough to pay the unsecured creditors in full, then the Debtor has amended the Disclosure Statement.

CONFIRMATION OF PLAN

Section 1128(a) of the Code requires that after notice, that the Court hold a hearing on confirmation of the Plan; and further that section provides that any party in interest may file an objection to confirmation of the Plan.

By order of the Bankruptcy Court dated July 14, 2015, the hearing on confirmation was scheduled for August 4, 2015 at 10:00 a.m. at the U.S. Bankruptcy Court, One Bowling Green, Room 723, New York, NY 10004. The confirmation hearing was adjourned to August 27, 2015 and may be further adjourned without further notice, except for an announcement made at the hearing and/or an entry on the electronic docket. Any objection to confirmation had to be in writing and filed with the Bankruptcy Court with proof of service that it was served upon counsel for the Debtor and the U.S. Trustee on or before July 31, 2015.

At the confirmation hearing, the Bankruptcy Judge will determine whether the Debtor has met all the requirements under Section 1129 of the Code so that an order can be made confirming the Plan.

The Debtor believes that the Plan satisfies all of the statutory requirements, that the Debtor has complied with all the requirements of Chapter 11 and that the Plan has been proposed in good faith.

CRAMDOWNS

In the event that any impaired class of claims does not accept the Plan, the Bankruptcy Court may still confirm the Plan at the request of the Debtor if, as to each impaired class which has not accepted the Plan, the Plan “does not discriminate unfairly”

and is "fair and equitable." The Debtor intends to invoke the cramdown provisions of Section 1129(b) as to any impaired class that does not accept the Plan.

A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives less than it is legally entitled to receive for its claims or equity interests. "Fair and equitable" has different meanings for secured and unsecured claims.

CONCLUSION

The Debtor believes that the Plan that it has proposed, with the implementation process involved, is in the best interests of the creditors and the Debtor. It will allow for the Debtor to pay the secured, administration and priority claims in full. After the objections to claims, there will be a substantial dividend to the unsecured creditors on a pro rata basis. Accordingly, the Debtor recommends acceptance of the Plan by the creditors.

THERE ARE NO REPRESENTATIONS AUTHORIZED TO BE MADE OTHER THAN THROUGH THIS DISCLOSURE STATEMENT. FINANCIAL INFORMATION PROVIDED HEREIN HAS BEEN SUPPLIED BY THE DEBTOR. IT HAS NOT BEEN THE SUBJECT OF A CERTIFIED AUDIT, BUT EVERY EFFORT HAS BEEN MADE TO MAKE THE INFORMATION AS ACCURATE AS POSSIBLE.

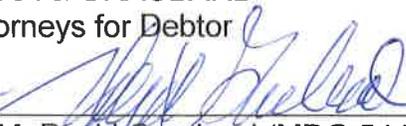
Dated: New York, New York
August 17, 2015

315 W 31TH ASSOCIATES LLC,
Debtor and Debtor in Possession



By: _____
Michael Sorotzkin, Manager

KERA & GRAUBARD
Attorneys for Debtor

By:  _____
M. David Graubard (MDG 5442)
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EXHIBIT A TO DISCLOSURE STATEMENT

ASSETS AND LIABILITIES
AND
LIQUIDATION ANALYSIS

ASSETS

Real Estate (Sale Value) \$43,000,000

LIABILITIES

| | |
|--|------------------|
| First Mortgage Holder | \$29,000,000 |
| Other Secured Creditors (Approx) | 1,000,000 |
| Motovich Holdings LLC | |
| Default Judgment (Litigation Pending) | 7,300,000 |
| Real Estate Taxes | 265,000 |
| Administration Expense Claims | |
| (Approx) | 1,200,000 |
| Unsecured Creditors | 608,000 |
| John Young (Unsecured Rejection Claim – Subject to Dispute) | 11,500,000 |
| Council for Community Preservation (Disputed) | <u>3,321,000</u> |
| Total | \$54,194,000 |

CHAPTER 7 LIQUIDATION ANALYSIS

ASSETS

| | | |
|--|-------------------|-------------------|
| Real Estate | | \$43,000,000 |
| First Mortgage Holder | 29,000,000 | |
| Other Secured Creditors | 1,000,000 | |
| Real Estate Taxes | 265,000 | |
| Motovich Holdings LLC Claim | 7,300,000 | |
| Chapter 7 Administration Claims | <u>1,200,000</u> | <u>38,765,000</u> |
| | Balance Available | \$ 4,035,000 |
| General Unsecured Creditors (including all disputed claims) | 15,429,000 | |
| Approximate Dividend | 27% | |