

77UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Parkway Acquisition I, LLC,  
f/k/a Parkway Hospital Associates,

Case No. 13-12015 (SCC)

Debtor.

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### **DISCLOSURE STATEMENT**

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THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL, BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.

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### **INTRODUCTION**

Parkway Acquisition I, LLC (the “Debtor”) has filed its Plan of Reorganization of even date (the “Plan”), with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). This Disclosure Statement has been found by the Bankruptcy Court to contain adequate information for use in connection with the solicitation of acceptances of the Plan pursuant to section 1125 of title 11 of the United States Code (the “Bankruptcy Code”).

At its core, the Plan provides for a sale of the Debtor’s property based upon a stalking horse contract and competitive bidding. The vast bulk of the net proceeds (i.e., the sale proceeds less real estate taxes and closing costs) are earmarked to be paid to the first mortgage holder Auberge Grand Central LLC (“Auberge”). At this point, the Debtor proposes to pay 95% of all net proceeds to Auberge, while noting that Auberge has not yet accepted to the Plan and the pay-outs will likely be the subject of additional negotiations. Auberge holds a first mortgage in the restructured principal sum of \$9,642,222 plus accrued interest. The remaining 5% is referred to under the Plan as the “Estate’s Share of Proceeds”, which is earmarked to pay all other claims and administrative expenses.

In the Debtor’s opinion, the treatment of claims under the Plan provides a greater return than creditors can reasonably expect to receive in Chapter 7 or outside of bankruptcy in a state court foreclosure. Accordingly, the Debtor believes that

Confirmation of the Plan is in the best interests of creditors and recommends that each impaired creditor vote to accept the Plan.

### **THE DEBTOR AND THE PROPERTY**

The Debtor is the successor to Parkway Hospital Associates (“Parkway Hospital”) and is the current owner of the land and building previously occupied by Parkway Hospital as a tenant at 70-36 113<sup>th</sup> Street, Forest Hills, NY 11375 a/k/a 70-44 Grand Central Parkway (the “Property”). The Property itself is improved by a six (6) story building containing approximately 87,500 square feet. The Property has been vacant following the closure of Parkway Hospital in 2008. Although associated with Parkway Hospital, the Property has always been separately owned by a real estate holding company that was previously comprised of a group of doctors and is now owned singularly by Robert G. Aquino, Sr. as the sole manager/member.

Up until the recent past, the Property appeared to be a lost cause because of poor market conditions and challenges posed by local zoning. Specifically, the Property is located in a residential R1-2A Zone in Queens which allows for single family homes. However, because the Property has been located on the site since 1964, it was grandfathered under the zoning laws to allow for medical services. Thus, the best use of the Property is operation of the building by a medical service provider. If the Property is redeveloped for other purposes, it could only be used to construct a handful of single family homes. Accordingly, maximum value lies in attracting a medical service provider to purchase the Property. The Debtor filed the Chapter 11 case because the market in this regard has improved over the last two years, as witnessed by the Debtor’s receipt of a \$14 million dollar stalking horse bid, which is the starting point for the Plan.

Indeed, the proposed stalking horse is significantly higher than the broker’s opinion of value obtained by Auberge of \$8,000,000. However, this broker’s opinion is suspect because it values the Property as a residential redevelopment, and not as a medical facility. In the end, the overall success of the Chapter 11 will depend on the Debtor’s ability to reach an agreement with Auberge regarding a fair treatment of its secured claim.

### **CONFIRMATION PROCESS**

Pursuant to section 1128 of the Bankruptcy Code, the Bankruptcy Court has scheduled a hearing to consider Confirmation of the Plan, on \_\_\_\_\_, 2013 at 10:00 a.m., prevailing New York time, before the Honorable Shelley C. Chapman, Courtroom 621, One Bowling Green, New York, NY 10004. The Bankruptcy Court has directed that objections, if any, to Confirmation of the Plan be filed and served on or before \_\_\_\_\_, 2013 in the manner described below. At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan complies with requirements of the Bankruptcy Code have been satisfied and should be approved.

## VOTING INSTRUCTIONS — SUMMARY

The following discussion summarizes more detailed voting instructions set forth in the section of this Disclosure Statement entitled “VOTING INSTRUCTIONS.” If you have any questions regarding the timing or manner of casting your ballot, please refer to the “VOTING INSTRUCTIONS” section of this Disclosure Statement and the instructions contained on the ballot that you received with this Disclosure Statement.

**General.** The Debtor has sent a ballot with voting instructions and a copy of this Disclosure Statement to all of the Debtor’s known creditors. Creditors should read the ballot carefully and follow the voting instructions. Creditors should only use the ballot that accompanies this Disclosure Statement.

The Plan can be confirmed by the Bankruptcy Court in one of two ways: First, if all impaired classes of claim vote to accept the Plan. A class of claims is deemed to have accepted the Plan if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each impaired class who actually vote on the Plan. In the event the requisite acceptances are not obtained, the Bankruptcy Court may nevertheless confirm the Plan as a cram-down if (i) the Bankruptcy Court finds that the Plan accords fair and equitable treatment, and does not discriminate unfairly, with respect to any class rejecting it and (ii) at least one impaired class of claims has accepted the Plan determined without considering the votes of any insider.

**As the preceding paragraph makes evident, a successful reorganization depends upon the receipt of a sufficient number of votes in support of the Plan. YOUR VOTE IS THEREFORE EXTREMELY IMPORTANT. Creditors should exercise their right to vote to accept or reject the Plan.**

**Deadline for Returning Ballots.** The Bankruptcy Court has directed that, to be counted for voting purposes, ballots for the acceptance or rejection of the Plan must be received by counsel for the Debtor, no later than 5:00 p.m., prevailing New York Time, on \_\_\_\_\_, 2013 at the following address:

Goldberg, Weprin, Finkel, Goldstein, LLP  
1501 Broadway  
22<sup>nd</sup> Floor  
New York, New York 10036  
Attn: Kevin J. Nash, Esq.

**Voting Questions.** If you have any questions regarding the provisions or requirements for voting to accept the Plan or require assistance in completing your ballot, you may contact Debtor’s counsel, Kevin J. Nash, Esq. at (212) 221-5700.

## **NOTICE TO HOLDERS OF CLAIMS AND INTERESTS**

This Disclosure Statement and the accompanying ballots are being furnished to the Debtor's known creditors and equity holders pursuant to section 1125(b) of the Bankruptcy Code in connection with a solicitation of acceptances of the Plan.

The purpose of this Disclosure Statement is to enable you, as a creditor to make an informed decision in exercising your right to accept or reject the Plan.

The information concerning the Debtor and the Property has been prepared using certain filings made with the Bankruptcy Court. The estimates of claims set forth herein may vary from the final amounts of allowed claims depending on future events and evolving circumstances.

This Disclosure Statement contains a summary of certain provisions of the Plan and the transactions contemplated thereunder, and may contain descriptions of certain other related documents. While the Debtor believes that these summaries are fair and accurate, such summaries do not set forth the entire text of the Plan. Thus, creditors are urged to read the Plan in its entirety. In the event of any inconsistency between the terms of the Plan and this Disclosure Statement, the terms of the Plan shall be controlling.

No statements or information concerning the Debtor or the Property are authorized other than as set forth in this Disclosure Statement and the Plan.

### **EVENTS LEADING TO CHAPTER 11**

The Debtor's financial and legal difficulties are tied to the closure of Parkway Hospital. Parkway Hospital was the sole tenant at the Property (with exception of certain cell phone tower leases) and was responsible to pay the carrying costs associated with the Property. The current mortgage held by Auberge was originally issued by Medical Provider Financial Corporation III ("Medical Capital") under a 2001 refinancing. Both the Debtor and Parkway Hospital are joint makers of the underlying amended and restated mortgage notes. The mortgage fell into default and became the subject of foreclosure proceedings. In the meanwhile, Medical Capital itself encountered financial difficulties and became subject to receivership in connection with certain S.E.C. related litigation in California. Thomas A. Seaman was appointed receiver of Medical Capital and he subsequently sold the mortgage to Auberge for \$6.5 million. Auberge continued the foreclosure action, in which Israel Rubin was appointed Receiver for the Property. Thereafter, Auberge noticed a foreclosure sale, which triggered the Chapter 11 filing.

### **SIGNIFICANT EVENTS IN THE CHAPTER 11 CASE**

The goal of the Chapter 11 case from the start was to obtain a stalking horse offer for the Property at a competitive price. With eligibility more than three months of the bankruptcy filing, the Debtor has negotiated with an entity formed by 70-44 Grand

Central Parkway Corp. (the “Stalking Horse”) to become a Stalking Horse bidder for the Property at 

Real Estate Taxes Year	Amount Owed	Status
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 \$14.0 million.

The principal of the Stalking Horse is Frank Ciolli, who is involved in the construction business and also owns a national chain of pizzerias. Mr. Ciolli has already lined up financing to close on the transaction. If he becomes the Successful Bidder, Mr. Ciolli envisions utilizing the Property to create medical offices at the site for private doctors. The Aquino family may assist Mr. Ciolli as a consultant in lining up doctors to relocate to the Property in the event Mr. Ciolli emerges as the successful bidder although the discussions are preliminary and there is no specific agreement.

The Debtor shall seek the Bankruptcy Court approval of conventional bidding procedures so that higher and better offers can be solicited in conjunction with an auction to be conducted in concert with Confirmation of the Plan.

### **CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

Article III of the Plan classifies the various Claims and Interests as follows:

- Class 1 - All secured and priority claims of City Governmental Units
- Class 2 - The Auberge Secured Claim
- Class 3 - All other creditors
- Class 4 - Equity Interests of Robert G. Aquino, Sr.

Article IV of the Plan provides for the treatment of these Classes as follows:

#### **Non-Impaired Claims**

The unclassified quarterly fees owed to the U.S. Trustee will be paid from the Estate’s Share of Proceeds pending entry of a final decree closing the Chapter 11 case.

The professional fees and expenses of Goldberg Weprin Finkel Goldstein LLP, as the Debtor’s counsel, are subject to Bankruptcy Court approval after the filing of appropriate application for allowance on notice to creditors and other parties-in-interest. All professional fees and expenses that may be awarded by the Bankruptcy Court shall be paid from the Estate’s Share of Proceeds and are projected to be \$200,000.

**Class 1** – The allowed claims of City Governmental Units shall be paid in full directly from the proceeds of sale at closing, since, in large measure, these claims constitute statutory obligations (real estate taxes and related water and sewer charges) that enjoy a priority over a recorded mortgage. Public filings indicate that the total Class 1 claims aggregate at least \$3,958,921.91, itemized as follows:

2009	\$986,789.74	Lien-sold
2010	\$869,029.69	Lien-sold
2011	\$450,856.20	Lien-sold
2012	\$712,246.28	Lien-sold
Estimated 2013	\$940,000.00	Open bill
<b>TOTAL</b>	<b>\$3,958,921.91</b>	

### **Impaired Claims and Interests**

**Class 2** – The lead impaired class is comprised of the Auberge Secured Claim which is classified as the sole creditor in Class 2. The Plan provides that Auberge shall receive an amount equal to 95% of the remaining net proceeds of sale (i.e., proceeds remaining from the sale after payment of real estate taxes and other City obligations and closing costs). The distribution and payment to Auberge of 95% of the remaining net proceeds shall be deemed in full settlement and satisfaction of its allowed secured claim. Additionally, Auberge shall also be deemed to release any deficiency claim which it might otherwise have against the Debtor or the Debtor's estate. The Debtor reserves the right to challenge various aspects of Auberge's secured claim relating to default interest, but will use a reasonable effort to negotiate an agreed allowed amount which will include principal and non-default interest. Although remote, the possibility exists that Auberge shall be paid up to the full amount of its allowed secured claim depending on the outcome of final bidding, with any surplus to be retained by the Debtor's estate.

**Class 3** – All other allowed claims are classified in Class 3, which includes any claims of the State Court Receiver, mechanic's liens and judgments of record to the extent that they become allowed. Holders of allowed Class 3 claims shall receive a pro rata dividend based upon the applicable proportion of their claims as compared to the balance of net sale proceeds constituting the Estate's Share of Proceeds after payment of Administration Expenses. While the Debtor has scheduled \$1,083,381.26 of unsecured claims, many of these charges are disputed and the Debtor envisions that the allowed amount of Class 3 claims will be much less. Class 3 may also include claims of the Aquino family for monies advanced on the Debtor's behalf over the years to maintain the Property and other services.

**Class 4** –7 The Allowed Class 4 Equity Interest held by Robert G. Aquino, Sr. shall not receive any distribution on account of his membership interest unless a surplus arises from the sale of the Property after payment of all claims as provided herein. The bankruptcy petition also lists a group of former general partners whose prior interests were listed notice purposes. The former general partners likewise shall not receive any distributions under the Plan.

## IMPLEMENTATION OF THE PLAN VIA AN AUCTION SALE

**The Sale.** The Property shall be sold at an auction predicated upon the Stalking Horse offer of \$14.0 million. The sale shall be free and clear of all claims, liens, taxes and non-permitted encumbrances based upon the following material bid features:

(a) The auction to be conducted at the offices of Debtor's counsel, Goldberg Weprin Finkel Goldstein LLP, 1501 Broadway, New York, New York 10036, at least twenty (20) days prior to Confirmation;

(b) Only qualified bidders shall be permitted to bid at the auction. In order to be a qualified bidder, an Entity shall submit to counsel for the Debtor and counsel for Auberge:

(i) an all cash written offer, without financing contingencies, for the Property of not less than \$14,500,000 (the "Initial Over Bid");

(ii) financial information to which fairly demonstrates its ability (and sources of its ability) to close on its purchase of the Property;

(iii) a cash deposit equal to 10% of the Initial Over Bid (the "Deposit"); and

(iv) a written consent to a Closing no later than thirty (30) days after the entry of the Confirmation Order.

**Closing.** The Property shall be transferred to the Successful Bidder at a closing to be held after confirmation. In connection therewith, the Successful Bidder shall receive a bargain and sale deed with covenants in form and substance reasonably acceptable to the Debtor, the Successful Bidder and its title insurer (the "Deed"), together with any and all New York City and New York State real property transfer tax returns and any and all affidavits, certificates and other documents which may be necessary or customary to facilitate the recording of the Deed subject to the 1146(a) exemption. Indeed, the closing shall occur post-confirmation to comply with Supreme Court precedent and insure that the Debtor receives a transfer tax exemption.

**Disbursing Agent.** The Debtor's Chapter 11 counsel, Goldberg Weprin Finkel Goldstein LLP, shall be the Disbursing Agent to make distributions under the Plan. Pursuant to the terms of the Plan, the Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties. The Disbursing Agent shall also be responsible to file post-confirmation status reports on a timely basis in accordance with Local Rules.

### **EFFECTIVE DATE**

The Effective Date of the Plan is defined to mean the day on which a closing occurs following entry of the Confirmation Order.

### **MANAGEMENT OF THE DEBTOR**

Following the closing, the Debtor's operations of the Property shall cease, and the Debtor shall wind-up its affairs under the direction of Mr. Robert G. Aquino, Sr.

### **RETENTION OF JURISDICTION**

The Plan contains provisions providing for the retention of jurisdiction by the Bankruptcy Court to primarily enforce the Plan and implementation thereof, as well as determine all other matters pending on the date of Confirmation.

### **REQUIREMENTS FOR CONFIRMATION**

The Debtor hopes that all classes of impaired claims will consent to the Plan so that Confirmation can proceed consensually under 11 U.S.C. §1129(a) without litigation or controversy. Confirmation of the Plan is important because it will provide tax exemptions upon a transfer of the Property. Therefore, the Debtor is committed to obtaining approval of the Plan and Auberge's agreement. Under bankruptcy law, if a class of creditors votes against a plan, the plan may still be confirmed under 11 U.S.C. § 1129(b) so long as, among other things, at least one class must vote in favor of the Plan.

At the Confirmation Hearing, the Bankruptcy Court will determine whether the requirements of section 1129 of the Bankruptcy Code have been satisfied, in which event the Bankruptcy Court will enter an order confirming the Plan. These requirements include determinations by the Bankruptcy Court that: (i) the Plan has classified Claims in a permissible manner, (ii) the contents of the Plan comply with various technical requirements of the Bankruptcy Code, (iii) the Debtor has proposed the Plan in good faith, (iv) the Debtor has made disclosures concerning the Plan that are adequate and include information concerning all payments made or promised in connection with the Plan, (v) the Plan is in the "best interest" of creditors, in that it provides a better recovery than a liquidation should a non-accepting class arise, (vi) the Plan is feasible based upon the prospect of a closing, and (vii) the Plan has been accepted by the requisite number and amount of creditors in each Class entitled to vote on the Plan, or that the Plan may be confirmed without such acceptances. The Debtor believes that all of these conditions will be met prior to the Confirmation Hearing.

## ALTERNATIVES TO THE PLAN

If the Plan is not confirmed by the Bankruptcy Court the alternatives may include other and less favorable disposition of the Property by Auberge, in which event, other creditors have no reasonable prospect for receiving a distribution.

## ADDITIONAL INFORMATION

Requests for information and additional copies of this Disclosure Statement, the Ballots and the other materials delivered together herewith and all deliveries, correspondence and questions, as the case may be, relating to the Plan should be directed to the Debtor's counsel, Goldberg Weprin Finkel Goldstein, LLP, 1501 Broadway, 22<sup>nd</sup> Floor, New York, New York 10036, Attn: Kevin J. Nash, Esq. at (212) 221-5700.

DATED: New York, New York  
September 20, 2013

**GOLDBERG WEPRIN FINKEL  
GOLDSTEIN LLP**  
Attorneys for the Debtor  
1501 Broadway, 22<sup>nd</sup> Floor  
New York, New York 10036  
Tel No.: (212) 221-5700

By: /s/ Kevin J. Nash  
Kevin J. Nash, Esq.  
A Member of the Firm

Debtor  
**PARKWAY ACQUISITION I, LLC**

By: /s/ Robert G. Aquino  
Title: Managing Member